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PUBLIC PURPOSE IN TAXATION AND EMINENT DOMAIN

Educational Institutions

To establish and maintain public schools always has been a prominent object of the government. From the very first it has provided some means for public education. It is sufficient to allude to the earliest territorial legislation in regard to education and to the donation of lands by Congress for this purpose as preliminary to what the states have done in this respect. In fact several of the constitutions require the legislature to establish and maintain educational systems. Therefore, when the right to exercise the power of eminent domain or taxation for educational purposes has been questioned the case has usually related to the extent of the power provided for in the constitution and not to the existence of the right or duty to invoke it.

1. Common Public Schools.—State and Local.

In accordance with a section of the constitution of Pennsylvania which required the legislature to provide by law for the establishment of schools, in such manner that “the poor shall be taught gratis,” the supreme court of that state decided that the legislature could lawfully establish a sufficient number of public schools for the education of every individual between the ages of five and twenty-one years.\(^1\) The schools, when established, were made available to every one between these ages, who applied for admission and instruction. It was contended that the last clause of the section of the constitution was a limitation on the power of the legislature and that no law could be held constitutional which had for its purpose any other object than that of teaching the poor gratis. The court laid stress upon a liberal interpretation of the constitution and declared that:

“The error consists in supposing this to define the maximum of the legislature's power. While in truth it only fixes the minimum. It enjoins them to do this much, but does not forbid them to do more. If they stop short of that point they fail in their duty; but it does not result that they have no power to go beyond it.”

Local schools are not only declared to be a public purpose but local governments may be required to establish and main-

tain them. The legislature of Maryland enacted a law which required the authorities of a city of that state to issue bonds to raise money for the construction of a public school building without the consent of the qualified voters. The statute was sustained in *Revell v. City of Annapolis.* In this case it was contended that the legislature was not competent to compel a municipal corporation to create a debt or levy a tax for a local purpose in which the state has no interest. That is, it was contended that the state had no concern in the construction of local schools and therefore their construction was not a public purpose. But since the legislature had established a system of public schools and provided for their maintenance the court held that they were for a public object within the meaning of the ordinary functions of municipal government. Having in mind that a municipal corporation is a subordinate part of the state government, Chief Justice Robinson said in delivering the opinion of the court:

"It is well settled in this state that the legislature has the power to compel a municipal corporation to incur a debt for a public purpose and one within the ordinary functions of government. * * * Public schools being a public object * * * there is no ground on which the exercise of this power can be denied."

In establishing an educational system, a city is not limited to making provisions for the ordinary common schools. A Wisconsin case holds that bonds issued by a city for the erection and maintenance of a manual training school in and for a city to be for a public purpose. The bonds were issued to supplement funds which had been provided by a testamentary gift made under such circumstances as to create a trust made in perpetuity. It was intended that the building for the school should be built as a memorial to the donor. In spite of the fact that had it not been for the gift, probably no money would have been raised; and that the city became permanently obligated to maintain the school, the court held that the city had a right to vote bonds to maintain a public school system and teach manual training as a part of its general system of education.

A very interesting case involving taxes for school purposes

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2*(1895) 81 Md. 1, 31 Atl. 695. But in *Lovern v. School Dist.*, (1886) 64 N. H. 616, 6 Atl. 483, a bill to compel the selectmen to assess a tax in a school district to build a school house on a lot which was not public property was not sustained.

3*Maxey v. City of Oshkosh*, (1910) 144 Wis. 238, 128 N. W. 899.
is that of Town Council of Cranston. A town voted to abandon the school district and to adopt the town school system. Thereupon the title to all of the school property owned by the school district was vested in the town, subject to an appraisal to be made by a commission to be appointed for that purpose. A statute provided that at the next annual assessment of taxes, a tax should be levied upon the whole town equal to the amount of the appraisal; and there should be remitted to the taxpayers of each district their proportional share of the appraised value of the school property in the district. In answer to the argument that the statute provided for a tax for other than a public purpose, the court replied that school districts have been recognized as quasi public corporations and are respectfully the owners of their school property. Under the act these were to become the property of the town. All the taxpayers would be liable to pay for school houses built or purchased by the town, and as members of the school district the act recognized that some payment should be made by the town for the property taken from the districts. The payment of money under these circumstances is not compensation in the strict sense of the term as where private property is taken although it resembles that. The court maintained that it was rather an attempted equalization as between the taxpayers of the town, as members of a corporation, and the taxpayers of the district as members of another corporation. The court failed to concede that the adjustment of debit and credit was not fair, reasonable and for a public purpose, and upheld the statute which levied the tax.

