

1983

An analysis of the development of selected areas of the legal status of Virginia division superintendents 1869-1970

Richard Jay. Nelson

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The College of William and Mary in Virginia

Ed.D. 1983

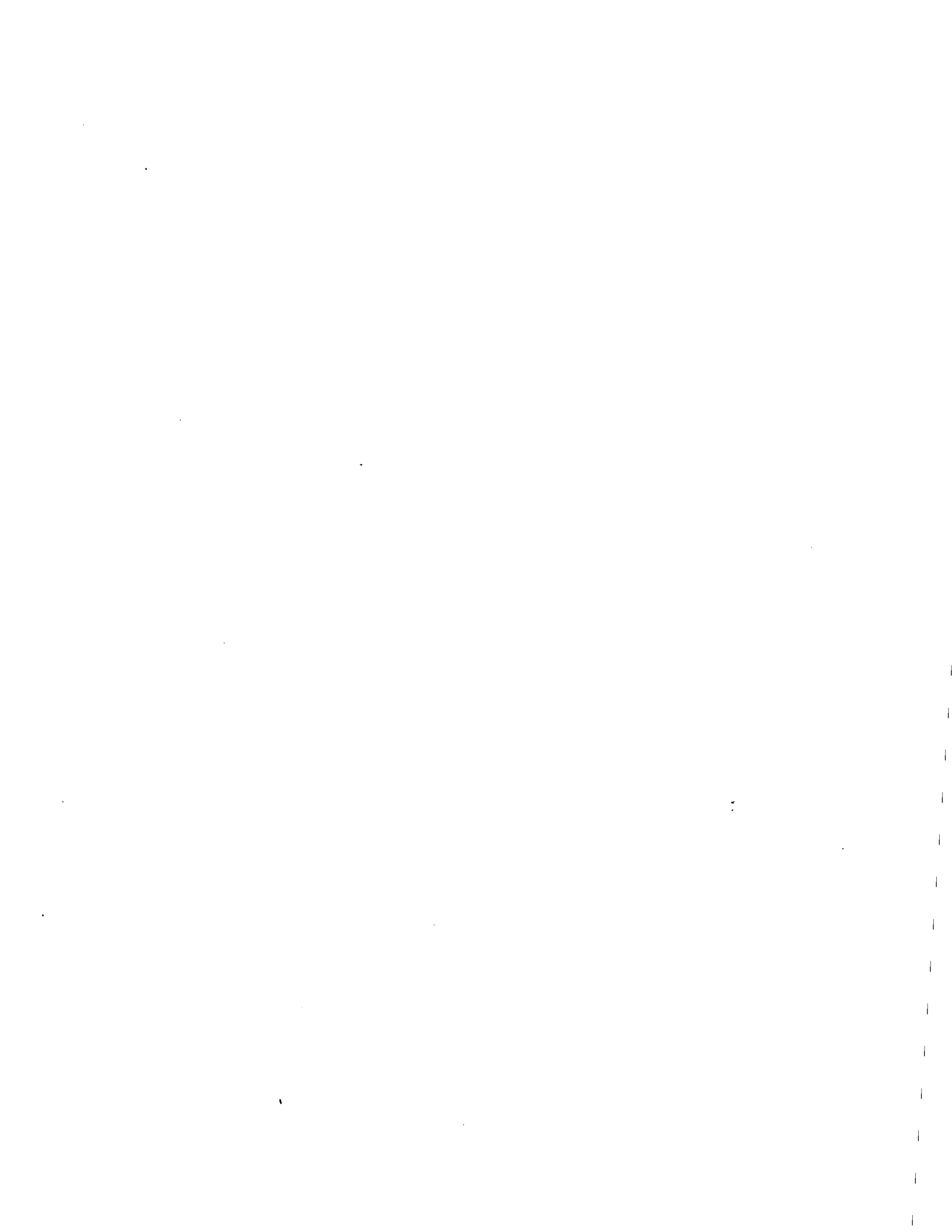
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AN ANALYSIS OF THE DEVELOPMENT OF SELECTED AREAS
OF THE LEGAL STATUS OF VIRGINIA DIVISION
SUPERINTENDENTS 1869 - 1970

A Dissertation

Presented to

The Faculty of the School of Education
The College of William and Mary in Virginia

In Partial Fulfillment
of the Requirements for the Degree
Doctor of Education

by

Richard Jay Nelson

May 1983

AN ANALYSIS OF THE DEVELOPMENT OF SELECTED AREAS
IN THE LEGAL STATUS OF VIRGINIA DIVISION
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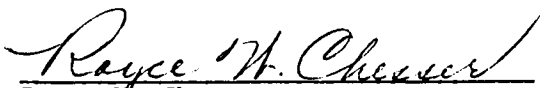
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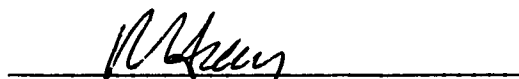
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Doctor of Education.

Approved May 1983

by



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Chairman of Doctoral Committee



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Professor of Education



Paul Unger
Professor of Education

DEDICATION

This study is dedicated to Erika and Jay, and Susan, whose support has been warmly received and appreciated.

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My pursuit of a Doctorate of Education has been one of commitment and diligence. It could not have been completed without the support and encouragement of many.

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A word of thanks is offered to Teresa Lemons for her assistance in typing this report.

Final appreciation and special thanks are owed to my family for providing encouragement and support throughout my academic career.

CHAPTER I

INTRODUCTION

In the second Annual Report, 1871-72, of the Superintendent of Public Instruction in Virginia, Dr. William Henry Ruffner addressed the role of the division superintendent.

The officer has control of the entire school interest within his territory. His supervision extends over every subject. . . His cares are boundless, his labors unending. He is the principal of the whole set of schools and patron of education in his country or city.¹

There is little doubt that the office of public school superintendent continues to be one of importance. Griffiths agreed with this assessment by calling the superintendency "one of the most significant positions in American public life."² Brickell said, "one of the most crucial positions in any school system is that occupied by the superintendent of schools."³ Lary Cuban concurred and expanded by stating:

Few, if any, question the importance of the superintendent to the future of a school system. A superintendent somehow influences directly and indirectly the Board of Education, the

¹Virginia, Department of Education, Annual Report, Superintendent of Public Instruction, 1871-1872, (Richmond, Virginia: Department of Education), p. 78.

²Daniel E. Giffiths, The Superintendent, (New York Center for Applied Research in Education, Inc., 1966), p. vii.

³Edward Brickell, Jr., "An Identification and Analysis of the Expectations of Virginia School Board Members for Their Superintendents" (unpublished Ed.D. dissertation, The College of William and Mary), 1973, p. 2.

bureacracy he manages, the staff he heads, and the students he is responsible for. What a school chief does and does not do in these areas affect the community. In short, most educators, board members, teachers, and members of the community believe that a superintendent makes a difference in their children's education.⁴

Morphet, Johns, and Reller described the importance of the position of superintendent.

The school superintendency has developed into one of the most important positions in our society. Few, if any, men in other professions discharge a role that has a larger impact upon the development of individuals and of our society. The values that he holds as well as his knowledge impringe upon many people.⁵

With the recognized importance of the position of superintendent of schools has come complexity. As early as 1895, William Bruge George, a school board member and editor of American School Board Journal declared:

The superintendent's position is a difficult one. He is the ready target for unreasonable parents, disgruntled teachers, and officious school board members. In a cortex of school board quarrels, he is the first to be crushed.⁶

In 1967 Evans, referring to the previous statement, said, "Currently, the school board superintendent finds himself in the same 'difficult position' and the difficulty has, if anything, become even more severe."⁷

⁴Larry Cuban, The Urban Superintendency: A Century and Half of Change, (Phi Delta Kappa Educational Foundation, Bicentennial Series, 1976), p. 7.

⁵Edgar L. Morphet, Roe L. Johns, and Theordore Reller, Educational Organization and Administration: Concepts, Practices and Issues, (Englewood Cliffs, New Jersey: Prentice Hall, Inc., 1974), p. 327.

⁶Seymor Evans, "The Superintendent's Dilemma," The American School Board Journal, Vol. CLV, No. 5 (November, 1967), p. 11.

After describing the importance of the superintendency, Cuban spoke about the difficulty of the position.

Furthermore, few people question that the job is a tough, demanding one. During the last decade one city school superintendent has been murdered, many have suffered heart attacks and ulcers, and scores have been fired. The job has always been tagged as a difficulty executive post.⁸

As the previous statements attest, the position of division superintendent is an essential one for public education in Virginia. The Virginia School Boards Association specified, "The superintendent must supply the leadership upon which the efficiency and progressive development of the School depend."⁹

Given the assessment that the superintendent's position is important, influential, complex, and difficult, one could ask from where, then, did the legal authority of the division superintendent in Virginia emanate? In the present study an analysis of selected components of the legal authority of the superintendency will be carried out in order to identify the current legal status. For as Hudgins and Vacca indicated, "If one is familiar with the law, not only is he more likely to behave legally, he is also better prepared for preventing problems."¹⁰

The public school division superintendent in Virginia is a constitutional officer. Responsibilities are stated in the Constitution

⁸Cuban, The Urban Superintendency, p. 7.

⁹Virginia, Virginia School Boards Association, Virginia School Boards, (Charlottesville, Virginia: University of Virginia, 1977), p. 36.

¹⁰H.C. Hudgins and Richard S. Vacca, Law and Education: Contemporary Issues and Court Decisions, (Charlottesville, Virginia: The Michie Company, 1979), p. 22.

of Virginia and statutes enacted by the General Assembly. The Virginia School Board Association addresses the status of the division superintendent.

The division superintendent of schools is a constitutional officer of the State through whom the state school authorities exercise their supervision and control of the school system. The superintendent also is a local officer in that he or she is the chief executive of the county or city school board through whom that board operates the local school system. His or her powers and duties as a state officer are defined and fixed by state law and Board of Education and may not be altered or amended by the local board.¹¹

Since the formation of the Virginia public school system and the establishment of the office of the division superintendent with the 1869 Constitution, the legal authority of the superintendent has been modified. Changes have resulted from provisions within succeeding constitutions and acts of the legislative body, the General Assembly.

During the course of this study an attempt was made to identify and analyze selected aspects in the development of the legal status of Virginia division superintendents based upon State Constitutions and ensuing Acts of the General Assembly from 1869 to 1970. This research can serve to identify the present legal modus operandi of the superintendent and explain how legal authority developed, providing assistance for those who wish to understand the present status of division superintendent.

There has been some confusion in Virginia regarding the practice and function of division superintendents. The Virginia School

¹¹Virginia, Virginia School Boards Association, Virginia School Boards, p. 29.

Boards Association stated, "Many school boards have been uncertain as to the best practices to be followed in the administration of school affairs. Differences of opinion have frequently arisen in the proper functions of local boards and superintendents. . ."¹²

Confusion as to the role of division superintendents is not restricted to Virginia. Gross said, "Superintendents and school boards frequently disagree over their respective rights and obligations."¹³ Monahan and Hengst claimed that there exists a confounding and confusing of the role of the superintendent and the relationship between the occupant of that role and the board itself.¹⁴ Nolte contended that a disadvantage to the present unclear legal status of a superintendency is to produce misunderstandings within school staff, a lack of public understandings, a hinderance of educational innovation, and creation and confusion of decision.¹⁵ Gee and Sperry have found that, "Today the position of superintendent is given statutory authorization in the laws of nearly every state."¹⁶ They expanded this by stating confusion results because of the functions of the office.

¹²Ibid., p. v.

¹³Neal Gross, Who Runs Our Schools? (New York: John Wiley & Sons, Inc., 1958), p. 139.

¹⁴William G. Monahan and Herbert R. Hengst, Contemporary Educational Administration, (New York: Macmillian Pub., Co., Inc., 1982), p. 262.

¹⁵M. Chester Nolte, Guide to School Law, (West Nyack, New York: Parker Pub., Co., 1969), p. 3-4.

¹⁶G. Gordon Gee and David J. Sperry, Education Law and the Public Schools: A Compendium, (Boston: Allyn and Bacon, Inc., 1978), p. A-18.

Thus for certain purposes the superintendent may in fact perform as a public officer, and for others she/he may act solely as the spokes persons for the Board of Education. The difficulty with this arrangement is that the superintendent may be unable to recognize his/her changing role and may not be effectively under both sets of circumstances."¹⁷

Monahan and Hengst briefly reviewed the effectiveness and status of local superintendents. The early functions were more clerical than managerial. In the 1920's and 1930's many achieved national stature by virtue of the leadership they provided. The decades of the 1960's and 1970's, however, have seemed to reverse that tendency. School boards have become more responsive to the diverse issues that have emerged as American society has grappled with long-standing grievances of its less fortunate citizens. They claim that process has, in fact, produced a confusion of the role of the superintendent.¹⁸

Nolte agreed, "School superintendents today, many complain, are like shorn Sampsons whose source of power has been snipped away by numerous Deliahs."¹⁹ He went on to state, ". . .the professional prerogatives (and that means powers) of superintendents are being challenged today in some school districts as they have never been before."²⁰

Nolte concluded:

Whatever the superintendent believes about the effect of decisions he makes, or the board makes, it is demonstrable

¹⁷Ibid., p. A-19.

¹⁸Monahan and Hengst, Contemporary Educational Administration, p. 261-262.

