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Comparative School Law

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band on the vacant throne, required of them to subscribe to the Bill of Rights and thus exorcised forever the fetish of the Divine right of kings to rule from the constitution of England. By this racial trait of construction instead of destruction, the Anglo-Saxon has drawn that luminous line across the history of England that marks the pathway of her legal growth from the absolutism of the Plantaganets and the Tudors to the constitutional government of the Houses of Orange and Hanover, and from the wager of battle and trial by fire and water to that splendid system of jurisprudence that safeguards the life, the liberty and the property of every Englishman.

He who would understand the history of a nation must ever bear in mind that its present is the result of all its past. Our ancestors bequeathed to us not only their physical beauty or deformity, but their mental and moral vices or virtues as well. Rome has been in her grave for nearly fifteen hundred years, yet she rules the civilized world, today, through her corpus juris. The ancient merchants whose courage, enterprise and public spirit built up the Lex Mercatoria have long since passed to that "Bourne from whence no traveler hath returned," but they crystallized their good name in that splendid word "sterling" and set it sparkling, like a gem, in the coronet of our language, they endowed mankind with a system of mercantile law richer than all their freighted argosies and more enduring than their jewels or gold. They indeed have perished from the earth but their good name and their good deeds are immortal, they can never die.

COMPARATIVE SCHOOL LAW

Edited by Prof. George M. Baker, Department of Education, University of Kentucky

The purpose of this series of papers is emphatically not to find fault nor to focus on the weak points in the school law of this or any other State. On the contrary, it is to call attention to the advisedly superior points in the school laws of several of the leading states.
from the standpoint of their educational systems. In order to more intelligently determine just which states are at present so considered, we consulted Commissioner P P Claxton, of the United States Bureau of Education. He suggested the following list of states as being especially worthwhile for the purposes of comparative study: Arizona, California, Indiana, Kansas, Minnesota, North Carolina (high school legislation), Ohio, Oregon, Washington and Wisconsin. We have therefore gathered data from the most recent editions of the school laws of each of these states, under the following headings:

2. State Superintendents of Public Instruction.
3. State Boards of Education.
4. County Superintendents of Schools.
5. County Boards of Education.
7. Special High School Legislation.
8. Control of State School Building.
10. State Qualifications for Teachers.

The various divisions of the paper have been prepared by the members of Education 13, a class in State and county school administration, in the Department of Education. Their names are attached to their respective sections of the paper.


On examination the constitutional provisions for education as they appear in the Constitutions of some forty-five states, one is first struck by the physical fact that in some cases these provisions cover several closely written pages, while in other instances, only a few lines are necessary to cover the points dealt with in the Constitution. Alabama has the longest statement, approximately, and the two Dakotas the two next longest. Maryland has the shortest statement, and Vermont the next shortest.

The following states have very lengthy constitutional pro-
visions pertaining to education: Alabama, Arizona, California, Colorado, Louisiana, Missouri, North Dakota and South Dakota.

The following states have very short constitutional provisions pertaining to education: Connecticut, Delaware, Maryland, New Hampshire, New Jersey, Rhode Island, Tennessee and Vermont.

Secondly, one is struck by the great similarity of these constitutional provisions, both in general order of arrangement and in phraseology. This is no doubt due to the fact that one Constitution has served as a model in the making of others. However, there does exist a great discrepancy in the matter of financial provisions. The question of the disposition of the school lands, and the investment of the principal and interest arising therefrom, receives the greatest variety of treatment, ranging from practically no statement at all to great detail of statement thereon.

Kentucky Constitutional Provisions.

The Kentucky provisions are of medium length as to space occupied, and cover the following points with special emphasis: The General Assembly shall by appropriate legislation provide for an efficient uniform system of schools. The bond of the Commonwealth for the sum of $1,406,600, including $79,800 of bank stock in the Bank of Kentucky, together with all interest and dividends arising from said fund, shall be held inviolate for the purpose of maintaining a system of public schools. Each county shall receive its proportion of a school fund based upon the census of children for each school year. Each race shall share this fund equally, and separate schools shall be maintained for white and colored children. The tax rate of cities, towns, counties and taxing districts, shall be as follows:

- Cities with 15,000 or more population......$1.50 on $100.00
- Cities between 15,000 and 10,000.............1.00 on 100.00
- Cities less than 10,000......................... .75 on 100.00
- Counties and taxing districts.................. .50 on 100.00

Freedom of conscience, church and state shall be tolerated in all the schools of the Commonwealth. No school shall be deemed
a "common school," or be entitled to any contribution out of the school fund, unless the same is kept by qualified teachers for six months or more during the school year, and open to all school children between the ages of six and twenty years.