Not only may the inhabitants of a town be taxed to defray the expenses of changing from a district to a town school system, but non-resident corporations may be taxed to maintain the public schools of the state located in a county, which are not confined to any one class of persons but open to the general public. Therefore an annual levy on the taxable property of a railroad located within a county for the support of public schools is for a public purpose. Such a tax was upheld in the Southern R. R. Co. v. St. Clair County case. An objection to the right to levy the tax was based on the argument that the tax was not for the maintenance of the public schools of the state, and that non-resident corporations or citizens owning

5 (1899) 124 Ala. 491, 27 So. 23.
property in the county have no direct interest in the better maintenance of the schools and ought not to be taxed for their support. The court took the view that state and local taxation are often closely interwoven, and that occurs most often in matters pertaining to the subject of education and schools. For the purpose of supporting schools the court showed that the two subjects, state and local taxation, "are allied because there is mutuality of duty, purpose and benefit," and where such conditions exist state taxation for a public purpose will be supported by local taxation.

In answering the objection that the property of non-resident corporations should not be taxed, the court said: "They have property to protect and greater security results from the moral, intellectual, and social improvement by which the property is surrounded." Thus this case holds that non-resident corporations having property within a county can be taxed for the support of schools on the ground that the schools are maintained for a public purpose.

The exercise of the power of eminent domain has been sustained to establish and maintain public schools. For example it has been decided in Vermont that land taken for a school house site is a valid exercise of the power of eminent domain for a public use. The case involving this point is that of Williams v. School District, in which it was alleged that the
purpose was too limited and local in its character, and benefited so small a portion of the community that the legislature could not exercise the power of eminent domain in its favor; that in order to sustain the power of eminent domain it must be for some purpose that may be enjoyed by the entire community. The court in answering the objections made a very forceful statement saying:

"Every public use, is to some extent local and benefits a particular section more than another. * * * But the use in the present case has a more enlarged and liberal view. It is a benefit and advantage to the whole country that all the children should be educated and thus any means of educating the children in a single district benefits the whole. To accomplish this great object of educating the whole, it becomes necessary to make them accessible to all; but the principle remains the same as if all the children in the state attend a single school. They are but separate means to accomplish the same great and general benefit. The maintenance and support of common schools have ever been regarded in this state as not only a public usefulness but of public necessity, and one which the state in its sovereign character was bound to sustain. It would be hard to require school districts by law to erect school houses and support schools and not place within their reach the legal power to enable them to comply with the legal requirement."

It will be noticed that in the opinion primary emphasis is placed upon the relation of the local schools to the entire county and the necessity of the power of eminent domain to carry into full effect the legal duty of establishing and maintaining them. There is also discernable the elements of benefit upon which the decision turned.

A number of other cases have arisen in which the question of the validity of condemnation proceedings for school house sites were presented to the court. The exercise of the power of eminent domain under authority of a school law which authorized the purchase of real estate upon which to erect school houses, but gave no power to take the land by condemnation proceedings, was sustained by the supreme court of Pennsylvania.8 The common school system pervades the whole state. For that reason the court said the school system is its creation, acting in the several districts by its board of directors, who are simply the agents of the state carrying out the wise, benevolent and far sighted policy of the government. Every man, woman

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and child in the commonwealth should be able to read and write, and this is the object aimed at by the common school law. School houses are an essential part of the system and the compulsory power is as necessary to it as the taking of property for a highway. In both cases the uses are public. The state proceeds in both cases are adequate funds for adequate compensation and security for compensation for damages by a pledge of the funds raised by taxation.

In accordance with the doctrine that land taken for a school house site is a public use, it has been held that property may be taken for this purpose by a school district organized by a special act of the legislature instead of under the general school law. However, the district had been recognized by the state department of education as a union free district and it had complied with the requirements of the school law. The fact that some part of the premises was to be used for training the school children under the state military training commission did not effect the question of public use.