¹⁹M. Chester Nolte, "How Fast is the Power of Superintendents Slipping Away?," The American School Board Journal (Vol. II, No. 4, September, 1974), p. 42.

²⁰_____, p. 43.

- (1) that decision making has lost a lot of its predictability,
 (2) that the power of the superintendent hasn't been a match
 for the magnitude of the problems faced in education. . .²¹

Some may ask, is this loss of power a proper assessment of
 legal restriction? Nolte remarked:

A strong case can be made, nevertheless, in support of the
 contention that whatever power courts are snipping away from
 superintendents is de facto power, power that each school dis-
 trict's chief executive never really possessed de jure. The
 fact that few superintendents were legally challenged in the
 past (when they may have been violating teacher, student or
 parent rights) give a false sense of security to those super-
 intendents who were ill-informed in legal manners.²²

Campbell contended that the status of the superintendent's role
 is a direct result of the individual school district's relationship
 between the superintendent and the Board of Education. If the school
 board limits the superintendent's role, then the position, even more
 than the man filling it, is obsolete. The superintendent who is not
 obsolete is one who is allowed and attempts to influence purpose and
 direction, establish effective organization, and obtain resources
 necessary for development.²³

With knowledge about the development of the legal authority of
 division superintendents in Virginia, effective decisions can be made
 with consideration of historical precedence. Nolte addressed the
 importance of including legal consideration in decision making:

²¹Ibid.

²²Ibid., p. 43-44.

²³Roald F. Campbell, "Is the School Superintendent Obsolete?,"
Phi Delta Kappan (Vol. LXVIII, No. 2, October, 1966), p. 56.

One benefit to superintendents and their various constituents from the current trend of taking an increasing number of variety of school issues to court is that the very process forces superintendents to reassess the bases of actions they may have never questioned on their own initiative.²⁴

Gee and Sperry pointed out the individual interpretations and actions must also be considered when reviewing the superintendent's authority.

Thus, the superintendent who by law may have the right to exercise a good deal of initiative may, in fact, not be able to survive if the board is determined to restrict or scrutinize his/her every move. Conversely, the superintendent who has little or no statutory authority ascribed to his/her position directly may exercise great liberty and initiative if the board is willing to place faith and trust in the superintendent's judgement and give sustained approval to the administrator's ideas, suggestions and actions.²⁵

Nolte presented an indication of present trends. "While his (superintendent's) responsibilities are growing rapidly, his authority is shrinking."²⁶ In 1965 the National Education Association in a policy statement recognized that, "Whatever the area, the superintendent's problems are more complex than at any time in the past."²⁷

In order to gain a grasp of the complexities of the legal authority of Virginia division superintendents, it is helpful to

²⁴ Ibid., p. 44.

²⁵ Gee and Sperry, Education Law and the Public Schools: A Compendium, p. A-20.

²⁶ Nolte, "How Fast is the Power of Superintendents Slipping Away?," p. 46.

²⁷ National Education Association of the United States, The Unique Role of the Superintendent of Schools. The Education Policies Commission, National Education Association of the United States, Washington, D.C., 1965 (phamplet), p. 12.

understand the legal base from which they operate. An analysis of the legal authority will provide insights from which one can address such issues as changing functions, practices, and perceived gain/loss of authority without a corresponding perceived change in responsibility.

For the purpose of organization of this study, four specific hypotheses were formulated. The first hypothesis states that there has been an increase in the legal authority of Virginia division superintendents from 1869 to 1970 in the area of certificated personnel, increases having resulted from mandatory provisions in Acts of the General Assembly of Virginia. The second hypothesis states that there has been an increase in the legal authority of Virginia division superintendents from 1869 to 1970 in the area of finance, increases having resulted from mandatory provisions in Acts of the General Assembly of Virginia. The third hypothesis states that there has been an increase in the legal authority of Virginia division superintendents from 1869 to 1970 in the area of buildings, increases having resulted from mandatory provisions in Acts of the General Assembly of Virginia. The fourth, and final hypothesis states that there has been an increase in the legal authority of Virginia division superintendents from 1869 to 1970 in the area of policy formulation and execution, increases having resulted from mandatory provisions in Acts of General Assembly of Virginia.

The time frame of 1869 to 1970 was selected for several reasons. The first Constitution in Virginia which required free public education for all school aged children was adopted by the General Assembly in 1869 and went into effect the following year. The year 1970 not only marks a hundred years from that date, but it is also the year of the

a recent revision of the Virginia Constitution.

This study was limited to the examination of the legal authority of Virginia division superintendents as granted by the State Constitutions and statutes regarding certificated personnel, finance, buildings, and policy formulation and execution. All legislation which addressed the rights, duties, or responsibilities of the division superintendent in the four designated areas, whether they be of ministerial, discretionary or mandatory nature, were reviewed and analyzed.

It was assumed that the legal authority of the division superintendents in Virginia emanates from the State Constitution and the actions of the members of the General Assembly. It was also assumed that the legal requirements of the office formed the basis from which division superintendents acquired legal authority.

For the purpose of this study the term authority is used frequently and is defined to mean a compliance of orders or directives. Legal authority is the legitimized right of those in higher offices to have power over subordinates as prescribed in the Constitutions and statutes of Virginia.²⁸ When the legal authority of the division superintendent is referred to, it means the authority of the local school superintendent as granted by the Virginia Constitution or the Acts of the Virginia General Assembly.

Division superintendent is the term used to indicate the chief executive officer of the numerous individual Virginia public school

²⁸Max Weber, Theory and Social Organization, (New York: The Free Press, 1947), p. 324-328.

divisions. As used in this study the term refers to the office of the division superintendent, rather than to a specific person. Until 1903 the common term used for the division superintendent in the Constitutions or statutes was either county or city superintendent of schools. The superintendent of public instruction is the title designating the State superintendent of public schools.

Until the 1922 and 1928 Acts of Assembly, there were numerous separate statutes for the governance of district and county, and town and city school systems. However, these regulations were very similar and except where noted, references directed to county or division superintendents are to apply to city and town superintendents as well.

In a search of the literature, it was found that few writings exist which are based on an investigation of the historical analysis of the legal authority of local school superintendents. Literature available does, however, contribute to the general background of Virginia's public education and the American school superintendency.

Ierardi's study described the legal powers and duties of school superintendents as they existed in Connecticut in 1980. He relied on Connecticut General Statute, opinions of the Connecticut Attorney General, court decrees, regulations as derived from statutory authority, and perceptions of persons in authoritative Connecticut public education positions. This study was geographically limited to Connecticut and chronology confined to 1980. Very little emphasis was given to historical analysis of Connecticut General Statutes.²⁹

²⁹Lawrence E. Ieradi, A Description of the Legal Powers and Duties of Connecticut School Superintendents as Found In Statute, Decree, and Regulation and as Perceived by Superintendents. (Unpublished Ph.D. dissertation, University of Connecticut, 1980).

In A History of Education In Virginia, Heatwole used both primary and secondary information to explain the development of Virginia's public school system and the related aspects of the legal authority to manage school divisions. Heatwole spoke often and directly about the actions of state superintendents, but only occasionally offered reflections about division superintendents. This history of Virginia education covered the time from 1607 to 1916. With such a broad time span many specific investigations such as an analysis of legal authority were, by necessity, excluded. However, most of the significant movements in Virginia's education were briefly discussed.³⁰

Background information concerning the history of Virginia public education was reviewed in "Public Education of Virginia, 1870-1970." Although the work was in many aspects similar to Heatwole's, it was not as detailed. There were passing references to the legal authority of division superintendents, but the article's main function was one to disperse general information.³¹

Buck, in The Development of Public Schools in Virginia, traced the growth of education from 1607 to 1952. Buck discussed the development of the appointment procedure and minimum qualifications of division superintendents, but did not record or analyze either the

³⁰Cornelius J. Heatwole, A History of Education In Virginia, (New York: The Macmillian Company, 1916).

³¹Virginia, State Department of Education, "Historical Development of Virginia's Public School System, 1870-1970," (Public Education In Virginia, Vol. 5, No. 4, Edited by Harry L. Smith, Winter, 1970).

status or the sources of the superintendent's legal authority.³²

Many other studies have reviewed the historical development of the local superintendent of schools, but only limited attention has been paid to the sources of their legal authority.³³

From the secondary sources examined, it is clear that little has been written regarding the historical analysis of the legal authority of Virginia division superintendents. This study specifically investigated the legal status of Virginia division superintendents. The legal authority of Virginia division superintendents as based upon State Constitutions and Statutes from 1869 to 1970 were examined in the areas of certificated personnel, finance, buildings, and policy formulation and execution. With the increasing complexity and difficulty of the office of the division superintendent, it was anticipated that the analysis would indicate an increase in the legal authority for superintendent in each of the four selected areas. Furthermore, it was anticipated that these increases have resulted from mandatory Acts of the General Assembly.

³²J.L. Blair Buck, The Development of Public Schools in Virginia 1607-1952, (Richmond, Virginia: Board of Education, Commonwealth of Virginia, 1952).

³³See Raymond Callahan, Education and the Cult of Efficiency (Chicago, University of Chicago Press, 1962); Larry Cuban, The Urban School Superintendency: A Century and Half of Change (Phi Delta Kappa Educational Foundation, Bicentennial Series, 1976); Thomas McDowell Gilland, The Origin and Development of the Power and Duties of the City-School Superintendent (Chicago, The University of Chicago Press, 1935); Daniel E. Griffiths, The School Superintendent (New York: The Center for Applied Research in Education, Inc., 1966); Stephen J. Knezevich (editor), The American School Superintendent (Washington, D.C., American Association of School Administrators, 1971); Theodore Lee Reller, The Development of the City Superintendency of Schools in the United States (Philadelphia, pub. by the author, 1935).

Secondary sources used for this study include appropriate historical and educational journals, histories of education in Virginia, histories of the American superintendency, pamphlets, newspaper articles and doctoral dissertations. The primary sources used included the Virginia State Constitutions, the Acts of the General Assembly of Virginia, 1869-70 - 1970, the Codes of Virginia, and Annual Reports of the Superintendent of Instruction 1871-72 to 1969-70.

In order to provide a clearer picture of the background during the development of the legal status of Virginia division superintendents, a basic history of Virginia education and the American school superintendency is presented.

At its beginning in 1607 and for centuries afterwards, Virginia's philosophy of education replicated that of 17th century England. Early Virginian formal education was performed at the homes of wealthy plantation owners with the assistance of a tutor or, as time progressed, at exclusive academies. Unsuccessful attempts at free schools were made as early as 1622, but the continent's first permanent establishment for poor white children took place in Hampton in 1634 as a generous result of the wills of Benjamin Symms and Thomas Eaton.³⁴ A few "old field schools," so named because they were often held on fallow fields, were funded and serviced the needs of the white middle class at a low cost. However, the schooling of the middle class was inferior to the upper class, and the schooling of the poor was inferior to that of the middle

³⁴Heatwole, A History of Education in Virginia, p. 46.

class. There was no system of formal education for blacks in colonial Virginia.

It was Thomas Jefferson who, in the midst of a state that recognized and practiced private education, proposed to establish state-wide free public education for all white children. This plan was formally introduced in the legislature in 1799 as "A Bill for the More General Diffusion of Knowledge." Free elementary schooling for both males and females with increasingly exclusive education at secondary and university levels for males was advocated. Although this Bill was very limited in provisions for the schooling of females and participation beyond the elementary education, and contained no provisions at all for blacks, it was progressive for its time. However, in spite of the active support of Thomas Jefferson, the idea of free public education could not gain acceptance in Virginia until after the Civil War.

On February 12, 1810, the Virginia General Assembly created a basis for supporting free public schools by establishing the Literary Fund. This act ordered that all "escheats, confiscations, fines, penalties and forfeitures, and all rights occurring to the State or derelict, shall be set aside for the encouragement of learning."³⁵ The investment of principle was to be used for providing education for orphans and indigent white children. However, poor people took offense at this designation and did not support these schools. Thus, the principle was invested to support higher education, and it was not until 1822 that payments were made for the original purpose, providing

³⁵Chapter VIII, 1810 Acts of Assembly. Approved February 12, 1810.

primary schooling for those whites unable to afford private school education.

The Literary Fund established the principle of public money for public schools in Virginia. For this reason it remains an important milestone in the development of public education in Virginia. However, the tradition of private schools held by Virginians helped to cause a poor image of schools created by this fund and the few schools that were established were shunned.

Heatwole agreed and expanded upon this assessment of pre Civil War free education in Virginia.

The 'poor' for whom the schools were primarily intended, for reasons of prejudice connected with the idea of being placed in position of a charge of the state, were loath to send their children to these schools. The well-to-do refused to patronize them for the reason that they were intended for the 'indigent' and not for those who were able to provide by private means for the education of their children.³⁶

Fox claimed that the creation of the Literary Fund marked the dividing line between eastern and western Virginia regarding educational matters. Fox stated that before this bill there had been little difference in the sentiment of the sections, but afterwards a constant struggle emerged with the west favoring free public education, and the east opposing it.*³⁷

³⁶Heatwole, A History of Education in Virginia, p. 210-211.

*West Virginia did not separate from Virginia until June 20, 1863. Fox also claims that a large influx of non-Virginian settlers moved into western and northern Virginia from 1820 to 1860. This group led by Presbyterians, advocated free education and helped create this split in educational philosophy.

