Summer 1939

Supreme Court Decisions In Kansas Affecting The Organizing of Schools

Floyd S. Hadley
Fort Hays Kansas State College

SUPREME COURT DECISIONS IN KANSAS

AFFECTING THE ORGANIZING OF SCHOOLS

being

A Thesis presented to the Graduate Faculty of the
Fort Hays Kansas State College in partial
fulfillment of the requirements for
the Degree of Master of Science

by

F. S. Hadley, B. S.
Fort Hays Kansas State College

Approved Robert T. McGrath
Major Department

Date July 29, 1939

Chairman Graduate Council

SUPREME COURT DECISIONS IN KANSAS

AFFECTING THE ORGANIZING OF SCHOOLS

Contents

CHAPTER I

INTRODUCTION

In the school year of 1918-1919 the people of Kansas were hit with a severe epidemic of influenza. This caused an intermittent operation of schools over the entire state. Such operation brought about the question of what legally constituted a school year over which teachers were under contract to teach.

A few years later, the experiences of the writer were, as a teacher, with the corporate powers granted a rural high school and a county high school. At another time, the writer taught in a school in which two teachers met the same classes for a period of two weeks, each contending that he had a contract for the position as teacher.

Following the writing upon the statutes of the state, that law which is popularly known as the "Cash Basis Law", many schools had to issue bonds to meet the demand upon them. Later, some of them re-financed this bond issue.

It seems, to the writer, that it has always happened, that when he became properly qualified and certified for a good teaching or administrative position, that the school law was changed and he therefore found it necessary to further prepare himself.

These experiences, with others, drew the interest of the writer to school laws. It is said that law is a rule of action. As long as our schools are active, laws will be needed. As long as our schools are democratic organizations, functioning for a dynamic society, the laws necessary for their operation will become more complex.

Modern industrial society has so multiplied the number of social contacts and has so augmented the character of social change, that it is absolutely necessary that new laws be spread upon the statutes, and among them are bound to be those effecting the operation of our schools.

However, the laws of society have been embodied within its activities for such a long time that they cease to be foremost in the thoughts of society, and are never called to the front until someone is damaged. By this reason, some of these laws have never come before the courts for interpretation, and in this number are many of those relating to the organization of schools.

The constitution of the state has arranged a system of courts so that the damaged person may appeal to them for interpretation of the law, demanding redress. It is the policy of our state to allow the suitor, if defeated, to appeal his case to a higher court, if he feels himself aggrieved. The court may have been influenced by passion or prejudice, or it may have erred in its construction of the

law. In either case, it is desirable that there be a higher tribunal, composed of judges of great learning and upright character, which may be appealed to, to correct such miscarriage of justice.

It is from the decisions of these learned judges of the supreme court of the State, affecting the organization of the schools, that this thesis is prepared. A specific law, or a popular interpretation of a school law will be given, affecting the organization of schools. The question involved will be mentioned and the opinion of the court given.

Previous studies related to the problem of the thesis are: "Some Phases of Kansas School Law as Determined by Supreme Court Decisions", by Roy Hoflund, Kansas University, 1934; "Some Phases of School Law as Determined by Supreme Court's Decisions", by Rolland R. Elliott, Kansas University, 1935; "Some Phases of Kansas School Laws as Interpreted by the State Supreme Court", by John F. Lindquist, Kansas University, 1935; "A Study of Educational Trends Affecting School Development in Kansas from the Beginning of Statehood to the Present Time", by Lawrence Sayler, Fort Hays Kansas State College, 1937; and "Supreme Court Decisions in Kansas Affecting the Status of Employed Teachers", by Leo J. Rogers, Fort Hays Kansas State College, 1938.

The problem is to review supreme court decisions in Kansas affecting the organization of schools.

CHAPTER II

PLANNING OF THE SCHOOL DISTRICT

It is thought to be perfectly proper that a school district be considered as only a quasi-corporation and therefore necessarily governed by legislative measures creating it, (Section 10-101, General Statutes of 1935).

In the case of S. E. Beach, et al., vs. Thomas Leahy, as Treasurer, etc., an injunction is brought by Beach and six others, residents, electors and tax payers in the School District No. 2, Neosho County, to restrain Leahy, as county treasurer, from collecting certain taxes levied on property of the plaintiffs.

The records show that the board of the district had issued bonds on the district of the amount of $15,000 for the purpose of erecting a school house in the district; that the bonds were issued in accordance with law (Chapter 35 of the laws of 1871); that to pay the interest on these bonds the school board had levied a tax on the property of the tax payers of the school district, which was duly certified to the county clerk and duly entered upon the assessment rolls, and that the assessment rolls were in the hands of the defendant Leahy, as county treasurer. Plaintiffs claimed and averred that said

chapter 35 was a special act and unconstitutional, and said bonds were void. Defendant Leahy demurred. The district court of April Term 1872, sustained the demurrer and gave judgment in favor of the defendants for costs. The plaintiffs brought the case into the supreme court by petition in error.

The following opinion of the court was delivered by Brewer, J.:

> "School districts are corporations. They are created under general laws. The power to vote bonds to erect school houses, the manner in which such power shall be exercised and the amount of the bonds that may be issued, are prescribed and clearly defined and regulated by general laws and any act of the legislature that attempts to confer upon a school district authority to issue bonds for a larger amount than other districts similarly situated, or seeks to release it from compliance with any of the provisions of law in issuing bonds, that must be complied with by other districts to render their bonds valid is a special act conferring corporate powers, is in direct conflict with the constitutional provisions above referred to and is void." (1)

In his remarks upon the case, Judge Brewer stated:

> "They are denominated in the books and known to the law as quasi-corporations, rather than as corporations proper. They possess some corporate functions, but they are primarily political subdivisions -- agencies in administration of civil government -- and their corporate functions are granted to enable them to more readily perform their public duties." (2)

In the case of Louie J. Voss, et al., vs. the Union School District No. 11 et al., the plaintiffs alleged that they were citizens and taxpayers in the county of Crawford and holders of real and personal property subject to taxation in School District No. 71, and were chargeable with and liable to pay school taxes against them, but

---

1. Kansas Reports. Vol. 11, p. 23.
2. Ibid.

they alleged that certain taxes assessed and levied as school district taxes on their property as being in Union School District No. 11 were illegal and void. The district court found in favor of the defendants and gave judgment against the plaintiffs for costs. The plaintiffs took the case to the supreme court on error.

The following opinion of the court was delivered by Valentine, J.:

> "The only ground upon which the plaintiffs claim that said taxes are invalid is, that said school district never had a valid organization. The court below, however, found that it had a legal and valid organization; and if that finding were really material in this case, still we think that this court could not under the evidence set it aside. That the school district had an organization, there can be no doubt and it devolved upon the plaintiffs to show that it never had such organization------- They cannot attack the legality of the organization of the district in the collateral manner in which they have attempted to attack in this case. The organizations of corporations or of quasi-corporations can only be set aside by a direct proceedings." (3)

In the case of School District No. 37 of Rice County vs. The Board of Education of the City of Lyons, School District 69, Judge Porter, J., dissenting:

> "School districts possess no vested right as against the state. There is no vested right in the existence of a quasi-corporation such as a school district. Its rights and franchises, having been granted for the purposes of government, never become such vested rights as against the state that they cannot be taken away. The legislature has the authority to amend their charters, enlarge or diminish their powers, extend or limit their boundaries, consolidate two or more under one, overrule their legislative action whenever it is deemed unwise, impolitic or unjust, and may abolish them altogether." (4)

---

3. Kansas Reports. Vol. 18, p. 467.
4. Kansas Reports. Vol. 11, p. 23.

A school district is a quasi-corporation and therefore has no vested corporate rights as against the state. (Ch. 10, P. 101, General Statutes of 1935.)

In the case of School District No. 37 of Rice County vs. The Board of Education of the City of Lyons, being School District No. 69, the purpose of which was to defeat the consolidation of the two districts, a part of the syllabus of the trial court was that,

> "there is no vested right in the existence of a quasi-municipal corporation such as a school district. Its rights and franchises having been granted for the purpose of government can never become such vested rights as against the state that cannot be taken away. The legislature has authority to amend their charters, enlarge or diminish their powers, extend or limit their boundaries, consolidate two or more under one, over-rule their legislative action whenever it is deemed wise, impolitic or unjust, and may abolish them altogether." (5)

The opinion of the court as delivered by Porter, J.:

> "There is no vested right in the existence of a municipal organization. To put it in another way, the existence of a municipal corporation is not a vested right. A school district is a mere quasi-municipal corporation and municipal corporations generally are mere agencies of the government and except as specially restrained by other constitutional restrictions, are within the continued exclusive control of legislature." (6)

The notice of election petitioning for a school must be posted and must define the territory to be included in the school district. (Ch. 72, P. 3502, General Statutes of 1935.) In the case of J. N. Schur et al., vs. Rural High School District No. 1 of Ottawa County,

---

5. Kansas Reports. Vol. 110, p. 613.
6. Kansas Reports. Vol. 110, p. 613.

in which resident taxpayers of the county brought action challenging the validity of the organization, the syllabus of the trial court in the case embodied the statement that,

> "---it is essential that the publication notice of the election shall define the territory to be created into such a rural high school---" (7)

The following opinion of the court, delivered by Dawson, J.:

> "This court is constrained to hold that the notice of the election required should define the territory which is proposed to organize." (8)

It is understood by the majority of people, that in order to organize a school district, it is necessary that notices of same be posted previous to the meeting concerning the organization. In some particular instances this is not at all necessary. It may be that some previous action has been executed that lays this procedure aside. Or it may be that some particular law may be involved in which the organization of a school district without written notice may be possible.

In the case of the State of Kansas, ex rel. Charles B. Griffith, Attorney-General, vs. Ralph A. Cannon et al., an action contesting the legality of four districts was presented to the supreme court. In this case it was shown that previously several districts had consolidated with School District No. 100, forming a School District

---

7. Kansas Reports. Vol. 112, p. 421.
8. Kansas Reports. Vol. 112, p. 421. (Ibid)

No. 6. This organization turned out to be ineffective and its officers were unable to operate, because the people refused to vote bonds to construct school buildings, and at regularly called meetings refused to make a levy for school purposes. Later on, the county superintendent was called upon to re-organize a part of the district for school purposes. The county superintendent did this for a part of the district, making a public notice of the fact to all concerned, mentioning that such would be effective, if no appeals were taken. Appeal was taken and the issue presented to the county commissioners for their consideration. The commissioners entertained the appeal and affirmed the actions of the superintendent. The case was then taken to the supreme court contesting the acts of the county superintendent, the commissioners, and the thought that such could be done without written notice of same.