It is also true that ample grounds are quite as essential for the exercise and recreation of the school children as for the construction of a school house. In the Independent School District v. Hewett case a tax was voted to purchase a lot after the school house had been built. The land which appeared to have been taken for a playground for the children was adjacent to the school house. The owner of the property refused to sell the property for the alleged reason that the evidence did not establish the necessity for it. On the ground that the lot was for the convenient use of the school, the court sustained the condemnation proceedings. The fact that the lot was not for an original site Justice Ladd said “furnishes no objection to the appropriation.” It was said in a more recent case, in which this same subject was considered: “The meaning of the word ‘site’ is broad enough to embrace such land not exceeding the statutory limits as may reasonably be required for the suitable and convenient use of the particular building; and land taken for a playground in conjunction with a school may be as essential as land taken for the school house itself.” The land involved in this case was for the benefit of a high school. The

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10 (1898) 105 Iowa 663, 75 N. W. 497.
11 Board of Education v. Forrest, (1925) 130 S. E. 621. (N. C.)
building had been constructed before the condemnation proceedings were instituted to take the land for the entrance and playground.

The cases in regard to the exercise of the power of eminent domain thus far considered have involved school building sites and school grounds. But it happens that the power of eminent domain has been used for other things. The underlying coal which may be necessary to support a school building may be condemned by a school district. The rule governing this situation was expressed by the supreme court of Pennsylvania in a fairly recent case. When the school idistrict purchased the land for a school house site it expressly waived the right of all surface support and erected its building where the title to all the coal and the right to remove it was vested in another. At an enormous expense the coal company sank a shaft and made all necessary preparations to carry on mining operations which it proceeded to do without providing adequate surface supports. The use of the school building was abandoned and the pupils were sent to other schools which resulted in overcrowding and reduced school efficiency. The citizens and taxpayers of the school district sought to prevent the mining of the coal on the ground that it constituted a public nuisance. The court recognized the fact that the mining of coal is lawful; and when as in this case the right to surface support is expressly waived, it is lawful to mine all of the coal. The court was confronted with the difficult task of preventing the doing of a lawful act in a lawful manner by declaring it a public nuisance. Chief Justice Walling stated that for practical purposes, the right to coal consists in the right to mine it. Where, as in this case, the right to surface right is expressly waived, it is lawful to remove all of the coal.

"An order of the court that the coal or any part of it must remain permanently unmined as a support to the school building practically takes such coal from the company and vests it in the school district, without compensation, which the constitution forbids." It was finally held, however, that coal is real estate subject to the power of eminent domain and that the school district could exercise the power for the protection of school buildings. The court said: "It is only in rare cases of overwhelming necessity that private property may be taken or

destroyed for the public. * * * The primary obligation of furnishing adequate school buildings rests upon the school district and if any be found without surface support * * * the district must under existing laws supply the deficiency by condemnation.”

2. Problems Arising out of Consolidated Schools.

One of the problems which confronts school officials due to the consolidated school movement is the transportation of pupils. It is now settled that the transportation of pupils to and from school is a legitimate expense of operating a public school system. This principle of law was laid down in Bafkin v. Mitchell in which it was contended that the transportation of pupils was a diversion of school funds raised by taxation to a purpose not authorized by law. Most courts would undoubtedly agree with Justice Reed when he said:

“If the establishment of these consolidated schools in rural districts is as claimed for the general improvement in the system as it operates throughout the state, and provides superior advantages and opportunities for the promotion of intellectual, scientific, moral, and agricultural knowledge and training, then we cannot see that there is any improper diversion of the school funds to apply a necessary portion thereof in transporting pupils residing outside of a certain distance to the school so that such consolidated and improved school may be maintained. We can readily see that the organization of such consolidated districts may result in the saving of expenses in conducting the school in the rural communities through centralization and unified work.”