³⁷E.L. Fox, "William Henry Ruffner and the Rise of the Public Free School System of Virginia." The John P. Branch Historical Papers of Randolph Macon College. Vol. III, No. 2 (Richmond, Virginia: Richmond Press Incorporated, June, 1910), p. 124-144.

Between 1846 and 1853 efforts were made to strengthen and expand the Virginia school system. In 1846 the General Assembly provided for the establishment of a local school system under a county school superintendent with commissioners from each district constituting a county school board. However, tax support was left to local initiative and was very slow in developing. In 1851 and 1853 additional funds were provided for the Literary Fund. With the onset of the Civil War, in 1861 income from this fund, plus some principal, was diverted for defense of the state and invested in Confederate bonds. Energy and financial support for the idea of public education were redirected in the preoccupation brought about by the Civil War.

Heatwole claimed that the cities of Norfolk, Petersburg, and Richmond, respectively established free public schools a few years before the state system was inaugurated in 1870.³⁸ Another example of a "practically" free school is the Alexandria Academy which had a schoolroom in operation in 1732. In 1758 a schoolhouse was erected and money was gained by lottery and gifts of endowment, some of which came from the will of George Washington.³⁹

Meyer summarized the development of public education in the nation until the Civil War by stating that it was not until well into the nineteenth century that states began to assume their full educational authority. Meanwhile, education had evolved as a local enterprise with a relatively generous amount of local freedom.⁴⁰

³⁸Heatwole, A History of Education in Virginia, p. 277.

³⁹_____, p. 271.

⁴⁰Meyer, Educational History, p. 397-398.

With most of Virginia's energies being devoted to the Civil War and the reconstruction period afterwards, little attention was given to public education in the 1860's. As a reconstruction measure, a new state Constitution was established and ratified July 9, 1869. This Constitution was known as the Underwood Constitution partly because of its chief advocate, the president of the General Assembly, John Underwood. The Constitution itself aroused vigorous opposition, not in the least that portion which specifically established the first state-wide free public education school system for all school aged children. The public education portion of this Constitution was disliked by many since it was not a reflection of the genuine interests of Virginians, but rather a requirement of the victorious northern states before consideration for full status in the Union could begin.

The Underwood Constitution provided for a State Superintendent of Public Instruction, a State Board of Education, and county superintendents and district school trustees. It also granted the General Assembly permission to adopt compulsory attendance laws and the power to levy taxes for the financial support of schools.

Dr. William H. Ruffner was chosen as the first superintendent of public instruction by the General Assembly following ratification of the Constitution. Sensing a lack of public support, Ruffner submitted a complete plan of organization to the General Assembly for its approval in twenty-five days after his appointment. With few modifications, this plan was approved by the legislature on July 11, 1870. By November of 1870 at least one (in many cases more than one) free school was open in all Virginia counties and cities.

At first, both popular and financial support for the public

schools was slow to emerge. Pulley suggests that the Underwood Constitution was distasteful and regarded as a symbol to stimulate popular democracy in Virginia.⁴¹ There is much documented evidence of the perilous financial position of the public school system in its early years, but it did manage to survive, grow, and improve. Smith states "The system Dr. Ruffner had conceived survived strong opposition and the severe financial burdens of reconstruction for 30 years, until the more favorably received Constitution of 1902 reaffirmed the principle of a state-supported public school system."⁴²

After inception, Virginia's public schools continued to expand and improve. In the first 32 years of the existence of the system much was accomplished and much was left to be done. Six main accomplishments previous to the 1902 Constitution included: establishment with the strong help of superintendent Ruffner; withstanding caustic opposition, largely because it provided for the education of all the children of the state in a social system that had long defeated the efforts of such a man as Thomas Jefferson in establishing a system of primary schools; increase in students, buildings, teachers and expenditures; providing a unified system of elementary schools and consideration of high schools and; establishing a state normal school for women at Farmingdale and subsidization for William and Mary College for training of male teachers along with a systematic method of certification and adopting a uniform list of textbooks.⁴³

⁴¹Raymond H. Pulley, Old Virginia Restored, (Charlottesville, Virginia: The University Press of Virginia, 1968), p. 9.

⁴²Smith, "Virginia's Public School System, 1870-1970," p. 8.

⁴³Heatwole, A History of Education in Virginia, p. 259.

Smith summarized many viewpoints regarding the political and educational climate in Virginia at the turn of the twentieth century.

After enduring the severe burdens of reconstruction, the people of Virginia began to take more interest in public affairs. . .

By 1900 Virginians were ready to consider a new construction to replace the unpopular Underwood Constitution of 1869. The disillusionment which followed the War Between the States had been replaced by a keen interest in education and government. . .⁴⁴

Several conferences helped to draw attention to the need to spur interest in advancing public education in Virginia around 1900. The first of three annual meetings was held in 1898, in Capon Springs, West Virginia. The purpose was to discuss the advancement of religious education in the South. Although the first conference was more religious than educational in nature, future meetings were devoted to more educational concerns than secular events.⁴⁵

Pulley contended that the Richmond Education Association conference held in April 1900 was the vehicle for the first real expression of the growing interest of the leadership class of Virginia.⁴⁶ The formation of the Richmond Education Association coincided with the development of the Southern Education Board. This Southern Education Board formed in 1902 with a purpose to promote public schools throughout the South.⁴⁷

⁴⁴Smith, "Virginia's Public School System, 1870-1970," p. 13.

⁴⁵Meyer, Educational History, p. 222.

⁴⁶Pulley, Old Virginia Restored, p. 135.

⁴⁷_____.

In July 1901, Dr. Joseph W. Southall, State Superintendent of Public Instruction, called a meeting of Virginia educators to make recommendations pertaining to public education for the constitutional convention. The ensuing 1902 State Constitution gave a mandate for public education by declaring, "The General Assembly of Virginia shall establish and maintain an efficient system of public schools throughout the state."⁴⁸

Heartened by the receptive attitude of the constitutional convention towards public education and subsequent ratification, the leadership of the Richmond Education Association and the Southern Education Board formed a new organization named the Cooperative Education Association of Virginia. This organization was formed in 1903 with a primary goal of strengthening public education in Virginia.⁴⁹ All of these conferences and associations encouraged the movement for acceptance of improvement of public education.

Certainly a highlight of state superintendent Southall's administration was the May campaign of 1905, a month long effort made by leading Virginia statemen and educators to increase the already growing support for public education.⁵⁰ Smith indicated the intensity of this effort by stating that over 100 of the leading citizens of Virginia delivered educational addresses in nearly every city and

⁴⁸ Article IX, Section 129, Constitution of 1902.

⁴⁹ Pulley, Old Virginia Restored, p. 138.

⁵⁰ _____, p. 139-140.

county of the Commonwealth advocating improvement in public schools.⁵¹ Governor A.J. Montague and others delivered over 300 speeches, distributed 200,000 pages of educational literature, and organized 50 citizen groups, all within thirty days.⁵²

In summarizing the impact of the May campaign, Southall emphasized the need to commit financial resources toward improvement of the public schools.⁵³

Pulley capsulized the impressive results of the Virginia school crusades from 1900 to 1909 by stating that within these nine years the value of school property and total school revenue doubled; high schools were provided with the passage of the Mann Act in 1906; the number of students increased rapidly; illiteracy decreased; and improved teacher training and administration helped to bring forth better schools.⁵⁴

Pulley also noted that the school crusade fell short in some areas. In 1915 the average school term was 7.1 months, Negro teachers were paid less and facilities of many schools fell behind. Opportunities were not equal for Negroes. "In the case of education, progress before 1920 in Virginia was largely a case of progressivism for whites only."⁵⁵

⁵¹Smith, "Virginia's Public School System, 1870-1970," p. 14.

⁵²_____, p. 15.

⁵³State Superintendent of Public Instruction, Biennial Report, 1901-1903, p. 35.

⁵⁴Pulley, Old Virginia Restored, p. 143.

⁵⁵_____, p. 144.

In 1915 the Commonwealth spent \$11.35 per capita for public education while the nation spent \$30.00. Despite marked gains scored in education from 1898 to 1916, the state considerably fell behind the net average of the nation.⁵⁶

During the 1916 session the General Assembly passed legislation authorizing the State Board to establish educational qualifications for division superintendents. Regulations adopted by the State Board required the superintendents to participate in educational work for 10 years prior to their appointments and specified that they be college graduates with at least two three-hour college courses in education, or three years additional experience as a teacher, principal, or supervisor.⁵⁷

Dr. Harris H. Hart was elected to the State superintendency in 1918 and served for the next 13 years. The highlights of his first Annual Report called for eliminating the district system, enacting a compulsory attendance law and providing free textbooks.⁵⁸ Of these, perhaps Hart's most sweeping administrative adjustment was the institution of a county unit law in September, 1922. Under this proposed law the county, rather than the district, was to become the unit of instruction.⁵⁹ Buck praised the ensuing legislation stating,

⁵⁶ Ibid., p. 143.

⁵⁷ Chapter 467, 1916 Acts of Assembly. Approved March 22, 1916.

⁵⁸ State Superintendent of Public Instruction, Annual Report, 1917-1918, p. 14, 17-18.

⁵⁹ _____, p. 14-18.

It is probably no exaggeration to say that the best type of leadership from state and division superintendents could never be made really effective as long as the small school districts maintained their autonomy. September, 1922 should be looked upon as a red letter day on the calendar of educational progress in Virginia.⁶⁰

Hart's tenure as State superintendent was also noted for organizing, simplifying, and strengthening teacher certification. Four other significant developments were an organized attempt to measure efficiency, the establishment of the first equalization fund, strengthening of the State Department of Education, and the rapid growth of related education organizations (Virginia Education Association, Negro Organization Society, and Virginia Parents and Teachers Association).⁶¹

The years of 1931 to World War II saw public education adversely affected by the great depression of the 1930's. Although Virginia's agrarian economy was not as severely affected as the more industrialized states, nevertheless tax income from both state and local sources declined sharply. Accompanying this loss of revenue was curtailment of financial aid to public schools.⁶²

With reduced funding, professional emphasis was placed on strengthening curriculum. A newly created Department of Instruction stressed the role of the teacher in developing curriculum.⁶³

⁶⁰Buck, Public Schools in Virginia, 1607-1952, p. 208.

⁶¹_____, p. 209-218. p. 209-218.

⁶²Smith, "Virginia's Public School System, 1870-1970," p. 22-24.

⁶³State Board of Education, Organization for Virginia State Curriculum Program (Richmond: The State Board of Education, 1932), p. 5.

Although funds in the 1930's were cut, public education in Virginia managed to make progress in the areas of qualification standards, curriculum revision, coordination, and administration.

The years from 1941 to 1951 were, according to Buck, a period dominated by the Second World War. The characteristic pre-war, war, and post-war growth and inflation produced record spurts in the economy, and even a record birth rate for United States.⁶⁴

With the shocking news of the December 7, 1941, attack on Pearl Harbor, America's full energies turned towards war. Hundreds of thousands of young men were conscripted and volunteered to join the Armed services, including 30% of the nation's teachers. With the subsequent decrease in qualified teachers in Virginia, substandard replacements were pressed into service. The teaching ranks in Virginia were even further depleted by a low salary scale that did not reflect the war industry inflation. Teacher shortage remained a problem even after the close of World War II and in several areas until at least 1970.⁶⁵

Although the Commonwealth's main efforts were directed towards the war from 1941 to 1951, Buck said that efforts were made to equalize the practice of separate and lower salaries of Negro teachers. Other important developments of this period were a revival of emphasis on health; an expansion of the vocational education program; the

⁶⁴Buck, Public Schools in Virginia, 1607-1952, p. 389.

⁶⁵Smith, "Virginia's Public School System, 1870-1970," p. 27.

development of teaching materials for conservation; increased audio-visual aid and; establishment in 1942 of a retirement system for all State employees, including teachers.⁶⁶

The 1954 United States Supreme Court decision of *Brown v. Topeka* cast a shadow upon Virginia's segregated school system. High schools attended by whites only were closed in Norfolk, Front Royal, Charlottesville, and Prince Edward County following federal court orders to desegregate in 1957. All of these schools reopened in a year with some desegregation except those in Prince Edward County which remained closed until the fall of 1964.⁶⁷

In 1958 Governor J. Lindsay Almond, Jr., appointed a special commission on public education to recommend to the General Assembly legislation for dealing with the desegregation crisis. The recommendations were to repeal the state-wide compulsory attendance law in favor of local option, and to make state funds as tuition grants available for parents of children attending private schools. The local option statute remained until 1968 when the General Assembly again passed a compulsory attendance law.⁶⁸

During the tenure of Dr. Davis Y. Paschall as State Superintendent from 1957 to 1960, several moves were made to strengthen public education. Curriculum revision, graduation requirements, certification

⁶⁶ Buck, Public Schools in Virginia, 1607-1952, p. 389.

⁶⁷ Smith, "Virginia Public School System, 1870-1970," p. 30.