The decision of the court made by Johnston, C. J., presents the following:

> "While the written notice as required, was not given, there was no lack of actual notice, as the proposed action was sharply contested by the contending parties, and when the decisions of the county superintendent were made, those opposed promptly took appeal to the board of county commissioners. In the tribunal, the contending parties appeared and the matter of the organization was thrashed out. When the parties appealed from the decision of the county superintendent, they vested the board of county commissioners with jurisdiction of the issues involved and thereby the defect or omission of the written notice by the county superintendent was cured." (9)

---

9. Kansas Reports. Vol. 116, p. 325.

The idea of petitioning is, in a number of cases, looked upon in an incorrect light and misconstrued. It is thought that the petitioners do the organizing and that the legislative measures of the organization are through them. This is not so. The statute concerning the creation of districts on petition and vote of electors is no grant of legislative powers.

In the case of the State of Kansas ex rel. Herbert R. Ramsey as County Attorney of Reno County vs. J. J. Lamont et al., the state sought to enjoin the collection of taxes levied for the rural high school located at Turon, Kansas, which had been organized under chapter 284 of the Laws of 1917, and to disorganize such rural school district. It was alleged that a petition to disorganize had been presented to the school board and that they had refused. The principal ground of the attack was the alleged invalidation of the chapter 284. The court held this act valid and in the opinion of the court as given by West, J., the following statements are gathered:

> "It is contended that the electors of a certain territory are given authority to form a rural high school district and that the act is void because it delegates legislative power. The legislature has for many years, made provisions for the formation of various high school districts upon petition of the electors of a given territory. It may be said, by these enactments, to furnish legislation by which such electors, instead of being compelled, are given the choice, to assume the burden of such high school concerns. Whatever may be the proper definition of legislative power, the granting, rather than the exercising, of authority for certain persons to form themselves into a school district, would seem to be within its meaning. The operation of the law does not depend upon the will of the petitioners, but it is the will of the legislature which is being put in force when the board of county commissioners find

that the prescribed condition exists within the district which the petitioners ask to have incorporated." (10)

The contention in the above case next brings forth the question; Does the county superintendent of schools have the power and authority to organize a new school district? The law states that it shall be the duty of the county superintendent of public instruction to divide the county into convenient number of school districts, and to change such districts when the interests of the inhabitants thereof require it, but only after twenty days notice thereof, by written notices posted in at least five public places in the district to be changed. (Ch. 72, Art. 213.)

In the case of the State of Kansas, ex rel. D. E. McCrory as County Attorney of Pratt County vs. Ping Waters et al. as the School Board of District No. 91, the County Attorney attempts to compell the defendants to show by what authority they exercise the powers of director, clerk and treasurer of school district No. 91 which the plaintiff contends was never organized. The findings in the trial court were that school district No. 8 of Pratt County was regularly organized and included the city of Preston, a city of the third class and for a number of years maintained a graded school; that the school district No. 22 was regularly organized and had a boundary contiguous to that of school district No. 8 for three and one-half miles; that

---

10. Kansas Reports. Vol. 105, p. 134.

school district No. 8 and No. 22 were consolidated in 1920 and were, therefore, known as school district No. 8; that in June, 1920, a petition was presented to the county superintendent, signed by residents of the territory, praying for the organization of a new school district to include a large portion of the territory of the old district No. 22; that on August 21, 1920, the county superintendent refused to create a new school district as prayed for and made an order for the formation of another school district having boundaries different than those described in the petition, from which order an appeal was at once taken to the board of commissioners; that on September 7, 1920, the appeal was sustained by the commissioners and an order was made creating a school district as prayed for in the petition; and that afterward the defendants were elected by the new school district, director, treasurer and clerk, respectively, and have acted as such continuously since the election. Judgment in the trial court was in favor of the defendant and the plaintiff appealed.

The opinion of the court was delivered by Marshall, J. He states:

> "The authority of the county superintendent to create new districts does not seem to be curtailed. ----- after consolidation, the authority of the county superintendent was the same as it would have been if no colsolidation had taken place. Other consolidations may be made, or new districts may be created." (11)

---

11. Kansas Reports. Vol. 112, p. 60.

by the county superintendent. If approval of boundaries followed instead of preceding signing of the petition, the proceeding was irregular and not void." (12)

The statute provides different methods for forming a joint school district by creating a new school district from territory lying in more than one county, and for forming a joint school district by attaching land in one county to an existing district in another and for altering the boundaries of a joint district already formed. The act making regulations covering ordinary school districts applicable where territory is sought to be transferred from one rural school distfict to another, authorizes such transfer although the application therefore is not signed by its owners or occupants. And no question at all concerning the existing obligations of either territory enters into the policy concerning territory to be included.

In the case of the State of Kansas ex rel. Charles B. Griffith, Attorney General, vs. Rural High School Joint District No. 8 of Wabaunsee and Shawnee Counties, in which an effort was made to enlarge the Rural High School Joint District No. 8 of Shawnee and Wabaunsee Counties, an injunction was brought by the attorney general in the name of the state to enjoin the execution of the order for enlargement. In the syllabus of the court, it was shown

---

12. Kansas Reports. Vol. 113, p. 441.

that the two rural high school districts each had outstanding bonds which would possibly be impared by the detaching of territory from either of them.

The opinion of the court as rendered by Mason, J., is that:

> "A final objection to the validity of the order changing boundaries is that improvement bonds of the two Wabaunsee County Rural High School Districts were outstanding, the obligations of which would be impaired by detaching territory from these districts. The problem of the adjustment of existing debts as between the districts creating them and territory detached therefrom, is one to be worked out under the statutes relating to that subject. It does not enter into the question of the policy to be followed in regard to the territory which should be embraced within a particular district." (13)

In the organization of a rural high school, it is understood that the voters of the district establish the district at one election duly held for that purpose and at a later election designate a location for the school building or site and issue bonds to pay for the erection of the plant.

In the case of T. B. Matthews vs. Rural High School District No. 5 of Johnson and Miami Counties, it appears that in February 1920, a petition of the electors was presented to the board of commissioners, asking it to call a special election to vote on the proposition to establish and locate a rural high school district, composed of certain described territory. The petition specified

---

13. Kansas Reports. Vol. 117, p. 332.

the location at Spring Hill. The commissioners granted the petition and ordered the special meeting should be held to vote upon establishing and locating a rural high school, the building therefor to be within the city of Spring Hill. The notice was published and posted, but the notice omitted any mention of the city of Spring Hill as the location or site of the high school. From the holding of the meeting, the district was established. Later the board purchased land in and adjoining the city as a site for the building. No steps were taken for the erection of a building until later. At that time an election was called for voting bonds to build the schoolhouse and the notice of the election included the proposition that the building was to be erected on the land owned by the school district. The proposition carried and shortly afterward the bonds were sold. The contract was let for the building before any questions were raised.

The question now raised by a taxpayer was that there was no effective vote fixing the location or site of the building at Spring Hill.

The opinion of the court, delivered by Johnson, C. J., was:

> "The location or site might and doubtless would have been fixed by the vote cast at the first election if the matter of the location had been included in the notice of election. The result of the omission was that nothing more than the establishment of the district was determined at that election. Under the statute all the propositions, including establishment, locating and voting of bonds to provide means for a school building, might have been submitted at a single election if proper notice of the proposition had been given.

However, it was competent for the voters to first determine a single question, whether a district should be established and leave to the latter election the proposition of location or site of the building and the issuance of bonds to pay for it." (14)

Closely related to this is another case testing the law that the rural school district cannot change school site without the vote of the electors of the district.

In this case, Olin G. Cline et al., vs. W. G. Wettstein et al., a mandamus to compell the School District No. 24, Stevens County, to construct and erect two school houses in the district and to maintain the two schools for the year, it is shown that the district in March voted bonds for a new school building; after a special meeting in May in which a proposition to build two new buildings on separate sites had been considered and voted down, the board attempted to carry out the expression of the voters. The old building had been torn down and preparation for the new building had commenced upon the old site. The proposition at the previous meetings having failed, the board was building the one building upon its own property, the old school site, when the writ was served upon it to cease and show why it should not build the two buildings.

In the opinion of the court, delivered by Porter, J., he

---

14. Kansas Reports. Vol. 120, p. 347.

quotes Chief Justice Johnson:

> "Can it have been intended that after a tax has been voted, contracts made and teachers employed, ten taxpayers who failed to attend or who were outvoted at the annual meeting, can on request, require another meeting to be called and another test of strength taken on one or more of the propositions? If at the annual meeting, directions were given to put a new roof or to make other repairs on a school house, after the contract has been let, may a resident builder who failed to get the job, procure nine others to join him in a petition and have the question reopened and the contracts, partially executed, annuled? If questions which provoke controversy, like the selection of a site, could be reopened whenever ten disappointed taxpayers might ask for another vote, dissention and disorder would prevail in many school districts much of the time." (15)

It is a general opinion that in case the district cannot decide upon the boundaries, the question may be appealed to the county superintendent and the county body of commissioners. As a final arbitrator in the matter, the state superintendent may act in case the afore mentioned officials cannot come to a conclusion. But that the state superintendent has no authority to approve boundaries of districts in more than one county until the superintendent and commissioners fail to agree.

In the case of the State of Kansas ex rel., vs. Jess W. Miley, State Superintendent of Public Instruction, et al., it appears that the County Superintendent, Geo. A. Allen, and the commissioners of Coffey County, without any authority for so doing, attempted to approve boundaries of the proposed Leroy Rural High

---

15. Kansas Reports. Vol. 99, p. 404.

School District No. 4, Coffey County, Kansas; that none of the electors had petitioned for the approval of these boundaries; that the appeal was made to the State Superintendent, Jess. W. Miley, for final arbitration. The plaintiff in the case seeks to enjoin Jess W. Miley from hearing the appeal concerning the organization of the proposed rural high school district and to enjoin all the other defendants from any manner participating in the further organization or attempt to organize the rural high school district.

The opinion of the court as given by Marshall, J., is that:

> "----the state superintendent of public instruction has no authority to act until there has been a disagreement between the county superintendent and boards of county commissioners of two or more counties concerning the boundaries of proposed rural high schools. Under the allegations of the petition, the state superintendent of public instruction was undertaking to act without authority and the state could maintain an action to restrain him." (16)

As a final thought in the planning of the school district let us consider that the power of the legislature is to change any boundaries of school districts and apportion property.

In the first part of the chapter it was considered that school district organizations were quasi-corporations, acting by authority of the state. This means that such are entities of the state, thereby placing the state in an authorative position.

---

16. Kansas Reports. Vol. 120, p. 321.

In the case of the Board of Education of the City of Topeka, vs. the State of Kansas and School District No. 22, as appealed to the supreme court, the Kansas Permanent School Fund seeks to recover a series of bonds from School District No. 22 of Shawnee County. Findings in the case show that in August, 1889, the city of Topeka, by an ordinance extended its boundaries to include a large portion of the adjoining territory of school district No. 22 and annexed to the city that part of the district on which the school house stood. The bonds which the plaintiff seeks to recover are those of school district No. 22, issued prior to the annexation act of the city of Topeka, and for the purchase of the school site and building. Agreements were made between the two contracting bodies, upon annexation, as to the liabilities upon the payment of the bonds.

In 1893, an act was passed by the legislature entitled: "An Act relating to cities of the first and the second class providing for the settlement between a school district or a part of a district and a city, when annexed by the extension of the city limits, providing that when all the territory of a school district is annexed to a city all its property shall be transferred to the board of education of such a city and the latter be held responsible thereafter for the valid floating and bonded debt of the district".