3. Education for Colored Children.

In several of the states it is expressly prohibited by law to make any distinction in regard to the rights of colored children to attend the same schools with others when the law makes equal provisions for them. And in Nevada the Supreme Court of that state held that where the law contemplates separate schools, colored children may attend the regular schools if no others are provided. In fact a mandamus was granted to compel the admission of a colored pupil to the public schools, for the reason that certain funds were pledged and certain taxes were allowed for the support of common schools which were public and open to be used by all. But on the other hand, the court stated that “It is perfectly within their power to send all blacks to one school and all whites to another * * * to make

13 (1913) 106 Miss. 253, 63 So. 458.

14 State v. Duffy, (1872) 7 Nev. 342.
such classification whether based on age, sex or race or any other existent condition as may seem to them best.\textsuperscript{15}

However there is some diversity of opinion on this subject. A North Carolina case holds that a statute requiring a tax on polls and property of colored persons to be applied exclusively to the education of their children is an unlawful discrimination to the prejudice of either race.\textsuperscript{16} In another case from a different jurisdiction a law was upheld which provided for devoting school taxes collected from colored people for the support of schools used exclusively for colored children.\textsuperscript{17} And according to the decision in this case colored people cannot be taxed exclusively for white schools. When in \textit{Marshall v. Donovan}\textsuperscript{18} the sheriff seized and sold property to satisfy a tax claim against an individual for the benefit of the schools in the county, he objected to the paying of the tax for the alleged reason that the negro did not participate in the profits arising from the school fund and in the educational advantages afforded by the common school system. But the court said: "Whatever may be the duty of the state to the negro in regard to providing for the education of his children, it is one which devolves upon the legislature and in the discharge of that duty that department of government has the power, by imposing taxes upon his property and by establishing schools for the benefit of his children, to equalize the burdens and benefits of the two races. So far as the matter of education is concerned, steps have been taken to establish and maintain separate schools for the colored children."

4. \textit{Pensions for School Teachers.}

"Under a broad interpretation of the constitutional provision of promoting the general welfare, Congress can provide pensions for the school teachers of our land, because the encouragement of education is a public purpose inextricably connected with the general welfare policies of our nation and state."\textsuperscript{19}

\textsuperscript{15}This view is held in \textit{Ward v. Flood}, (1874) 38 Cal. 36; \textit{Cory v. Carter}, (1874) 48 Ind. 327; \textit{State v. McMann}, (1871) 21 Ohio St. 198.


\textsuperscript{18}(1874) 10 Bush. (Ky.) 681.

\textsuperscript{19}\textit{Hall v. United States}, (1878) 98 U. S. 343, 25 L. Ed. 180. Justice Robinson dissented on the ground that it was class legislation "* * * a gift or donation which is not for a public purpose."
Accordingly the exercise of the taxing power to establish a teacher's pension fund is regarded as a public purpose in North Dakota.\(^{20}\) The statute before the supreme court of that state did not levy a tax directly. The county treasurer was required to set aside from the tuition fund a sum equal to ten cents for each child of school age. A small amount was to be retained out of the wages paid to the teachers to enlarge the fund. The court regarded the pension in the nature of an added salary allowance to increase the efficiency of the teachers themselves and encourage them to devote their lives to a profession "which though essential to our civilization has been poorly encouraged and has been too often looked upon merely as a stepping stone to other employment." For this reason the fund was held to be germane to the general school purposes. But a similar statute was declared unconstitutional in Ohio as taking private property from one citizen for the benefit of another.\(^{21}\)

5. **Special Kind of Tax for School Purposes.**

The increase in the cost of maintaining schools, due to the public demand for the establishment of better educational facilities, has led some states to impose special kinds of taxes. An additional tax rate imposed upon a particular class of income by the legislature of Massachusetts is an example. The revenue derived from this source was required to be turned over to the several cities and towns in the state to reimburse them for certain expenditures for the support of public schools. Because popular education is a public purpose it was declared that the income tax was a "simple case of additional revenue, levied to meet the additional general expenses of government which is indubitable."\(^{22}\) The records do not show another case of an income tax levied for the specific purpose of school support. But an inheritance tax levied for the purpose of defraying the expenses at the state university of students without means, who should be awarded scholarships of merits by a competitive examination was held to be unconstitutional by the Missouri court as levying a tax for private persons and not for a public purpose.\(^{23}\)

The same court declared a statute unconstitutional which provided that every manufacturer of patent medicines in the state