⁶⁸ _____.

regulations, and building construction standards were all strengthened. In response to the 1957 launching of the Russian satellite Sputnik, emphasis was given to the science and math programs.⁶⁹

Dr. Woodrow W. Wilkerson succeeded Paschall as state superintendent and continued to seek improvement in the public schools with instructional emphasis on the American form of government and the economic way of life. In order to aid this emphasis the General Assembly in 1966 greatly increased funds available for in-service education of teachers with top priority given to the study of basic economics.⁷⁰

Other important areas of improvement in the development of Virginia's public schools from 1958 to 1970 included increased growth for vocational and technical education for adults and high school students; legal authority to pursue desegregation according to Title VI of the Civil Rights Act enacted by Congress in 1964; new federal programs (the National Defense Education Act of 1958, the Vocational Education Act of 1963, the Elementary and Secondary Education Act of 1965) which substantially increased federal aid for public schools in the State; implementation in 1965 of a nine point program recommending improvements in the quality of public education; verbal support by the State Board of Education for kindergarten in 1966 and subsequent financial aid for the 1968-70 biennium; accreditation of elementary

⁶⁹Ibid., p. 30-32.

⁷⁰Ibid., p. 31-32.

schools effective in 1970; and further upgrading of teacher certification in 1968.⁷¹

In summary, public education in Virginia grew from scattered support with no statewide organization in 1869 to one of increasing involvement and coordination in 1970. Smith stated that the 1970 primary objective of the public school system was to develop individual talents and abilities to prepare each student to fulfill his potential as a member of society. This goal was sought within the framework of Jefferson's concept that education should be vested with the people themselves.⁷² Thus, public education in Virginia in 1970 was a cooperative venture between the state and the localities.

The position of the local school superintendent developed slowly. White indicated that a strong anti-executive attitude was a part of the emerging tradition among American colonists. According to White, this attitude was evident by an examination of individual state constitutions adopted from 1775 to 1800.⁷³ Knezevich noted that in view of this anti-executive attitude, it was not surprising that the appointment of a full-time administrator as an executive officer for the school system as a whole (superintendent) was delayed almost 200 years after the start of the American system of public education.⁷⁴

⁷¹Ibid., p. 33-35.

⁷²Ibid., p. 37.

⁷³Lenard D. White, Introduction to the Study of Public Administration. Revised edition. (New York: Macmillan 1939), p. 20.

⁷⁴Stephen J. Knezevich, Administration of Public Education, 3rd edition. (New York: Harper and Row, Pub., Inc., 1975), p. 339-340.

In deed, "The image of the executive as a sort of deposed royal governor lingered long after the royal governor had disappeared from the American scene."⁷⁵

At the time of the adoption of the federal Constitution there were no school superintendents in American cities. One reason for this was that the population, until around 1800, did not warrant a chief executive of schools. The federal census in 1790 showed that only five cities had populations over 8,000.⁷⁶ Another reason, according to Knezevich, was:

The primitive school house and simple curriculum made the management of the local community school fairly easy. Most administrative details were handled by lay people within the community. Policy making and policy execution were reviewed at the town meeting and the two were not separated during this early period.⁷⁷

In the mid-nineteenth century many school boards needed help as increasing school populations and complex duties forced them to go outside their own organization to hire principals and superintendents to ease their official burdens. The nineteenth century and the first decade of the twentieth century became a time of the establishment of the superintendency.

Grieder, Pierce and Rosenstengel cited several historical forces that contributed to the development and establishment of the school superintendency. They include, concentration of large numbers

⁷⁵ Ibid., p. 340.

⁷⁶ Ibid.

⁷⁷ Ibid.

of children as a result of rapid urbanization; enactment of compulsory attendance laws; scientific investigations of the learning process, teaching methods, child growth and individual differences; school finance as a response to various social service requirements and expansion of government activity; conviction that school and home were partners in the educational process and that each was dependent upon the other for successful operation; the issue and diplomatic entanglements of home rule (local control) and state authority, which called for increasing knowledge of policies and political science; study of administration as a science and an act that created a body of knowledge which was not available until the middle decades of the twentieth century.⁷⁸

Gilland claimed that Buffalo, New York, hired the first public school superintendent in 1837 with Louisville, Kentucky, following shortly after.⁷⁹ At least thirteen other school systems established the school superintendency between 1837-1850.⁸⁰

Early superintendents were literally superintendents of instruction and little else. Moehlman stated,

The early superintendent was considered an assistant to the board. There wasn't any question as to 'whose man' the superintendent was. He came into being as an agent of the

⁷⁸ Calvin Grieder, Turman Pierce, and William E. Rosentengel, Public School Administration, 2nd edition. (New York: The Ronald Press, 1961), p. 72-74.

⁷⁹ Thomas McDowell Gilland, The Origin and Development of the Power and Duties of the City-School Superintendent. (Chicago: The University of Chicago Press, 1935), p. 124.

school board faced with perplexing educational problems. The typical board continued to exercise executive power through executive committees during the 19th century.⁸¹

Ieradi stated that although by 1883 all large cities had established the office of school superintendent, the position did not generally appear in non-city areas until after 1900.⁸² An exception to this generalization is Virginia, which appointed 1,400 county superintendents and trustees by 1871.⁸³

A second period of development of the superintendency covered the approximate years of 1910 to 1930. During this time school superintendents emphasized business management and operational efficiency.

Monahan and Hengst stated that boards of education were probably aware of the differences between ideology and cost, although their behavior did not always demonstrate this.

Accordingly, between 1870-1920 school superintendencies tended to develop in terms of the prevalent philosophy of 'scientific management' simply because at the stage of their evolution, public schools could probably not have survived without viable attention to the ideas of prudent fiscal oversight.⁸⁴

However, this role of business acumen was not unchallenged. Public confidence in the "infallible" businessman weakened with the depression in the 1930's. As a result, a human relations movement in

⁸¹Authur B. Moehlman, School Administration. (Boston: Houghton Mifflin, 1940), p. 246.

⁸²Ieradi, Description of Legal Powers, and Duties of Connecticut School Superintendents, p. 21.

⁸³Buck, Public Schools in Virginia, 1607-1952, p. 71.

⁸⁴William G. Monahan and Herbert R. Hengst, Contemporary Educational Administration. (New York: Macmillian Pub., Co. 1982), p. 36.

education gained momentum and tended to parallel the concurrent democratic administration movement. This focus upon human relationships became the main factor of emphasis in the third period in the development of the superintendency, 1930-1945.

A fourth period of superintendency development, 1945 to 1960, opened with the closing of World War II. Griffiths called this period one of the "professional school administrator," noting that this time was one in which the practice of following theories of administration became apparent.⁸⁵ Griffiths noted that this period of emphasis upon administrative theory did not completely overshadow previous concentrations of business management and humanism.⁸⁶

A fifth period of development for the superintendency may well be identified as one of change and challenge to authority and took place in the 1960's and 1970's. Personal style, leadership, role playing, and a host of uncontrollable factors made this a time of ferment for many. Cuban claimed that in this period the surviving superintendents were often the type who were able to see all problems, however, unique or large, as soluble. Cuban identified this type of superintendent as a "negotiator-statement."⁸⁷

The expectations of the superintendent's role for the fifth period of ferment were lofty. Knezevich listed fourteen typical

⁸⁵ Griffiths, School Superintendent, p. vii.

⁸⁶ _____, p. 31.

⁸⁷ Cuban, The Urban Superintendency, p. 28-29.

descriptions of the superintendent's responsibilities during this era. The list included many functions which were time consuming complex and involved.⁸⁸ It is not surprising that superintendents could not meet all the expectations the diverse backgrounds of their constituencies placed upon their shoulders. Cuban observed:

Competing role demands beset the superintendent. He was the chief executive, professional expert on education, advisor to the board and staff, and supervisor. Around these competency demands of the superintendent grew, as pearls around grains of sands, diverse views of the position.⁸⁹

Perception of superintendent's duties and authority has also varied from the viewpoint of the Board of Education and office of the superintendency. In 1977 the Virginia School Boards Association addressed this issue of diverse perception and stated, "Only when the board performs the functions of directors and the superintendent those of the executive, and neither upsurge the duties of the other, will the important work for which they are jointly responsible be successful."⁹⁰

However, Cuban implied that full cooperation has not always been possible.

Since boards determined employment, since boards and schoolmen could seldom clarify the blurred lines of authority between them, and since schools operated in a fluid environment, conflicting demands were placed upon both (school boards and superintendents) sets of actors.⁹¹

In summary, five identifiable periods of the development of the superintendency took place between the 1830's and 1970's. These

⁸⁸Kenzevich, Administration of Public Education, p. 344-345.

⁸⁹Cuban, The Urban Superintendency, p. 21.

⁹⁰Virginia, Virginia School Boards, p. 30.

⁹¹Cuban, The Urban Superintendency, p. 22.

periods did not always have a specific beginning and termination date, but tended to blend into each other. They were, respectively, founding and establishment, 1837-1910; business management, 1910-1930; humanistic concern, 1930-1945; professional school administration, 1945-1960; and ferment in the 1960's and 1970's. Each period's emphasis increased and decreased as time progressed, but no period lost its influence upon succeeding generations.

There has been an aggressive demand for increased services from the public schools by a diverse and knowledgeable constituency. The present study speculates that this demand has resulted in a corresponding increase in the legal authority of the division superintendent in Virginia from 1869 to 1970.

CHAPTER II
CERTIFICATED PERSONNEL

The legal authority of Virginia division superintendents in the area of certificated personnel has been revised since the inception of statewide public education in 1869-70.

This study hypothesized that there was an increase in the legal authority of Virginia division superintendents in the area of certificated personnel from 1869 to 1970. It was further hypothesized that increases resulted from mandatory acts of the Virginia General Assembly. Legal authority of division superintendents was examined by analyzing Virginia Constitutions from 1869 through 1970, as well as all applicable ensuing acts of the Virginia General Assembly.

Article VIII of the 1869 Constitution embraced the issue of free public education in Virginia. There was no specific reference to certificated personnel, although Section 12 gave widespread legal authority to the General Assembly. "The General Assembly shall fix the salaries and prescribe the duties of all school officers, and shall make all needful laws and regulations to carry into effect the public free school system provided for by this article."¹ As a result, legislation was enacted which affected certificated personnel.

Chapter 259 of the 1869-1870 Acts of General Assembly "An ACT

¹Article VIII, Section 12, Constitution of 1869.

to Establish and Maintain a Uniform Systems of Public Free Schools," gave organization and structure to the formation of the public free school system. The fourth clause of Section 14 in Chapter 259 specified the duties of county superintendents, stating that they shall:

. . . examine all persons applying for license to teach in the public free schools, and if satisfied to their capacity, acquirements, morals, and general fitness, to grant them certification of limited duration, subject to revocation; all done in accordance with directions from the superintendent of publication.²

Section 33 gave additional emphasis to this authority.

No teacher of public free schools shall be employed, or shall receive any pay from public funds, unless he or she shall hold a certification of qualification in full force, given to him or her by the county superintendent for the county with which he or she is employed.³

Summarily, in 1870 the division superintendent was charged with the duties of examining and granting certificates of limited duration, subject to revocation. Teachers were required to have certification of qualification granted to them by their superintendent before they could be employed or paid. The superintendent was also responsible for promoting improvement and efficiency of teaching.⁴ Although all of these duties were performed under directions from the superintendent of public instruction, the county superintendent was given basic authority of deciding who would be certified and employed, and how improvement of teaching could be encouraged.

²Chapter 259, 1870 Acts of the Assembly, Section 14, Fourth Clause. Approved July 18, 1870.

³ _____, Section 33.

⁴ _____, Section 14, Fifth Clause

On March 7, 1878, the General Assembly approved Chapter 161 which stated, "The teachers for each school district shall be chosen from among those licensed by the county superintendents."⁵ The effect of this law was to maintain the legal relationship between superintendents and certificated personnel which had been established in 1870.

The extra session of the General Assembly in 1884 gave clearer direction for certification of personnel. Section 1 of Chapter 126, "An ACT to regulate the licensing of teachers in public free schools," was essentially the same as earlier provisions. Section 2 added,

That each superintendent of schools shall hold examinations for those who desire to teach school in his county or city for the current school year, in each school district in his county or city, at such times and places as may be prescribed by the district boards, and after due notice of the same, and the said superintendent shall always examine for a teacher's license when required to do so by any district board of trustees.⁶

Incentive for compliance was added by Section 33. "Any superintendent of schools failing or refusing to perform the duties required of him by this act shall be fined not less than fifty nor more than five hundred dollars."⁷

In 1884 the superintendent was required to examine all persons applying to teach within his division and to grant certificates, both of these duties to be fulfilled within designated restrictions. In

⁵Chapter 161, 1878 Acts of the Assembly, Section 7. Approved March 7, 1878.

⁶Chapter 126, 1884 Acts of the Assembly (Extra Sessions), Section 2. Approved November 27, 1884.

⁷ _____, Section 33.

addition, the superintendent was not to hold examinations for those desiring to teach at such times and places as prescribed by the district boards, and to hold examinations for a teacher's license when required to do so by any district board of trustees. There was a possible financial penalty for noncompliance. Although the superintendent retained the same legal authority in relationship to certificated personnel as previously held, his duties were specified with details and restrictions.

In 1902 the Virginia Constitution was revised and approved by the General Assembly and the electorate. Article IX, Education and Public Instruction, addressed the issue of public education. Section 129 charged the General Assembly with maintaining an efficient system of public free schools. Although there was no specific reference to certification of personnel in this Article, it may be inferred that the authority to make provisions was granted by Section 129.⁸

Shortly after adoption of the 1902 Constitution, Chapter 509 the 1902-03-04 Acts of the General Assembly amended and re-enacted the laws relating to public free schools. Section 1476 declared, "Every teacher of a public free school shall hold a certificate in full force issued or approved by the division superintendent of schools for the division within which such teacher is employed."⁹ Although the superintendent

⁸ Article IX, Section 129, Constitution of 1902.