The opinion of the court as delivered by Smith, J.:

"It is within the constitutional power of the legislature when a part of the territory of a school district upon which a schoolhouse is situated is taken into a city to charge the latter with the payment of bonds issued by the district to build the schoolhouse, although the city should annex no more than the site of the building." (17)

---

17. Kansas Reports. Vol. 64, p. 6.

CONCLUSIONS

School districts are governed by the legislative acts creating them. They are quasi-corporations, rather than corporations proper, and act, primarily, as political subdivisions, or as agencies of civil government. They are created by statute to enable them to more readily perform their public duties.

School districts are held valid, but have no vested corporate rights as against the state.

The notice of election for organization must define the territory to be included in the district.

In the formation of a new district, territory may be taken from a consolidated territory.

In the notice of election for a new district the description of boundaries is held to be sufficiently certain.

The organization without a written notice is upheld where parties have had actual notice.

The statute concerning the creation of a district on petition and vote of electors is no grant of legislative power.

The county superintendent has authority, under statute, to organize a new school district.

An omission to recite the boundaries of a new district which was approved by the county superintendent does not invalidate the organization.

The question of existing obligations does not enter into the policy concerning territory to be included in the district.

The district may be established at one election, and the establishment of the site and the declaration of the bond issue at another.

The rural school district cannot change the school site without the vote of the electors of the district.

The state superintendent of public instruction has no authority to approve boundaries of school districts in more than one county, until the county superintendent and county commissioners fail to agree.

The state legislature has the power to change the boundaries of school districts and to apportion property.

CHAPTER III

PREPARING OF THE SCHOOL BUDGET

The state law reads, Ch. 79, Art. 2925, "This act shall apply to all taxing subdivisions or municipalities of the state, including counties, cities of the first, second and third class, townships, (except townships in counties having the county road unit system and having an annual expenditure of less than $200, which township shall be exempt from the provisions of this act), school districts of all types, community high school districts, drainage districts and library boards"; Ch. 79, Art. 2926, "------The state tax commission shall prepare and furnish forms for the annual budgets of common-school districts, rural high school districts, community high school districts, all high school districts located outside of cities of the first and second class, and townships as herein prescribed in this act. ------- The said tax commission shall deliver the form for all school districts within each county to the superintendent of schools within each county who shall immediately deliver copies to the clerk of the respective school districts and boards of education within each county. ----- It shall be the duty, and it is required that the governing body of such taxing subdivision or municipality within the state to prepare, make and publish the financial statement and budget required by this act;" Ch. 79,

There are but few times in which the contesting of this law has been carried to the supreme court for its interpretation. There is only one case which is of interest to us in this discussion. In this particular case, D. L. Voshell vs. Anton Peterson, as Clerk of McPherson County, the plaintiff, a taxpayer of School District No. 30 of McPherson County, brought the action to enjoin the alleged illegal tax levy which the defendant clerk was about to spread upon the tax rolls of the school district.

After the budget had been adopted by the district at its annual meeting in due course of legal procedure and the same delivered to the county clerk as prescribed by law, he made an independent calculation and reduced the budget. The rights of both parties is not questioned in the case, the facts developed with the decision of the trial court, that the levy by the clerk was not sufficient.

The opinion of the court, given by Dawson, J. is:

> "----another reason why some of the justices of this court cannot approve the judgment of the trial court may be added here; the constitution contains a mandate to the legislature to establish, encourage and maintain a system of public schools. That mandate has been loyally executed from the foundation of the state. The cash-basis law of 1933 is intended to put the financial affairs of the common schools upon the solid foundation -- upon a pay-as-you-go-basis. The judgment of the trial court completely defeats that legislative purpose. If the injunction complained of were permitted to stand, school district No. 30 could not possibly maintain a school and pay the expenses thereof in conformity with the cash-basis law during the autumn of 1936." (2)

---

2. Kansas Reports. Vol. 142, p. 448.

The Cash Basis Law affecting the school budget, reads, Ch. 10, Art. 1101, "The following words, terms and phrases, when applied in this act, shall for the purpose of this act, have the meanings respectively ascribed to them in this section, except in those instances a different meaning, "municipality", shall be construed and held to mean county, township, city, board of education, municipal university, school district, high school district, drainage district and any other similar political subdivision or taxing district of the state. The words "governing body", shall be construed and held to mean board of county commissioners of any county, township board of any township, mayor and councilmen or board of commissioners of any city, board of education of any city, school board of any school district, board of trustees of any high school board, board of regents of any municipal university, board of directors of any drainage district, board of park commissioners of any city and any other body or board of a municipality, having authority under the laws of this state to create indebtedness against the municipality. ----"; [3] Ch. 10, Art. 1102, "All municipalities are required to pay or refinance their valid indebtedness as in this act provided, in the manner and at the times herein set forth, and to contract no indebtedness after May 1, 1933, except as herein provided. It is hereby declared that the purpose of this act is to provide for the funding and payment of all legal debts and obligations

---

3. General Statutes of Kansas. 1935, p. 98.

except present bonded indebtedness of all municipalities and for the future conduct of the financial affairs of such municipality upon a cash basis."[4]

Like the school budget law, the cash basis law has but a very few trial cases in the matter referred to the supreme court for interpretation. These cases are purely trial cases, contesting the constitutionality of the measure. Only one case with interest in our discussion, may be cited; that of the State of Kansas, ex rel., Roland Boynton, Attorney General, vs. the Board of Education of the City of Topeka,

The syllabus of the trial court read; "constitutional law--validity of Cash Basis Statute--Contract Obligations--Division of Tax Revenue. In a proceeding questioning the validity of a recent legislative measure (house bill No. 745), the statute is examined and held not to be invalid for any of the reasons suggested. Original proceedings in mandamus. Opinion filed April 29, 1933. Write to issue, on praecipt."[5]

Following the appeal to the supreme court, the opinion of the court was delivered by Harvey, J. He reviewed the case in all its possible phases and held with the trial court.

---

4. General Statutes of Kansas. 1935, p. 99.
5. Kansas Reports. Vol. 137, p. 451.

CONCLUSIONS

After the budget has been adopted by the electors of the school district, it is the duty of the clerk of the school board to present it to the county commissioners for the consideration of that body, which will hand it to the county clerk for him to spread upon the tax rolls.

The legislative acts concerning the finances of the school, popularly known as the "Cash Basis Law", have been held valid by the interpretation of the supreme court.

CHAPTER IV

BUILDING PROGRAM

It is generally understood that the members of the school board, as such, are representatives of that corporate body, and will act within the good faith of that body. In some particular instances it cannot act without the direct authority of the body, called into a meeting and operating as an entity. In such a case is that of the school board being unable to build a schoolhouse unless it has first been legally authorized to do so. Such is shown in the case of William Brown and Willis Jackson vs. the School District No. 80, of Graham County, Kansas.

Brown and Jackson, in this case, brought suit against the school board to collect for the building of a schoolhouse, presumedly for School District No. 80 of Graham County. The petition alleged the making of the contract with the school board, and the construction in accordance therewith of a schoolhouse. The liability of the school district is the only question presented by the record. The findings in this case were unable to show in the record any evidence of authority vested in the district board to make the contract in question.

The opinion of the court, offered by Garver, J. was:

"Having only limited authority in a matter of this kind, the officers of a school district can only carry out the expressed will of the electors of the district. If they act without such direction, or exceed the power conferred upon them, their action does not bind the district. They have no inherent power as a board to build a schoolhouse, or to create any district liability in a matter that is committed by the statute exclusively to the qualified voters of the district. This statute also confers upon the electors of a school district the exclusive right and power to select a site for the district schoolhouse. After the voters of a district at a meeting duly called, have selected a site for the schoolhouse, have determined what kind of a house they will build, and have provided funds for that purpose, the district board as mere agents may carry out the will of the inhabitants of the district so expressed. ----- Anyone dealing with the board is bound to take notice of the limitations of its authority. Hence, in order to base a recovery upon a contract entered into with a school board, such as alleged in this case, it must be shown that the contract was authorized by the voters of the district. ----- We are unable to find in the record any evidence of authority in the district board to make the contract in question." (1)

In the program of building as set upon by the state laws and as is practiced by the school districts, it is considered that each district must own and operate its own building. In some particular cases it has been found proper and legal that two or more districts may consolidate, in which occasion the building site of one or the other may be considered as that of and belonging to the consolidated district.

In the organizing of some rural high schools, the district embodying that of an ordinary school district, it seemed logical and advisable to use the one building for the two schools. But this practice the law does not permit. Rural high school and ordinary

---

1. Kansas Report, Court of Appeals. Vol. 2, p. 309.

school districts cannot unite in construction of a school building for their joint use.

In the case of A. T. Stewert vs. C. H. Gish et al., A. T. Stewert, a taxpayer, having interest within the school district, brought action against the officers of the rural high school district to enjoin the issuance of bonds for the erection of a high school building, and against the officers of a school district to enjoin them in the erection of a school building to be used by both organizations. He was denied relief in the trial court and appealed.

The opinion of the court as given by Mason, J. is that:

"Whilst it is possible that there might be some saving in this arrangement at the start, it is evident that in the long run, complications might arise which would compel the abandonment of the use of the property by the common school district. It is better that both the spirit and language of the statute should be observed and that the common school buildings should be devoted exclusively to the purpose for which it is intended.

Inasmuch as the rural high school district and the ordinary school district are separate organizations, we think that without express legislative authority, they have no power to join in the erection of a schoolhouse for their common benefit. The situation that would be created, involving a divided control, no division being made for determining what course should be persued if a difference of opinion should arise in some matter or policy relating to the use or the care, preservation or improvement of the building, is so anomalous that we cannot regard the authority to enter into such an arrangement as fairly inferable from that granted to each to erect a schoolhouse for its own use. It is true that in a particular case no difficulty in administration might arise. But the possibility of the plan here sought to be followed out is so open to debate, that we feel

constrained to hold that until further legislation on this subject, a single building may not be erected by the two districts for their common use." (2)

In very close relationship to building, comes that of remodeling and improving. In any number of instances the two may be considered as one as far as the legal set up is concerned. But that of repair upon the buildings is farther related and will need be considered separately. The right to remodel and improve is not implied from authority to repair as shown in the case of C. F. Conklin and another, vs. School District 37, etc. A school district is bound by the contract of its board for repairs of its schoolhouse and that notwithstanding that, at the annual meeting, a given sum was voted for certain specified repairs, and such sum had already been expended in such repairs.

In this case, the plaintiffs repaired a door of the building, and painted over some obscene writing upon the walls. They billed the school board for five dollars. The contention of the school board is that the district board is limited to the amount of the money voted for repairs at the school meeting, and to the kind of repairs specified in such vote, and the testimony shows that the board had already exhausted the moneys voted for the repairs specified, and claims that the powers of the board were exhausted and the contract not binding upon the board.

