The Court of Appeals and Education in Kentucky

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THE COURT OF APPEALS AND EDUCATION IN KENTUCKY

BY

WILBUR WADE

A THESIS
SUBMITTED IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF
MASTER OF ARTS

WESTERN KENTUCKY STATE TEACHERS COLLEGE
DECEMBER, 1946
Approved:

Major Professor
and
Department of Education

Graduate Committee

[Signatures]
ACKNOWLEDGEMENTS

I wish to express my sincere appreciation and thanks to Dr. Lee Francis Jones for his helpful assistance and criticism in making this study which I have found to be very interesting; to Dr. Gordon Wilson for his helpful suggestions; to Mrs. Frank P. Moore and Miss Elizabeth Coombs of the Kentucky Library for their able assistance in securing materials and furnishing a pleasant place to work; and to the Hon. Rhodes K. Myers for the use of his modern law library.
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INTRODUCTION

The purpose of this investigation was to make a study of education in Kentucky, as interpreted by decisions handed down by the Court of Appeals, and to show how these decisions have helped to form our educational policies, and to trace these trends from the first decision of our wise old men to the present. The decisions of the Court of Appeals have helped legislators to formulate the school laws that have been passed and that will be passed in the future. There are too many decisions on education to be discussed at length. Therefore this investigation deals only with decisions concerning the school superintendents, school boards, and school districts.

There does not exist an investigation of this kind. Mrs. Bonnie Cowart's thesis, "The First Fifty Years of School Legislation in Kentucky," gives all the legislative acts from 1792 to 1842, but no decisions of the Court of Appeals. Therefore the need for such an investigation seems justified. It is hoped that this study will be of interest and value to all educators interested in the history of education in Kentucky and that it will be used as a guide for improving our educational laws.

The purpose of this study has been to make a compilation of decisions of the Court of Appeals concerning school boards, school districts, and superintendents, in order that administrators, board members, and all interested in education can study and see the trends in education from the beginning of our statehood to the present time. Powers and duties of superintendents and board members have been explained fully in the

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1 Bonnie Jones Cowart, "The First Fifty Years of School Legislation In Kentucky," August, 1947.
decisions of the court. It is true that the clerk of the Court of Appeals keeps a record and publishes the decision of the court each year, but these volumes (nearly three hundred of them) contain all decisions of the Court of Appeals. This study should serve as a guide to further research in this field.

Education was not mentioned in the first two constitutions of the state, but since the Acts of Virginia concerning education before Kentucky became a state were to be upheld, our legislators realized there was a need for some kind of an educational system, so that on October 4, 1843, the Court of Appeals ruled:

The collectors for common schools have the same powers as sheriffs, and a general warrant to collect, with a list of the amount assessed on each person subject to tax, in a good authority to levy and collect the tax. 2

Although our first two constitutions did not mention education as such, the court handed down a decision on collecting taxes for school purposes. Thus our educational system was underway.

In some phases of this investigation a definite trend can be noted which led to certain conclusions which have been drawn, but in some phases there has been no definite pattern drawn.

2 "Chiles vs. Todd," Kentucky Reports, I, 127.
CHAPTER I
THE SUPERINTENDENT OF SCHOOLS AND THE COURT OF APPEALS

"In 1837 the board of education in Buffalo and Louisville employed a full-time officer to assume the responsibility for educational affairs of the schools of these cities. In an address before the Department of Superintendence in 1880 on 'Popular Criticisms and their Proper Influence upon School Superintendence,' Dr. M. E. Gates stated that 'We have now four hundred and twenty cities of over five-thousand inhabitants, and all but forty of them have superintendents of schools.' 1

One of the first superintendents of schools was in Louisville, Kentucky, in 1837. Many smaller cities and counties had school commissioners who later became known as superintendents.

SCHOOL COMMISSIONERS

On October 1, 1872, the court explained how a defaulting school commissioner may be sued. Trustees of each district in the county have a separate course of action against defaulting county school commissioners and their sureties for the benefit of the teachers of each district. Sureties are not responsible for money drawn from the treasury by defaulting common school commissioners, unless it was drawn according to law. 2

In September, 1873, the court decided that the legislature has the power to prescribe how and by whom commissioners of common schools are elected: That the election of a commissioner of common schools by the presiding judge and justices (magistrates) of a county court is not a judicial act and is not inhibited by Section 37 of Article 4 of this constitution and under Act of March 21, 1870; the vote may be given viva voce or by ballot. 3

1 Proceedings of the National Education Association Report, 1880, 469.
2 "Hammond vs. Crawford," Kentucky Reports, IX, 73.
3 "Johnson vs. DeHart," Kentucky Reports, IX, 640.
An Act in 1884 provided for election of county superintendents, and they were to be paid from county taxes. The commissioners of education of each county were to hold office until the elected superintendent could qualify.

In 1887 a commissioner who held office until the superintendent qualified under the school law was entitled to compensation for reporting the census of the school children of the county for the year 1884, although the service was performed after the present law went into effect, the compensation allowed being, not for that of service, but for reporting the census.¹

REVOCATION OF TEACHERS' CERTIFICATES

The superintendent has power to revoke teachers' certificates providing:

"if at any time the holder of a county certificate should be found incompetent, inefficient, immoral or otherwise unworthy to be a teacher."

In 1899 the county superintendent of common schools had no power to revoke a teacher's certificate because he gave assistance to an applicant for a certificate while he was being examined for that purpose. The court ruled that giving assistance is neither "incompetency, neglect of duty, immoral conduct, or other disqualification," within the meaning of the law, but the examiners should see that the applicants are seated at the proper intervals from each other and shall see that they neither give nor receive any assistance during examination, and they shall refuse to grant a certificate to any applicant who may either obtain or give such assistance.⁵

¹ "Pickett, Superintendent, vs. Harrod," Kentucky Reports, LXXXVI, 425.
⁵ "Superintendent of Common Schools of Daviess County vs. Taylor," Kentucky Reports, CV, 397.
Where charges of immorality preferred against a school teacher by the county superintendent of Monroe County in 1904 failed to specify the date of the specific acts, it was held that such action requires an investigation of the moral character of applicants for teacher's certificates before issuance thereof and does not authorize the revocation of a certificate without just cause, or for immorality prior to date of certificate. 6 This teacher should not have been issued a certificate if the above charges were true.

The Superintendent of Barren County removed a teacher from the school system in 1916. The court held, in a proceeding to suspend or remove a teacher under Section 4417, Kentucky Statutes:

"Where the notice to the teacher, though defective, in not specifying the acts complained of and the time of their commission, was sufficient in other respects, and he appeared and defended, the superintendent had jurisdiction and his judgment is not void and cannot be assailed collaterally." 7

REMOVAL AND APPOINTMENT OF SCHOOL TRUSTEES

Ginn and Company contended the superintendent of Laurel County removed members of the board of education without cause to keep from buying their textbooks. The court handed down their decision in February, 1899, and held that the county superintendent has power to remove his associates from the county board without notice or the assignment of any cause. 8 In a similar case in November, 1899, the court held, that Section 4417 of the Kentucky Statutes does not confer upon the county superintendent the power to remove trustees of graded schools. 9

6 "Bowen vs. Ray, County Superintendent," Kentucky Reports, CXVII, 110.
7 "Lasley vs. Draper," Kentucky Reports, CLXXI, 218.
8 "Johnson vs. Ginn," Kentucky Reports, CV, 654.
9 "Matthews vs. Rogers, Superintendent," Kentucky Reports, CVII, 236.
In Breathitt County in 1910 a superintendent of schools had authority on June 29 to appoint a school trustee to fill a vacancy to occur on July 1 in the same year when his term extended beyond that date, and he had power to make the appointment when the vacancy occurred. 10

The county superintendent has a right to recognize a trustee among contestants of an election until the dispute has been settled, according to the court in June, 1912. 11

CREATION OF NEW DISTRICTS

Kentucky Statutes, section 4418, authorizing the county superintendent of schools to decide all questions of difference touching the administrative duties of the officers and teachers of common schools in his county, does not confer on the superintendent of Harlan County jurisdiction to determine the validity of proceedings for the establishment of a new school district out of territory taken from other districts. 12

EMPLOYMENT OF COUNSEL

The county superintendent of Shelby County in 1909 contracted with the county attorney and another attorney to sue a publishing company for breach of bond given under Kentucky Statutes, 1903, as a condition precedent to the adoption of its textbooks in the county schools. It was held that the county attorney was bound to prosecute civil actions, in which the county was interested, without additional compensation, but the superintendent could, in the exercise of reasonable discretion, employ additional counsel to assist the county attorney, if his services were reasonably necessary, and pay him a reasonable fee therefore. 13

10"Ferry vs. Cornett," Kentucky Reports, CXXXVI, 628.  
11"Patrick vs. Fletcher," Kentucky Reports, CALIX, 193.  
12"Howard vs. Forrester," Kentucky Reports, CIX, 336.  
SALARY

The amendment of Kentucky Statutes, 1903, section 4419, fixing the compensation of county school superintendents at not less than $250 nor greater than $1,500, by raising the minimum salary to $400, did not apply to superintendents elected prior to the passage of such amendment. The constitution prohibits the changing of an official's salary after his election or during his term of office. The superintendent of Clinton County was elected, and there was no general order fixing his salary. The court held, in absence of a general order fixing his salary before he was elected, the salary for the first year, after his election should be the basis for fixing his salary for future years of the term, not to be less than the minimum prescribed by the statute in force at the time of his election.14

In May, 1916, the court held that the county board of education has no right to appropriate any of the school fund to the county superintendent in payment of salary, nor can the superintendent perform the duties of school supervisor and be paid by the county board of education therefor, but the board can use sound discretion in the manner of increasing and paying expenses of the superintendent, or in making the school system more efficient.15

In December, 1919, the court held when the salary of the superintendent is based on the number of school children in the county and the census after his election becomes smaller reducing his compensation, the salary which he should receive under the new law should be ascertained on a percentage plan based on the census of former years.16

The superintendent of Caldwell County in 1926 agreed to serve under the same terms as his predecessor, but the new superintendent brought

14 "Hickey vs. Smith and Athens," Kentucky Reports, CXVII, 890.
15 "Kenneally vs. Snider," Kentucky Reports, CLXX, 220.
action for salary for months in which school was not in session. The evidence held to support the defendant school board in that predecessor was paid only for the months school was in session. Therefore the new superintendent was bound by contract to receive salary only when school was in session. 17

A taxpayer of Whitley County in 1928 brought suit against the county superintendent of schools to recover money paid the superintendent as salary; the court being without power to enter final judgment where county was not joined as party. 18

From 1916 to 1924 the State Superintendent of Public Instruction received an additional $1,500 for services as special inspector and examiner of schools. The court ruled that the Act of 1924 fixing the State Superintendent's salary at $4,000 repealed the section of the 1916 law giving him this additional $1,500 for services as special inspector and examiner of schools. 19

CLERICAL ASSISTANCE

The board of education may provide clerical assistance for the superintendent to use in his office if his work is so heavy that the superintendent is unable to do it and perform other duties of his office. 20

ASSISTANT SUPERINTENDENT

An assistant county school superintendent is un-authorized, and no one can be employed as such. 21

Bell County had an assistant superintendent before 1938. The court

18 "White vs. Walker," Kentucky Reports, 326.
19 "Bell vs. Talbot, Auditor," Kentucky Reports, 721.
20 Ibid., p. 220.
21 Ibid., p. 220.
interpreted the statute in 1938 that provided merely for appointment of "assistant" superintendents of schools, but did not define his duties. Their conclusion was that appointee was to perform duties of a "deputy" superintendent; "assistant" and "deputy" being synonymous as so used.  

REMOVAL OF SUPERINTENDENT

The Boyle County Board of Education tried to remove their county superintendent in 1930. The court ruled that the power of the board of education to remove the county superintendent is limited to removal for cause after proper notice and compliance with due process.  

The county superintendent is held public "officer" and not a mere employee of the board of education to serve at its pleasure. The court defined "election" and "appointment." The former usually refers to the vote of the people, and the latter relates to designation by some individual or group. Then if the power of appointment belongs to the board, appointment is complete when the meeting adjourns and is irrevocable after the last act of appointing authority has been done. However, appointment to office may be revoked at any time before the act becomes final. Valid appointment to office, anticipating future vacancy, must be made by authority empowered to act when vacancy does occur.  

The county superintendent is not a "county officer" and therefore not subject to be proceeded against by the commonwealth's attorney for alleged usurpation of office.  