⁹ Chapter 509, 1902-03-04 Acts of the Assembly, (Extra Sessions), Section 1476. Approved December 28, 1903.

could now issue or approve a certificate, this did not reflect any basic change from the previously granted authority. Section 1433 charged the State Board of Education, "To provide for examining teachers for the public schools of the State by appointing a State Board of Examiners, or by the adoption of such other plans as the (State) Board of Education may, in its discretion, deem wise and expedient."¹⁰ This Section made it clear that the division superintendent no longer had exclusive legal authority or responsibility to provide for examination of teachers for licensing.

The first clause in Section 1481 of Chapter 509 reflected modifications in the area of teacher improvement and teacher meetings. "County or district school boards may encourage meetings of teachers to be held from time to time in any county or school district under such regulations as the division superintendent of schools may prescribe."¹¹ Previously, the division superintendent was mandated to promote teaching improvement, under directions from the Superintendent of Public Instruction. In 1903 the school board was given the option of encouraging teacher meetings for which the superintendent may or may not prescribe regulations. The agenda was open to the superintendent.

In 1904 the General Assembly approved Chapter 101. The teacher employment procedure was restated and the following clause was added, ". . . provided further, that no district school board shall employ or

¹⁰ Chapter 509, Section 1433.

¹¹ _____, Section 1481, First Clause.

pay any teacher from public funds, if said teacher is the brother, sister, wife, son, or daughter of any member of the board."¹² A possible personal financial penalty for any member of the board violating this restriction gave strength to this statement.¹³ This was the first time a nepotism or conflict of interest statute appeared regarding employment of public school personnel. The potential pool from which a superintendent could control employment was limited, but the essence of legal authority in the area of certificated personnel was not changed.

Chapter 248 of the 1906 General Acts of the Assembly included a modification regarding issuing certificates by division superintendents.

Every teacher of a public free school shall hold a certificate in full force, issued or approved by the division superintendent prior to July 1st, 1906, or after that date to be issued by the State Board of Examiners and Inspectors and approved by the superintendent of schools for the division within such teacher is to be employed.¹⁴

As a result, the division superintendent no longer issued certificates after 1906, but maintained the power of approval of certification for personnel before employment.

Chapter 423 of the 1922 Acts of Assembly declared: ". . . No teacher shall be employed or paid from public funds unless said teacher holds a certificate in full force in accordance with the rules of

¹²Chapter 101, 1904 Acts of the Assembly, Section 1466, Second Clause. Approved March 11, 1904.

¹³Chapter 101, Section 1481, First Clause.

¹⁴Chapter 248, 1906 Acts of the Assembly, Section 1476. Approved March 15, 1906.

certification laid down by the State Board of Education . . ."¹⁵

There was no mention of the responsibility of the division superintendent to approve a teacher for certification. Thus, the superintendent lost control of certification procedure in 1922. Section 18 of Chapter 423 stated, "The county school board shall employ teachers and place them in appropriate schools on recommendation of the division superintendent, and shall dismiss teachers when delinquent, inefficient, or otherwise unworthy."¹⁶ Although the division superintendent had lost his control over the issuing of certificates, the right of recommendation, previous to board hiring, left him with some control of the employment of teachers. From 1922 through 1970, the Board of Education could not hire teachers without the approval of the division superintendent.

In 1928 the Virginia Constitution was amended. Chapter 471, approved in the 1928 Acts of Assembly, revised, consolidated, amended and codified the school laws of Virginia. Section 660 of Chapter 471 was concerned with many aspects of the legal relationship between division superintendents and certificated personnel.

. . . The school board shall employ teachers and place them in appropriate schools upon the recommendation of the division superintendent, and shall dismiss them when delinquent, inefficient, or otherwise unworthy. The division superintendent shall have the authority to assign them to their respective positions of all teachers and principals employed by the board, and to reassign them, provided no change in reassignment shall affect the salary of such teachers; and provided further, that he shall make appropriate reports and explanations on the request of the board.¹⁷

¹⁵ Chapter 423, 1922 Acts of the Assembly, Section 18. Approved March 24, 1922.

¹⁶ Ibid.

¹⁷ Chapter 471, 1928 Acts of Assembly, Section 660. Approved March 26, 1928.

Thus, the division superintendent had to respond to the board's request for explanation, and a certificated employee could not have his/her salary reduced because of a reassignment. The division superintendent's legal authority to control employment by recommendation and to assign placement and reassignment in 1928 was expanded by including principals as well as previously mentioned teachers.

Section 665 of Chapter 471, in the 1928 Acts of Assembly, gave the division superintendent more authority to call for teacher's meetings. "The school board shall encourage meetings of teachers to be held from time to time in the county under such regulations as the division superintendent of schools may prescribe."¹⁸ An important change in this clause is the word "shall" which no longer gave the board the option of responding to a division superintendent's request.

A final change made in the 1928 Acts of Assembly in the area of certificated personnel was a small one. The board was forbidden from hiring any mother or father of a board member in addition to other relatives as stated in 1904.¹⁹ This possible decrease in the pool of potential candidates for recommendation did not change the essence of the division superintendent's authority.

Section 660, Chapter 412, 1930 Acts of Assembly, restated the same legal authority in the area of certificated personnel for division superintendents as found at the close of 1928, except it

¹⁸ Chapter 471, Section 665.

¹⁹ Ibid.

failed to include any prohibition against hiring relatives of the board.²⁰ The potential pool for recommendation by the superintendent was, therefore, increased. In 1936 a provision was added to Section 660 that stated the school board may not hire or pay from public funds any teacher or employee related (specifically - father, mother, brother, sister, wife, sone, daughter, son-in-law, sister-in-law or brother-in-law) to the division superintendent, starting July 1st, 1938, but not effective retroactively.²¹ In 1938 a further provision to Section 660 excluded the hiring of personnel related to either the division superintendent or any member of the board.²² Once again the potential pool of candidates for recommendation to hire by the division superintendent was reduced in 1936 and further reduced in 1938. However, the essence of the authority of the division superintendent remained in force.

Section 660 of the 1940 Acts of the Assembly, was amended when the following provision was added, ". . . provided that, where a teacher holding a certificate in force is not available, a former teacher holding an expired certificate may be employed temporarily as a substitute teacher to meet an emergency. . ." ²³ This amendment exempted from the

²⁰ Chapter 412, 1930 Acts of Assembly, Section 660. Approved March 25, 1930.

²¹ Chapter 314, 1936 Acts of Assembly, Section 660. Approved March 26, 1936.

²² Chapter 378, 1938 Acts of Assembly, Section 660. Approved March 31, 1938.

²³ Chapter 368, 1940 Acts of Assembly, Section 660. Approved April 1, 1940.

nepotism rule certain persons because of their relationship to any person regularly employed by any school board "prior to the taking of office of any member of such board, or division superintendent of schools."²⁴ These two amendments to Section 660 may be interpreted as having given the division superintendent an increase in legal authority in the area of certificated personnel by expanding the potential pool of eligibles for recommendation of employment.

In 1954 clarification was made of the authority of a board to hire uncertified substitutes based upon a division superintendent's recommendation.²⁵ In 1958 the division superintendent was given discretionary authority to allow graduates of four year accredited colleges or universities with two years of satisfactory teaching experience approved by the superintendent, to be deemed to have met requirements for a Collegiate Professional certificate. This enabled certain teachers to raise their certification level, based upon recommendation of the division superintendent, without taking more than nine semester hours in professional education courses beyond the bachelor's level. Furthermore, these nine extra hours could be modified or waived upon the discretion of the State Superintendent of Public Instruction based upon the recommendation of the division superintendent.²⁶ This act was a increase in the division superintendent's discretionary legal authority

²⁴ Ibid.

²⁵ Chapter 638, 1954 Acts of Assembly, Section 22-204. Approved April 7, 1954.

²⁶ Chapter 300, 1958 Acts of Assembly, Section 22-204. Approved March 12, 1958.

in the area of certification.

In 1956 the division superintendent lost the authority to control placement of teachers and principals in the building he deemed appropriate. The right to place these certificated personnel in a particular school building was given to the school board.²⁷ This authority remained constant until 1968 when Chapter 643, 1968 Acts of Assembly, gave the school board an option of passing the following provision regarding the division superintendent: ". . . after the school board has adopted a resolution authorizing the district superintendent to reassign teachers and principals, he may reassign any teacher or principal employed by the school board to any school within such division. . ."²⁸ If the school board so chose, they could give the superintendent authority of reassignment of teachers and principals to any school within their division. This was an increase of discretionary authority to the superintendent because the school board did not have to relinquish this power, and the division superintendent did not have to use it.

There was no further change by the General Assembly in the area of legal authority of division superintendents in the area of certificated personnel through 1970.

Summary

To investigate the hypothesis that from 1869 to 1970 there was

²⁷ Chapter 61, 1956 Acts of Assembly, Section 22-205. Approved September 29, 1956.

²⁸ Chapter 643, 1968 Acts of Assembly, Section 22-205. Approved April 5, 1968.

an increase in the division superintendent's legal authority in the area of certificated personnel and that these increases resulted from mandatory Acts of the General Assembly, it was necessary to review the Acts of the Assembly from 1869 to 1970 and the State Constitutions in effect during this time.

In 1870 the division superintendent was required to examine persons wishing to teach within his division and if satisfied, to grant necessary certification. He also was charged with the promotion of improvement and efficiency in teaching. These duties were to be conducted in accordance with directions from the State Superintendent of Public Instruction.

Between the 1869 and 1902 Constitutions, the division superintendent's legal authority in this area remained the same with a few additional specific directions and procedures.

In 1903 the examination for certification was given by the State Education Board of Examiners. The division superintendent still had to approve for certification all teachers within his division. This reflects a loss of legal authority. The school board was given the discretionary option of encouraging teacher meetings under the regulations which a superintendent may or may not choose to provide. Since the superintendent was not mandated to promote improvement and efficiency in teaching, the new school board was given the option of encouraging meetings. This was a loss of discretionary legal authority.

Between the 1902 Constitution and the 1928 revision, further changes in the division superintendent's legal authority in the area of certificated personnel were made. In 1904 the potential pool of people to choose for employment consideration was reduced with the

inclusion of restrictions. In 1906 the local superintendent no longer issued certificates to teachers. In 1922 he lost the power of approval before certification and thus lost all control and involvement with certification procedures. However, in 1922 the division superintendent gained the right of recommendation before the board could either place or employ teachers.

The division superintendent was granted only indirect control of employment for his own school division from 1870 through 1970. From 1870 to 1922 this was accomplished by the superintendent holding the power of approving certification which was necessary to be eligible for employment. From 1922 through 1970 the local superintendent could control the hiring process by holding the power of recommendation which was necessary before board employment.

Shortly after the revised 1928 Constitution became effective, the division superintendent gained the right of recommendation before the board placement or employment of not only teachers, but principals as well. Another gain in the superintendent's legal authority in 1928 was the enactment of a statute that required the school board to encourage teacher meetings under the division superintendent's regulations.

Further reduction in the potential pool of employees for consideration of board employment was enacted by statute in 1928. However, in 1930 all restrictions against hiring of any relatives were completely removed. The year 1936 saw this restriction reinstated and further reduced in 1938. However, in 1940 a provision was included which enabled the potential pool of employees to be increased to include former teachers holding expired certificates as temporary substitutes to meet emergencies. Also, a slight modification increasing

the potential pool of employable relatives was approved. This was further increased in 1954. Thus, the potential pool of employees available for hire, and the division superintendent's legal authority in the area of certificated personnel, were decreased in 1904, further decreased in 1928, removed in 1930, decreased in 1936, further decreased in 1938, and increased in 1940 and in 1954. However, in the period of 1954 through 1970 there were several restrictions on the potential pool of employees that were not present at all in 1870 through 1904.

The year 1956 saw the division superintendent lose control of placement of teachers and principals to the school board. In 1968 this authority was returned to the local superintendent, but only at the board's discretion. Although this 1968 Act resulted in an increase in the legal authority of the superintendent as compared to 1956, it was a discretionary increase.

Conclusion

Although there were several increases in the division superintendent's legal authority in the area of certificated personnel from 1869 through 1970, there were several decreases as well. Furthermore, not all of the increases were mandatory. A detailed description in 11 specific areas provided evidence for rejection of the first hypothesis.²⁹

The first hypothesis stated that there was an increase in legal authority of Virginia division superintendents in the area of certificated personnel from 1869 to 1970. It was further hypothesized that the increases resulted from mandatory acts of the Virginia General

²⁹Refer to diagram number 1.

Assembly. A summary of the powers reveals that the division superintendent lost his authority relating to certificated personnel in three areas while gaining, at the discretionary option of the board, in two areas. His legal authority remained the same in one area and decreased in one area. Because of the decrease in one area, discretionary increase at the board's option in two areas, and complete loss of authority in three areas, the first hypothesis was rejected.

Chapter III will explore the legal authority of Virginia division superintendent from 1809 to 1970 in the area of finance.

CHAPTER III

FINANCE

The legal authority of Virginia division superintendents in the area of finance has undergone revision since the inception of statewide public education in 1869-70.

This study hypothesized that there was an increase in the legal authority of Virginia division superintendents in the area of finance from 1869 to 1970. It was further hypothesized that increases resulted from mandatory acts of the Virginia General Assembly. Legal authority of division superintendents in the area of finance was examined by reviewing Virginia Constitutions from 1869 through 1970, as well as all applicable acts of the Virginia General Assembly.