---

2. Kansas Reports. Vol. 109, p. 206.

Justice Brewer, J., gives this decision of the court in the case:

> "The district is a corporation with the usual powers of a corporation for public purposes and the board is its managing authority. True, its powers are few and limited, but still reasonable construction must be given to the powers which are granted. And where a duty is imposed, especially one so vital as this to the well being of the district, it will be understood that it is to be performed in the ordinary manner and by the ordinary means. It will be noticed by the law, that when the board builds, hires or purchases a schoolhouse, it is expressly stated that it shall be done "out of the funds provided for that purpose"; but no such limitation is expressed when the duty is cost of the care and keeping of the schoolhouse. The reason is obvious. In mere matters of repairs and preservation, there is little room for expenditure; in building, hiring or purchasing, there may be great extravagences. Again it is the very nature of repairs that they cannot be foreseen, and necessary amount determined in advance. Who can tell when and to what extent just such injuries as appear in this case will occur? Discretion as to these matters must be vested somewhere and nowhere more appropriately than in the district board. And so we understand the legislature has provided." (3)

It is in accordance with the law, and understood by those in charge of public funds, that when a building program is necessary, it is advisable that the contractor of such a building be placed under bond to guarantee complete and satisfactory execution of that contract. It is not at all unusual to write within the contract of construction that such a bond is required for the faithful performance of the work, with such securities as the board may approve. Such a clause, so inserted, becomes a part of the contract. The execution of such a contract cannot be until the details of every clause is met.

---

3. Kansas Reports. Vol. 22, p. 521.

Such a case is that of H. J. Vandenberg et al., vs. the Board of Education of Wichita.

In this case, the city of Wichita, desirous of erecting a school building costing approximately $170,000, received bids and accepted the offer of the H. J. Vandenberg & Son for the erection of the building. In the contract offered the H. J. Vandenberg & Son, signed by both contracting parties, was the clause, "The owner shall have the right to require the contractor to give bond covering the faithful performance of the contract, and the payment of all obligations arising thereunder, in such form as the owner may prescribe and with such sureties as he may approve." The building company executed bonds and presented them to the board for its acceptance. The bonds were examined by a committee of the board acting with its attorney which caused a rejection of same and a declaration by the board that the contractor had failed to comply with the conditions of the award and that such contract was rescinded. At this, the contracting company sued the school board, demanding an execution of its contract.

The decision of the court, given by Marshall, that:

> "The defendant had the right to approve the bond and the right to exercise discretion in that approval. The defendant was not compelled to accept whatever bond the plaintiffs should offer, even if it were good, but could insist on a satisfactory bond being given, capricious or in bad faith. The objection made by the board to the bonds tendered cannot be said to have been unreasonable, capricious or in bad faith, because in the event of an action on the bonds to

recover therefrom, if the surety companies had pleaded that the bonds had been executed without authority, the defendant might have been unable to prove that they had been executed with authority. Because the bond offered was not approved, the contract did not become binding on the defendant and for that reason the plaintiffs cannot recover any damages that may have been sustained by them." (4)

As mentioned in the previous discussion, the reading of the bonding clause is more or less universal. However, it does happen that this clause may be written a number of different ways. The reading of a number of them is "Give bond according to the state law of the State of Kansas." The condition upon which liability depends as written in the state law is stated in these words, "if the said principal shall faithfully perform such contract according to the terms, covenants and conditions thereof". A contract reading for a bond that contractor will "faithfully perform" contract, implies more than merely paying for the material and labor.

This is decided in the case of H. C. Hensley and O. G. Brosius as Partners, etc., vs. School District No. 87 of Anderson County, and the Equitable Surety Company. In this case the school district entered into contract with a J. T. Allen for the building of a schoolhouse. Allen gave bond, executed by the Equitable Surety Company, conditioned for his "faithful performance thereof". He failed to complete the building, and a number of mechanic's liens were filed against it. The school district sued

---

4. Kansas Reports. Vol. 117, p. 48.

the Surety Company and obtained a judgment covering all the mechanic's liens against the building and $500 for damages, because of the contractor's failure to complete the building. The Surety Company appealed the case, contesting the $500 item on the ground that it was not covered by the bond.

The opinion of the court, delivered by Mason, J. is in this wording:

> "We think the language of the bond too explicit to admit of a meaning so far from that naturally to be placed upon it. The Surety Company undertook that Allen should faithfully perform his contract according to its terms. This is the usual scope of a bond of this character. A failure to pay material men and laborers is only one of a variety of ways in which building contractors may violate their agreements. The bond here given must be held broad enough in its terms to cover the loss resulting from Allen's abandonment of the building before its completion." (5)

The means whereby the building program is financed will be discussed in the next chapter. It is the customary practice to bond the district then sell the bonds. The next chapter treats entirely upon bonding and indebtedness. Occasions may arise in which gifts are made for this purpose in connection with the sale of bonds. We have one of these cases cited, in which the expenditures of voluntary contributions are mentioned as not being prohibited by the statute, providing that such is mentioned in bonding and that the cost be within the estimate.

---

5. Kansas Reports. Vol. 97, p. 56.

In this case, J. M. Wright et al., vs. the Board of Education of the city of Leavenworth, the Board of Education of Leavenworth decided to erect a building for industrial-training, and submitted to the voters a proposition to issue $50,000 in bonds for that purpose, finding that sum sufficient, together with $10,000 to be contributed by a voluntary organization. Believing the two sums in hand insufficient, it levied a two mill tax in order to bring the available sources up to the required amount. An action was brought by the taxpayers to enjoin its further proceedings in pursuance of the plan. In the syllabus of the trial court, six different divisions of objections were presented for the consideration of the supreme court. Of this group, we will consider but the one entering our discussion, that of the statutory restrictions preventing the board from accepting and expending upon the building, proceeds contributed to the association or school district or organization.

The opinion of the court as given by Mason, J. is that:

> "It was not an infringment of the statute for the board to provide for the construction of a building at a cost of $10,000 in excess of the proceeds of the bonds and the tax upon that amount, being placed at its disposal for such a purpose by individuals who were willing to make this contribution to the building fund. Such restrictions to protect the taxpayers by limiting their liability in the matter, and not to prevent the acceptance and utilization of voluntary contributions in aid of public enterprises. This has been determined in several cases arising under similar statutes." (6)

---

6. Kansas Reports. Vol. 106, p. 469.

CONCLUSIONS

The district school board cannot build a school house unless it has been legally authorized to do so.

Rural high schools and ordinary school districts cannot unite in construction of a school building for their joint use.

The right to remodel and improve a school building may not be implied from the authority to repair.

The contract for the erection of a school building is not binding upon either party until the bond has been properly approved and executed. Neither can a construction company recover where the failure of the school board to approve a bond was not in bad faith.

A bond in which it is stated that the contractor will "faithfully perform" contract implies more than merely paying for the material and labor.

A school board may expend voluntary contributions for building, providing the cost of the building be within the estimate.

CHAPTER V

BONDING AND INDEBTEDNESS

May we now turn our attention to the financing of a school program by bonding. As a school district is a quasi-corporation and not a paying corporation, it is necessary that it depend almost entirely upon the receipts from taxation to finance its operation. However, occassions arise in which the receipts are not adequate and the district finds it necessary to issue and sell bonds for that purpose. And, it is usually the practice, that upon building, the school district issue and sell bonds for that purpose.

"The call for an election to be held after the creation of a school district to vote upon the question of issuing bonds for building is required to be made by the board of such a district." (1) It is within the authority of such a board to issue the notices calling the meeting of the district electors for such purposes, for without the direction of these electors, it finds itself unauthorized to operate in the matter.

We have an irregularity in this proceedure; that of the operation of the administrative body of the county high school. In this particular case, it is provided, that upon presentation of a

---

1. Kansas Reports. Vol. 109, p. 206. (previously cited)

petition of twenty-five percent of the legal voters of a county asking for an election of a proposed bond issue to build a county high school, it shall become the duty of the board of county commissioners to call such election.

In the case of The Board of County Commissioners of the County of Greeley vs. W. E. Davis, as State Auditor, etc., the Board of County Commissioners of Greeley County applied to the court for a writ of mandamus to require the state auditor to register a bond issue of $10,000 to pay for a county high school building recently erected in Greeley County, pursuant to a special election called by the commissioners on May 15, 1916, and which was held on August 1, 1916. The auditor declines to register the bonds on the grounds that no petition was ever presented to the board of county commissioners calling for such a meeting of the electors as was called by the board upon the date of May 15, 1916, and that such issuance of bonds is void. In the trial court, the writ was denied and the plaintiff appealed to the decision of the supreme court.

The opinion of the supreme court was given by Dawson, J. as follows:

> "It will be observed that the acts of 1897, 1903 and 1907 form a complete and independent program for the establishment of county high schools and for housing high school pupils in counties of less than six thousand population. These acts need no aid from the general statutes, authorizing county commissioners to determine, at their discretion, the necessity for permanent county buildings and to call a bond election to provide funds therefor. And since the high school acts provide their own procedure for setting in motion the

process by which a county high school building may be procured, such processes are exclusive. One of these was the presentation to the board of county commissioners a petition signed by twenty-five percent of the legal voters of the county. Now such petition was submitted, consequently the statutory basis on which the county board called the election was wanting. The election was, therefore, called without lawful authority and its result is void." (2)

Another irregularity is that of the operation in first and second class cities. When the city board of education has determined the necessity for a school bond election, and has certified its action to the city mayor, that officer has no option other than to call an election for that purpose.

In the case of the State of Kansas ex rel., R. C. McCormick, as County Attorney etc., et al., vs. O. H. Bentley, as Mayor etc., the Wichita Board of Education made application to the court for a writ of mandamus to compel the mayor of the city of Wichita to call an election on the proposition to issue bonds for an additional high school building required to relieve the congested situation of the city schools. The mayor declined to call the election with the answer that the city had insufficient funds with which to meet the expenses of the election; that it had made no arrangement in its fiscal budget for the election, but if the board of education would turn over to the city a sufficient sum to stand the expenses,

---

2. Kansas Reports. Vol. 99, p. 1.

he would call the election. This the board of education refused to do and asked for satisfaction through the courts.

The opinion of the court in this matter was delivered by Dawson, J.:

> "The Board of Education and the City are separate corporate entities. That their territorial limits largely coincide is immaterial. The wisdom and discretion of the board of education are not reviewable by the mayor. He is merely the ministerial officer designated by the statute to call the election. The sheriff or county clerk, if thus designated, would answer the purpose just as well. The school board determines the necessity of the election. There is nothing equivocal touching the mayor's duty. He must call the election within thirty days after receipt of the board's certificate. The plaintiffs are entitled to the judgment." (3)

In the original mandamus proceedings of the Rural High School District No. 1, of Rush County, by A. L. Farmer as Director etc., vs. W. E. Davis as Auditor etc., the school district trys to compel the state auditor to register bonds issued by the district. The writ was allowed in the trial court and appealed to the supreme court for its interpretation.

The auditor resisted the writ upon the grounds that the act violated section 16 of article 2 of the state constitution; that the plaintiff is not a body corporate and has no authority to maintain this action; and that the provisions of the act are so indefinite as to confer no authority to issue bonds.