22 "Knuckles vs. Board of Education of Bell County," Kentucky Reports, CCXXXII, 431.
23 "Board of Education of Boyle County vs. McCloskey," Kentucky Reports, CCXXXV, 682.
The superintendent of schools in Daviess County was removed from office in 1924 on the grounds of "incompetency and immoral conduct." The court ruled these words had no technical meaning. Charges against the superintendent of schools must be reasonably definite and certain. Sufficiency of cause for removal of the superintendent of schools is a question of law for the courts. General testimony as to negligent bookkeeping was held not to warrant the removal of the school superintendent.25

The superintendent of Bell County schools was removed from office in 1933 for failing to visit schools as required by law. The court held that courts will not retry similar cases but will examine records to ascertain abuse of discretion.27 In a similar case in Meade County in 1934 the superintendent was removed for failing to visit all the schools in Meade County. It was decided that the admissibility and weight of evidence and credibility of witnesses are for the county boards of education to decide and not the courts.28

The city superintendent of schools at Ludlow was appointed by the board of education for a term of four years. He could not be dismissed at the will of the board because of the prior order of the board that school superintendent should be appointed for one year only. Evidence showed where members of boards of education exceeded their authority and tried to perform many duties of the city superintendent of schools. The superintendent brought charges against members of the board of education before the state board. They held that there was not sufficient ground

26 "Graham vs. Jewell," Kentucky Reports, CCIV, 260.
27 "Howard vs. Bell County Board of Education," Kentucky Reports, CCLIV, 558.
28 "Meade County Board of Education vs. Powell," Kentucky Reports, CCLIV, 352.
for dismissal of the superintendent, regardless of his motive in bringing
the charges against the board. The word "cause" as used in the statutes
providing that superintendent of city schools may be removed by four
members of the board of education "for cause" means for legal cause. 29

At a meeting of the board of education in Floyd County in 1936, written
charges were placed with the board of education for removal of the county
superintendent for cause. The secretary of the board failed to place
charges in the board's minutes. This did not deprive the board of the
right to hear and determine charges. 30

In 1939 the superintendent of Bourbon County signed and sent to
the State Board of Education a contract of employment of attendance officers
not elected by the county board of education. This justified his removal.
Charges against the superintendent were delivered to him fifteen days
before the board took action on his removal, but were not signed. The
court held that such charges and copy thereof delivered to him does not
require being signed, sworn to, or verified. 31

CERTIFICATION

Section 4399 of the Kentucky Statutes was explained by the court in
1917. It stated that a certificate of qualification for superintendent
is the equivalent of a state certificate in all respects, including the
term of its duration. 32

The certificate of one elected as superintendent of schools, signed
only by Secretary of State and Attorney General, ex-officio members of
the State Board of Education in 1927, when later signed by the State

29 "Smith vs. Board of Education of Ludlow," Kentucky Reports, CCLXIV, 150.
30 "Hunter vs. Board of Education of Floyd County," Kentucky Reports, CCLXXV, 162.
31 "Starns vs. Board of Education of Bourbon County," Kentucky Reports, CCLXXX, 747.
32 "Gilbert, Superintendent vs. Brock," Kentucky Reports, CLXIV, 34.
Superintendent of Public Instruction, chairman of the board, was held as not violated as of the date when signed by other members. 35

ELECTION AND APPOINTMENT

Under Kentucky Statutes 1903, section 4401, fixing the tenure of the county superintendent until his successor is elected and qualified, in the case of contest the Superintendant of Public Instruction may recognize one of the contestants as the officer until the contest is settled in the courts. In Whitley County in 1907, the court decided the lady contestant was elected and she having qualified, the State Superintendant having recognized her right to the office, and the contestant having surrendered the official records to her, he was excluded from the office and may not sue to remove her from office, though she be ineligible. 34

Under a statute providing that the board should appoint a superintendant for a term not exceeding four years and an appointment made for two years was valid. 35

OFFICE AND EXPENSES

In 1926 the court held that the Acts of 1920, C.36, did not repeal the Acts of 1918, C.136, and hence fiscal courts of respective counties must furnish without charge an office to county school superintendent. 36

In 1917 it was ruled that a board of education had no authority to appropriate money to pay expense previously incurred by the county superintendent in the exercise of official duties. 37

37 "Leslie County vs. Hoskins," Kentucky Reports, CLXXV, 921.
SUSPENSION OF PUPILS

Superintendent Morris, City of Covington, expelled Miss Booth in 1901 for insulting a teacher. The court held that the action of public school authorities in expelling a pupil will not be reviewed by the courts, unless the action was arbitrary or malicious.\(^38\) In a similar case in 1938 it was ruled that a school superintendent has power to make rules and to suspend students for willful disobedience or defiance of authority, and courts will not intervene unless the superintendent acts arbitrarily or maliciously.\(^39\)

RECOMMENDATION OF TEACHERS

A county superintendent's nomination of a principal for school in a consolidated school district may be oral.\(^40\) Ten years later a county superintendent's recommendation of teachers for schools may be written or oral.\(^41\) The county board of education may not reject the superintendent's recommendation, unless for cause shown. Then they cannot choose principals or teachers not first recommended by the superintendent.

In 1932 only principals and high school teachers nominated by superintendent can be elected by the county board of education.\(^42\)

Powell, superintendent of Meade County schools, recommended a principal and teachers to the board of education who were morally and educationally qualified for their positions. The court held that superintendent Powell could withdraw nominations for principal of school at

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\(^{38}\) "Board of Education City of Covington vs. Booth," Kentucky Reports, CX, 807.

\(^{39}\) "Byrd vs. Segley," Kentucky Reports, CCLXII, 432.

\(^{40}\) "Lloyd County Board of Education vs. Hall," Kentucky Reports, CCLXII, 680.

\(^{41}\) "Daniel vs. McDaniel," Kentucky Reports, CCLX, 77.

\(^{42}\) "Byrness v. Mercer County Board of Education," Kentucky Reports, CCLXIV, 292.
the meeting of the county board of education whose recommendations were considered.43

Where the county superintendent failed to renominate or insist on election of high school teachers after rejection of his recommendations by the county board of education, the board could elect other teachers nominated by the superintendent, and hence teacher whose nomination was rejected could not compel his election by the board.44

The county board of education of Ohio County in 1934 could not elect a high school principal not recommended by the county superintendent.45

In a similar case in Laurel County in 1939 the board of education must consent to and approve the recommendation by the superintendent unless substantial cause in each particular case is shown. The qualifications of a teacher to teach would be determined as of day and time for fulfillment of their contracts and not as of date of their application.46

43 "Stith vs. Powell, County Superintendent of Schools," Kentucky Reports, CCLI, 155.
44 "Hale vs. Board of Education of Calloway County," Kentucky Reports, CCLIII, 709.
45 "Hudson vs. Ohio County Board of Education," Kentucky Reports, CCLIII, 709.
46 "Cottongim vs. Stewart," Kentucky Reports, CCLXXVII, 706.
CHAPTER II

THE BOARD OF EDUCATION AND THE COURT OF APPEALS

The board of education is the legislative branch of our educators. They lay down the policies to be carried out in our school systems. More cases have come before the Court of Appeals involving school boards and their members than any other topic in the field of education. This chapter also includes decisions involving school trustees.

Under the Act of 1893 for the government of cities of the first class, a school board was created having charge of the city schools. They were authorized to elect a superintendent of public schools for a term of two years. It was held that the plain meaning of the Act was to give the board of education the control of the schools and it was essential that they should have a superintendent in sympathy with them. The board was not required to put in a new superintendent but they were empowered to do so if they so desired.¹

ELECTION AND APPOINTMENT

A school trustee duly appointed and qualified on June 14, 1897, was continued in office until July 1, 1899, because of the Act of 1898 which changed the time of electing trustees from June to October of each year and to take office the following July.²

Members of the board of education of a city of the fourth class perform duties of school trustees, if there be no provision in the charter to the contrary, they should be elected as trustees, and therefore the vote must

¹ "Park vs. Bloom, Strother et al.," Kentucky Reports, CXL, 474.
² "Swango vs. Rose," Kentucky Reports, CV, 294.
be viva voce. Where no valid elections were held, old board members may continue in office or fill the vacancies but persons appointed by the city council to fill vacancies are not entitled to the office.\textsuperscript{3}

Where two school trustees were elected at the same time to fill two and three terms, and the statute does not indicate a method of determining who has the longer term, an agreement between the trustees-elect is the proper method of settling the issue and not the fact that the trustees receiving the most votes should have the longer term.\textsuperscript{4}

Where the poll sheet of an election to elect a trustee was stolen before the election officials certified the result, a vacancy exists which can be filled by the appointment of the county school superintendent.\textsuperscript{5}

In 1911, the court held that the statute intended that contested election cases be speedily disposed of, so that the person elected to the office might be inducted into it and perform the duties unmolested.\textsuperscript{6}

There being two vacancies on the Board of Education of Winchester in 1911, appellees were elected to fill them, later it was attempted to substitute two others in their place. The lower court properly found in favor of the appellees who sued to enjoin the two who were substituted from performing any duties as members of the board of education.\textsuperscript{7}

In the absence of a statutory provision a school board may do anything at a special meeting that they could do at a regular meeting.\textsuperscript{8}

Where no valid election for school trustee is held, a vacancy occurs,

\textsuperscript{3} "Elliot vs. Burke," Kentucky Reports, CXIII, 479.
\textsuperscript{4} "Gilbert vs. Lucas," Kentucky Reports, CXXXIX, 582.
\textsuperscript{5} "County School Superintendent, Dixon vs. Caudill," Kentucky Reports, CXLI, 623.
\textsuperscript{6} "Allen vs. Brown," Kentucky Reports, CXLI, 414.
\textsuperscript{7} "Hollis vs. Cornett," and "Hollis vs. Allen," Kentucky Reports, CXLIV, 420.
\textsuperscript{8} "Clark vs. Board of Trustees Dawson Springs," Kentucky Reports, CXLIV, 211.
which may be filled by the county board of education.9

In a school election where there is a tie vote, a vacancy exists and
may be filled by the board of education.10

In creating a county board of education in Breckinridge County in
1921, the court held that colored voters living in white graded school
districts are not excluded as they are not residents of such districts
within the meaning of the school law.11

Hopkinsville in 1928 had nine members on their board of education.
There were five vacancies on the board at one time. The remaining membership
of board of education did not constitute a legal quorum and they
were not authorized to fill vacancies. The Governor was authorized to
fill vacancies.12 In a similar case in 1931 where elected board members
failed to qualify, holdover members could not participate in selection of
own successors.13 In a similar case in Knox County in 1936, the court
gives a different opinion and states that a quorum of members of board
of education of a graded school district is not required to fill any
vacancies occurring on board. The one remaining officer held authorized
to fill vacancies if he did so within ninety days after vacancies occurred.14
Again in 1938 the court held that holdover members, as well as newly
elected members of city board of education constitute the board, which
had the right to fill vacancy created by resignation of holdover member
for unexpired term under statutes.15

9 "Ison vs. Watson," Kentucky Reports, CLXIX, 160.
10 "Combs vs. Brewer," Kentucky Reports, CLXXIX, 169.
11 "Wright vs. Lyddon," Kentucky Reports, CXCII, 58.
12 "Glass vs. City of Hopkinsville," Kentucky Reports, CCXXV, 428.
13 "Board of Trustees of Salt Lick Graded Common School District vs. Kercheval,"
   Kentucky Reports, CCLXII, 1.
14 "Horton vs. Bradford," Kentucky Reports, CCLXIV, 480.
15 "Spurlock vs. Spradlin," Kentucky Reports, CCLXVI, 164.
Board of Trustees of Fordsville Graded School had authority to fill
vacancies for unexpired terms until next regular election.16

When judgment was rendered in Pulaski County, January 29, 1938, that
persons holding office were usurpers, the offices immediately became vacant
and when these vacancies were not filled before May 23, 1939 the state
Board of Education had the right to fill these vacancies.17

The Amended Act authorizing division of school district
into division for purposes of selecting members of school board
manifests intent to return to the original method of election in
effect before adoption of the school code.18 The word "district"
should be construed to mean "division."

QUALIFICATIONS

It seems that more board members have had trouble meeting the educational
requirements for that office than any of the other requirements. One elected
to office to fill a vacancy on the board of education must qualify within
reasonable time thereafter. In Whitley County in 1930 one who had not
qualified thirty-three days after election was declared unreasonable by
the court.19 In a similar case in Greenup County in 1938, a board member
did not file evidence of his educational qualifications as required by law,
the court held, that he had a reasonable time to secure proof of his
educational qualifications.20

A verified statement by board member's former teacher that he had
completed the eight grades was sufficient evidence of his educational
qualifications.21 An affidavit of board members's teacher stating that

16 "Board of Trustees of Fordsville Graded School District vs. Oller," Kentuckv Reports, CCXLIII, 1.
17 "McGlendon vs. Hamilton," Kentucky Reports, CCLXXVII, 754.
18 "Knolling vs. Franklin County Board of Education," Kentucky Reports, CCLXXXIII, 572.
19 "Brown vs. Rose," Kentucky Reports, CCXXIII, 549.
20 "Oaker vs. Remine," Kentucky Reports, CCLXXIII, 760.
21 "Commonwealth vs. Griffin," Kentucky Reports, CCLXVIII, 839.
he had completed whatever grade he was taking each of two year she taught him was insufficient to show that board member was eligible for office.  

An affidavit of board member's teacher stating that he had completed the sixth grade in 1907, which was then the highest grade in that school, although the eight grade was taught in other schools in that county, and further stating that the sixth grade as taught was equivalent to the present eighth grade was insufficient evidence of eligibility of board member.  

In 1938 in Leslie County a board member had an affidavit from his teacher saying that he had the educational requirements, but a photostatic copy of his signature and a sample of his handwriting was not considered proof of lack of education.  

In Madison County in 1941 the court held that a board member may qualify by taking examination after he has been inducted into office.  

One under contract to teach school in Leslie County in 1938 was disqualified to hold membership on the board of education of that county.  

The provisions of statutes prescribing qualifications of members of county board of education are mandatory.  