Some of the most important and most frequently recurring lines of constitutional provisions are as follows

A. Financial Provisions:

a. Provisions relative to the establishment of a "public school fund," stating the sources thereof.
b. Provisions insuring the permanency of this fund.
c. Provisions relative to the investment of principal and interest of this fund.
d. Provisions for the disposition of the public school lands, through sale, lease or rental.
e. Tax rates for public school purposes.
f. Provisions guarding against indebtedness beyond a certain per cent. of the assessed value of the taxable property in the unit.
g. Provisions for the payment of the principal and interest of indebtedness incurred for public school purposes by providing for sufficient taxes to meet the same.
h. Provisions for poll taxes for public school purposes.

B. Provisions for State Boards of Education.

C. Provisions relative to State Superintendent of Public Instruction.

D. Provisions relative to County Superintendent of Schools.

E. General provisions for the establishment of a liberal system of public schools.

Provision is first made for the creation of a public school fund. After this comes provisions for securing the sacred inviolability of this fund, both principal and interest, generally. Then follows provisions for the investment of the interest from the fund. After this come provisions for the disposition of the school lands. On the whole, these provisions are commendably specific relative to the sale, lease or rental of these lands, and as to the investment of prin-
principal and interest of the above mentioned school funds. The term of lease is more often five years than any other number; rental is generally to be paid in advance, and the terms of sale show great variation, ranging from the most meager statement to the greatest specification of fine details. In many states a board of commissioners is created by the Constitution for the sale of school lands, and for the safe investment of the funds arising therefrom. This seems a most commendable provision. Space forbids quoting provisions of special interest and worth in this connection. The states having especially commendable detail of provisions under this head are: Idaho, Minnesota, Missouri, Kansas, North Dakota, New Mexico, Pennsylvania and Wisconsin. Many state constitutions are lamentably shy on this important head, Kentucky being in the list. The study of the above list of states will enable one to appreciate in part the wonderful progress of those states and the enviable financial situation they now find themselves in as compared with many other less fortunate and far-seeing states and statesmen. The financial foundations were securely laid right from the start, in the case of the above mentioned states, by wise foresight and sound business acumen, crystallized into constitutional provisions.

B. Provisions for State Boards of Education:

Under this head provision is made for the personnel and powers and duties of these boards. The State Superintendent is almost invariably either secretary or president of the board. It is well agreed by administrative experts that a lay board of education, secured by popular election, is the best solution for the legislative side of a state system of education. The following states, by constitutional provision, have adopted this form of organization: Arizona, California, Colorado, Idaho, Iowa, Louisiana, Michigan, Mississippi, Missouri, New Mexico, North Carolina and South Carolina.

C. Provisions Relative to the State Superintendent of Public Instruction:

Provisions are made for his election or appointment, tenure of office and salary. The salary is stated in either of three general
ways: a minimum may be given, or a maximum, or a straight amount specified. His qualifications are the most interesting point considered. The statements of the same are generally so meager and the qualifications demanded in such general terms as to be of little real value. Age seems to receive more attention than professional training, which is obviously stressing the wrong point. Here is a point needing attention and constructive revision in the direction of raising the qualifications for this office.

D. Provisions Relative to County Superintendents of Schools:

The Constitutions as a whole are conspicuously silent on this important point. The following states have provisions for the eligibility of women to this office: Montana, New Mexico, North Dakota, South Dakota and Pennsylvania. Other state legislatures have made this possible by later enactment. California has a constitutional provision to the effect that two or more counties may unite in hiring a county superintendent. This seems a highly commendable provision, constitutional or otherwise. It might easily mean very superior supervision for two or more counties neither of which might be able to independently secure such expert service. The idea is very feasible. The California constitution also provides for a four-year term for this official, which is also very commendable. This is an extraordinary constitutional provision.

E. General Provisions for the Establishment of a Liberal System of Public Schools:

The public school system in many state constitutions is to include kindergartens, common schools, high schools (not always differentiated from "common schools"), normal schools, and a State University, generally to include an Agricultural College. All these schools are to be open to both sexes, and to be as nearly free as possible. The constitutions of the southern states as a rule specify definitely that separate systems must be maintained for blacks and whites. The Kentucky Constitution provides that the public school fund shall be equally divided between the two races. This seems very commendable. The constitutions of Alabama, South Carolina
and Tennessee forbid each race to attend the schools of the other race. The constitution of New Mexico expressly provides that children of Spanish descent shall never be denied the rights and privileges of admission and attendance in the state public school system, and that they shall never be classed in separate schools.

There is the constantly recurring provision that no tax shall be levied on, or appropriation of public money made to, any church, private or sectarian school. Also that no sectarian qualification is ever to be required of students or teachers. Also that no sectarian instruction is to be given in the public schools.