---

3. Kansas Reports. Vol. 98, p. 442.

The interpretation of the court as given by Marshall, J. is that:

> "This court has often said, concerning this provision, that no narrow or technical rule should be adopted to defeat the operation of the law, and that it is not necessary that the title be an abstract of the entire act. ---- Before an act of the legislature can be declared invalid, it must clearly appear that the act violates some constitutional provision. ---- Observing these rules, we can not say that the establishment of rural high school districts does not include every thing that is necessary to organize such school district, build schoolhouses and maintain and operate schools. The title of the act is not misleading. It is broad enough to include authority to vote bonds for the erection of a school building. This act is not unconstitutional. The rural high school district is placed under the same authority and has the same obligations as school districts, with the few exceptions as named in the act. Therefore, rural high school districts are bodies corporate and have authority to sue and be sued. It follows that the plaintiff can maintain this action." (4)

The legislative act of 1923 converted the county high schools into community high schools. In the old county high school set-up the county commissioners, with three members chosen by the electors of the district, constituted the school board, over which the county superintendent of public instruction sat as chairman-exofficio. By the new law, the personnel of the board was changed; the county commissioner members being relieved of their duties as members. This relief of the county commissioner membership was thought to change the organization from that of the county to one of a regular school district.

---

4. Kansas Reports, Vol. 96, p. 647.

In the case of The State of Kansas ex rel., C. B. Griffith as Attorney-General, vs. Mrs. Myrtle Newbold et al. as the Board of Trustees of the Norton County Community High School District, we have a case brought by the state on the relation of the attorney-general to require the board of trustees of the community high school in Norton County to call an election upon the proposition of issuing bonds for the erection of a building, the purpose of which being to settle the question whether the statutes gives the defendants power to do so.

In the original proceeding, the writ was denied, upon which the case was immediately presented to the supreme court for its interpretation.

The following opinion of the court was delivered by Mason, J.:

> "The county high school which in 1923 converted into the community high school district here involved, was organized under a special act, providing for such organization in accordance with a general statute. Neither the special nor the general act authorized the issuance of bonds to erect a building for this county high school and the latter forbade the board of trustees to contract for school buildings in excess of the amount on hand and to be raised by one year's tax. Clearly the Norton County high school was not included in the grant to school districts of power to issue bonds for schoolhouses, and its mere conversion into a community high-school district with restricted boundaries does not in our judgment by any permissible liberality of construction enlarge it authority in this respect. The writ asked is denied." (5)

---

5. Kansas Reports. Vol. 114, p. 485.

After a rural high school has been organized, by legal proceedings, but not extending to the purchase of a site and building, the meeting for the selection of the site and the voting of bonds may be called by the school board upon petition presented to such a board.

In the case of S. S. Reynolds, vs. Frank B. Clark et al., as the Board of Grainfield Rural High-School District No. 4, an action was brought to enjoin the issuance of bonds voted by the rural high school district to enable it to construct a high-school building. A temporary injunction was dissolved and the plaintiff appealed.

It was within the finding of the court, that the rural high school district had been organized, but the proceedings did not extend to the voting of bonds for the purchase of a school site, or the selection of a site for the building. It was further shown that the school operated for a period of one year, leasing the building for its use. In February of 1917, a petition for an election to vote bonds for the erection of a building was presented to the school board. The board called the election; the election was held and the results favorable to the issuance of bonds for the construction of the school building.

The opinion of the court as delivered by Burch, J. is that:

Greenwood County Rural High-School from issuing bonds in the sum of $50,000 which the district had voted for the purpose of constructing a school building, on the allegation of numerous irregularities in the notice of the election. None of these irregularities given in the syllabus are of interest to us in this discussion, excepting number four, which reads that "The district officers' names were not signed to the election notices."

The findings of the court in this instance were that the officers names were all upon the notice, which had been furnished by the state department for such purposes; that such officers names had all been written by one hand, that of, presumedly, the clerk, and such signatures were in ink and had been written by the direction of the other members.

The ruling of the court as given by Dawson, J. is that:

> "The third defect urged was that the officers of the district did not sign the notices -- that one of them signed the names of the others. But the others sanctioned the signatures, which were written in their presence. It is familiar law that where a person's name is signed for him at his direction and in his presence by another, the signature becomes his own, and has precisely the same validity as if he had written it himself." (7)

In this same case, another thought is brought out quite vividly by the decision of the judge, and perhaps attention should be called to it. In discussing the operation of the notice he says:

> "The statute says, that printed or typewritten notices of bond election shall be posted on the door of each school house in

---

7. Ibid.

district. ------ The notice itself is, of course, mandatory." (8)

Among other irregularities in the proceedure for petitioning for bond election is that of the elapse of time between the posting of the notice of election and the election proper. This period is definitely mentioned in the statute and most school boards follow it closely. However, in some cases of emergencies it has been found impossible to do so. Then the question of the legality of the election arises. In this particular case, Rural High School District No. 101 of Jefferson County, ex rel. Bert Metzger, as Director etc., vs. W. E. Davis as State Auditor, etc., the bonds of the school district were held to be invalid because the notice of the meeting to authorize them was not published for the time required by the state statute. In the original proceedings in mandamus the trial court denied the writ. It was then appealed to the supreme court for registration.

The opinion of the court as given by Mason, J. follows:

> "The proposition to issue the bonds received the majority of votes, but not a majority of all who were entitled to vote, although more than sixty percent of the electors had signed the petition for the election. Therefore, it cannot be said that the omission to publish the notice for the prescribed time could not possibly have affected the result. Whatever might be the rule otherwise, in such a situation the defect has been expresely adjudged to be fatal. The bonds having been issued without valid authority, the auditor properly refused to register them. In the brief in behalf of the district, an argument is made based upon the inconvenience and injustice that will result from a decision holding the

---

8. Ibid, 742.

organization to be invalid. The legal existance of the district, however, is not involved in this proceeding. The writ asked for is denied." (9)

It is generally understood that when bonds are issued by school boards, they specify on their face for just what purpose they are issued. In some instances this is not true and no contest has been entered to determine their validity. In other cases, particularly when such bonds have been presented to the state School Fund for sale, their validity have been contested and such irregularity brought before the courts.

In the case of the State of Kansas vs. School District No. 3 Chautauqua County, action is brought by the State School Fund Commission to collect upon bonds sold by the School District No. 3 of Chautauqua County. In one of its reason for not paying upon same, the school district defends that the bonds did not state upon their face the purpose for which they were issued and from which particular fund they were to be paid. Through error from the Chautauqua District Court, the case went to the supreme court for trial. The opinion of the court as given by Valentine, J., is that:

"In this case ---- it must be considered that these bonds were issued in good faith; that the school district received ample compensation for them; for nothing appears contrary in the petition, and all the allegations in the petition would tend to indicate this. We have stated that the bonds do not in terms specify upon their face the purpose for which they were

---

9. Kansas Reports. Vol. 98, p. 200.

issued; but we think they do in effect. The bonds specify upon their face that they were "issued in pursuance of an act of the legislature of the state of Kansas, entitled an Act to enable School Districts in the State of Kansas to issue bonds, approved February 26, 1866 and acts amendatory and supplementary thereto." Now under that act bonds could be issued only for one purpose--that of providing a school house for the district, either by erecting or purchasing the same. It is true that was not necessary that the bonds should recite the act under which they were issued, and it was necessary that they should recite the purpose for which they were issued; but as the bonds did recite the act under which they were issued, and as that act authorizes bonds to be issued only for one purpose, the bonds do in effect recite the purpose for which they were issued." (10)

After school bonds have been issued it is the duty of the state auditor to register them. Because of the carefulness in which these bonds are prepared, seldom ever is this registration refused. However, in some cases the auditor feels unable to register them, at which time they are contested and brought before the courts, or action is brought against the auditor to cause an explanation for his action in same.

Such is the case of J. C. Fisher et al., vs. W. E. Davis as State Auditor etc., in which the school district tried to compel the auditor to register certain rural high school bonds. The auditor refused on the grounds that the district had an appeal from injunction proceedings still pending.

The findings in the case were, that at election the proposition to vote bonds carried, however, the notice of the election

---

10. Kansas Reports. Vol. 34, p. 237.

proved fatally defective under the statute; that upon the attention of the board of commissioners being challenged to this defect, and the petition again being presented, that board, upon the same petition, ordered another election; that this election carried. After the last election, an action was brought in the District Court of Stafford County against the high school to enjoin the issuance of the bonds. The action was tried and judgment rendered in favor of the defendants. An appeal was then filed in the supreme court and was pending at the time this case was brought against the auditor demanding him to register the bonds.

The opinion of the court as delivered by Marshall, J. is to the effect that:

> "When a proper petition is filed under the statute it becomes the duty of the board of county commissioners to call a special election to vote on establishing and locating a rural high school and to vote bonds for the construction of a high school building. That petition is effective until the requirements of the statute have been complied with. The requirements of the statute are not complied with until a valid election is held. In the present case the first election to vote the bonds was invalid. The petition was still active. When the attention of the board of the county commissioners was challenged to the defective election that board had authority, without a new petition being presented, to call a special election to vote bonds for the construction of a high school building. For this reason the board of county commissioners was acting under the law when the second election was ordered. --- The fact that the appeal is pending is not sufficient excuse to warrant the auditor in refusing to register the bonds." (11)

---

11. Kansas Reports. Vol. 98, p. 696.

In dealing with bonds, it is to be considered that they are negotiable instruments, and should come under the control of the National Negotiable Instrument Law. The question sometimes arises as to just how valid these bonds are when placed under the application of this law. To be valid and negotiable, such instruments must come under the requisites of this law. Such is sited in the case of School District No. 40 of Finney County vs. H. W. Chshing in which Cushing received judgment against the school district for $505.70, and the defendant appealed the case in error.

The findings of the court were, that these bonds had been issued in blank, thus came into being under law as bearer paper; that Cushing had become a holder in due course and in good faith. The following opinion of the court as delivered by Milton, J.:

> "The statute under which the bonds were issued provides that such bonds shall be signed by the director and countersigned by the clerk and after registration by the county clerk, shall be negotiable and transferrable by delivery, and may be disposed of by the district board at no less than ninety-five cents on the dollar. Under this provision such bonds can certainly be payable to bearer, or to some particular person or bearer. It is evident that the legislature intended to make bonds of this character negotiable." (12)

In the discussion of bonding and indebtedness, it may be proper that we take up at this time the question of limitation of bonded indebtedness. The statute reads (Ch. 10, Art. 301. Gen. Statutes of Kansas, 1935), "Except for the refunding of

---

12. Kansas Court of Appeals. Vol. 8, p. 728.

outstanding debt, including outstanding bonds and matured coupons thereof, or judgment thereon, no bonds of any class or description shall hereafter be issued by any county, township, city board of education or school district where the total bonded indebtedness of such county or township as shown by the last finding and determination by the proper board of equalization, or where the total bonded indebtedness of such city, school district or board of education would thereby exceed one and one-fifth percent of such assessment; but this restriction shall not apply to cities of the first class." And, then in Ch. 75, Art. 2316, General Statutes of Kansas, 1935, it further states, "That the board of school fund commissioners of the State of Kansas is hereby authorized and empowered to make an order authorizing any city or school district to vote bonds for the purpose of erecting school buildings to an amount of not more than one hundred percent in excess of, and in addition to, the amount of bonds that may be voted under laws now in force."