Where undisputed facts established that candidate for county board of education indorsed note, which had been executed to him by board as part of purchase price for school bus sold by partnership consisting of candidate and his son, to son upon dissolution of partnership, which dissolution occurred prior to election of candidate to board, and that son agreed not to look to candidate

22 "Whitteker vs. Commonwealth," Kentucky Reports, CCLXXII, 734.  
for payment of note in event of its nonpayment by board, candidate retained no "interests" in collection of note, which would disqualify him under statute from holding office. 23

A mail carrier is ineligible to be a member of the school board because he holds an office of trust or profit under the United States. 29

Under statute providing that no person shall be eligible to office of member of board of education who at the time of election is directly or indirectly interested in the sale of supplies or services for which school funds are expended, disqualifying "interest" is confined to monetary considerations, and the consideration must be such as would move directly or indirectly to the board member himself and does not include mere emotional interest that a member of the board might have in person rendering the services. 30

REMOVALS AND RESIGNATIONS

Bell County board of education was not authorized to remove newly elected subdistrict trustee, for refusal to draw lots as to length of trustee's respective term of office. 31

A reviewing court cannot question motives of the county board of education in removing a member who is delinquent in his statutory duties, but where board fails to inform the member of the change of the meeting date, the board's removal of the member for failure to attend three consecutive regular meetings was arbitrary and improper. 32

In a suit to oust a member of the county board of education on grounds that member did not possess statutory educational requirements, allegations that the requirement was lacking because member was not voter of legal age and residence, only fourth grade education, were sufficient as against demurrer to petition. 33

Neither a parole resignation by a school trustee, nor a written

30 "Chadwell vs. Commonwealth," Kentucky Reports, CCLXXXVIII, 644.
31 "Bell County Board of Education vs. Collett," Kentucky Reports, CCLXIX, 841.
32 "Saiden vs. Floyd County Board of Education," Kentucky Reports, CCLXX, 639.
The resignation of the school district trustee did not annul the previous recommendation of a person for employment as a teacher. However, the school district trustee withdrew the resignation before it was acted upon by the county board of education and they could not select a successor.35

SCHOOL SITES

Trustees of a common school district are created a body politic, and when they sue as such a body the withdrawal by some of the trustees of their names as plaintiffs does not affect the proceedings.36 The trustees wanted orchard and garden for school site.

In 1901 a school house was condemned in Hart County. It was in the center of the district which was both in Hart and Green Counties. The new site was selected in Green County but it was not in the center of the district. The plaintiff offered a lot not far from the site selected which was nearer to the center of the district than the one selected by the trustees. The plaintiff could not recover damages on the ground that trustees were actuated by malice in selecting the lot condemned. The plaintiff should have appealed to the county superintendent, and then to the State Superintendent if the selection was not a proper one.37

In 1911 the court held that the school act of March 24, 1903, to establish the first county high schools at the county seat, if one does not already exist, is directory in its terms, and not mandatory. It is

34 "Graham vs. Jackson," Kentucky Reports, CXII, 683.
35 "Ellis vs. Van Horn," Kentucky Reports, CCXLV, 188.
36 "Wright vs. Baker," Kentucky Reports, XCIV, 343.
37 "Akin vs. Jones," Kentucky Reports, CXXI, 199.
the duty of the board of education to follow the statute, but if they fail

to comply strictly with its provisions, their acts are not void but

irregular only. 38

The county board of education of Edmonson County selected a site for

the building of a school house a few hundred yards away from the old site,

but a few months later, about the time the work on the house was to begin,

by an order changed the site to the old one. It was held that there is

nothing in the statutes to prevent the board from changing its mind and

rescinding the order. 39

The former opinion in this case, 150 Kentucky 847 is modified

to the extent of holding that subsection 11 of section 4433a, Kentucky Statutes, did not repeal section 4437 of the Statutes, but as the deed in controversy was made before either of the sections was enacted, the latter had no effect upon the matter, except to make it the duty of the trustees and county superintendent to secure the fee simple title to the site for the district which they are now directed to do so by condemnation proceedings, if they cannot agree with the owners upon the price. 40

Three years later (1916) in Edmonson County the school board's right
to select school sites was again contested. Again the court held, after

board has selected a site, it may rescind its action and select a
different site. 41

The board of trustees of graded common school districts have authority
to add additional territory to the district, but their proceedings to have

any validity must be evidenced by records of such proceedings, properly

made and entered upon the record book of the proceedings of such board of

trustees. 42

38 "The Grant County Board of Education vs. Chandler," Kentucky Reports, CXLIV, 338.
39 "Hitter vs. County Board of Education Edmonson County," Kentucky Reports, CL, 847.
40 "Hitter vs. County Board of Education Edmonson County," Kentucky Reports, CLII, 578.
41 "Vincent vs. Edmonson County Board of Education," Kentucky Reports, CLXIX, 34.
42 "Fanny vs. McRoberts," Kentucky Reports, CLXIII, 314.
County school board may condemn more than one acre of land for consolidated school site if more land is needed for that purpose. 43

A school board is vested with discretion in choosing a school site which is binding on all persons interested in absence of abuse. A member of the board of education present at meeting who does not vote is regarded as voting with the majority. 44

Under deed of trustees to school district of land "for school purposes," board of education acquired fee - simple title, notwithstanding that more than fifteen years subsequent to conveyance the board of education ceased to use the land for school purposes; the words "for school purposes" being merely descriptive of the nature of the only use to which school trustees may put any property held by them and not having the effect of creating a limitation on the fee. 45

A county board of education has discretion in selecting a school site, and selections should not be interfered with, unless it appears that the board acted arbitrarily or abused discretion. 46

Neither school trustee deeding land for school purposes, nor his grantee without consideration, could enforce reverter clause inserted in deed despite statutory prohibition, although such defense was not pleaded. 47

In Franklin County in 1937 the court held that the board of education rather than fiscal court had power and duty under statutes to determine site for high school building. 48

Under the Act of 1798 donating lands to different counties of the state to establish seminaries of learning, the trustees of this grant of land in Bracken County sold the lands and with the proceeds erected buildings

43 "Cunningham vs. Shelby County Board of Education," Kentucky Reports, CCL, 765.
44 "Montgomery vs. Claybrooks," Kentucky Reports, CXXXVIII, 344.
45 "Bridwell vs. McCreary," Kentucky Reports, CXXXVIII, 334.
46 "Spaulding vs. Campbell County Board of Education," Kentucky Reports, CXXXIX, 277.
47 "Terry vs. Rose," Kentucky Reports, CCLI, 316.
48 "Franklin County vs. Franklin County Board of Education," Kentucky Reports, CCLXVII, 564.
and established a school in accordance with the provisions of the act. The legislature has no power to take from these trustees or their successors the title to the property and vest it in the trustees of the common school district. While the grant is irrevocable, the power exists on the part of the judiciary, when called upon, to see that the trustees of this fund, or of the buildings and grounds, use them as a seminary of educational purposes, and to remove them and appoint others upon their failure to carry out the purposes of the donation.49

In 1909 the court held, that old school sites or real estate not needed as a school site may be sold and the proceeds may be applied to any legitimate needs of the district for school purposes.50 Williamsburg district No. 1 sold these lots and used money to repair school house.

In 1911 the court held that building improvement, equipment and renting of school houses must be done by the county board of education; the county school superintendent has no authority over these matters.51

Where full and complete consideration is paid for land condemned by school trustees for school purposes, right of reverter does not arise except from clearest and most explicit language.52

Evarts Board of School Trustees made sale of school property to church without any fraud. Trustees elected nearly five years later could not rescind sale because it decided it was a bad trade, since school board is a continuing body and was in position of a natural person.53

49 "Graded School District No. 2 vs. Trustees of Bracken Academy," Kentucky Reports, XCV, 436.
50 "Galilee vs. Inman," Kentucky Reports, CXXXI, 283.
51 "Vaughan vs. Hindman, Superintendent," Kentucky Reports, CXIV, 607.
52 "Binder vs. County Board of Education of Jefferson County," Kentucky Reports, CXXXIV, 143.
53 "Trustees of Congregational Church of Evarts, vs. Board of Trustees of Evarts Graded Common School District," Kentucky Reports, CXXXI, 94.
FINANCING BUILDING PROGRAMS

In the 1920's county boards of education began to look for new ways to finance building programs and many test cases were held. The first decision was handed down by the court June 17, 1930. A contract to sell school site to a corporation with an option to lease and repurchase was held valid and not a violation of constitutional debt limitation. A similar decision was handed down concerning Scott County three days later. The city board of education of Ludlow was held authorized to convey a school lot to a holding company and pay the school building contractor from funds held by the trustees.

In Jackson County in 1937 a proposed plan,

Whereby board of education would convey school site to fiscal court, fiscal court would issue bonds secured by mortgage on property to finance construction of school building, lease building to school district under lease "continuing from year to year" for rental sufficient to eventually amortize mortgage, and then convey site and building to board, was violative of constitutional limitation on indebtedness because of provision that lease should continue from year to year, if amount for rental for entire term exceeded revenue of school board for year in which lease was entered into, but plan could be remedied to comply with constitution by making lease for one year, with annual privilege of renewal.

This same case appeared again before the courts in 1937, where fiscal court would lease a school building to the school district under lease for one year with the privilege to renew annually for same period for rental sufficient to eventually amortize mortgage. This plan was constitutional.

54 "Kirkpatrick vs City Board of Education of Russellville," Kentucky Reports, CXXIV, 336.
55 "Bridges vs Scott County Board of Education," Kentucky Reports, CXXIX, 143.
56 "Godsey vs Board of Education of Ludlow," Kentucky Reports, CLXXXIV, 17.
57 "Fiscal Court of Jackson County vs Board of Education of Jackson County," Kentucky Reports, CCLXVIII, 336.
58 "Fiscal Court of Jackson County vs Board of Education of Jackson County," Kentucky Reports, CCLXIX, 288.
County board as agency of the state has the power to convey good title to school property which is technically vested in the commonwealth. The county board also has power to control, buy and sell realty for school sites and to manage all public school property of its district, and has right to use school funds and property to promote public education in a manner deemed necessary and proper.

In 1940 the court held that a school board has a large discretion in adoption of plans of financing the construction of new school buildings.

A county board of education, renting school building from corporation which constructed it, had no right to incur indebtedness at the taxpayers expense, to reconstruct building after it was destroyed by fire, nor to issue funding bonds for payment of such indebtedness.

**BUDGETS**

The control and disposition of school funds by the board of education when they act within the scope of the statute is entirely in their discretion, and suits by taxpayers to have the board expend the money received from the fiscal court in certain ways will be dismissed.

The legislature intended to make the board of education independent and when the board of education reports to the fiscal court its estimate of the amount of money required to meet the educational needs of the country for the ensuing year, the fiscal court will not be permitted to refuse to comply with the board's demand, unless it can satisfactorily show that the members of the board acted corruptly or in bad faith.

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59 "Holladay vs. Board of Education of Ohio County," Kentucky Reports, CCLV, 447.
60 "Scott County Board of Education vs. McMillian," Kentucky Reports, CCLXX, 483.
61 "Beak vs. Board of Education of Graves County," Kentucky Reports, CCLXXII, 241.
62 "Steth vs. Board of Education," Kentucky Reports, CCXIII, 91.
63 "Spaulin vs. Floyd County Board of Education," Kentucky Reports, CLXII, 677.
64 "Floyd County Fiscal Court vs. Floyd County Board of Education," Kentucky Reports, CLXX, 317.
A similar decision was handed down in 1932. 65

Under the 1920 school act it is the duty of the county board of education to prepare a detailed budget for the school year and present it to the fiscal court before that body meets at its April term for making of the regular county levy and the fiscal court has no discretion in the matter except that it may fix the rate of taxation on the one hundred dollars at such sum only as may be required to raise the total amount specified by the board of education. 66 A similar decision was handed down in Elliott County in 1921. 67

The Cumberland County board of education in 1920 failed to submit their budget to the county court clerk for the purpose of requiring the fiscal court to make a levy for the benefit of the common schools of the county. It was held directly and not mandatory, since the school children of the county may not be allowed to suffer because of any oversight or nonfeasance of the county board of education. 68

In 1930 the court held that the board of education presenting the budget to the fiscal court was equivalent to submission to the county court clerk, he being ex-officio clerk of the fiscal court. 69

In 1933 the court held that the board of education had authority to agree with the fiscal court on what levy was necessary for schools. 70

65 "Allen County Fiscal Court vs. Allen County Board of Education," Kentucky Reports, CCCLII, 546.
66 "Breathitt County Board of Education vs. Breathitt County Fiscal Court," Kentucky Reports, CLXXXVIII, 674.
67 "Elliott County Fiscal Court vs. Elliott County Board of Education," Kentucky Reports, CXCIII, 68.
68 "Fiscal Court of Cumberland County vs. Board of Education of Cumberland County," Kentucky Reports, CXGI, 268.
69 "McCleary County Fiscal Court vs. McCleary County Board of Education," Kentucky Reports, CCXCVI, 149.
70 "Madison County Board of Education vs. Madison County Fiscal Court," Kentucky Reports, CCCLIX, 540.
Filing of the school budget prior to the time required by statute was held not to show bad faith of the school board. 71

In 1926 the court held that the board of education of a graded school district is limited in its annual spending to its budgeted revenue. 72

A city is not required to levy a higher school tax on theory that some taxpayers will fail to pay taxes during the year for which it was levied. 73