Article VIII of the 1869 Constitution embraced the issue of free public education in Virginia. Section 8 stated that the annual interest on the literary fund, the capitation tax provided from public free school purposes, and an annual tax on property was to be used for equal benefit of all the people within the state. Counties and districts were allowed to raise additional sums by a tax on property for the support of public free schools.¹ There was no specific mention of the division superintendent's legal authority in the area of finance.

Chapter 259 in the 1869-70 Acts of Assembly specified duties

¹Article VIII, Section 8, Constitution of 1869.

and responsibilities of the division superintendent in the area of finance. The second clause of Section 14 of this chapter directed the superintendent, "To take the needful steps under directions from the superintendent of public instruction, to submit to the voters in each county the question whether the county shall raise additional sums, by taxation therein, for the support of public free schools, . . ."12

The same clause stated that if the votes in any county on this issue came out equally, "the county superintendent of school shall give the casting vote."3

The third clause of Section 14, Chapter 259 charged the division superintendent to, "Prepare annually and whenever necessary, under the directions of the superintendent of public instruction, a scheme for apportioning the state and county funds among the school districts within each county under his supervision."4 This scheme required approval by the superintendent of public instruction and then a copy was sent to the county treasurer, clerk of each school district, and editor of each newspaper within the county.5

Both the second and third clauses of Section 14 specified that the county superintendent was to act under the directions of the superintendent of public instruction, except where the county superintendent was directed to cast the deciding vote when the voting

² Chapter 259, 1869-70 Acts of Assembly, Section 14, Second Clause. Approved July 11, 1870.

3 _____.

4 _____, Third Clause.

5 _____.

residents of the county were tied on the issue of raising additional taxes for the support of public free schools.

Section 22 of Chapter 259 directed the clerk of the district school board of trustees to keep a record of all board transactions and to keep this record open to the inspection of the county superintendent of schools, as well as every other citizen of the district. Thus, the superintendent could check on any district's cash account as necessary.⁶

Section 29 of Chapter 259 established the precedent for prohibiting public free school superintendents (as well as all other school officers and employees) direct or indirect financial gain from procurement or selection of textbooks, contracts, building materials and other school apparatus. An exception to this regulation was allowed when the school employee was an author or inventor and the product was to be used in his own school district. The school board had the option of allowing royalties to be awarded in a regular fashion, provided the selection process was not altered in any way.⁷

Section 40 of Chapter 259 gave the county superintendent the right to decide how best to invest donations given to the county for the benefit of public free schools. Although the school district trustees were to manage and apply all donations to the district schools, the county superintendent was to invest county donations.⁸

⁶ Chapter 259, Section 22.

⁷ _____, Section 29.

⁸ _____, Section 40.

Section 46 of Chapter 259 proclaimed that no state money was to be paid for a public school until there was a written statement filed with the county superintendent and signed by the chairman and clerk of the board of district school trustees testifying that school had been kept in operation for at least five months during the current school year, or that arrangements had been made to do so.⁹ This act gave the division superintendent the authority to check on compliance with the law.

Section 60 in Chapter 259 involved the county superintendent with a part of the process of securing state appropriated money for the county.

At the proper time each county superintendent of schools shall notify the county treasurer, in writing, that the state money apportioned to the county is ready for distribution, where upon the county treasurer shall forthwith make requisition in due form upon the second auditor of the state for the amount specified; and as soon as the money has been received into the county treasury, it shall be the duty of the treasurer to inform the county superintendent of the fact.¹⁰

The first paragraph of Section 61, Chapter 259, directed the county superintendent to sign and draw a warrant for his own pay, so far as it was to come from the county funds. This warrant was to be presented to the county treasurer and was to include a written explanation of why such pay or allowance was claimed.¹¹

The final legislation that affected the legal authority of the division superintendent in the area of finance to be approved by the

⁹ Chapter 259, Section 46.

¹⁰ _____, Section 60.

¹¹ _____, Section 61.

General Assembly in 1870 was Section 62 of Chapter 259. This section directed the treasurer of each county once a year, or as often as required, to render to the county superintendent an account of all receipts and disbursements of all school monies passing through the treasurer's hands during the year and to exhibit vouchers for disbursements. After examining such accounts and vouchers, the county superintendent was to transmit the account to the superintendent of public instruction and report whether or not the vouchers were satisfactory.¹² For this exercise, the division superintendent became the focus of control of the actions of the county treasurer in fiscal matters relating to local public schools.

Chapter 107 in the 1871-72 Acts of Assembly provided for the organization of county school boards. Section 8 of this act amended and re-enacted Section 40 of Chapter 259, approved in 1870. "When real or personal property is, or has been, donated to any county for the benefit of public free schools within its limits, the same shall be vested in the county school board of the county, and the same shall be managed and applied by the said county school board. . ."¹³ With the approval of this act, the county superintendent no longer had legal responsibility to manage the donated resources of the county school districts.

Section 10, Chapter 107, 1871-72 Acts of Assembly, declared that when any county treasurer or clerk of a district school board

¹²Chapter 259, Section 62

¹³Chapter 107, 1871-72 Acts of Assembly, Section 8. Approved February 21, 1872.

should fail to provide his books and papers (records) to the county school board he would be fined five dollars.

Moreover, it shall be the duty of the county superintendent, before sending his annual report to the superintendent of public instruction, to visit and examine the books and papers of every such delinquent officer, and to make a special report thereon in connection with his annual report.¹⁴

Section 6 of Chapter 348, 1871-72 Acts of Assembly, repealed the second clause of the 14th section of Chapter 259, approved in 1870. As a result, the county superintendent was no longer to submit, or vote in the question of raising county taxes for support of public free schools.¹⁵

Chapter 243, approved by the General Assembly in 1877, altered the way in which the county superintendent was to be paid. Section 13 specified that the pay of the county superintendent was to be based on the population of his respective districts and counties and to be given in quarterly installments from state school funds.¹⁶ With the inception of this act, county superintendents were no longer responsible for submitting warrants to the county treasurer for any portion of their salary.

In 1878 the General Assembly approved Chapter 248 which was the first of a series of acts aimed at securing state money for the support

¹⁴Chapter 107, Section 10.

¹⁵Chapter 348, 1871-72 Acts of Assembly, Section 6. Approved March 26, 1872.

¹⁶Chapter 243, 1876-77 Acts of Assembly, Section 13. Approved March 29, 1877.

of public free schools.¹⁷ Chapter 177, entitled "An ACT to secure the Public Free Schools the money set apart by the constitution and laws for their benefit," was approved by the General Assembly in 1879 and formally involved the county superintendent. Section 1 stated that once the state auditor of public accounts had ascertained the total amount of funds applicable for the public schools, three-quarters was to be used for the basis of distribution and warrants were to be made to the state treasurer in favor of the superintendent of each county or city for the amount each was entitled to receive. When the warrant was endorsed by the local superintendent to the treasurer of his county or city, it was to be paid by the treasurer of the state. Section 2 stated that the superintendent of schools for each division was required to endorse and deposit with the county treasurer each warrant upon receipt. Section 3 declared that all warrants drawn by district school boards upon the public school funds of the state had to be approved by the division superintendent. The county or city treasurer was directed not to pay any warrant from state funds unless it was issued by the division superintendent and only if the aggregate total amount in reserve was greater than the warrant. The division superintendent could be fined if he overdrew his account. Section 4 specified that at not less than one general meeting prior to July 1, of each year, the school trustees of each county were required to compare warrants issued by the division superintendent and report the

¹⁷Chapter 248, 1877-78 Acts of Assembly. Approved March 14, 1878.

result to the superintendent of public instruction. Section 5 provided an example of the warrant to be used and contained a place for the superintendent of public free schools to sign.¹⁸

Chapter 254 in the 1881-82 Acts of Assembly¹⁹ and Chapter 373 in the 1885-86 Acts of Assembly 20 made modifications of Chapter 177 from 1879, but the legal authority of the division superintendent remained constant. The county superintendent was to deposit state issued warrants with the county treasurer upon receipt. He was then to approve and sign all county issued warrants drawn by district school boards. He was not to approve more to be paid than had been set aside for this purpose. Lastly, at least once a year the county school board checked all warrants of district school trustee boards and compared them to the superintendent's warrants and reported the results to the superintendent of public instruction.

Section 1520 of the 1887 Code of Virginia required that the county school board prepare an estimate of the amount of money needed to operate the schools for the next year and file the estimate with the county superintendent. After preparation of the estimate it ". . . shall be submitted by him (county superintendent) to the board of supervisors at their annual meeting in July."²¹ It is assumed that

¹⁸Chapter 177, 1878-79 Acts of Assembly, Sections 1-5. Approved March 3, 1879.

¹⁹Chapter 254, 1881-82 Acts of Assembly, Sections 1-5. Approved March 6, 1882.

²⁰Chapter 373, 1885-86 Acts of Assembly, Sections 1-5. Approved March 3, 1886.

²¹1887 Code of Virginia, Section 1520, Chapter 66, Title 22. In force May 1, 1888.

with approval of the 1887 Code of Virginia that the county superintendent received an estimate from the county school board of the amount of money necessary for the next year, and presented this estimate to the board of supervisors.*

Chapter 25, 1889-90 Acts of Assembly, amended and re-enacted sections 1508, 1509 and 1510, and repealed section 1511 of the 1887 Code of Virginia.

Section 1508 of Chapter 25 specified that upon receiving the state warrant for funding, each county and city superintendent must endorse and deposit it with the county treasurer. This represents no change from previous statutes. In addition, the warrant was to be submitted ". . . with a written statement showing the amount to be placed to the credit of each school district."²² With approval of this section, the county superintendent no longer merely signed and deposited the state issued warrant, but attached a statement detailing credit for each school district.

Section 1509 of Chapter 25 stated, "All warrants drawn by district school boards upon state funds shall be paid by the treasurer out of any state funds collected by him."²³ There was no mention of any responsibility of the county superintendent to sign or approve county

*The specific reference of the 1887 Code of Virginia, to Chapter 243, 1876-1877 Acts of Assembly, was substantially different from Section 1520 of the 1887 Code. Attempts at locating revisions between 1877 and 1887 were made, but a revision was not located.

²²Chapter 25, 1889-90 Acts of Assembly, Section 1508. Approved January 24, 1890.

²³ _____, Section 1509.

school issued warrants. Therefore his legal duty in this particular function was discontinued.

Section 1510 of Chapter 25 declared, "At the annual meeting in August of each year the school board shall compare the warrants issued by each district board with those paid by the (county) treasurer, and report the results to the superintendent of public instruction."²⁴ Again, no involvement of the local superintendent was required with passage of this section.

The last section of Chapter 25 repealed Section 1511 of the 1887 Code of Virginia.²⁵ Section 1511 provided an example of the county issued warrant which included a place for the county superintendent's signature.

The last act of the General Assembly pertaining to the authority of local superintendents in the area of finance before adoption of the 1902 Constitution was Chapter 693 of the 1893-94 Acts of Assembly. Section 1 designated that it was the duty of the superintendent of schools in any county or city to require the county or city treasurer to furnish a statement to him within 30 days of any refusal to pay a warrant drawn on the treasurer for school purposes. This statement was to include all the money in the treasurer's hand or collected by him for school purposes, whether it be state, county or district funds, along with an explanation of disbursement.²⁶ If the treasurer refused

²⁴ Chapter 25, Section 1510.

²⁵ _____, Section 1511.

²⁶ Chapter 693, 1893-94 Acts of Assembly, Section 1. Approved March 3, 1894.

such request it was the duty of the superintendent to notify the school board of such refusal. The school board was then to transfer all school funds to another depository.²⁷

Article IX of the 1902 revised Virginia Constitution addressed many issues of free public education. Section 135 declared that the General Assembly shall apply annual interest on the literary fund, capitation tax, and annual property tax for equal benefit of all people and schools of the state.²⁸ Section 136 allowed each county, city, town, and district to raise additional sums by a tax on property to support local schools.²⁹ There was no specific mention of involvement for the division superintendent in the financial affairs of public schools in the 1902 Constitution.

Chapter 509 of the 1902-04 Acts of Assembly specified duties and responsibilities for division superintendents in the area of finance. Several of these did not change the existing authority at the time of revision. Section 1447 required that the division superintendent have or file the county school board's annual estimate of funds needed for operation for the following year. The division superintendent was to continue to present this estimate to the board of supervisors.³⁰

²⁷ Chapter 693, Section 2.

²⁸ Article IX, Section 135, Constitution of 1902.

²⁹ _____, Section 136.

³⁰ Chapter 509, 1902-03-04 Acts of Assembly (Extra Sessions), Section 1447. Approved December 28, 1903.

Section 1472 stated that the division superintendent was not to have pecuniary interest in the affairs of the schools. He was to continue to inspect the books and papers of county treasurers or district clerks who failed to give them to the county school board. After inspection, the superintendent was required to make a special report to the state superintendent of public instruction concerning the results of the inspection.³¹ No school could receive state funding until there was a written statement signed by the chairman of the local school board on file with the county superintendent stating that school had been kept in operation five months within the previous year, or that plans for such action had been secured for the next year.³² At the proper time, each division superintendent was to continue to notify the county treasurer that the state money apportioned to the county in cash was ready for distribution.³³ The clerk of the district school boards was required to keep a record of cash accounts and to keep the record open for inspection by the county superintendent.³⁴

Some modifications were made in the authority of the division superintendent with the approval of Chapter 509 in 1903. Although the county treasurer was required to submit his school accounts to the division superintendent, he had to do so only once a year, within ten

³¹ Chapter 509, Section 1472.