Without question, the makers of our laws have been satisfied that such limitations on bonded indebtedness were necessary to meet the necessities of most school districts. However, it has made it possible that by the special arrangement before the state school fund commission, a district may be allowed to go beyond the regular limitation. In some cases, under unusual circumstances, school boards find that they need to go before the commission

petitioning for the privilege of issuing bonds in excess of the usual limit. Such is the experience of School District No. 88 of Shawnee County as shown in the case of H. B. Cowles vs. School District 88 of Shawnee County.

This case was an attempt to obtain an order enjoining the issuance of school district bonds. The attack on the execution and the sale of the bonds proposed to be issued was based on the claim that the initial steps had not been regularly taken. This school district joins the city of Topeka and had a property valuation of $447,850 and contained about 213 qualified electors. A movement was started to secure a new school house costing about $10,000. Under the bonding limitation law, this could not be done so it was understood to be necessary to petition the School Fund Commission in the matter. A formal petition was made to the school board by electors of the district, asking that the board go before the commission, seeking the permission to issue excessive bonds. The petition was signed by 119 names, received by the board and that board made application according to the petition. While the application was under consideration of the commission, a number of electors presented a protest and the mentioned suit at law came from that protest. The attack was made by the thought that there were not enough signers to the petition and that a number of those names upon it were not signatures. Some signers chose to withdraw their names and others of the district liked to place their names upon the petition.

The judgment of the court as given by Johnson, C. J. was:

"The iniatory step was taken by the electors, and their petition addressed to the school board, and not to the state board. The action of the state board is invoked by the application of the school board and a notice of the filing of that application is required. The state board does not base its findings and judgment on the petition to the school district, but it fixes a day for the hearing and upon the evidence then offered, under rules which it prescribes, the application is either granted or denied. The purpose of the petition is to move the school board to make application to the state board and that purpose has been subserved when the prayer of the petition was granted and the application made." (13)

Another case closely paralleling this one is cited in which the general proceedure is not question, but the amount of the issue. In this case, The Board of Education of School District No. 42 of Brown County, vs. W. E. Davis, as State Auditor, registration is refused on the ground that the issue is in excess of the limit prescribed by law. With the permission of the state school fund commission, the school district had issued bonds and presented them to the state for registration, and had been refused.

The decision of the court as given by Burch, J. is that:

"With the permission of the school fund commissioners, the board of education of a city of the second class may issue bonds for the purpose of erecting school buildings up to a maximum limitation of three and three-eights percent. The bonds presented for registration are well within that limit." (14)

---

13. Kansas Reports. Vol. 88, p. 603.
14. Kansas Reports. Vol. 94, p. 670.

The statutes authorize the school districts to compromise and refund their bonded indebtedness "upon such terms as can be agreed upon", the agreement referred to is one between the district and the owner of the bonds, and the fact that the bonds are held by the school fund commission, which is an agency of the state and which acquired them by accepting an offer at par which the statute required to be made, does not authorize a compromise and refund without its consent.

In the case of School District No. 78 of Linn County, vs. Jess W. Miley et al., as the Board of State School Fund Commissioners, and E. T. Thompson as State Treasurer, it is shown that the school district was able to borrow money at a lower rate of interest than of that which it was paying on its bonds held by the commission; that the school district demanded of the commission that it either accept payment of these bonds which it held or that it accept new bonds bearing a lower rate of interest in exchange.

The commission refused the demand and the above mentioned case was brought to bring the liquidation of the old bond issue.

The opinion of the court, as delivered by Mason, J. is that:

> "The district is not in a position to pay off the old debt except by incurring a new one and although the several steps should be taken at the same time and the cash for the payment of the present bonds be made at once available from the sale of new ones, the transaction would still be an exchange of creditors and not a reduction of the principal of the debt. We hold that the commission is not required either to reduce the interest contracted for or in effect to sell the bonds to

a purchaser who is willing to do so. This view merely means that the contract is to be inforced as made. Any apparent hardship to the district which it involves is a consequence of the rate of interest having been fixed higher than the market required or of the market having been changed." (15)

In the case of the State of Kansas vs. the City of Lawrence, the attorney-general brought action for the management and investment of the school fund. The complete syllabus of the court is lengthy and irrevelent in its completeness for the need of discussion here. However, there is one point that need be taken from it for our discussion; that the legislature may compromise the debt owing to the school fund.

The decision of the court, Smith, Graves, concurring, is:

"The constitution creates a permanent school-fund commission, consisting of the superintendent of public instruction, the secretary of state and the attorney general, and declares that the commission shall have the 'management and investment of the school funds".---- The fund of which it is given the management and investment is declared to be 'the common property of the state'. In our opinion it was not intended in establishing the mission to create an independent soverignty which should not be amendable to the legislature. The constitution establishes the commission just as it creates the office of governor. But it reposes the legislative power in the legislature. And notwithstanding the constitution gives to the office of governor the executive power of the state no one would contend that the legislature is powerless to enact laws imposing duties on the governor. Can there be nn doubt that the legislature has the power to declare the rate of interest at which the school fund shall be loaned." (16)

---

15. Kansas Reports. Vol. 114, p. 741.
16. Kansas Reports. Vol. 79, p. 234.

CONCLUSIONS

The call for an election to be held, after the creation of a district, to vote on bonds must be made by the district board.

The authority of the board of county commissioners to call an election to vote bonds for high school is determined by the statute dealing with that particular issue.

In cities of the second class, it is the mayors duty to call the election, upon proper order from the school board.

The rural high school district may issue bonds for the erection of a high school building.

Community high schools have no authority to issue bonds as a school district.

Where a person's name is signed for him at his direction, and in his presence, to petition for bond election, it becomes his own.

The notice of election on bonds is mandatory; and where the notice of election did not comply with the statute, such bond issues were invalid.

Bonds must state upon their face the purpose for which they were issued; the statutory recitation is sufficient.

The state auditor cannot refuse to register bonds because of an appeal from injunction proceedings is still pending.

School bonds are valid, although they may be made payable to bank or bearer.

A school district may vote bonds in excess of the usual limit with the permission of the state school fund commission. Also, a district in second class city may issue bonds for building with permission of the commission, up to three and three-eights percent.

A school district cannot demand a refunding of school bonds held by the state school fund commission without its consent.

CHAPTER VI

OPERATION

The control of the operation of the public schools outside of cities of the first and second class is by the county superintendent. Legislative measures have set up an educational organization, running in its scope from the State Board of Education to the County Superintendent. Certain administrative powers and duties have been placed upon each. In general, as far as the local condition exists, the control lies within the power of the county superintendent.

In the case of M. W. Stewart, as treasurer of Wyandott County, et al., vs. David J. Adams et al., it is shown that the city of Argentine, by the proclamation of its mayor had enlarged its city limits, thereby gathering into its school district, territory of another district. At the same time of the enlargement of the city it became a city of the second class. The suit is brought by Mr. Adams and others against the treasurer enjoining the collection of taxes for school purposes; Mr. Adams being a resident of the newly joined territory contends that it is illegal to collect the taxes assigned against the annexed property for the operation of the old school organization. There are five divisions in the syllabus of the court, but our interest will be directed upon the one dealing with the rights of the county superintendent in the matter.

The opinion of the court delivered by Horton, C. J. follows:

> "When the city of Argentine, became a city of the second class, it became subject to different laws, both as a municipality and as a school district. The limits of the school district then became coextensive with the limits of the city, and territory outside the city limits could be attached to such city for school purposes only in the manner prescribed by law ---- From and after the date of the organization of the city of the second class the school board of the annexed territory could exercise no authority or perform any act." (1)

This discussion and the opinion of the judge clearly shows the authority of the operation of the schools to remain in the office of the county superintendent until it is removed to the office of the school board of the first or second class city.

The operation of the immediate district is under the control of the board of directors of that district. The major part of the discussion of this chapter will deal with the activities of this group in the operating of the school.

The state law mentions a day for the annual meeting of the district, making provisions that special meetings may be called under certain circumstances. The interpretation of the meaning of the word "may" (it is optional) has caused questions. In some instances, the court has been called upon for an interpretation. In such an instance is the case of the State of Kansas, ex rel. Fred S. Jackson, as Attorney-general, vs. School District No. 1

---

1. Kansas Reports. Vol. 50, p. 560.

of Edwards County et al.

In this case the board had, at its regular meeting selected a site upon which to place a building. Following this action, the board had the property appraised. In the meantime some of the electors found other property which they considered more suitable and which could be purchased at a lower figure. These electors petitioned the board for a special meeting so that they might place their findings before the electors of the district and ask for a re-consideration of the action of the previous annual meeting.

The board refused to call the meeting, on the grounds that such was not mandatory, and that they did not feel obligated to do so.

The opinion of the court as delivered by Johnston, C. J. is:

> "Should the school board be compelled by a mandamus to call a special meeting of the electors to choose a site for a school building when one has already been designated at a meeting duly called and where the school board, acting on that designation, has proceeded to condemn and acquire the site selected? The statute relating to special meetings provides that special meetings <u>may</u> be called by the district board or upon a petition signed by ten resident taxpayers of this district. The contention is that the provision that special meetings <u>may</u> be called by the district board -----means that the board not only may, but must, call the meeting upon the presentation of the petition. Primarily and as ordinarily used in the statute the word may is permissive rather than premptory." (2)

---

2. <u>Kansas Reports</u>. Vol. 80, p. 667.

Following the previous discussion, that of meetings called upon petition, it might be well to take up the discussion as to just who is bound to call these meetings. It is the belief of the average elector that this is the duty of the director of the school board, but listen to the interpretation of the judge in this case of the State of Kansas ex rel., R. D. Armstrong as County Attorney of Scott County vs. W. D. Luke, as Clerk of School District No. 2 of Scott County.

A petition was signed by the certified number of electors of School District No. 2, Scott County, asking the school board to call a special meeting to vote upon consolidation. The petition was delivered to the clerk of the board by the wife of the director of the board. The clerk returned the petition to the wife and refused to post the notice of the called meeting. He declared in his refusal that he was not obligated in posting the notice of the meeting because the board had no meeting upon the matter and he therefore had no authority in doing so. Mandamus action was taken against him to compel him to act in the matter. The day previous to the serving of the writ upon him, he resigned from his office, and the resignition was accepted by the county superintendent of schools. The trial court found in favor of the defendant and the case was presented to the supreme court for an opinion.