Kentucky Statutes, 1903, Section 4443, enacted 1893, provided that when a tax is levied in a school district the trustees shall appoint a treasurer, who shall execute a bond to the trustees, and further prescribed the treasurer’s duties in connection with taxes. In 1894 the section was amended by allowing the treasurer ten percent commission for collecting taxes. In 1898 another amendment permitted the trustees to dispense with the treasurer’s services and to require the sheriff to collect the taxes and perform the treasurer’s duties. Kentucky Statutes, 1903, Section 4479, also enacted in 1893, provides that the trustees shall appoint a treasurer who shall give bond to the commonwealth for the use of the trustee’s "conditioned for the faithful performance of his duties under this article." This section imposes on the treasurer duties in connection with proceeds of the sale of bonds, funds collected for annual expenses and for the payment of interest, money received by gift or device, etc., and directs the trustees to pay the treasurer such sum for his services as shall be deemed reasonable and just. Held, that the sections are not in conflict, but relate to distinct matters, and, while one person might fill the office of treasurer under both sections, in order to be qualified to perform the duties imposed by both, he must give bond under both, and when he has given bond under Section 4443 alone he is not entitled to compensation for any service other than in the collection of taxes. 74

An appellant seeks to oust a recently elected treasurer of the school board and five trustees on the grounds that the trustees were not legally qualified. It was held that the rights of the trustees cannot be attached collaterally. 75

71 "White, Mayor vs. Board of Education City of Maysville," Kentucky Reports, CCLXIII, 1.
72 "Board of Education of Frankfort vs. Board of Education of Frankfort and Hardin," Kentucky Reports, CCLXIII, 512.
73 "City of Paducah vs. Board of Education of Paducah," Kentucky Reports, CCLXXXIX, 864.
74 "German vs. Board of Trustees, Highland Park School District No. 46," Kentucky Reports, CAVII, 997.
75 "Jewett vs. Nuttson," Kentucky Reports, CXLVIII, 320.
Louisville School Board hired John T. Bell as janitor and was indebted to him. Bell assigned claims to an appellant who brought suit. It was held that the school board had the right to employ a janitor and to fix his salary out of the fund which annually comes into its hands for educational purposes. 76

In June, 1946, the court held where valuation fixed in school budget was about $500,000 less than the apparently correct valuation for current year, tax levy for school purposes for ensuing school year was required to be fixed on the rate to be computed on most reliable valuation. 77

RECOMMENDATION AND HIRING OF TEACHERS.

In 1912 the trustees composing the educational divisional board were hiring the teachers for the county schools. The court held that a teacher recommended by a sub-district trustee in writing possessing the necessary qualifications, and no reasonable objection was offered to his election, it was the duty of the educational division board to elect him. 78

In Floyd County in 1913, the sub-district trustee had failed to recommend a teacher for his school when divisional board met to hire teachers. A teacher was hired by the board without waiting for a recommendation of the sub-district trustee. The court held that it is the duty of the chairman of the educational division board to immediately request such sub-district trustee to nominate a teacher and where election of teacher by educational division board without having requested the recommendations of a teacher by the trustee of the sub-district was invalid. 79 But in 1927 the court held that a board of education...
may hire teachers on recommendation of any of its members after sub-district trustee's failure to make recommendation. 80 Again in 1931 the court held that from May 15, when a teacher resigned, to June 1, was a "reasonable time and repeated opportunities" for sub-district trustee to make recommendation for teachers, entitling county board of education to make appointment without recommendation. 81 A similar case arose in Bourbon County in 1933, where the court held that the sub-district trustee had "reasonable time and repeated opportunity" to recommend teachers. 82 A board of education must follow the recommendation of the sub-district trustee when reasonably made in the employment of a teacher. 83

Where a common school or schools were converted into county high schools, the county board of education is held authorized to employ teachers of both their common and high school branches, without regard to the recommendations of district trustee. The court handed down decisions in 1917, 84 in 1926, 85 and in 1933. 86

The board of education of a graded school district may at any time in the calendar year elect teachers for the ensuing school year in which the election of teachers is made. Teachers may be elected in January during the school year that begins in July. 87

80 "Christian County Board of Education vs. Geer," Kentucky Reports, CCXVII, 531.
81 "Warren County Board of Education vs. Brunson," Kentucky Reports, CCXL, 626.
82 "Evans vs. Bourbon County Board of Education," Kentucky Reports, CCLVIII, 263.
83 "Asher vs. Jones," Kentucky Reports, CCXLI, 22.
84 "Tenn vs. Burbank," Kentucky Reports, CLXXVI, 739.
85 "Mall vs. County Board of Education of Calloway County," Kentucky Reports, CCXIII, 386.
86 "Counce vs. Carver, Superintendent of Schools," Kentucky Reports, CCLI, 976.
87 "Wheller vs. Burke," Kentucky Reports, CLXII, 143.
Section 107, chapter 24, Acts 1916, providing for the election of a visitor for the colored schools with the same duties as the sub-district trustee, save that such a visitor shall not be a member of the division board, is not unconstitutional. 88

Where the schools of a city of the fourth class are organized and operated under the general school laws of the state rather than as city schools, the power of the school board to employ and dismiss teachers is defined by section 4474 rather than section 3591 or subsection 14 of section 3587a, Kentucky Statutes. Under section 4474, the board of trustees of a graded common school district has the power to dismiss or remove a principal or teacher without notice of cause. Hence, a principal dismissed without notice after being employed by the board of trustees has no right of action for breach of contract since this provision of the statute must be read into the contract of employment. 89

In 192790 and again in 193591 the court held that a county board of education may require the teachers it employs to have higher educational qualifications than are required by statute.

In Christian County in 1927, mandamus action by former teachers to require their appointment by the county board on grounds of recommendation by the sub-district trustee, the county board's rejection of their recommendations was proper exercise of discretion, where one of the teachers had appeared to sleep during school hours and had been absent without cause and where other teacher was lacking in educational qualifications. 92

88 "Daviess County Board of Education vs. Johnson," Kentucky Reports, CLXXIX, 34.
89 "Maxey vs. Board of Trustees of Elizabeth Graded School District," Kentucky Reports, CLXXXVII, 729.
90 "Daviess County Board of Education vs. Yanover," Kentucky Reports, CXIX, 565.
91 "Montgomery County Board of Education vs. Messor," Kentucky Reports, GCLVII, 836.
92 "Foreman vs. Board of Education of Christian County," Kentucky Reports, CCAIX, 573.
Where sub-district trustee recommended a teacher possessing the necessary educational and moral qualifications, it was the duty of the county board of education to elect that person, and the board could not elect another qualified teacher recommended by the county superintendent. 93

The county board of education was under mandatory duty to elect a teacher nominated by the sub-district trustee, where he was qualified at the time of the meeting at which selection of a teacher was to be made, though he had no teacher's certificate at the time he was nominated. 94

A similar decision was handed down in 1932 even though the teacher took active support of the candidate for office of sub-district trustee. 95

A sub-district trustee can withdraw recommendation of a teacher only in writing, or by a statement before a board meeting, appearing on record in the board's minutes. 96

In Logan County in 1931 a sub-district trustee vacated his office by moving to another district. The new sub-district trustee failed to qualify by taking the oath within a reasonable time, therefore the previous vacancy still existed. Statutes make it mandatory to fill vacancies in a sub-district trusteeship, but the board of education had no authority to elect a teacher for sub-district trustee. There had been plenty of time to fill the vacancy in the sub-district trusteeship. 97

Because a sub-district trustee desired to withdraw a prior recommendation of a teacher and in her place to recommend another, was held

93 "Scott vs. Blackburn," Kentucky Reports, CXXII, 514.
94 "Rice vs. Gilliam," Kentucky Reports, CXXVI, 613.
95 "Board of Education of Logan County vs. Aker," Kentucky Reports, CXLIII, 177.
96 "Board of Education of Muhlenberg County vs. Weatherford," and "Butler vs. Board of Education of Muhlenberg County," Kentucky Reports, CCLII, 66.
97 "Logan County Board of Education vs. Fowler," Kentucky Reports, CCLII, 169.
insufficient to show valid the withdrawal of the prior recommendation.98

In 1932 the court held that county boards of education must choose a
high school teacher nominated by the county superintendent.99

The county board of education, having reduced a two-teacher school to
a one-teacher school, must elect a qualified teacher recommended by the
sub-district trustee.100 In a similar case one year later, a school district
trustee recommended two teachers, and the board of education had the burden
to show that only one teacher was needed.101

In Bell County in 1935 where two teachers were to be chosen, the county
board was held unauthorized to consider the teacher's nomination signed by
the trustee and filed two months after filing of the same trustee's
nomination of two other teachers.102

The board of trustees of graded common school district is held authorized
to employ principals and teachers for a reasonable time exceeding one year.103

Statute, providing that sub-district trustees in office when
1934 Act relating to schools took effect and trustees elected
under Act should advise freely with county superintendent on
all matters pertaining to general welfare of school related to
exercise of general control over school property and not to
appointment of teachers.104

A member of the board of education cannot vote for any person related
to him thus requiring the entire vote of the remainder of the board in case
of the appointment of such person. A member of the board of education could
vote against the employment of his first cousin which would render ineffective
the statute requiring unanimous vote of the remainder of the board of

98 "Logan County Board of Education vs. Funk," Kentucky Reports, CCLV, 701.
99 "Johnson vs. Elliot County Board of Education," Kentucky Reports,
CCLV, 654.
100 "Prosper vs. Woodford County Board of Education," Kentucky Reports,
CCLVIII, 760.
101 "Bell County Board of Education vs. Taylor," Kentucky Reports, CCLIV, 447.
102 "Taylor vs. Bell County Board of Education," Kentucky Reports, CCLIV, 253.
103 "Sugg vs. Board of Trustees of Glasgow Graded Common School District No. 83,"
Kentucky Reports, CCLIII, 336.
104 "Morgan County Board of Education vs. Elliot," Kentucky Reports, CCLX, 672.
A board of education was not authorized to appoint an applicant for a teaching position whose application was indorsed by a holdover trustee, but not by the last elected trustee.106

District school trustee elected in 1934 under Act relating to schools, and not trustees elected under 1932 act relating to schools, and holding over until expiration of their terms of office, could nominate teachers for district.107

In Simpson County in 1937 evidence was held to show that the sub-district was not abolished but enlarged by adding territory included in other sub-districts and that the trustee continued in office and could recommend the teacher.108

A board of education can refuse to hire a teacher for use of abusive and indecent language regarding the principal in a teachers meeting which constitutes unprofessional conduct.109 In a similar case where a primary teacher refused to deny the most far reaching charges at a hearing before the board of education, the board was justified in rejecting the recommendation.110

In 1940 the court held that the power of the county board of education to approve nominations of teachers by the superintendent of schools is a limited one, which must not be exercised arbitrarily, and the board must present some legal cause for disapproving such recommendations.111

In Laurel County in 1940, the board of education illegally rejected

105 "Hall vs. Boyd County Board of Education," Kentucky Reports, CCLX, 500.
106 "Jewling vs. Combe," Kentucky Reports, CCLXVI, 56.
107 "Held vs. Laurel County Board of Education," Kentucky Reports, CCLXXVIII, 72.
108 "Simpson County Board of Education vs. Strickler," Kentucky Reports, CCLXXVIII, 72.
109 "Hall, Superintendent vs. Cooley," Kentucky Reports, CCLXXVII, 429.
110 "Coleman vs. Board of Education of Pike County," Kentucky Reports, CCLXXVII, 588.
teachers nominated by the county superintendent. It was held that rejected
teachers were entitled to recover individually against the substitute
teachers appointed by the board for money received by the substitute
teachers in illegal contracts, and jointly against the board members and
the substitute teachers. 112

Common school teachers are state "employees" and in discharging
their duties they render services for a public service. A "school
teacher" is not properly speaking a "public officer" yet his employ-
ment is in a public capacity, and he is treated in some cases as a
public official and in others he is not. 113

One who has been legally nominated as teacher by the proper officer and
whose name has not been legally withdrawn acquires a right to teach, and as
much so as if the contract had been actually signed. 114

In Simpson County in 1942, the board of education failed to approve a
nomination made by the retiring superintendent for an assistant high school
teacher. The new superintendent recommended another who was hired by the
board of education and received encomium thereof. It was held that the
new superintendent was equally liable with the members of the board to
the retiring superintendent's nominee for damages resulting from failure
to appoint such nominee. 115

The superintendent of Knott County Schools read a list of proposed
teachers and schools to which they were assigned for the ensuing school
year at a meeting of the county board of education. It was held that reading
a list was in effect, a recommendation and that it was not necessary
that these recommendations be submitted in writing. 116

112 "Cottongin vs. Stewart," Kentucky Reports, CCLXXIII, 616.
113 "Ibid."
114 "Wisdom's Administrator vs. Sims," Kentucky Reports, CCLXXXIV, 288.
115 "Huff vs. Chaseney," Kentucky Reports, CCLXXI, 306.
116 "Amburgey vs. Draughn," Kentucky Reports, CCLXXXVIII, 128.
SELECTION OF SUPERINTENDENT

A county superintendent may be appointed prior to the first day of April in the year in which his term begins provided he is appointed by the same board that is authorized to act when vacancy does occur. In a similar case in Greenup County in 1940 the board could not elect a new superintendent because their term of office expired before the vacancy occurred.

Where a superintendent resigns before his term is completed the board of education can only appoint a new superintendent to fill the vacancy and not for a four year term.