³² _____, Section 1485.

³³ _____, Section 1491.

³⁴ _____, Section 1516.

days of December first. The division superintendent was no longer required to send a report after examination of such account to the state superintendent of public instruction.³⁵

Sections concerned with warrants were slightly altered in 1903. Section 1507 continued to require that the division superintendent sign and deposit with the county treasurer the state issued warrant with an explanation of each district's share of credit. However, Section 1510 specified that at the annual meeting the county school board was to compare warrants issued by district school boards to those paid by the county treasurer, "and through the division superintendent of schools," report the result to the superintendent of public instruction.³⁶

Immediately previous to this act, the division superintendent was not involved with reporting results of warrants to the superintendent of public instruction. Section 1484 directed the superintendent to keep all cancelled county and city warrants issued for school purposes for at least twelve months before destroying.³⁷

In 1903 the division superintendent lost the responsibility to prepare a scheme for apportionment of funds. Section 1433, assigned to the State Board of Education the responsibility of approving or amending a scheme prepared by the superintendent of public instruction for apportioning money appropriated by the state for public free school purposes.³⁸

³⁵ Chapter 509, Section 1464.

³⁶ _____, Sections, 1507, 1508, 1510.

³⁷ _____, Section 1484.

³⁸ _____, Section 1433, Thirteenth Clause.

The Virginia Code of 1904 stated that it was the duty of the division superintendent to require the city or county treasurer to submit a record of all monetary actions within 30 days if the treasurer did not honor any warrant drawn for school purposes. This statute was exactly the same as the one approved in 1894 and was not amended or repealed in the recodification of 1903. Therefore, it is assumed that this duty of the division superintendent was continued through 1903 to approval in the Virginia Code of 1904.³⁹

Chapter 211 of the 1906 Acts of Assembly contained a section which specified that the superintendent of any division in which a high school was established, "shall give due notice of the same to the State Board of Education before any state funds shall be appropriated for support of such school."⁴⁰ The county treasurer was directed to make detailed reports of receipts and disbursements of the high school fund to the division superintendent.

In Chapter 330, approved by the General Assembly in 1908 was an Act by which the state auditor issued state warrants for school appropriations upon the treasurer of the state, payable to the treasurer of each city or county.⁴¹ Chapter 155, also approved in 1908, repealed Virginia Code, Section 1508.⁴² With these changes the division

³⁹1904 Code of Virginia, Section 1506a. Approved, August 4, 1904.

⁴⁰Chapter 211, 1906 Acts of Assembly, Section 3. Approved, March 14, 1906.

⁴¹Chapter 330, 1908 Acts of Assembly. Approved March 14, 1908.

⁴²Chapter 155, 1908 Acts of Assembly. Approved March 10, 1908.

superintendent was removed from all involvement with state issued warrants for county and city school funds.

Chapter 393, in the 1908 Acts of Assembly, continued the responsibility of the county school board to file an estimate of the next year's operating expenses with the division superintendent and having him present the estimate to the county board of supervisors. However, the date this was to be accomplished was changed from July 1st to April 1st.⁴³

Chapter 310, also in the 1908 Acts of Assembly, directed the county and district school boards to publish an annual report of receipts and disbursements. Furthermore, "It shall be the duty of the division superintendent of schools to see that the said statement is published and posted at the courthouse, as aforesaid."⁴⁴ This was the first legal responsibility for the division superintendent for publishing the annual report of receipts.

Chapter 138, 1910 Acts of Assembly, ordered the district superintendent or the county school board of each county involved to make a "pro rata apportionment" of county and state school funds whenever a school district was situated in more than one county in the state.⁴⁵

Chapter 296, 1912 Acts of Assembly, required the division superintendent to sign and deposit the state issued warrant containing

⁴³Chapter 393, 1908 Acts of Assembly. Approved March 3, 19810.

⁴⁴Chapter 310, 1908 Acts of Assembly. Approved March 14, 1908.

⁴⁵Chapter 138, 1910 Acts of Assembly. Approved March 11, 1910.

division school appropriations.⁴⁶ Chapter 55, 1914 Acts of Assembly, directed that the appropriation be sent directly to the city or county treasurer, which removed the division superintendent's responsibility in this area.⁴⁷

In 1920 two statutes were approved which involved the authority of the division superintendent. Chapter 72 declared that the State Board of Education would control funding for all high schools.⁴⁸ The division superintendent did not have to give due notice to the State Board of Education that a high school was established before state funds were given with passage of this act. Chapter 82, specified that no state money would be given for county or city schools until there was evidence filed with the State Board of Education, signed by the local superintendent of schools, that the schools of the district had been in operation seven months during the previous year, or the arrangements had been made to do so for the following year. When possible, schools were urged to be kept in operation nine months.⁴⁹ Besides requiring schools to be open seven months instead of five, this act had the division superintendent sign the qualifying statement to be sent to the State Board of Education.

An act to create and prescribe the powers of county school

⁴⁶Chapter 296, 1912 Acts of Assembly. Approved March 14, 1912.

⁴⁷Chapter 55, 1914 Acts of Assembly. Approved March 10, 1914.

⁴⁸Chapter 72, 1920 Acts of Assembly. Approved February 21, 1920.

⁴⁹Chapter 82, 1920 Acts of Assembly. Approved February 25, 1920.

boards, and to abolish district school boards was approved by the General Assembly in 1922. Sections 6 and 7 of Chapter 423 altered the authority of the division superintendent for preparation and presentation of the annual estimate of school needs. "It shall be the duty of the county board on or before the first of April of each year to prepare, with the advice of the division superintendent, an estimate of the amount of money which will be needed during the next scholastic year for the support of the public schools of the county."⁵⁰ On the basis of this estimate the county school board was directed to request the board of supervisors to fix a levy to generate the money necessary for the operation of the schools for the following year.⁵¹ As a result of these two actions, the division superintendent was required to give his advice to the county school board for the preparation of the estimate of needs. However, instead of the superintendent giving this request to the board of supervisors, the county school board was directed to do so. Section 10 of Chapter 423 ordered the county school board to publish an annual statement showing all receipts and disbursements of the school fund for the county.⁵² No involvement was required from the division superintendent for this activity which represented a change from previous responsibility.

The school laws of Virginia were revised, consolidated, amended

⁵⁰ Chapter 423, 1922 Acts of Assembly, Section 6. Approved March 24, 1922.

⁵¹ _____, Section 7.

⁵² _____, Section 10.

and codified with approval of Chapter 471 in the 1928 Acts of Assembly. Acts not consistent with amended statutes were repealed. Since the authority of the division superintendent in finance was curtailed with Chapter 471, all relevant sections of Chapter 471 were reviewed.

Three sections of Chapter 471 continued to maintain the same authority for the division superintendent in the area of finance previously held. Section 647 required the division superintendent to sign a statement testifying schools had been in operation at least seven months during the previous year.⁵³ Section 708 prohibited the division superintendent from having pecuniary interest in the affairs of the school district.⁵⁴ Section 614 directed the clerk of the county school board to keep a record of receipts and disbursements and to keep this record open for inspection by the division superintendent.⁵⁵

Remaining sections of Chapter 471 of the 1928 Acts of Assembly addressed the relationship of the division superintendent in regards to finance altered his legal authority in this area.

Section 652 of Chapter 471 proclaimed:

The superintendent of schools shall keep in his office a record for the purpose of keeping an accurate report of all receipts and disbursements of school funds, and all statistical information which may be required by the State Board of Education in the uniform report to be submitted to it by the superintendent of schools.⁵⁶

⁵³ Chapter 423, 1928 Acts of Assembly, Section 647. Approved March 26, 1928.

⁵⁴ _____, Section 708.

⁵⁵ _____, Section 614.

⁵⁶ _____, Section 652.

This was a new duty for the superintendent, and it increased his responsibility for maintaining financial records.

Section 657 of Chapter 471 was concerned with the annual operating estimate for the school district. With passage of this act the division superintendent was directed to prepare the estimate with advise from the school board. Upon school board approval the estimate was to be presented, with a request for appropriate funds, to the governing body by the division superintendent.⁵⁷ For the first time, the division superintendent was assigned the duty of preparing the estimate, with advice of the school board. He was once again directed to present the estimate to the governing body.

From 1928 through 1970 two changes were made in the authority of division superintendents in the area of finance. In the first of these changes the minimum length of the school year for all school districts receiving state funds was increased to eight months in 1930.⁵⁸ In 1940 it was increased to nine months with a school board option to have a seven and a half month year with a six day school week.⁵⁹ The optional seven and a half month year was withdrawn in 1956 when the nine month minimum was restated.⁶⁰ However, the division superintendent's

⁵⁷ Chapter 423, Section 657.

⁵⁸ Chapter 412, 1930 Acts of Assembly. Approved March 25, 1930.

⁵⁹ Chapter 182, 1940 Acts of Assembly. Approved March 12, 1940.

⁶⁰ Chapter 67, 1956 Acts of Assembly (Extra Sessions). Approved September 29, 1956.

authority remained the same from 1920 through 1970 regarding the length of the school year. He was directed to sign a certificate stating that schools were in session for at least the minimum amount of time specified by the General Assembly before the school district was eligible to receive state funding.

The second and final modification in the division superintendent's authority in the area of finance between 1928 and 1970 occurred in 1959. The division superintendent was required to prepare two budget estimates with the advise of the school board. The first estimate was to reflect the amount of money deemed necessary to support the public schools. The second estimate was to show the amount of money deemed necessary for educational purposes.

The support of public schools estimate was to include charges for instruction, overhead, operation maintenance, auxiliary agencies, new school buses, equipment, permanent capitalization, miscellaneous and other items as may be necessary. The educational purposes estimate was to show the number of school aged children residing within the district multiplied by the expected average cost per child to the district and a sum sufficient for debt service. The division superintendent was then directed to request the local governing body to fix a levy or make appropriations to provide an amount of money deemed to be needed for the operation of public schools, or to provide money necessary for educational purposes.⁶¹

⁶¹Chapter 67.

Summary

To investigate the hypothesis that from 1869 to 1970 there has been an increase in the legal authority of the division superintendent in the area of finance and that these increases have resulted from mandatory Acts of the General Assembly, it was necessary to review the Acts of the Virginia General Assembly from 1869 to 1970 and the State Constitutions in effect during this time.

In 1870 the superintendent of schools was assigned several duties and responsibilities by the General Assembly in the area of finance. Four of these were duties that provided no opportunity for decision making. Under the direction of the state superintendent, the superintendent was required to submit to the voters in each county the question of raising additional sums for public free schools by taxation. The superintendent was required to prepare a scheme for allocating state and county funds among all school districts within his jurisdiction, again under the direction of the state superintendent. Before state funds could be applied to any school the county superintendent was required to have on file certification stating that the school had either been in operation five months of the previous year or that plans had been completed to arrange for five months of operation in the following year. The superintendent was then to notify the county treasurer that state money apportioned for the county was ready for distribution. In none of these activities was the superintendent given opportunity to use his own discretion.

The superintendent was prohibited in 1870 from using his position for pecuniary gain. He was to serve as a local control on the activities of the county treasurer by being required to collect and

review the records of all receipts and disbursements of the county treasurer at least once a year. This review of the treasurer's accounts was transmitted to the superintendent of public instruction through an annual mandatory report. The clerks of all district school boards were required to keep open their books of official school board action for use by the superintendent.

Two areas in which the superintendent was given opportunity to use his own judgment were approved by the General Assembly in 1870. If any county voters were tied in a referendum over the issue of raising county taxes to support public free schools, the superintendent was to cast the deciding vote. The superintendent was required to manage and apply property donated to his county for the benefit of public free schools.

Lastly, in 1870 the superintendent was required to draft and sign a warrant for the portion of his salary that would be allocated to local funds. This warrant was then presented to the county treasurer and was accompanied by a written explanation of the basis of the claim.

In 1872 the county school board was charged with investing donated property of the county intended for public free school purposes. The superintendent was no longer to submit to the county voters any question concerned with raising funds for public schools by taxation, or to vote in case of a tie regarding this question. Authority for each of these duties was taken from the superintendent.

In 1872 an added responsibility of the superintendent was to visit and examine the financial records of all delinquent county treasurers or clerks of the district board and to make a special report on the findings in the annual report to the state superintendent of

public instruction. In 1877 the superintendent was no longer responsible for submitting warrants for any portion of his own salary.

In 1878 the superintendent received a state issued warrant for a percentage of the total state funds the county or city was entitled to receive. Upon receipt of this warrant, the superintendent was to sign and deposit it with the treasurer of the county or city. All warrants drawn by district school boards were required to receive approval by the superintendent. He was subject to a state imposed fine if he allowed a warrant to be cashed for more money than was on deposit in the account. At one general meeting a year, school trustees of each county were required to compare warrants issued by district boards with those issued by the division superintendent and to report the results to the superintendent of public instruction.

Beginning in 1888 the county school board was required to prepare an estimate of money needed to operate schools for the following year and file the estimate with the superintendent. After receiving this estimate the superintendent submitted it to the Board of Supervisors.