The opinion of the court as delivered by Marshall, J. is that:

"The statute does not support the defendant in his contention. The law directs the clerk of the school district to post the notices whenever a petition has been signed by twenty-five percent of the voters in the school district. The statute does not require action by the school board. When the petition is presented to the clerk, it is his duty not the duty of the board, to call the election." (3)

The director of the school board is given full control of litigation, as shown in the case of School District No. 116 of Sedgwick County vs. School District No. 141 of Sedgwick County. The matter for settlement was that of jurisdiction over school land, which does not enter into our point. In the trial proceedure the director of the plaintiff board moved to dismiss the case. The attorney for the board, Mr. J. W. Adams, resisted the move. This move of the director and the attitude of his attorney is the part which is of interest in this discussion. The case was appealed to the supreme court in error, and the following is the decision of that court given per curiam:

"Upon the showing made, it does not appear that Mr. Adam's appearance or employment in the case was authorized by the school district meeting, or that any provision has been made by any school meeting of the district to prosecute the action. It follows, therefore, that the director has full general authority to represent the district and may control the action as fully as an individual might control his own action. He is assigned the duty to appear for and in behalf of the district in all suits brought by or against the district, unless other directions shall be given by the voters of such district at a district meeting." (4)

---

3. Kansas Reports. Vol. 113, p. 252.
4. Kansas Reports. Vol. 79, p. 407.

Any contracts made by a school board, must be made as by that body. In other words, one or other of the members may not bind the actions of the board by his contracting. In the case of Sullivan et al., vs. School District No. 39 of Brown County, et al., it is shown that the director of the board may bind that board with his signature upon a contract, if at a later time the board or the district affirms the contract.

In this particular case the director of the board contracted for the erection of the school building. Before the building was completed, the contractor breached, and left the state. The building stood unfinished for some time, then was completed by other contractors. Supply houses placed a lien upon the property because of the material which they had furnished the former contractor. In this case, the parties holding the lien upon the property seek to collect for the materials put forth. The question involved is that of the unusual way of contracting, and if such a contract is legal.

The opinion of the court was delivered by Valentine, J.:

> "--------Everything seems to have been done, and sufficiently done that was necessary to entitle the plaintiffs to their mechanics lien, except that the original contract made by Mr. Eley, the former contractor, and the school district was not made in the manner prescribed by law. It seems to have been originally made by Eley and only one member of the board, but there was evidence introduced tending to show that the contract was afterward ratified by the other members of the school board, and also by the entire school district. -----

We think that such a contract might be ratified and made binding upon the school district." (5)

The school house and site is considered public property. The land is purchased by public money and the building is erected by the expenditure of public money. At all times it is placed under the control of the board of directors of the school district. The use of the building for any private purpose such as the holding of religious meetings, or political meetings, or social gatherings or the like, is not authorized by law and any taxpayer has the right to complain although adequate rent is received for the use of the building from such organizations.

In the case of John G. Spencer vs. Joint School District No. 6, etc., Mr. Spencer complains that the joint building of the district is so being used and that in such use, property belonging to him, in the way of text books, school supplies, etc., is destroyed and confiscated, and asks in his petition that the school district be enjoined from the letting of the building for such use. The case was tried in the district court and through error appealed to the supreme court for its decision.

The decision of the court follows, as given by Brewer, J.:

"-----It seems to us that upon well-settled principles the question must be answered in the negative. The public school house cannot be used for private use, and purposes. The

---

5. Kansas Reports. Vol. 39, p. 347.

argument is a short one, taxation is levied to raise funds to erect the building; but taxation is illegitimate to provide for any other purposes. Taxation will not lie to raise funds to build a place for a religious society, a political society or a social club. What cannot be done directly cannot be done indirectly. As you cannot levy taxes to build a church, no more may you levy taxes to build a school-house and then lease it for a church. ----- The use of a public school house for a single religious or a political gathering is as unauthorized as its constant use thereafter." (6)

Following the decision of the court, offered by Judge Brewer in the preceding paragraph, one wonders as to the authority of the district in levying taxes. This was presented to the court through the case of The Marion and McPherson Railway Company vs. T. P. Alexander, as County Treasurer, etc.

In this case the plaintiff enjoins the collection of taxes levied for school purposes in District No. 79 of Marion County, Kansas. A graded school had been organized with identical boundaries and electors with school district No. 79 and the two were operating as a union school. The plaintiff contended, that to operate, the schools were not permitted to levy taxes in excess of two percent. The school board claimed that it had the right to levy tax in excess of two percent above that as required to operate the regular school district. The supreme court presented its decision in the matter through Cunningham, J., as follows:

---

6. Kansas Reports. Vol. 15, p. 259.

"-----The authority to levy taxes is an extraordinary one. It is never left to implication, unless it be a necessary implication. Its warrant must be clearly found in the act of the legislature. Any other rule might lead to great wrong and oppression, and when there is a reasonable doubt as to its existance, the right must be denied. Therefore, to say that the right is in doubt, is to deny its existance.------ Our conclusion is, that the decision of the district court must be reversed, with direction to make the injunction perpetual, restraining all of the defendants from collecting that part of the school taxes in excess of two percent." (7)

From this decision of the court, there is no doubt, but that the right of the school district to levy taxes must be clearly found in the statute.

Statutory provisions are made for the school district to meet and make the necessary levy for taxes, making it the duty of the clerk to certify the same to the board of county commissioners, upon the receipt of which it becomes its duty to make the levy and have the county clerk place the same upon the tax roll. The dates for the annual meetings are set and according to the difference in the school organization, at different times, but the periods for the reports of the school clerks and the commissioners reports are directory. The same is the decision of the court in the case of the Rural High School District No. 93 in Jefferson County vs. Kenneth Raub, as County Clerk of Shawnee County.

In this case, the rural high school district was formed so late in the year (August 15) that when the new school board through

---

7. Kansas Reports. Vol. 163, p. 72.

its clerk certified the same to the county commissioners, and that body made the levy for taxation and asked the county clerk to spread the same upon the tax rolls, he refused to do so, placing as his reason, that the same should have been done on or before the first Monday in August and that it was now too late. The school board brought action against the clerk of the county to force him to write the levy upon the tax roll of the district.

Porter, J. reports the opinion of the court as:

> "We think, however, that in view of the general principles upon which the reason for the rule of interpretation referred to rests, and the interests of the public in a case like the present, we are warranted in holding that the provisions in respect of time in which the officers shall act are directory and not manditory. The statute authorizes the organization of a rural high school district by an election, which is the duty of the commissioners to call whenever the proper petition is presented asking for such an election, and this without regard to the time of the year at which the petition is presented. ----- Manifestly, the purpose of fixing the time in which the various officers shall perform their duties was simply to insure an orderly and prompt conduct of official business. ----- We hold therefore, that the provision must be regarded as directory only, and not manditory." (8)

Whenever the tax for school purposes is voted, the same reported to the board of county commissioners, and the clerk of the county has spread the same upon the tax rolls of that district, there is a valid levy.

A rather unusual case of this kind is recorded in that of School District No. 127 of Reno County vs. School District No. 45

---

8. Kansas Reports. Vol. 103, p. 757.

of Reno County. The county superintendent, by regular proceedings attached a strip of land to school district No. 45 which had previously been a part of school district No. 127. At the annual school meeting, the school district No. 45, with knowledge of the annexation voted a tax of twenty-five mills and the school district No. 127, with like knowledge of the loss of the land, voted a tax of thirteen mills. Both tax records were in due course, certified to the county board of commissioners, which in turn, asked the clerk of the county to spread the same upon the rolls for taxation against the two districts. The clerk of the county, by mistake, overlooked the previous change of boundaries, and entered upon the tax rolls, thirteen mills voted by school district No. 127, upon the property in the strip of land which belonged to school district No. 45, and which should have carried twenty-five mills. Furthermore, in the apportionment of the school funds, the school district No. 127 drew the thirteen mills taxation from this strip which amounted to $321.13. In the case, school district No. 45 tried to collect this amount from the school district No. 127.

The opinion of the supreme court as given by Smith, J. is to this effect:

> "-----It cannot be said that the county clerk extended on the rolls a levy by school district No. 127 against the property in the strip of land attached to school district No. 45, as

there was no such levy extended. The county clerk, whatever was in his mind, simply extended upon the rolls, against the property in the strip, a levy less in amount than had been legally made by the school district No. 45. Neither by his action in this respect nor the fact that a higher rate should have been extended and collected can deprive the school district No. 45 of the money which was lawfully collected for it. The mistake of the county clerk, and that of the treasurer, in paying the money, which belonged to school district No. 45, to school district No. 127, gave no right to the latter to retain the same or to refuse the demand of school district No. 45 therefor." (9)

There is an occassion whereby the county superintendent may make the high school levy when the commissioners fail to do or refuse to do so. The county commissioners place the levy for the county high school, and in case they do not, the county superintendent of public instruction may do so, which levy cannot be in excess of the product of $1,200 times the number of teachers of the high school.

This is shown in the case of The Board of Education of the City of Pratt vs. Thomas E. Eubank, as County Superintendent, of Schools, as an original proceeding for declaratory judgment.

The county commissioners made a levy of 1.148 mills, and the county superintendent made a levy of 1.168 mills. Later on reconsideration, the county superintendent made and certified a second levy of 1.35 mills, the legal limit. The first levy of the county superintendent was placed on the tax rolls, but the second

---

9. Kansas Reports. Vol. 80, p. 641.

levy did not reach the clerk in time to be placed upon the rolls. The result of which was a shortage in the school funds for the year.

Burch, J. reports the interpretation of the court in the following:

> "-----The amount to be raised is the product of $1200 multiplied by the number of teachers. It is the duty of the county commissioners to make a levy sufficient to produce that sum. If the county commissioners fail to make a levy sufficient to produce that sum, the county superintendent shall make a suitable levy, that is, a levy to produce that sum. The legislature has determined the needs of the schools, the statute is mandatory throughout, and neither the county board nor the county superintendent has any discretion in the matter." (10)

In first and second class cities, the statutes arrange for a different method of certifying taxes for the schools. The school board prepares the budget and before it may become effective it must have the approval of the city council. But the question has arisen in some instances as to the meaning of the clause, "approval of the city council". Is this approval mandatory or otherwise? In the case of the State of Kansas ex rel., vs. William Addis, Mayor, et al., this question is settled and the relationship between the city council and the city school board established.

In this particular case, the board of education of the city of Emporia prepared the budget calling for a fifteen mills levy for the year to expend in the operation of the schools, and pre-

---

10. Kansas Reports. Vol. 121, p. 562.

sented the same to the city council of Emporia. In a meeting of the council, it was decided not to approve the levy of fifteen mills, and offered to approve the budget at thirteen mills. Upon this decision of the city council, the school board drew a writ of mandamus against the city board and mayor, trying to enforce the acceptance of the budget as requested at fifteen mills. The writ was denied by the trial court and appealed to the supreme court for its decision. Following is the opinion of the court as given by Johnston, J.:

> "-----We think the terms employed when given their natural and ordinary signification involve an exercise of judgment and discretion, and that the approval referred to implies the official assent and sanction of the city council. Nothing in the consequences of the act or in the difficulties attending its operation warrants the court in eliminating one of the checks plainly placed by the legislature upon the power of imposing a tax. ---- It might have lodged the power of determining this levy in either of these bodies, as well as in both of them, and might have required that there be a joint concurrence. ---- The writ will be denied." (11)

It is within the power of the rural high-school to levy for school purpose at its annual meeting. This is unusual, in its application, in that this power is not granted the ordinary school district board. This is the opinion of the court in the case of Otis Laswell et al., vs. G. M. Seaton et al., as the School Board of High School District No. 3 of Pottawatomie County. This case is of an injunction served against the board to keep it from building,

---

11. Kansas Reports. Vol. 59, p. 762.

when it was thought not to have money enough on hands from the sale of bonds. The school board had figured that with the present money on hands, it would be able to start the operation and meet the balance needed by taxation. Further details of the case are not needed in the discussion; the statement of the judge concerning the taxing powers of the board is to our interest.