Statutes limiting school superintendent's term to four years gave school boards discretion to fix a term at four years or shorter period if it deemed best.

SELECTION OF OTHER EMPLOYEES

A graded white school district having the same boundary as a graded colored school district can not employ a truant officer and require the colored district to pay any part of his salary, although he may have performed service for both the white and colored school.

Where plaintiff, claiming to have been the highest bidder for appointment as school treasurer, as provided by Kentucky Statutes, supplement 1924, section 4398a-2a, sought by mandamus petition, to compel the board of education to install him in such position, petition held specifically demarable where the then serving treasurer was not made a party to the suit.

117 "Reynard vs. Allen," Kentucky Reports, CCLXVI, 486.
118 "Benn vs. Hoover," Kentucky Reports, CCIX, 160.
119 "Bedley County Board of Education vs. Rose," Kentucky Reports, CCLXVII, 283.
120 "Boore vs. Johnson," Kentucky Reports, CXXXV, 774.
121 "Thornton vs. White," Kentucky Reports, CLXII, 769.
122 "Morgantown Deposit Bank vs. Butler County Board of Education," Kentucky Reports, CXXI, 201.
Provisions of statute providing that each board of education shall hire an attendance officer upon recommendation and nomination of superintendent are mandatory, and board must appoint person recommended by superintendent unless it is shown that such person does not possess qualifications prescribed by statute or other valid reason.123

DISMISSAL OF TEACHERS AND SUPERINTENDENT

Section 4447, Kentucky Statutes, giving to the trustee power to dismiss a teacher with the consent of the county superintendent where the average daily attendance for twenty consecutive days taught was less than twenty-five per cent of the total number of school children of the district, unless they were satisfied that the decreased attendance was due to natural causes, such as high water, inclement weather, epidemics, or unusual sickness, was not repealed by subsection 6, section 4426a, being part of the Act of March 24, 1908.124

In 1911 the court held that a teacher, for unlawful dismissal, may maintain an action for damages against the county board of education, but the extent of its liability is the amount of salary under the contract.125

That members of school board of education were prejudiced and hostile toward a principal-teacher is held not to disqualify them to hear and try the principal-teacher on charges, nor to afford grounds of reversal or interference with their findings.126

In Wolfe County in 1840, rumors were that members of the board of education made threats to file charges against the county superintendent and that he would be removed as a result of the hearing, were false.

123 "Bernard vs. Sims," Kentucky Reports, CCLIIX, 565.
124 "Wheatley vs. Division Board of Education of Hancock County," Kentucky Reports, CLIV, 763.
125 "Lock vs. County Board of Education of Nelson County," Kentucky Reports, CLV, 715.
126 "Thompson vs. Pendleton County Board of Education," Kentucky Reports, CCLVII, 843.
However, charges were filed against the superintendent later for misconduct in office, and he resigned because of more rumors that a circuit judge would decide pending suit for settlement as to which of two persons were a legal member of the board in favor of the person opposed to the superintendent, with the result that a majority of the board would be against him, no such "duress" was imposed on the superintendent so as to entitle him to withdraw his resignation after its acceptance by the board.127

CONTRACTS

There have been several decisions handed down by the Court of Appeals on contracts made by school boards. Newport National Bank sued Newport board of education for $3,000 damages for violation of a contract to sell it $27,200 of refunding bonds. It was held that there was no a sufficient compliance with Kentucky Statutes 1903, section 3212, requiring the resolution to be on call of the yeas and nays, to be entered on record.128

Where a county board made a contract and in so doing exceeded their constitutional limit of indebtedness, such debt, being void, cannot be enforced, either directly or indirectly, and the debt cannot be voluntarily assumed by the district. Neither can the contractor remove the school house or any part thereof for remainder of unpaid contract. Also a contract naming as "parties of the second part," the "board of trustees" of school district, is the contract of the school district, and not the personal obligation of the trustees.129

127 "Board of Education of Wolfe County vs. Rose," Kentucky Reports, CCLXXXV, 217.
129 "Grady vs. Fruitt," Kentucky Reports, CXI, 100.
Where one member of a school board of school trustees was a de facto trustee, and he and de jure trustee constituted a majority of the board of trustees of the school district, a contract of employment of a school teacher entered into by them was binding on the board and the district.\footnote{130}

In 1910 the court held, that a taxpayer could maintain an action as such to prevent the waste of public school funds or prevent the school board from making contracts with one of its members.\footnote{131} A similar case arose in Hardin County in 1931,\footnote{132} but in 1936 a slightly different opinion was given. A member of the board in Muhlenberg County was selling coal to the board through mining partnership. The court held that self-interest is only indirect or very small, that it cannot be reasonably calculated to affect his judgement or conduct in making of a contract or in its performance.\footnote{133}

The County board of education and the trustees of a graded school district may enter into a contract for the erection of a school building to be paid in part by the county board of education an in part by bonds issued by a graded school district. When the elections are held for a white graded school colored voters are not entitled to vote and their property in the district is not subject to taxation for erecting and maintaining a school colored children cannot attend.\footnote{134} In a somewhat similar case in Ohio County in 1916 it was held that a county board of education and trustees of a graded school district can enter into contract whereby graduates of county schools may attend the graded school but this contract has to be in writing to be binding.\footnote{135}

\footnotesize{\bibitem{130} "Johnson vs. Saunders," Kentucky Reports, CXXXI, 538.}
\footnotesize{\bibitem{131} "Harnstein vs. Louisville School Board," Kentucky Reports, CXXVII, 108.}
\footnotesize{\bibitem{132} "Douglas vs. Pittman," Kentucky Reports, CXXXIX, 548.}
\footnotesize{\bibitem{133} "Commonwealth vs. Wither," Kentucky Reports, CCLXVI, 29.}
\footnotesize{\bibitem{134} "Humfordville Mercantile Co. vs. Board of Trustees District No. 39," Kentucky Reports, CLV, 385.}
\footnotesize{\bibitem{135} "Board of Trustees of Hartford Graded School vs. Ohio County Board of Education," Kentucky Reports, CLXXII, 424.}
graded school and the county board of education concerning education of colored children was held to show that colored children residing in the district are within jurisdiction of the county board of education which must establish and maintain for their use and benefit suitable education facilities.136

Under statute relating to establishment of a high school by county board of education, provisions requiring that county boards make contracts, and providing what contracts should contain not to apply to contract between board of education of graded and high school, and county board of education to accept county high school students for a stipulated tuition fee, but only to agreements whereby county board of education and governing authorities of city or town establish or maintain high school for joint use of county or city and county.137

A contract affecting property rights made by a member of the school board with the school board is void.138

The formal acceptance of an offer to purchase by orders entered on the records of the board of education and knowledge thereof on the part of the one making the offer with the giving of notice of acceptance later, completes the contract.139

A contract made by an unauthorized agent is void. The school act of 1920 contained an emergency clause and therefore took effect immediately, requiring school building contracts to be signed by the county superintendents.140

In McCracken County in 1923, where the plans for a school building included a gymnasium as an annex to the main building was not enough. The board let the contract for the main building, with a provision

136 "Board of Education of Barbourville vs. Knox County Board of Education," Kentucky Reports, CCLX, 115.
137 "Board of Education of Campbton Graded and High School vs. Board of Education of Wolfe County," Kentucky Reports, CCLXVII, 401.
139 "Issacs vs. Jackson County Board of Education," Kentucky Reports, CCLXIII, 895.
140 "County Board of Education of Warren County vs. Durham," Kentucky Reports, CCLVIII, 738.
that thereafter it might require the contractor to build gymnasium with the

terms of his bid. Four months later he was told to build the gymnasium.
The provision in the original contract fixed the time for completion of the
building, but did not apply to the gymnasium. The contractor was not
subject to penalty imposed for failure to complete the building within the
time specified, where he had completed the main building ahead of schedule.
Neither did the board of education have authority to agree to pay the
contractor a bonus for completing the building before the time fixed. 141

School boards have only the powers expressly granted, but enumerated
powers of the school board necessarily include those reasonably incidental
to their proper exercise. A contingent fee contract, where the board of
education employed an auditor to audit the former sheriff's books, was
held valid. 142

Contracts for building material for erecting school houses must be
approved in writing by the county superintendent. A person furnishing
lumber for a school building under an oral contract by the board could
not recover the cost, although the board used the lumber and occupied
the building for school purposes for ten years. 143

The fact that hardship may result in particular cases
does not justify recovery against school board upon an implied
contract or upon a quantum merit for services performed or
supplies furnished, since that would permit raids upon school
funds. 144

In Casey County in 1948 there was a controversy between a teacher and

141 "George W. Ratterjohn and Son vs. Board of Education of City of Paducah,"
Kentucky Reports, CCII. 680.
142 "Bell County Board of Education vs. Lee," Kentucky Reports, CCXXXII, 317.
143 "Knott County Board of Education vs. Martin," Kentucky Reports, CCXVI, 518.
144 "Gomerworth vs. McCracken County Board of Education," Kentucky Reports,
CCXXV, 319.
the superintendent as to the amount of money owing the teacher and the
teacher wrote a letter merely informing the superintendent that she
would not report for duty on the following Monday unless she was paid
the amount she thought herself entitled to, and the teacher was absent
on Monday but reported for duty on Tuesday. She continued to teach until
she was discharged by order of the school board. The letter was not
a resignation and members of the school board were individually liable
for breach of contract.145

A contract with a subdistrict trustee to haul pupils to and from
their homes to a consolidated school does not fall within the inhibition
of the statutes.146

TRANSFERS OF PUPILS AND TUITION

Whether transfer of pupils from subdistrict to public
school of another subdistrict is "desirable" is matter for
determination by county board of education.147

In Caldwell county in 1938 the court held that a county board of
education had discretion as to whether high school pupils should be
permitted to attend high schools not maintained by the board, even
where it might be to the best interest of the pupils and more
economical.148

Where county board of education has adequate and accessible county
high school in the school district where pupils live, and there is no
county high school at the county seat, the board is not required to pay
tuition for children in a city high school.149 A similar decision was

145 "Rice vs. Humphrey," South Western Reporter, 2nd Series, CXC, 596.
146 "Keenan vs. Adams," Kentucky Reports, CCLXVI, 618.
148 "Stallin vs. Caldwell County Board of Education," Kentucky Reports,
    CCLXVI, 824.
149 "Scott County Board of Education vs. Grubbaugh," Kentucky Reports,
    CCXIII, 771.
handed down in Lincoln County some years later.  

A county board of education may contract with the city board of education for free tuition of the county pupils in the city high school and in making such contracts the boards are given a wide discretion.

The "convenience" referred to in Kentucky Statutes, Section 4520b-5, providing pupil may attend the most "convenient" high school, means the convenience of the pupil where he or his parents do the transporting, not to cases where the transportation is done by another under some arrangement with the pupil or his parent.

where a county board of education made an oral agreement with a city board of education relative to the payment of tuition and the housing of pupils in a city's colored school was held valid and binding on the county board.

A county board of education has the discretion to discontinue sub-districts or to transfer children to other subdistricts.  

SUSPENSION OF PUPILS

In 1905 in Boone County a pupil was expelled from school for failing to take part in annual commencement exercise and the trustee would not allow him to enter school the following year. It was held that the trustees of a graded school district had no right to arbitrarily expell a pupil from a school he attended and to refuse him the priviledge of attending this school in the future. Three years later the same case came before the courts again. This time the trustee's journal was brought into court.
which showed pupil was suspended only. The court held that the trustees had a right to suspend the pupil for the remainder of the term.\textsuperscript{156}

\textbf{SCHOOL CENSUS}

Kentucky Statutes, 1903, Section 4449, provides that the trustees of each school district shall take a census of children between the ages of six and twenty annually and send a list to the superintendent and one to the county court clerk. Section 4434 provides that any two of the trustees constitute a quorum to transact all business at a meeting of which all have reasonable notice. In 1907 in Gallaway County the court held that a census certified to by only the chairman of the board of trustees was not legal and the county superintendent could not make it a part of his records.\textsuperscript{157}

\textbf{INSURANCE}

Kentucky Statutes volume 3, Section 4440 gives boards of education the right to insure public school buildings and it may be implied that it has the authority to determine the companies and the amount of insurance. This is left to the sound discretion of the boards of education.\textsuperscript{158}

\textbf{HIGH SCHOOL DISTRICTS}

In 1927 the court held that county boards of education had the power to divide county into high school districts and to require the residents in each district to attend the school therein if it acts reasonably in so doing.\textsuperscript{159}

\textsuperscript{156} "Cross vs. Trustees Walton Graded School," Kentucky Reports, CXIX, 36.
\textsuperscript{157} "Short vs. Langston," Kentucky Reports, CXV, 516.
\textsuperscript{158} "Falsell vs. Fourborn County Board of Education," Kentucky Reports, CXIII, 171.
\textsuperscript{159} "Veal vs. Mason County Board of Education," Kentucky Reports, CXIV, 463.
TEXT BOOKS

School boards adopting books must take into consideration the adopted books of the state textbook commission.160

CONSOLIDATION AND TRANSPORTATION

There have been several cases in the courts of Kentucky concerning consolidation and transportation. A few of these cases will be cited to show the power of the boards of education in this manner.