The constitutions occasionally make mention of the language or languages to be taught in the public schools. Of course English is most often mentioned where any such specification is made, but the constitution of Louisiana provides: "That the French language may be taught in those parishes or localities where the French language predominates, if no additional expense is incurred thereby." The constitution of New Mexico states: "The legislature shall provide for the training of teachers in the normal schools, or otherwise, so that they may become proficient in both the English and Spanish languages, so as to qualify them to teach Spanish-speaking pupils and students in the public schools and educational institutions of the state."

The constitution of the State of Washington provides for the recall and discharge of every elected officer in the state. This includes the State Superintendent of Public Instruction and the county superintendents of schools. This is a provision that might be most commendably introduced into other states where it not infrequently might work to the decided amelioration of the educational situation.

EDITOR.

2. State Superintendent of Public Instruction:

First let us consider the matter of median term and median salary. Investigation in this direction reveals a wide range between the minimum and maximum salaries. The minimum salary found is $1,800, and the maximum is $10,000 per annum, while the median salary, determined on 39 states, is $3,000 per annum. The length
of term ranges from one to five years, with a median term of four years, determined on 40 states.

As to the manner of selecting this officer: In 31 states he is elected by popular vote; in 9 appointed by the Governor, with the advice and consent of the Senate or Council, while only 4 State Superintendents are appointed by State Boards of Education. This last fact is rather surprising when we consider that it is now the consensus of administrative opinion that appointment by the State Board of Education is the preferable manner for securing this officer.

As to his qualifications: State school laws are strangely reticent on the matter of qualifications for State Superintendents of Public Instruction. Why this should be the case is hard to understand, and harder still to justify. That there should be a statement of the academic, professional, moral and other pre-requisite qualifications there can be no doubt. In most cases where there is any such statement of qualifications, it is couched in such manner that most any individual of very ordinary attainments and a modicum of experience in school affairs, could easily get under the legislative bars. Politicians experience relatively little embarrassment in securing this strategic and honorary position for their office-bound friends. This should not be the case. It ought to be no harder for the proverbial camel to get through the proverbial needle than for such an individual to secure this important position. To be sure, men have been known to grow up with the position, and ultimately to prove themselves highly efficient and progressive administrators, justifying their appointment. The policy of political favoritism, however, does not always work out thus auspiciously for the state and its schools. High academic and professional requirements should effectually bar the road to the consummation of a political friendship appointment. In most states such requirements are conspicuous for their absence. However, many states are now requiring graduation from a "reputable university, college, or normal school," and some few are demanding something in the nature of professional as well as an academic training. Thirty years seems to be the favorite age limit where any is prescribed. In most states there is fortunately no age qualification. Age is obviously the least
essential of the list of possible pre-requisites. Oklahoma, bars women from the office, which is a mistaken policy we believe. The office is held by women at the present writing in the following four states: Idaho, Colorado, Washington and Wyoming. The following statements from the laws of the states represented constitute our findings in the direction of legal requirements as to qualifications:

**Georgia**—He must be a man of good moral character, of high educational standing, and must have had at least three years’ experience in teaching, or be a graduate of a reputable college, or normal school, or have had five years’ experience in supervision.

**Idaho**—He must hold a state or life certificate and a diploma from an approved normal school or university, and be engaged in educational work.

**Iowa**—He shall be a graduate of an accredited university or college, or of a normal school having a four-year course above the high school, and must have had at least five years’ experience as a teacher or superintendent.

**Kentucky**—No qualifications are specified in the law.

**Michigan**—He must be a graduate of a university, college or normal school of good standing, and must have had at least five years’ experience as a teacher or superintendent of schools.

**Montana**—The law demands the following qualifications: At least 30 years of age, two years a resident in the state preceding election, the holder of a state certificate of the highest kind issued in some state and recognized by the Montana State Board of Education, or a graduate of some university, college or normal school with equal rank with the University of Montana or the State Normal School.

**New Jersey**—The law does not specify further than to state that he shall be elected without regard to whether his place of residence is within or without New Jersey. This is especially commendable.

**New Mexico**—He must here be a citizen of the United States, at least 30 years of age, a resident of the state for at least five years, and a trained and experienced educator.

**North Dakota**—He must be a qualified voter, over 25 years of
age, and the holder of a teacher's certificate of the highest grade issued by the state.

**Ohio**—The law here does not specify further than to demand that he must not be interested financially or otherwise in any book-publishing or book-selling company.

**Oklahoma**—He shall be a male, not less than 30 years of age, a United States citizen, and a qualified elector of the state for three years preceding his election.