The opinion of the court as given by Porter, J. carries the following statement:

> "In the same section (Section 4 of Chapter 284 of the Laws of 1917) it is provided that the annual meeting of the high school board shall be held on the following Monday, at which time the board is required to make the necessary levy for taxes, not to exceed four mills on the dollar on the valuation of all property in the high school district, to pay teachers, to create a fund to retire any indebtedness and interest on the same, to purchase a site, to build, hire or purchase a school house and to pay incidental expenses of the high school. It is at the annual meeting of the high school board that it determines how the school shall be conducted and makes the tax levy." (12)

The school district is bound by the contract of its board members for repairs. It is the duty of the board and a part of its obligations to its district to see that the building is kept in constant repair. It is granted that because of the different elements, the building is bound to decay and be in constant need of repair. It is within the voice of the electors that certain specific repairs be done, and that the budget be enlarged to meet

---

12. Kansas Reports. Vol. 107, p. 439.

the expenditures necessary for the same. But even at that with such a budget depleted, the board finds itself obligated to do other needed repairs.

Such is shown in the case of C. F. Conklin vs. School District No. 37, etc. Mr. Conklin with help, placed a glass in the school house door and did some painting of the walls of the building, after which, he billed the school board for $5.00. The board refused to pay the bill stating that the budget for repairs, as arranged by the electors at the annual meeting was completely depleted. The case was appealed, through error to the supreme court. The decision of that court, as given by Brewer, J. is:

> "The district board shall have the care and keeping of the school house and other property belonging to the district, which authorizes and requires that the board preserve and care for the school house." (13)

It sometimes happens that because of necessity and convenience, one or the other members of the school board will sign an order for the purchase of school supplies, without the knowledge and sanction of the other members of the board. Then the question will arise as to the legality of such an action, and by what, if any, authority such action was executed. Sometimes school boards have acting committies, with authority delegated to them to act if it is within their judgment to do so.

---

13. Kansas Reports. Vol. 22, p. 521.

In the case of the Union School Furniture Company vs. School District No. 60 of Elk County, it is shown that a member of the school board signed an order for furniture and some other school supplies, without the sanction of the complete board, and that, because he had in his possession signed warrants, filled one out for the purchases invoice and delivered it to the agent. The merchandise, being delivered, was immediately put into service. The furniture company presented the warrant for acceptance and payment, but was unable to get the school board to make payment upon it. The contract ran along for a period of five years and the furniture company placed the contract within the hands of the court for collection. The defendant board was able to defeat the case in the trial court, so the plaintiff appealed to the supreme court, in error, for satisfaction within its contract.

The opinion of the court as delivered by Allen, J. follows:

> "-----It is found by the court, and all evidence in the case shows, that the defendant school district received the school furniture----and has held and used the same----over a period of nearly five and one-half years. We are utterly at a loss to understand how the defendant, having kept and used the furniture during all this time can claim to be excused from making any payment therefor. It may be conceded that both the written instruments were void, and that no action could be maintained on either or both of them; yet the defendant district, having received and retained the property------- is bound in common honesty to pay for it." (14)

---

14. Kansas Reports. Vol. 50, p. 727.

Ordinarily, when a school board assumes its duties, that body is considered as a board of directors of the school district. Those duties are numerable and variable. The state statute tries to enumerate those duties, but even then we find them questioned. Occassions arise whereby the board is left in a quandry as to its scope of authority. Into just which particular division of the budget may this contract be placed, and if placed there, has the board the authority to make such a contract?

In the case of N. J. Swayze vs. School District No. 17, Chase County, the question arose as to the authority of the school board in purchasing a mathematical chart as necessary appendages or apparatus.

The syllabus of the court shows that the school board contracted for the chart and issued a warrant for the purchase price. The warrant, being negotiable, was delivered to Mr. N. J. Swayze, who presented it and demanded payment. Upon the refusal of the treasurer to honor the warrant, Mr. Swayze placed the same with the court, asking for satisfaction. The decision of the trial court was in his favor, because of which, the school board appealed. The opinion of the court as delivered by Valentine, J. is:

> "-----Now it is certain that all kinds of school apparatus are not included among the articles properly denominated "appendages"; but we think it is equally certain that some kinds of school apparatus may be denoted "appendages"; for instance, we would think that blackboards, outline maps

and mathematical charts, hung upon walls of the school house and to remain there permanently for the purpose of illustrating such lessons in science, history or geography as might be taught in the schools, might properly be denominated both "school apparatus and 'appendages'". A mathematical chart might be hung upon the walls of a school house and become an appendage; and it might also be used for the purpose of illustrating the science of mathematics and thereby become a part of the apparatus used by the school.-----The evidence in controversy, outside of the order itself, tends to show that the apparatus for which it was given was a mathematical chart. It is possible, and even probable, that this chart was in fact worthless; but as there was no evidence that it was worthless, it must be presumed that it had value, and that it was worth the amount which the school board agreed to pay for it.-----We cannot say that any material error was committed by the court below, and therefore, its judgment must be affirmed." (15)

---

15. Kansas Reports. Vol. 29, p. 211.

CONCLUSION

The operation of school districts, outside of cities of the first and second class is controlled by the county superintendent of public instruction.

The provision for school district meetings called upon petition of resident tax payers is held to be permissive rather than mandatory.

Whenever a school board is petitioned to meet, it is the duty of the clerk of the board to post notices calling the meeting.

Because of the corporate powers given the school district, it becomes the duty of the director of the board to assume control of litigation.

Any contract being made by one member of the school board is void. However, it may become valid when, and if, ratified by the whole board.

If any tax payer has a legal right of dissension, the school building cannot be used for social gatherings, political gatherings or private use although adequate rent is paid.

The right of the district to levy taxes must be clearly found in the statutes.

The statute concerning the levy of taxes by the school board is directory; the county commissioners having the right to adjust, and a taxpayer having the right to contest the same.

Where the tax voted at a regular school meeting becomes certified by the county clerk, there is a valid tax.

It is the duty of the county superintendent of public instruction to make a high school levy when the commissioners of the county fail or refuse to do so.

The school board tax levy in cities of the second class must have the intelligent approval of the city council.

The rural high school board has the power to levy taxes for school purposes at the annual meeting.

The school board is bound by its contract for repairs.

The retention and use of school furniture bought without authority ratifies the contract of purchase.

The school board has the authority to purchase a mathematical chart as necessary appendages or apparatus.

CHAPTER VII

CONCLUSIONS

The Supreme Court, as chief interpreter of the laws of the State, in relation to the schools, holds closely to the constitution, and to state rights. Also, that schools must be purely democratic. This generalization is clearly shown in the decision of the court in the case of the City of Pratt vs. Thomas E. Eubank, as County Superintendent, (p. 73), and in the case of Olin G. Cline et al., vs. W. G. Wettstein et al., (p. 17-18).

In the case of the City of Pratt vs. Thomas E. Eubank as County Superintendent, cited in the previous paragraph, it may further be observed that provision for free schools is mandatory, and the obligation for this provision, is a responsibility of the citizen, as taxpayer, and an elector of the state.

In the interpretation of a specific law, the Supreme Court tends to seek the will of the people of a district, rather than to follow strictly the reading of the law. This is clear in the case of Rural High School District No. 101 of Jefferson County, ex rel., Bert Metzger, as Director, etc., vs. W. E. Davis, as State Auditor, etc., (p. 49).

The court, rather closely holds, that school organizations are quasi-corporations acting as agencies for the State. In this way it is able to clearly distinguish between quasi-corporations and paying corporations. Citation is made to a number of cases in the thesis, (5, 6, 7, 22).

The Supreme Court looks upon commercial contracts of a school board in the same light as any contract drawn in commercial activities; frequently presenting cross-citations of decisions made, regarding contracts of regular commercial enterprises, to explain its decision in a particular case. This is shown in the case of H. C. Hensley and O. C. Brosus as Partners etc., vs. School District No. 87 of Anderson County, etc., (p.36-37), the case of C. F. Conklin vs. School District No. 37, etc., (p. 76), and the case of N. J. Swayze vs. School District No. 17 of Chase County, (p. 78-79).

In the interpretation of the court, regarding laws affecting the organizing of schools, one finds a rather liberal attitude. It allows for continued economic and social growth, realizing that our society is dynamic and that the organization of schools and the interpretation of the school laws must necessarily be made to fit such a society. These facts may easily be seen in its attitude concerning the consolidation of school districts, the re-organizing of school districts and attaching parts of a district to first and second class city districts, and in its review of the "Cash Basis Law".

Never once, in the practices of the court has it refused to listen to a damaged taxpayer of a school district. In the case of John G. Spencer vs. the Joint District No. 6, etc., Mr. Spencer became damaged by the activities permitted within the building. It seemed that the activities were sanctioned by the majority of the electors of the district, and that possibly Mr. Spencer was alone in the case, (p. 67-68).

However, the court has reprimanded the school board or a single member of the board for not having faithfully met the trust placed upon him by the electors of the school district, as shown in the case of R. D. Armstrong as County Attorney of Scott County vs. W. D. Luke, as Clerk of School District No. 2 of Scott County, (p. 64-65).

BIBLIOGRAPHY

Kansas Supreme Court. Kansas Reports. Volume 1 - 145

Topeka, State Printer, 1864 - 1937. 145 Vols.

Reports of cases argued and determined by the Kansas Supreme Court. Chief sources of information.

School Laws of Kansas. Topeka, State Printer, 1937, 291 p.

Edited and revised by W. T. Markham, State Superintendent of Public Instruction.

Kansas Courts of Appeals. Kansas Appeals Reports, Vol. 1-10

Topeka, State Printer, 1895 - 1900. 10 Vols.

Reports of cases decided in the Courts of Appeals in the State of Kansas.

Hatcher, Earl Hilton and McCue, Howard F., assisted by

Vance, Charles. Hatcher's Kansas Digest. Rochester,

New York, The Lawyers Co-operative Publishing Co.

1929. 2820 p.

A digest of Kansas Reports, covering all decisions in McMahon's Reports, Supreme Court Reports, Volumes 1-125, Appeal Reports, Volumes 1-10, with specific citations to Pacific Reporter.

Kansas Laws, General Statutes, 1935.

Topeka, State Printer, 1936, 2705 p.