In McCreary County, the board of education united with the Whitley City Graded School District in erecting a high school and each board was to pay half of the expenses thereof. The contracts between the boards were not executed in strict accordance with legal technicalities, but the county board was liable because they patronized the high school. While a school board should keep a record of contracts made by it, which is the best evidence thereof, having failed to do so they may be shown by qualified witnesses.161

In 1931 the court held, that graded common school districts merging with county school system rests in the discretion of the respective boards.162

Again in 1931 the court ruled consolidation of school districts may be by action of the board of education or by popular vote,163 and one year later subdistricts may be consolidated in the same way.164

In Bell County in 1936, the court held that county boards of education had broad powers in consolidating and changing school district.165 A similar

160 "Schlake vs. Board of Education of Fort Thomas," Kentucky Reports, CCXL, 469.
161 "Whitley City Graded School District of McCreary County vs. McCreary County Board of Education," Kentucky Reports, CCXVII, 682.
162 "Gilson vs. Wilson," Kentucky Reports, CCXL, 524.
164 "Andus vs. Legal County Board of Education," Kentucky Reports, CCXLVI, 534.
165 "Bell County Board of Education vs. Wilson," Kentucky Reports, CCLXIII, 556.
case was handed down in 1844 which also stated that boards could transfer children from one district to another if for their best interest. 166

If pupils who live within reasonable walking distance from school house or bus line, may safely travel roads in going to school house or to bus line, duty of county board of education as to transportation is satisfied. 167

LIABILITIES

Attorney fees, non-taxable cost and value of items expended in defending an injunction suit are not recoverable as damages on the bond where the injunction secured the whole relief sought in the suit. The rule is otherwise where the injunction was merely auxiliary to some other relief. 168

The treasurer of the school board in Pulaski County in 1921 declined to pay vouchers which had been legally issued, yet the county board of education cannot deny all liability, and at the same time insist that the claimant should have proceeded by mandamus against the treasurer. 169

County board of education had been held chargeable with the debts of the old common school district, though it has become a graded district. 170

Where an agreement between the board of education and patrons of a district, for each to pay a certain amount toward the construction could not compel the board to pay more than such amount it had agreed to pay. 171

Subcontractor's claim against contractor held not unpaid within requirements of bond that obligee notify surety and withheld payments from contractor. 172

The Knott County Board of Education was not responsible for building materials furnished the association which contracted to build the school

166 "Alford vs. Board of Education of Campbell County," South Western Reporter 2nd Series, CLXXIV, 207.
169 "County Board of Education of Pulaski County vs. Jasper," Kentucky Reports, CCIII, 222.
170 "Breathitt County Board of Education vs. Pollard," Kentucky Reports, COI, 182.
171 "Allen County Board of Education vs. Scottsville Builder's Supply Co.," Kentucky Reports, CCII, 165.
172 "National Surety Company vs. Grant County Board of Education," Kentucky Reports, CCXII, 475.
house. The board was only responsible for material furnished on its orders after completing the school-house which contractor failed to complete.173

Property owners of Dayton could not recover damages from the city school board alleged to have been caused during a heavy rain as a result of school board's subjection of a drain for a natural watercourse, but the board would have been liable for damages in an ordinary rain.174

In Powell County in 1937 a student was struck by an oncoming automobile after getting off of a school bus and attempting to cross the highway in the rear of the bus. Evidence failed to show the driver of the school bus had knowledge of the approach of an unlighted automobile and so could not be held responsible for failing to warn the student.175

Evidence supported finding that validity of claims against county board of education for school supplies was never challenged prior to time board entered into agreement with seller to settle original action for purchase price of supplies and kind, board should be held to its agreement.176

Pike County board of education acted within its discretion in having an old gymnasium torn down and replaced with a more modern and better equipped one and would not be liable for injuries sustained by a workman when scaffold used in tearing down the old gymnasium collapsed.177

**MISCELLANEOUS**

Statutory requirements that each county school district furnish twelve grade service does not require that twelve grades be taught in every school established in the county; this service being within the sound

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173 "Knott County Board of Education vs. Martin," Kentucky Reports, CClVIII, 688.
174 "Superior Coal and Builders Supply Co. vs. Board of Education of Dayton," Kentucky Reports, CCLX, 84.
175 "Fellrey vs. Snowden," Kentucky Reports, CCLVII, 432.
176 "Begby vs. George & Dunn Co.," Kentucky Reports, CCXII, 351.
177 "Teacher vs. Pike County Board of Education," South Western Reporter, 2nd Series, CCXIII, 409.
discretion of the county board of education.\textsuperscript{178}

A trustee of a graded common school district in Boyd County, without
resigning, filed for office of the justice of the peace and participated
as a board member in hiring principal and teachers. It was held that the
statute providing for the vacancy of the trustee's office on filing for office
applies only to county board of education, and not to the board of a graded
school trustee.\textsuperscript{179}

The power of determining general educational policies as respects
curricula, supervision, and qualification of teachers rests in the state
board of education, while authority of administering affairs of county
districts is vested in county boards.\textsuperscript{180}

Statutes requiring a corporation who is plaintiff to give
bond for costs does not apply to public corporation such as
the trustees of a common school district was handed down by
court in 1893.\textsuperscript{181}

Chapter 2 of the Acts of 1910, being "an act to amend
the school laws and to create boards of education, and to
define their duties in the cities of the first class" did
not repeal Section 2997, Kentucky Statutes 1915 edition, but
said section remains in full force and effect as a part of
the general school laws of Kentucky, as applicable to cities
of the first class.\textsuperscript{182}

By the act of March 22, 1920, placing the exclusive control of all
common schools in the board of education of the cities and counties of the
state and giving them power to provide funds for all needs of the schools.
It was the intention of the legislature that such boards be the sole
judges of the needs of the schools. They are entirely independent of the

\textsuperscript{178} "Wilson, County Superintendent of Schools vs. Alkip," Kentucky Reports.
\textsuperscript{179} "Board of Trustees vs. Renfree," Kentucky Reports, CCLIIX, 644.
\textsuperscript{180} "County Board of Education of Bath County vs. Godpaster," Kentucky
Reports, COLA, 193.
\textsuperscript{181} "Trustees of Common School District vs. City of Flemingsburg," Kentucky
Reports, CLVII, 702.
\textsuperscript{182} "Board of Education of Louisville vs. See," Kentucky Reports, CLAVII, 772.
fiscal court and city council, through whose tax levies they must be supplied with funds. 183

A higher court has power to require a fiscal court to comply with the demands of the school board when made in accordance with the statutes. 184

School board, being an agency of the commonwealth, a part of state commonwealth school system, it is not barred by latches of its office. 185

The board of education determines the kind and cost of school buildings. 186

School trustees may perform only duties enumerated in the statute. 187

Three years later the court held that the office of subdistrict school trustee is also statutory. 188

In Warren County in 1932 the school board was held to have the power to create the position of school nurse and teacher of health and physical education and to make appropriation therefor, if in its sound discretion this was for the interest of the schools, although the order creating this position of school nurse cited wrong statute. 189

County board of education having exercised its statutory power to divide county into educational divisions cannot make changes therein until legislature provides therefor. 190

The powers of the board of education on the management of its schools were extended by School Code 1934 and may even abolish subdistricts thereunder; but such powers may not be arbitrarily exercised in the abuse of

183 "Breathitt County Fiscal Court vs. Breathitt County Board of Education," Kentucky Reports, CXXXVI, 437.
184 "Fiscal Court of Pendleton County vs. Pendleton County Board of Education," Kentucky Reports, CXXI, 589.
185 "Phelps vs. Board of Education of City of Pikeville," Kentucky Reports, CXXXIII, 742.
186 "Ball vs. City of Ludlow," Kentucky Reports, CXXXIV, 812.
188 "Board of Education of Boyd County vs. Trustees of Rusee Vista School, Subdistrict No. 30.," Kentucky Reports, CIX, 482.
189 "Board of Education of Bowling Green vs. Simons," Kentucky Reports, CXXXIV, 493.
190 "Cowen vs. Pursifull," Kentucky Reports, CCL, 670.
reasonable discretion.\footnote{197}

A board of education has the authority to fund a valid debt.\footnote{192} A similar

decision was handed down in 1936.\footnote{193}

Phrase "educational facilities" within statute providing
that in certain districts county board of education must
provide "educational facilities" for colored children, as
against contention phrase included only necessary equipment of
a furnished school building.\footnote{194}

The Boyd County board of education had never adopted any governing
rules, but met regularly in the office of the county school superintendent.

Such course of action established a regular meeting place as effectively
as if it had been done by formal action.\footnote{195}

In 1927 the court held that members of the board of education are "state
officers"\footnote{196} and again in 1938, this time stating that a member of the county
board of education is a "state officer."\footnote{197} Even the trustees of a school
district are "state officers," since they administer and function in the
administration of governmental functions.\footnote{198}

A county board of education is a "quasi municipal corporation"
governed by rules applicable to strict municipalities.\footnote{199}

The county board of education is an arm of the state and in
operating common schools it is engaged in a "governmental function."\footnote{200}

The maintenance, management, and control of the public school
system is a "governmental function," and the legislature in enacting
statutes relating to those matters may provide exclusive remedies
for the infringement of any rights that may be perpetuated by any
officer in the maintenance of the system.\footnote{201}

\footnote{191} "County Board of Education of Montgomery County, Kentucky et al on
Petition Ex Parte," Kentucky Reports, CCL, 246.
\footnote{192} "Brown vs. Hopkins County Board of Education," Kentucky Reports, CCLXXIV, 288.
\footnote{193} "Lawson vs. Board of Education of Greenup County School District," Kentucky
Reports, CCLXX, 320.
\footnote{194} "Board of Education of Woodford County vs. Board of Education Midway
Independent School," Kentucky Reports, CCLXXIV, 245.
\footnote{195} "Brown vs. Petkus," Kentucky Reports, CCLXXXII, 407.
\footnote{196} "Polley vs. Porton," Kentucky Reports, CCLXXIII, 369.
\footnote{197} "Ward vs. Silber," Kentucky Reports, CCLXXXII, 424.
\footnote{198} "Troy vs. Letton," Kentucky Reports, CCLXXI, 363.
\footnote{199} "Board of Education of Benton County vs. Felhott, Commissioner," Kentucky
Reports, CCLXXXI, 563.
\footnote{200} "Wallace vs. Laurel County Board of Education," Kentucky Reports, CCLXXXVII,
177.
\footnote{201} "Marshall vs. Calhoun," Kentucky Reports, CCLXXXVII, 264.
Vine Grove School was furnished coal from 1892 to 1902 by a Mr. Burkhart who made the contract with the trustees of the school. He was even trustee part of the time and never received any pay from the trustees. The court held that Mr. Burkhart was entitled to have a sum sufficient to pay for the fuel furnished by him each year levied and collected from the patrons of the school for that year. In a similar claim for building a school house in Edmonson County in 1906, the court held, that Raymer is entitled to judgment requiring the trustees to levy a tax to pay his claims.

Since the imposition of a poll or capitation tax for school purposes is authorized by the constitution, it is the absolute duty of the fiscal court to levy a capitation tax within the statutory limit at the request of the board of education.

In McCracken County in 1912 the general council apportioned less than it actually levied and collected, therefor the board may sue the city and recover the excess.

A deputy sheriff may execute an order of the county court directing the holding of an election on the question of voting a graded school tax, and has the same power as his principal to appoint the election officers under the statutes.

It is the duty of the board of education having charge of the public school system in cities in requesting the city council to levy taxes for school purposes, the board of education must report all resources on hand, and if it does not, the city council may refuse to levy the taxes demanded and make only such levy when added to resources on hand makes the amount requested.

203 "Raymer vs. White School District," Kentucky Reports, CXIV, 96.
204 "Fiscal Court of Logan County vs. Board of Education of Logan County," Kentucky Reports, CCLXXVI, 96.
205 "City vs. Paducah vs. Board of Education of the City of Paducah," Kentucky Reports, CLXI, 634.
206 "Hinman vs. Trustees of Graded School District 619," Kentucky Reports, CLII, 519.
207 "Board of Education of Newport vs. City of Newport," Kentucky Reports, CLXXIV, 28.
As early as 1899 the court ruled that taxes must be divided proportionally between the white and colored pupils in the tax districts according to their respective numbers. This philosophy was reaffirmed sixteen years later in the Penbrooke School case, and again in 1918 from Mayfield, Kentucky.

Boards of education cannot borrow money in excess of revenue for the current year and expect to repay it from the funds received the following year.

In 1918 in the city of Pineville the court held that there has to be time for the board of education of fourth class cities to certify to general council resolutions levying school taxes. It is the duty of the board of education to certify resolutions levying taxes to general council within thirty days prior to the time prescribed by the charter for the levy to be made by the general council.

The county board of education is the judge of needs of school districts and the rate of taxation to be levied to meet the board's requirements.

School board taking property of another must pay therefor, notwithstanding that school board is arm of state and must raise money by taxation.

Indebtedness of a city board of education cannot be treated as part of the indebtedness of a city.