**Tennessee**—He shall be a person of “literary and scientific attainments,” and of skill and experience in the art of teaching.

**Utah**—He must have been a resident of the state for the preceding five years, be over 30 years of age, and hold a certificate of the highest grade issued by some state, or be a graduate of some reputable university, college or normal school.

**West Virginia**—He shall be a person of good moral character, of temperate habits, of literary acquirements, and skill and experience in the art of teaching.

**Wisconsin**—He shall have had five years of practical experience as a teacher or supervisor, and shall hold the highest form of certificate which the state department can issue.

To conclude the question of qualifications; since the State Superintendent is, or at least ought to be, the educational head of the state school system, his qualifications should be more specifically stated in the school law and much more rigid in character than are demanded by most of the states at present. Witness the citations made above. We believe the following should represent approximately the essential qualifications that every state ought to demand by law for this position: Graduation from a reputable university or college, this to include a liberal amount of “professional” training. Graduation from even a reputable normal school should not be accepted as sufficient training of either academic or professional type. The applicant should be able to offer at least five years of successful experience in the capacity of superintendent or supervisor. Mere grade and high school teaching should not be accepted to fulfill this qualification. No age limit should be set. As in the case of the New Jersey law, he should be selected absolutely without regard as to whether his place of residence be within or without the
state he is to serve. These qualifications would have the tendency
at least to secure the most proficient and alert educator available
for the money. This level of attainment would very soon and very
effectually eliminate the “political” type of educator.

As to the powers of the office: The powers and duties of the
State Superintendent are very similar as outlined by the state school
laws. In some instances his powers are implied rather than stated.
This would seem unfortunate, as it appears reasonable to believe
that the most important of his powers should be clearly defined so
as to eliminate grounds for later misunderstanding and misinter-
pretation. The Kentucky law covers the following points as to the
powers and duties of the State Superintendent: He shall appoint
two professional educators, and these two with himself shall con-
stitute a State Board of Examiners, who shall examine all appli-
cants for certificates for county superintendent, for state diplomas
or state certificates. This board shall prepare questions for exami-
nation of candidates for county superintendents and for teachers.
The State Superintendent shall devote all his time to the duties of
his office. He shall make biennial reports to the legislature and
have the same printed. He shall report on the institutions for the
blind, deaf and feeble-minded. He shall prepare blanks for reports,
registers, certificates, etc. He shall biennially collect, edit and pub-
ish the school laws of the state and the decisions bearing on the
same. He shall report county superintendents and others for neg-
lect of duty. On written request he shall decide questions of differ-
ence or doubt touching the administrative duties of school officers
and teachers, with appeal to the State Board of Education allowed.
He shall appoint agents to take charge of gifts and donations to
the common-school fund, who shall sell and dispose of the same
and pay the proceeds into the State Treasury. He “should visit
various portions of the state in the interests of the common
schools.” The State Superintendent is finally authorized to act as
special State Inspector and Examiner of all schools receiving public
funds, and he has power to appoint two assistants for this work.

Different states have highly commendable features provided for
in their law on this point. The following are powers and duties,
either of special importance or rare occurrence, delegated to the respective State Superintendents.

The Minnesota superintendent must examine all plans for buildings before contracts are made. No change in a building can be made without his knowledge and approval. This work is done, through his office, by the Commissioner of School Buildings, appointed by the State Superintendent. In this way the state department procures expert service in this direction. This seems to be a provision that Kentucky, as well as all other states, should strive to incorporate in her school laws. This is a coveted power in the hands of the State Superintendent of Minnesota. Combined with their provision for a State School Building Commissioner, it means maximum values for minimum expense, to say nothing of artistic rather than barn-like structures. The State Superintendent of Texas, also, by law handles the school building plans for the state.

The power to elect or appoint rural and other supervisors of schools by the State Superintendent is common in many states, but after some deliberate investigation, it seems highly probable that a much better plan would be for the State Board of Education to select these, with the advice of the State Superintendent. This method, we believe, would tend to eliminate any personal element or political influence that might exist. If it did not eliminate the same, it would most assuredly tend to mitigate these evils.

In West Virginia the State Superintendent appoints the five remaining members of the State Board of Education. This is an unusual method of securing a State Board of Education, and one that does not seem particularly advisable, as long as politics play as important a part as they now do. Could politics be eliminated, this plan might have much to recommend it. As long as politics continue to be the controlling factor in the situation, nothing constructive is ever accomplished or ever will be.

A few states specify in their school laws that the State Superintendent of Public Instruction shall devote his entire time to the duties of his office. This is true of Kentucky and Tennessee, and it goes without saying that it should be specified in the school laws of every state.

J. W. SNYDER.

(To be continued.)