\(^{20}\) *State v. Hange*, (1917) 37 N. D. 583.
\(^{22}\) Mr. Bell furnished no citation for this quotation. Ed.
\(^{23}\) *State v. Switzer*, (1898) 143 Mo. 287, 45 S. E. 245.
shall pay a license fee to be used for maintaining free scholar-
ships in the state university to aid students without means,
because it was levied for a special class of students of the uni-
versity and did not benefit the public. A license fee is usually
distinguished from a tax. But they are closely allied and it is
not unreasonable to suppose that if a court declares the purpose
for which a license fee was charged not to be a public one, it
would take the same attitude toward a general tax levied for the
same purpose. If it is not a public purpose for the one, it is
not for the other.


The use of the powers of taxation and eminent domain have
not been limited to the common schools. These two govern-
mental powers have been exercised successfully for the benefit
of high schools and other institutions of higher learning. These
educational institutions have been liberally supported by taxa-
tion, and the right of eminent domain has been invoked on
numerous occasions for their benefit. It is such a well established
principle of constitutional law that only a few cases have been
in litigation.

The general question of the authority of the state to make
high schools free, confronted the court of last resort in Michigan.
The court was asked to restrain the collection of school taxes
which had been voted for the support of high schools and to
make free the instruction of children in the modern languages.
The complainants in the suit argued that the instruction in the
classics and in the modern languages was not for the benefit of
the people at large but rather for the accomplishment of the
few, and therefore the court ought to declare it incompetent for
the state to supply it wholly at public expense. But after a very
comprehensive review of the educational policy of the state the
court sustained the collection of the tax, declaring it to be for
a public purpose.

The authority of the state to support an agricultural and
mechanical college by a general tax levied annually was chal-
lenged and sustained in *Higgins v. Prater*. The college was non-sectarian, and its aim was to furnish at a cheap rate of tuition, a practical and liberal education to the rich and poor alike—a place where the masses of people could prepare themselves for proper citizenship. Regardless of these aims it was contended in argument that the state could not constitutionally aid by taxation any educational institution whatever, other than common schools. The decision turned on the interpretation of the clause in the constitution relative to the school system. The court concluded that the article of the constitution when all of it was considered and especially in connection with its history and the practical construction which had been given it, did not forbid taxation by the state to aid an educational institution other than common schools.

The public purpose for which taxes may be levied to support higher institutions of learning also sustains the use of the power of eminent domain. Therefore when the legislature deems it necessary to secure land for the future growth and prosperity of the state university upon which there can be erected buildings for its various activities, it may authorize the condemnation of ample ground for the purpose. The legislature is not required to act only for the present, but it has the power to determine the future needs of the university with reference to land and to provide in the present for that which it believes to be a future necessity. Therefore a condemnation proceeding is not invalid because the legislature apparently makes provision for the future growth and development of the university and authorizes the acquisition of more land than is necessary to satisfy its immediate need in this respect. The fact that a part of the land acquired is leased to private persons for a private purpose until it is put to use to meet the needs of the university in no way changes its status. The property is still dedicated to a public use, if the revenues derived from the rentals become a part of the funds of the university.

It is not necessary for the land so acquired to be used for university buildings. Condemnation proceedings have been sustained to secure land on which a building was to be erected.
with funds donated by an alumnus for the purpose of housing a combined lawyers' club and dormitory to be used in connection with the law school. All members of the law school were to be eligible to membership in the club, and all dues and profits from the operation of the building were to be used exclusively for legal research. Justice Donald said in speaking for the court:

"The claim that the property to be acquired is not for a public use is so plainly without merit that we do not deem it necessary to enter into any extended discussion of it."

In a case decided in Minnesota the exercise of the power of eminent domain by the state to condemn a right of way for a railway connecting the university farm with the campus and with a street car system for the purpose of providing facilities for the transportation of persons, supplies, and materials was sustained. After reviewing the status of the university in the educational system of the state, C. J. Taylor said:

"The University has been reorganized from time to time and its scope and activities much extended; but it has always been recognized as a public institution forming a part of the educational system of the state and no attempt has ever been made to give it any other or different character. That the state may take property for the purpose of enabling it conveniently to perform its governmental functions has never been doubted. It may take such property for public schools and for other public institutions established and conducted by the state in its capacity as sovereign. The state in its governmental capacity maintains and conducts the university as a part of its educational system, and may condemn for its use any property needed for the purpose of providing the institution with proper and convenient facilities for performing its work. The taking of property for such purpose is a taking for public use."