203 "Harrodsburg Educational District No. 28 vs. Colored District No. 1," Kentucky Reports, CV, 657.
209 "Penrose Graded School vs. Wurt," Kentucky Reports, CLXIII, 569.
210 "Board of Trustees of Graded Free Colored Common Schools of Mayfield vs. Board of Trustees of Graded Free White Common Schools of Mayfield," Kentucky Reports, CLXIV, 310.
211 "Board of Education of City of Newport vs. Scott," Kentucky Reports, CLXIX, 226.
212 "City of Pineville vs. Moore," Kentucky Reports, CX, 357.
213 "Madison County Board of Education vs. Madison County Fiscal Court," Kentucky Reports, GCXVI, 201.
214 "Superior Wall and Builders Supply Co. vs. Board of Education of Dayton, Kentucky," Kentucky Reports, GCX, 34.
215 "Rash vs. City of Edinville," Kentucky Reports, GCXVIII, 154.
Board of education proposed bond issue to fund floating indebtedness held unauthorized as to part of indebtedness accumulated during period fiscal court levied maximum rate for school purposes.  

County board of education cannot bond indebtedness for replacing burned schools, notwithstanding indebtedness was validly created by application to fiscal court for levy.  

Suit on sheriff's bond, executed to commonwealth, for school taxes which he failed to pay over, was properly brought in name of county board of education, in view of civil code of practice, section 18, which is mandatory.  

The county board of education is held required to maintain a high school at the county seat, or arrange for high school facilities.  

Representation made in a speech by one soliciting subscription for a school building in Green County in 1924 was not binding on the board.  

Two trustees of a graded school district board has no authority to bind board, by agreeing to stipulations and conditions under which subscriptions to school fund were made, since, under Kentucky Statutes, Section 4469, district can only speak through its officers or agents, duly authorized to represent it at regular meetings of the board.  

Alleged question by trustee of school district whether it would be worth one hundred dollars to person addressed to get his place as teacher for another year held not "promise" within statute denouncing promise to sue office or employment, and, hence, there being no other evidence, trustee was entitled to promptory instructions.  

216 "Hockensmith vs. County Board of Education of Franklin County," Kentucky Reports, CCLI, 76.  
217 "Drakey vs. Board of Education of Logan County," Kentucky Reports, CCLIII, 66.  
218 "Gay vs. Jackson County Board of Education," Kentucky Reports, 66V, 277.  
219 "Christian County Board of Education vs. Morris," Kentucky Reports, CCLI, 291.  
220 "Forsy vs. Dobson," Kentucky Reports, 66V, 640.  
221 "Lewis vs. Burns," Kentucky Reports, 66V, 603.  
222 "Faulkner vs. Commonwealth," Kentucky Reports, CCLVI, 363.
CHAPTER III
SCHOOL DISTRICTS AND THE COURT OF APPEALS

Superintendents, boards of education and school districts are inseparable, at least we think so today. Therefore it would be unwise not to review the decisions of the Court of Appeals concerning school districts.

ESTABLISHMENT

The county court has no power by virtue of Section 4484 of the Kentucky Statutes to submit to an election the question of establishing a graded school in a district embracing a city of the fourth class and contiguous outlying territory.1

Kentucky Statutes, 1903, C. 113, Article 10, giving the people the power to decide the question of the adoption of the graded school system, does not repeal laws 1892, 1893, p. 1211, C. 241 relating to cities of the fourth class, a city of that class which has established the system and has it in use is exempt therefrom.2 In 1911 the court held that Princeton, a city of the fourth class may by vote of its people establish a graded common school in lieu of the school provided for by the act governing cities of the fourth class.3

In 1902 the court held that a school district is liable for violation of contract with a teacher, since school districts are a body politic and corporate, and as such they may sue and be sued.4

In Adair County in 1909 the court held that graded schools are "common schools."5

1 "Bailey vs. Figley," Kentucky Reports, CVI, 725.
2 "Taylor vs. Russell," Kentucky Reports, CXVII, 539.
3 "Trustees of Princeton Graded Common School vs. Stope," Kentucky Reports, CAILI, 718.
4 "Kingo vs. Trustees of Colored School District A of Garrard County," Kentucky Reports, CAILI, 475.
5 "Jeffries vs. Board of Trustees," Kentucky Reports, CXXXIV, 486.
Without the approval of a majority of the trustees of any common school district, the county judge has no authority to establish a graded common school district, nor has any jurisdiction to enter an order calling an election to take the sense of the voters as to the establishment of the district and the voting of a tax to erect and maintain a school building.6

In Pike County in 1912 the court held that where a school district has no school house, it may contract with an academy for the use of one or more rooms in which to teach the public school; but a merger of the school with the academy would be a violation of the law.7

Where Kentucky Statute, 4526b-2 requires a county high school to be erected at the county seat, but one erected seven-tenths (.7) of a mile from the corporate limits of a county seat meets the requirement of the statute.8

Where there is an independent school district in a county, Acts 1926 C. 82, Section 1, declares that every county shall constitute one county school district composed of the remainder of the county outside the independent district. It was held that an independent white graded school district is not required to provide schools for colored children in their district and not to deprive the county the right to exercise jurisdiction over education of colored children residing in the independent district.9

Acts 1916, C. 24, Section 77, new Kentucky Statutes, section 4428a-2 providing for a division of counties into educational divisions, but all

6 "Fing vs. Keith," Kentucky Reports, CL, 452.
7 "Frence vs. Paulkner," Kentucky Reports, CL, 500.
8 "Fayette County Board of Education vs. Temple," Kentucky Reports, CCXII, 751.
9 "Sally vs. County Board of Education of Woodford County," Kentucky Reports, CCXIV, 50.
graded common school districts existing in any educational division, whether established by a charter or popular vote, should be exempt from provisions of the act, and exemption extends to any such district that may be established in the future. 10

School districts held authorized to convey land to corporation for construction of school buildings thereof under contract to lease and repurchase. 11

MERGER

Where an independent common school district merged with the county school districts the county school district shall take over assets and liabilities of districts joining in the merger. 12

An independent school district may not contract with another district to teach certain grades, such right being conferred upon the county board of education. 13

In 1940 the town of Clifton was annexed by Newport, the merger taking place between the Campbell County District and the Newport District. The legislature in enacting statute providing that title to the school property in the territory transferred from one school district to another shall remain vested in the board of education of the district from which the territory was transferred and would continue to operate as a school district. 14

Although some of the independent school districts are continuous

10 "County Board of Education of Jefferson County vs. Southern Pacific Company," Kentucky Reports, CCXXV, 521.
12 "Board of Education of Pulaski County vs. Nelson," Kentucky Reports, CCLXVIII, 63.
13 "Board of Trustees of Bowling Independent School District vs. State Board of Education," Kentucky Reports, CCLXIX, 253.
14 "Board of Education of Campbell County vs. Board of Education of Newport," Kentucky Reports, CCLXIV, 774.
with cities, each is a municipality or political subdivision separate and
distinct from such city and over which the city has no control. 15

CHANGING
In 1899 the court held, that there was no law to include a farm in
one county in a school district of adjoining county except by a joing
action of the school commissioners of both counties. 16

An order transferring the owner of a farm from one district
to another will be construed to transfer the entire farm,
including the tenants thereon, unless the order specifically
excludes them. 17

TUITION
In Pike County in 1930 the court held that where there was no written
or verbal contract, the county board of education did not have to pay he
graded school district tuition for pupils residing in the county but not
within the school district. 18

Distance, character of roads, means of transportation and other circumstances will be considered to determine the "most convenient school"
which high school pupils may attend in the county, and their tuition will
be paid by the county. 19 A similar case was decided the same year to
determine if the school attended was the "most-convenient school." 20

TAXATION
One of the earliest cases to come before the Court of Appeals was
in Fleming County in 1843. A Mr. Stewart brought action of trespass to

15 "Board of Education of City of Corbin vs. City of Corbin," South Western
Reporter, 2nd Series, CXII, 951.
16 "Trustees of Common School District No. 80 vs. Young," Kentucky Reports,
CV, 293.
17 "Kelton vs. Burdette," Kentucky Reports, CXII, 492.
18 "McMullin Graded School District vs. Pike County Board of Education,"
Kentucky Reports, CXCVII, 62.
19 "County Board of Education of Boyle County vs. Caldwell," Kentucky
Reports, CXCVIII, 761.
20 "Madison County Board of Education vs. Smith," Kentucky Reports, CL, 435.
vest authority of Mr. Ringo as collector of the 11th School District of Fleming County to keep him from collecting taxes assessed upon the inhabitants of that district. The county had been divided into common school districts but it had not been filed with the count court clerk, therefore the organization was incomplete, and the trustees had no authority to enforce the collection of taxes.

As early as 1902 the court held that part of a farm lying outside the two and one-half mile limit is not subject to taxation for graded school purposes, since Kentucky Statutes, section 4464 states in establishing graded schools the district shall be no more than two and one-half miles from the site of the proposed school house.

Where, within due time after the holding of an election to establish a graded school within a school district, the proper authorities declared that the school was established by a majority of the voters cast upon the question and for seventeen years thereafter a graded school was maintained without objection being made either by the state or county officers, or by the taxpayers, the county superintendent of schools, who had made official reports accordingly, and who had before his employment as superintendent been a teacher in the school for several years, could not in an action against him for money belonging to the graded school district after such a lapse of time, raise objections to defects in the orders of the court authorizing the election.

In 1910 the plaintiffs built a school house in McLean County and the school district agreed that they should receive the amount collected as poll and property tax in the school district for three years in payment for the school house. The trustees did not abide by the contract.
if they negligently omitted to collect a part of the taxes due. 24

Where a railroad is the dividing line between two school districts, one-half of the railroad lies in one district and one-half in the other, one school district had collected taxes on the railroad for several years. The other district failed to assert its right. This district lost its claim for back taxes but would share with other district from then on. 25

In action to enjoin school district trustees from levying and collecting taxes on plaintiff's property, involving issue whether such property was within such district, evidence held to sustain finding of chancellor as to boundary of district. 26

DEFINITION OF DISTRICT BOUNDARIES

In 1915 the court held that a description of a proposed graded common school district by farm is sufficient. 27 The board of education approves the establishment of school districts and also approves the boundaries of the district. This decision was handed down by the court in 1919. 28

Where trustees of a school district condemned a site for a school house not exceeding one acre requires that the two and one-half mile boundary for the district be measured from the outer boundary of the site of the school building, providing the site does not exceed one acre. 29

The common school district is the creature of the statute, and what the legislature made it can unmak. 30

26 "Kidd vs. Walker and Lezler," Kentucky Reports, CCVI, 716.
27 "Dekoven vs. Hardinsburg Graded Common School District No. 4," Kentucky Reports, CXXIV, 512.
28 "Conrad vs. Roole," Kentucky Reports, CLXXXIV, 348.
Where the boundary of a district is fixed so as to follow the dividing lines between certain well known farms, such description is sufficient. 31

Two adjacent sections of adjoining counties may constitute either a common school or graded school district. 32

A description of a proposed graded common school district by the designations of farms is sufficient. 33

The establishment of boundaries of school districts is a legislative function, which the legislature may exercise, or it may delegate the authority to a board or officer to exercise the power. 34

Section 4440b Kentucky Statutes providing that additional territory may be added to a graded common school district upon the written request of a majority of the legal voters in the new district is constitutional. 35

But fifteen years later the court held that:

Statutes providing for method whereby territory could be added to existing graded school districts held repealed. 36

Mercer County superintendent could not extend the boundaries of graded school district in a fourth class city by describing the district as containing territory contiguous to the city. 37

Rule that deed calling for line with both length and width includes land to center of such line does not apply to boundaries of graded common school districts. 38

In order for a county court to fix the boundaries of a graded common school district and order an election, a petition of twenty-five per cent

31 "Snyder et al vs. Board of Trustees La Grange Common Subdistrict," Kentucky Reports, CXLII, 736.
33 "McLain vs. Board of Trustees of Chaplin Graded School District," Kentucky Reports, CXXXIX, 148.
34 "Board of Trustees Dennisville Graded School vs. Board of Education of Kenton County," Kentucky Reports, CXXXII, 509.
35 "Hune, Sheriff vs. Friend," Kentucky Reports, CLXXV, 733.
37 "Dean vs. Board of Education of Harrodsburg," Kentucky Reports, CCCXLVII, 853.
38 "Trimble County Board of Education vs. Trustees of Milton Graded Common School District," Kentucky Reports, CCCXVII, 211.
of the legal voters, who are taxpayers, within the proposed school district must sign the petition. 39

When a county board of education makes a change in a school district boundary line and it is contested by a taxpayer the statute does not permit litigant to proceed beyond the judgment of the circuit court. 40

REVERTER CLAUSES

Many school districts were given land for school purposes with reverter clauses to return to the donor the land when it is no longer used for school purposes. This has brought action in the courts on several occasions. The first of these suits came about in 1911 in Larue County. The court held that the trustees had the right under the deed of 1883 to build on the lot any kind of structure for school purposes and to alter or remove it at pleasure. 41

In Lee County land was conveyed to school trustees for school and religious purposes. To avoid condemnation by a railroad company of the school grounds, the trustees conveyed the property to the railroad in consideration of the purchase of another lot and the removal and repair of the buildings, the transaction has the same legal effect as if the land was condemned, and the heirs of the donor will not be entitled to recover the property on the grounds that it had to be used for the purpose for which it was donated, but will be entitled to the same reversionary rights in the property purchased that they had in property sold. 42

40 "Mason vs. Montgomery County Board of Education," Kentucky Reports, CXXI, 654.
41 "Evans vs. Coop," Kentucky Reports, CLI, 514.
42 "Lutes vs. Louisville and Nashville Railroad," Kentucky Reports, CLVIII, 269.
Adverse holding of public school authorities in Louisville in 1918, the court held that evidence examined makes the question of adverse possession one for the jury.\(^4\)

School district held to take conditional fee, though reverter provided for, and could lease its land for the production of oil.\(^5\)

In Breathitt County in 1926 the court held that donor, because of reverter of site granted for school purpose, is not entitled to school furniture and apparatus in school by reason of its abandonment.\(^6\) In a similar case in Webster County in 1930 the school district lost right to remove the building and improvements by abandoning the property for school purposes because the deed carried with it right to improvements.\(^7\)

Where a deed by school district to county board, in consideration of grantee's maintaining school in building located on the ground transferred, did not provide for a forfeiture or reversion to grantor in the event the property ceased to be used for school purposes, the fee to such property vested in grantee.\(^8\)

Conveyance of land to school district trustees to be held so long as it should be used for school created determinable or qualified fee subject to termination on cessation of that use, notwithstanding the fact that school facilities were being provided on other lands.\(^9\)

\(^4\) "Board of Education of Louisville vs. Brumlove," Kentucky Reports, CLVIII, 268.
\(^5\) "William vs. McKenzie," Kentucky Reports, CCI, 376.
\(^6\) "Breathitt County Board of Education vs. Back," Kentucky Reports, CCCIV, 784.
\(^7\) "Webster County Board of Education vs. Gentry," Kentucky Reports, CCXIII, 38.
\(^8\) "Trustees of Lone Oak Graded School District vs. Gentry," Kentucky Reports, CCX, 708.
\(^9\) "Fayette County Board of Education vs. Bryan," Kentucky Reports, CCLVIII, 61.
Where statute in effect at time the school district acquired land as a site for a school house required that the title should be made in a fee simple manner to the trustees, but owner of land was one of the trustees and he inserted a reverter clause in the deed, when tract of land was no longer used for school purposes, the court held that the owner was not entitled to recover the land, since the reverter clause, being contrary to the statutes, was void.49

SEPARATE SCHOOLS

As early as 1906 Berea College contested Act of March 22, 1904, p. 181, c.85, which prohibits and imposes a punishment for maintaining and operating institutions of learning in which white and colored children are taught at the same time and place, and it was held that it is within the police power, and is valid.50

Any law which seeks arbitrarily to deprive a domestic corporation organized under Kentucky Statutes section 879-883, to establish and maintain an industrial school for colored people, of the right to use its property in any way it sees fit, within its chartered powers not inimical to the public welfare, is violation of constitution's Bill of Rights, sections 1 and 2, 22 guaranteeing the inalienable rights of men to enjoy their liberties, and to acquire and protect property etc.51

Section 137 of the Kentucky Constitution provides for the maintenance of separate schools for white and colored children, defines "colored children" as including all children wholly or in part of Negro blood.

49 "Necton vs. Wayne County Board of Education," Kentucky Reports, CCLXXVII, 174.
50 "Berea College vs. Commonwealth," Kentucky Reports, CXXIII, 209.
51 "Columbia Trust Company vs. Lincoln Institute of Kentucky," Kentucky Reports, CXXXVIII, 304.
or having any appreciable mixture thereof. In Pike County in 1911, a child with one sixteenth of negro blood is a colored child and not entitled to attend schools maintained for white children. 52

Where a colored common school district has within its boundary a graded school district for white children, the county board of education may erect a common school building for colored children within the portion of the common school district for colored children, which lies within the boundary of the graded school district for white children. 53

Where there are separate school districts for white and colored children in a city of the fourth class, both school districts are separate taxing units, the white school district including white persons and their property and the colored school district including colored persons and their property. 54 In Hopkins County in 1920 we have a similar situation concerning a white and colored district, the white district under the city board of education and the colored district under the county board of education, under the act of 1920, these two districts must become one, with separate schools for white and colored children, and under the control of one board of education, provided for in the Act of 1920. 55

Where a common school district was organized into a separate graded white common school district, and a tax for the maintenance of

52 "Collins vs. Pelcher," Kentucky Reports, CCLII, 673.
53 "Crady vs. Lawre County Board of Education," Kentucky Reports, CXLIX, 49.
54 "Nung vs. City of Mayfield," Kentucky Reports, CLXXXVI, 340.
55 "Shadrack vs. Board of Trustees of the Madisonville Graded Common School District," Kentucky Reports, CLXXXVIII, 345.
such school had been levied and collected by its board of trustees upon
the corporate property of the district subject to taxation, a colored
common school is not entitled to claim or recover any part of the tax
levied and collected.\textsuperscript{58}

Where only question was as to whose duty it was to maintain
and provide for and manage school for negroes residing within
geographical limits of graded school district for pupils of
Caucasian race, question as to source or sources from whence
funds might be collected to defray expenses of maintenance is
not involved.\textsuperscript{57}

Where title to property which had been held by trustees
for school purposes was vested in the state for benefit of
state's agencies charged with duty of educating colored
children in the district, the use and control of the property
were placed under jurisdiction of the city board upon which
the statute placed the duty of educating them.\textsuperscript{59}

MISCELLANEOUS

Powers and duties of school districts through their
officers in construction and maintenance of school buildings
are those only which are created expressly or impliedly
by statute.\textsuperscript{59}

An inmate of a children's home which had its own school system was
placed in a private boarding home with the children's home retaining
supervision of the child. He was a resident for school purposes in
the district where he was placed, and therefore such district had right
to include a child in the census of the pupils of the district.\textsuperscript{60}

The county superintendent of Harlan County in 1900 attempted to
establish a new school district without giving ten days notice in

\textsuperscript{56} "Board of Trustees of Clay Common School District v. Webster County
Board of Education," Kentucky Reports, CXXXII, 486.
\textsuperscript{57} "State Board of Education et al v. Brown," Kentucky Reports, CXXXII, 434.
\textsuperscript{58} "Board of Education of Taylor County v. Board of Education of City of
Campbellsville," Kentucky Reports, CXXXII, 26.
\textsuperscript{59} "Commonwealth v. Hidson," Kentucky Reports, CCLXIX, 571.
\textsuperscript{60} "Board of Education of Louisville v. County Board of Education of
Jefferson County," Kentucky Reports, CCLXV, 447.
writing to trustees of the districts to be affected, (Kentucky Statutes, section 4427) therefore his acts do not constitute the creation of a new district. A similar case arose seven years later. In Louisville in 1918 the city board of education annexed territory embracing common school property lying in the county. It was held that the title and control of such property pass from the county board of education to the city board of education.

Where it is convenient to lay off subdistricts composed of two counties with concurrence of respective boards of education, there needs to be a contract signed by officers of boards concerned.

In an action between school districts to obtain a construction of the act creating one of them, that the court submitted the controversy to a jury was not prejudicial for the over-ruling of the motion for a new trial and the rendering of the judgment were in effect the adoption by the court of the finding of the jury as the proper interpretation of the statute.

Ordinarily, when the title to common school property is vested in a trustee of a graded common school district, pursuant to section 4164 of the Kentucky Statutes, the board of trustees will take the property, subject to any lien or encumbrance thereon; but this rule will not prevail when the property is received from another agency of the state which has actually levied taxes for the purpose of paying for the property, or of discharging such lien or encumbrance, and the proceeds of such taxes are sufficient for that purpose.

In Greenup County in 1934 the court held that where school districts were established and in operation for a long time, public policy is against declaring school district defective unless an insuperable obstacle is in the way.

61 "Gard vs. Forester," Kentucky Reports, CIX, 334.
62 "Graves County Superintendent vs. Trustees School District No. 54," Kentucky Reports, CLXXI, 194.
63 "Board of Education of Jefferson County vs. Board of Education of city of Louisville, Kentucky," Kentucky Reports, CLXXII, 65.
64 "Laurel County Board of Education vs. Berry," Kentucky Reports, CLXXVII, 763.
65 "Board of Education Somerset Public Schools vs. Graded Common School District No. 78," Kentucky Reports, CLXXVII, 66.
66 "Greenup County Board of Education vs. First National Bank of Jackson," Kentucky Reports, CLXI, 763.
67 "Greenup County Board of Education vs. Savage," Kentucky Reports, CLXVI, 259.
CHAPTER IV
SUMMARY AND RECOMMENDATIONS

The school superintendents of Kentucky have risen from the time the executive had limited powers to the present day where he is given all the responsibility he is able to carry and produce results. Our first school commissioners (later superintendents) were elected, the vote could be given viva voce or by ballot. Today the superintendents are appointed by the boards of education. Through these years the school board has become a legislative or policy making body and the superintendent has become a full fledged executive whose duty it is to carry out the orders of the school board in the best manner to produce the greatest results. Through interpretation of statutes and various school laws by the court of appeals these policies have become a reality.

The courts of Kentucky have played an important part in the formulation of our school policies and will play a very important part in the reorganization of our present school system. These decisions will have to be used or at least kept in mind in formulating future policies. It may or may not be good school administration to always depend upon the court of appeals for their final interpretation upon new policies, new programs, or new legislation. Why not use the past decisions of the court as a measuring rod in determining what is right, legal and proper? Judges of the courts are ordinary persons, although they appear to have a liberal social philosophy on certain litigations, they usually look to the past for precedents and legal principles. It
is interesting to note how one decision affects current and future legis-
lative much more than the legislation involved in the case on which a
ruling is made. The Court of Appeals of Kentucky has been very liberal
in its decisions, and it appears that they have nearly always considered
the social and economic philosophy of the day, which affects the wel-
fare and happiness of our people.

The Court of Appeals has always regarded education as the rampart
of democracy, and the teaching profession has been regarded very highly
in Kentucky. The court has upheld the boards of education for not
hiring teachers whose character is not above reproach.

There is no doubt that Kentucky needs a new Constitution, but
according to the interpretations of the courts the Constitution must
expand or contract to keep in step with an ever changing world. For all
intents and purposes the meaning of the Statutes never change. Although
a Kentucky Statute states that the board of education may remove an
employee from office for "incompetency and immoral conduct;" the court
ruled those words had no technical meaning and that charges against a
superintendent of schools must be reasonably definite and certain.¹

The Court of Appeals has generally recognized the constant and con-
tinuous change in educational problems, purposes and trends. At least
they have lent a sympathetic ear and a liberal mind to these developments
as they came about. Measures which have been regarded as dangerous,
unconstitutional, and frowned upon by public opinion only a few years
ago have been approved as essential in the last decade. In 1916 the

¹ "Graham vs. Bell," Kentucky Reports, 211 Ky., 280.
court ruled that an assistant superintendent is un-authorized, but in 1936 they gave a different decision. Needs and interests of children, public opinion of society all have brought about important changes such as cafeterias, transportation of private school pupils in public school buses, and introducing vocational training have been declared essential to any adequate program of education. Teaching and education have been given rather broad and liberal interpretations.

Though the federal government has taken an active interest in education they declare education to be a function of the state. The Court of Appeals has ruled that the common school district is the creature of the statute and that school boards derive their powers of educational control from the state. The boards of education have a broad discretion in determining school policies, but any action which is taken by them must be considered as though the legislature directed it.

Compulsory school attendance laws make it necessary for parents to send their children to school, therefore the parents have responsibilities and rights in educating their children. After all we have a government of the people, by the people and for the people and they should be considered in all important problems of education.

The state has certain reasonable controls over the schools it supports, and the state may furnish certain school equipment and supplies free to pupils in its schools. The board of education being an arm of

2 "Beauchamp vs. Snider," Kentucky Reports, CLXX, 220.
3 "Knuckles vs. Board of Education of Bell County," Kentucky Reports, CCLXXII, 481.
the state legislature, has the power to create the position of school
nurse and teacher of health in Warren County in 1932, and make the
necessary appropriations therefor.\footnote{5}

According to Southern tradition the courts have ruled favorably
for the support of colored schools. It is true that the issue of racial
discrimination may not have been faced squarely according to many
educators, when in Pike County in 1911, a child with one sixteenth of
Negro blood is a colored child and not entitled to attend schools
maintained for white children.\footnote{6} Colored schools have received favorable
decisions, aimed to meet their best interests, and the opinions of the
court may have been guided largely by social issues, instead of educational
needs.

Another important factor determining the opinions of the court is
the limitation imposed by the State Constitution, and as the educational
activities increase, the responsibility and liberal opinions of our
jurists will expand accordingly. The Court of Appeals has regarded
education favorably and no doubt will continue to do so.

RECOMMENDATIONS

This study has been made of decisions of the Court of Appeals con-
cerning superintendents, school boards, and school districts. These
decisions are hardly one third of the opinions of the Court of Appeals
concerning education.

Anyone interested in the history, trends and philosophies of

\footnote{5}{"Board of Education of Bowling Green vs. Simmons," \textit{Kentucky Reports},
CCLV, 493.}

\footnote{6}{"Pullins vs. Belcher," \textit{Kentucky Reports}, CCLII, 673.}
education in Kentucky, as a result of opinions rendered by the Court of Appeals, would find it profitable to continue this investigation and include all cases concerning: revenue and taxation, bonds and bonded indebtedness, common school funds, textbooks, school elections, transportation, consolidation, teacher contracts, certification of teachers, and any other cases that might arise since this investigation was conducted. It is recommended that further investigation of this problem be conducted to see how their findings compare with this investigation.

Kentucky may have a poor public school system at the present time, but it is the opinion of the writer that the courts during this period (1890 to October, 1946), did everything in their power to enable the state to provide an adequate education for its children.
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