7. To Secure the Location of Educational Institutions.

Several cases hold that the donation of money raised by the issuing of bonds or taxation to secure the location of educational institutions is a valid public purpose. This view is adopted in the decision of Marks v. Purdue University. Other cases in which the rule is found are: Burr v. Carbondale, (1875) 76 Ill. 455; Hensley Township v. People, (1877) 84 Ill. 544; Livingston County v. Darlington, (1879) 101 U. S. 407; Cox v. Pitt County, (1908) 156 N. C. 584, 60 S. E. 516, 16 L. R. A. (n. s.) 253; East Tenn. University v. Knoxville, (1873) 6 Baxter 167.

1. (1871) 37 Ind. 155. In 1869 the commissioners of Tippecanoe county to secure the location of an agricultural college within the
tion in the case was whether taxes could be assessed in a county to liquidate a debt contracted by the county, in securing the location of a state institution. The court answered the question in the affirmative, on the ground that the taxes collected to discharge the obligation was solely for a county purpose. While the university is a state institution the court said:

"Every citizen will have an equal right, under the same circumstances, to avail himself of its privileges, and the location of it in a given county will, doubtless confer upon that county many local benefits of pecuniary value. The parents of the county can send their sons and perhaps their daughters to the college to be educated at a less expenditure of time and money than would be incurred if it were situated at a more remote point in the state. The college with its professors, tutors, attendants and students will probably diffuse much more money throughout the community than would otherwise circulate, it may also add to the educated and intelligent population of the place and be the means of stimulating the industry and increasing the wealth and moral worth of the community thereby enhancing the attraction of society and the value of property. Local taxation by counties and cities are constantly upheld. There can be no possible doubt, on general principles that the location of the college in Tippecanoe county was a sufficient consideration to support the promise on the part of the county."

8. Private Educational Institutions.

The question whether educational institutions when owned and controlled by a private corporation may constitutionally be given the right to take private property upon paying a just compensation apparently has been presented to no other court than that of Connecticut. A decision of the supreme court of that state declared that the higher education of women is in the county made a liberal donation of $30,000 for the purpose. An act of the legislature was approved accepting the donation, locating the college in that county, and naming it the "Purdue University". The purpose of the suit was by way of mandate to compel the payment of a warrant issued for the first installment of the donation.

In Gordon v. Cornes, (1872) 47 N. Y. 608, the legislature of N. Y. authorized a village to raise money by levying taxes and issuing bonds to secure the location of a normal school for the education of teachers for the common schools. This tax was sustained as a tax upon a particular locality to aid in a public purpose.

The supreme court of Missouri in State v. Curator of the State University, (1874) 57 Mo. 178 held bonds issued by a county and donated to the curator of the state university to secure the location in the county of a branch of the university unconstitutional and void without the sanction of a 2/3 vote of the people.

Two cases in Illinois affirm such donations. In a suit to enjoin the collection of taxes assessed to pay the interest on bonds issued by the city of Carbondale, under authority of an act passed by the legislature to secure the location of the Southern Normal University within the city, the court sustained the collection of the taxes in question.

Connecticut College for Women v. Calvert, (1913) 87 Conn. 421, 188 Atl. 633.
its nature a public use in aid of which the right to exercise the
power of eminent domain may be granted to a private educational
corporation, provided the public is given free and equal
right to enjoy the benefit of it. The college concerned in this
case was incorporated by the general assembly for the purpose
of providing such a public education. But the control and dis-
position of its property and the management of its affairs were
vested in a board of trustees to be elected by the members of
the corporation. The admission of students to the institution,
the tuition fees to be paid, and the curriculum to be pursued
were at the direction of the trustees. Therefore the court said
in refusing to permit the college to acquire property by the
use of the power of eminent domain:

"The phrase 'higher education' is indefinite. The corporation has
already received large gifts and the expenses of its establishment and
maintenance will be provided in part at least, through voluntary con-
tributions. It, therefore, administers a public charity within the
meaning of the statute of charitable uses. But it is a matter of common
knowledge that there are many colleges for the higher education of
women in which the public have not and cannot acquire the right to
be educated. The proprietors of these cannot take land for such con-
tinued private use, by right of eminent domain. There is no allegation
in the petition that the public has or can acquire the right to enjoy
the benefits of the land sought to be taken, no provision to that effect
in the petitioner's charter, and the stated corporate purposes of the
obligation of admitting to its courses of instruction all qualified candi-
dates to the extent of its capacity without religious, racial or social
distinction. The necessary public benefit from the establishment of
the college does not entitle it to use the power of eminent domain
unless the public have a free and equal right to its benefits. In the
absence of showing that this is true the statute is unconstitutional."

Several cases involving taxation for the support of private
educational institutions have been decided in the state courts.
In every case except one taxation for this purpose has been
declared unconstitutional. This was the Hart v. Antrim case
in which a statute was upheld which authorized a town to raise
money by loan or taxation to erect a school building and to give
a perpetual lease of it, to a private academy corporation without
payment of rent to be used for public school purposes. The
taxpayers of the town asked for an injunction to prevent the
town from carrying the statute into effect on the ground that
it was taxation for a private purpose because the academy
corporation charged tuition. But the school was open to the

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* (1887) 64 N. H. 234, 9 Atl. 389.
public, to all who paid the tuition, without any restriction. For that reason the court held that the tax in question was for a valid public purpose.

Some courts have held statutes similar to the one considered in the foregoing case unconstitutional. If it appears that the inhabitants of a town have no interest in the institution as such and no power of control over it, the incidental benefits resulting to the people are not sufficient grounds for the exercise of the taxing power to aid it. In *Jenkins v. Andover* taxation was prohibited for the purpose of building a public school house, which was founded by a charitable bequest but controlled by trustees limited to members of a certain religious society, although a majority of them were to be chosen by the inhabitants of the town, and it was intended to use and occupy the building in place of a high school. The objectionable feature was that the school was not under the control of the public officials. For that reason the court held that taxes could not be levied for its support. Likewise industrial schools maintained by private benevolent and charitable institutions deserve the patronage and voluntary support of all citizens but the taxing power cannot be used to support them when they are not under the control of those who are taxed.

9. **Conclusion.**

A general view of the subject of education will find a few prominent and outstanding principles. The first of these is that the powers of taxation and eminent domain may be used to establish and support a system of free public schools. These powers may be exercised by the legal representatives of the state or by the local subdivisions of the state. And local governments may be required to establish and maintain public schools as a part of the school system of the state.

The establishment and maintenance of schools include taxation for the transportation of children in consolidated school districts because through centralization and unified work, better

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35 See for example, *Curtis v. Whipple*, (1869) 24 Wis. 350; *Jenkins v. Andover*, (1869) 103 Mass. 94.
36 *Curtis v. Whipple*, (1869) 24 Wis. 350. A statute was declared unconstitutional which authorized taxation to erect a school building for a private corporation.
37 (1869) 103 Mass. 94.
38 *St. Mary Industrial School v. Brown*, (1876) 45 Md. 310.
schools may be maintained at less expense. Separate schools for colored pupils may also be maintained, provided the money spent for the purpose is derived from taxes collected from colored persons to be applied exclusively to the education of their children. Likewise a tax to establish a teacher's pension fund to encourage teachers to devote their lives to the teaching profession is within the legitimate domain of public purpose. And it appears that there is no objection to levying a special tax, for example an income tax, for general school purposes. But if the tax is used to benefit directly persons individually by creating scholarships, the purpose is private and not public in character.

In the second place, the higher institutions of learning have been liberally supported by taxation and the exercise of the power of eminent domain. Free high schools, mechanical and agricultural colleges, as well as state universities, are examples. Not only may these institutions be established and maintained, but it is a legitimate exercise of the taxing power by a city to devote money to secure their location, because of the resulting benefits to local communities.

Finally, the exercise of these governmental powers in favor of privately owned educational institutions in which the public has no interest as such is not constitutional, unless the public have a free and equal right to their benefits, and participate in their control. In the absence of showing that this is true, taxation or condemnation of private property to aid them is for a private and not a public purpose.

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