In 1890 the superintendent was authorized to sign and deposit state issued warrants and to submit a written statement with the deposit showing the amount to be placed to the credit of each school district. The superintendent no longer was required to sign or approve county issued warrants and was not responsible for keeping records of the total of county warrants issued against the amount on deposit.

If a county or city treasurer did not honor a warrant drawn for school purposes in 1894, the superintendent was ordered to require the county or city treasurer to furnish a statement to him within 30

days of such refusal. This statement was to include an accounting for all money collected, owed and spent for state, county or district purposes. If this request for information by the superintendent was refused by the treasurer, the superintendent was to notify the school board which would take remedial action.

Between the approval of the 1869 and 1902 Constitutions, the division superintendent's legal authority in the area of finance was reduced in several decision-making and mandatory clerical type of activities but increased in other activities.

In 1903, shortly after the acceptance of the 1902 Constitution, the superintendent had no legal responsibility to prepare a scheme for apportionment of state and county funds. At the annual meeting the county school board was required to compare warrants issued by district school boards and those paid by the county treasurer and then to report to the superintendent of public instruction through the office of the superintendent. The superintendent was also required in 1903 to keep all used school warrants on file for at least twelve months. Other legal responsibilities of the division superintendent in the area of finance remained unchanged.

Between 1903 and the 1928 revision of the Constitution several changes in the division superintendent's legal authority in the area of finance were made. In 1906 the division superintendent was required to give due notice of the establishment of any high school before state funds could be appropriated for the school. In 1908 the superintendent was relieved of all responsibility involved with county issued warrants. The division superintendent was required in 1908 to post a statement of school receipts and disbursements at the county courthouse.

In 1910 the superintendent or the county school board of each involved county was required to make a pro rata apportionment of county and state school funds whenever a school district was situated in two or more counties within the state.

Although the superintendent still had to sign and deposit state issued warrants for public school purposes in 1912, he did not have to include an explanation of disbursement. In 1914 this appropriation was sent directly to the county or city treasurer which removed the superintendent from all responsibility in securing state issued warrants.

In 1920 the State Board of Education controlled funding for high schools, removing the superintendent from any responsibility in this area. The superintendent did have to sign a statement attesting to the minimum operation of schools before being eligible for state funds. Previous to 1920 the statement had to be filed with the superintendent.

In 1922 the annual estimate of operating costs was to be prepared by the county school board, but with the advice of the superintendent. Although this represented a gain of legal authority, the superintendent lost authority when the county school board was directed to present the estimate to the Board of Supervisors rather than the division superintendent. The superintendent was no longer required to post the record of disbursements and receipts in 1922.

In 1928 a major revision of the school laws was approved by the General Assembly. Shortly after the revised 1928 Constitution became effective, several duties of the superintendent were repealed. He was no longer required to inform the county treasurer when state funds were

ready to be disbursed, nor did he have to examine the report of the treasurer regarding vouchers and unreported accounts. If the treasurer did not pay any school issued warrant, the superintendent had no further responsibility. He also did not have to file cancelled warrants or make pro rata apportionment among school districts.

The superintendent was not required in 1928 to maintain a record for the purpose of keeping accurate financial accounts of school funds. Another change in 1928 was the designation that the superintendent prepare the annual estimation of operation with advice from the county school board. He was also once again directed to present the estimate and request appropriate funds from the Board of Supervisors.

Between 1929 and 1970 only one modification in the division superintendent's legal authority in the area of finance was made. In 1959 the division superintendent was required to prepare an estimate necessary to support public schools and a separate estimate necessary for educational purposes. All other responsibilities of the division superintendent in the area of finance remained the same through 1970.

Conclusion

Although there were several mandatory increases in the legal authority of the division superintendent in the area of finance from 1869 through 1970, there were several decreases as well. A detailed description of 22 specific areas provided evidence for rejection of the second hypothesis.⁶²

⁶²Refer to diagram Number 2.

The second hypothesis stated that there was an increase in the legal authority of Virginia division superintendents in the area of finance from 1869 to 1970. It was further hypothesized that the increases have resulted from mandatory acts of the Virginia General Assembly. A summary of the powers reveals that the division superintendent lost his authority relating to finance in seven areas while gaining in four areas between 1870 and 1970. His legal authority remained the same in two areas and was temporary increased and subsequently removed in nine areas. Because of the decreases in seven areas the second hypothesis was found to be only partially accepted and was, therefore, rejected.

Chapter IV will explore the legal authority from 1869 to 1970 in the area of buildings.

CHAPTER IV

BUILDINGS

The legal authority of Virginia division superintendents in the area of buildings was revised after the inception of statewide public education in Virginia in 1869-70.

The third hypothesis of this study specified that there was an increase in the legal authority of division superintendents in the area of buildings from 1869 to 1970. It was further hypothesized that increases resulted from mandatory Acts of the Virginia General Assembly. Legal authority of division superintendents was examined by analyzing Virginia Constitutions from 1869 through 1970, as well as all applicable Acts of the Virginia General Assembly.

As indicated in Chapter Two, Article VIII of the 1869 Constitution addressed the issue of free public education in Virginia. There is no mention of the division superintendent's legal authority in the area of buildings in this document. However, Section 12 gave the General Assembly the right to prescribe responsibility stating "The General Assembly shall . . . prescribe the duties of all school officers, . . ." ¹

Section 14, Chapter 259, of the 1870 Acts of Assembly enumerated the prescribed duties of each county superintendent. The seventh

¹Article VIII, Section 12, Constitution of 1869.

clause of this section designated that the county superintendent shall have responsibility, "to visit and examine all the schools and school districts under his care as often as practicable, to inquire into . . . , the condition of the school-houses, sites, out-buildings and appendages, . . ." ² He was also empowered, ". . . when necessary, to take lawful measures to abate nuisances, or to condemn, as unfit to be longer used, any school houses, the occupancy of which, for any reason, is likely to endanger the health of the pupils." ³

Section 43 of the same Chapter 259, specified,

In erecting or providing school houses for public free schools, the utmost economy shall be observed consistent with health and decency, and no house shall be erected without first consulting with the county superintendent concerning the style and structure and the arrangements about the buildings and grounds. ⁴

. . . , and when a schoolhouse shall appear to the county superintendent of schools to be unfit for occupancy, it shall be his duty to condemn the same, and immediately to give notice thereof, in writing to the chairman of the board of district school trustees . . . no part of county or state fund would be applied to support any school until the county superintendent certify in writing to the district school board trustees he is satisfied with the condition of such building and with the appliances pertaining thereto. ⁵

The final section of Chapter 259 that pertained to the local superintendent's legal authority for buildings was Section 55 which declared, "When funds apportioned to a county are not sufficient to

²Chapter 259, 1869-70 Acts of Assembly, Section 14, Seventh Clause. Approved July 11, 1870.

³ _____.

⁴ _____, Section 43.

⁵Chapter 259.

allow for a school in every district thereof, the location of the school or schools to be established shall be determined by convention, summoned and presided over by the county superintendent. . ."⁶

Representatives of each board of district school trustees in the county were to hear the case for each side and vote on their decision. "In the case of an equal number of votes on both sides in any such convention, the casting vote shall be given by the county superintendent."⁷

In 1872, Section 2 of Chapter 370, Acts of Assembly, repealed Section of Chapter 258, approved in 1870.⁸ The division superintendent lost the authority to hold a meeting, preside, and vote in the case of a tie when there was a concern because of the location of a school building.

Section 53 of Chapter 310, approved by the Assembly in 1875 specified that the board of school trustees provide suitable schoolhouses with proper furniture and appliances in every school district. To that end they could hire, purchase or build schoolhouses according to the exigencies of the district and the needs at their disposal.⁹ This was the same status that existed before 1875 and did not affect the county superintendent's authority in the area of buildings.

⁶Chapter 259, Section 55.

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_____.

⁸Chapter 370, 1871-72 Acts of Assembly, Section 2. Approved March 26, 1972.

⁹Chapter 310, 1874-75 Acts of Assembly, Section 53. Approved March 10, 1875.

Section 53 added a clause which stated:

Provided only five heads of families belonging to the district who feel aggrieved by the action of the district board in fixing the location of a schoolhouse in a particular spot, shall be allowed to appeal from such action to a special board of reference composed of the county superintendent as president and any two trustees whom he may associate with him from any other district in the county except one under consideration. On written request of the heads of families to hold a meeting this board shall hear both sides of the case and decide where the schoolhouse in question shall stand; which decision shall be final.¹⁰

Thus, when there was concern about the location of a schoolhouse as expressed by five family heads, the county superintendent was to involve two neutral district school trustees and form a three man board to decide the issue.

Throughout the remaining years in the 1800's, the authority of the division superintendents in the area of buildings remained constant. However, this status changed shortly after adoption of the 1902 constitution. In response to this new constitution, the General Assembly enacted statutes pertaining to education in the special sessions of 1902-03-04. Section 1489 in 1903 declared, "No schoolhouse shall be contracted for or erected until the plans therefore shall have been submitted to and approved in writing by the division superintendent of schools, . . ."¹¹ In the same statute, the division superintendent was ordered to condemn unfit schools:

. . . and when a schoolhouse appears to the division superintendent of schools to be unfit for occupancy, it shall be his duty to condemn the same and to immediately give notice, thereof, in writing, to the chairman of the district school board, . . . no part of any State or county fund would be

¹⁰Chapter 310.

¹¹Section 1489, 1902-03-04 Acts of Assembly, (Extra Sessions).
Approved December 28, 1903.

applied to support such school until the division superintendent shall certify, in writing, to the district school board he is satisfied with condition and appliances pertaining thereto.¹²

Both of these clauses established essentially the same legal authority for the superintendent as he held previous to the 1902 Constitution. However, the school board had to obtain the district superintendent's approval, instead of just consulting with him, before building construction could begin.

Although Section 1487, approved in 1903, did not specifically mention the role of the superintendent in adjusting complaints about school buildings, nothing in the statute prohibited his involvement.

Any five interested heads of families, residents of the district, who feel aggrieved by action of the district school board may, within 30 days of such action, state their complaint in writing to the district superintendent of schools, who, if he cannot within 10 days of receiving such complaint satisfactory adjust the same, shall grant an appeal to the school trustee electoral board, which shall meet and summon witnesses and declare finally on all questions at issue.¹³

At this time, the district superintendent was one of the three voting members on the school trustee electoral board and remained there till 1930.

Chapter 187 approved in 1908 added specifications before school buildings could be erected and designated this approval to be the responsibility of the State Board of Inspectors.¹⁴ This was a loss of authority for the division superintendent. In 1919 the laws of Virginia were recodified and approved by the General Assembly. Pollard

¹² _____.

¹³ _____, Section 1487.

¹⁴ Chapter 187, 1908 Acts of Assembly, Section 2. Approved March 11, 1908.

explains that the authority for approval of school construction plans was inadvertently transferred to the State Board of Inspectors in 1908. The recodification commission recognized this and transferred the authority back to the division superintendent in 1919.¹⁵ As a result of these actions the county superintendent only temporarily lost legal authority to approve plans for new school construction from 1908 to 1919.

In 1914 the issue of the use of school building for non-school functions was addressed by the General Assembly.

When a responsible resident citizen of any school district may apply to any school trustee of said district for use of school house when school is not in session or used by a lawful gathering of educational, agricultural, civic or social bodies, the trustee may grant use of said building. If the trustee refuses use, in writing, a demand of five freeholders of such district may present appeal to the chairman of the district school board. If the district board refuses this appeal, a final appeal may be made to the school trustee electoral board.¹⁶

The division superintendent was one of three members serving on this board till 1930. Therefore, in 1914 the superintendent occasionally helped determine whether a school building was to be used for non-school activities.

In 1928 the Virginia Constitution was amended. Chapter 471, approved in 1928, addressed the issue of public education and

¹⁵ Code of Virginia (Annotated), Section 673, 674, 675. Pollard's Revisors Note - "The act from which this section is taken provided that 'the State Board of Inspector for public school buildings shall have the power of approval before erection of new buildings.' As revised this is placed upon the respective division superintendent."

¹⁶ Chapter 153, 1914 Acts of Assembly. Approved March 14, 1914.

recodified the school laws. Section 716 stated that the school superintendent, along with any board member, could permit usage of school facilities for non-school functions, subject to approval of the school board.¹⁷

Section 667 of Chapter 471 designated that aggrieved resident citizens could protest an action by the school board to the superintendent. If he could not satisfactorily adjust the issue within a specified time limit, a final appeal could be made to the circuit court, or judge thereof in vacation.¹⁸ The school trustee electoral board, with the superintendent as a member of the board, was no longer involved in the final appeal process.

Section 671 of Chapter 471 continued the division superintendent's legal authority to grant approval of plans before construction of school buildings and designated his duty to condemn unsafe building.¹⁹

The legal authority of the division superintendent remained constant from 1928 through 1970. It was his duty to condemn unsafe buildings, to give permission for building use for non school functions, subject to school board approval, and to approve plans for construction before erection of buildings.

Summary

To investigate the third hypothesis, from 1869 to 1970 there was an increase in the division superintendent's legal authority in the

¹⁷Chapter 471, 1928 Acts of Assembly, Section 716. Approved March 26, 1928.

¹⁸ _____, Section 667.

¹⁹ _____, Section 671.

area of buildings and that increases resulted from mandatory Acts of the General Assembly, it was necessary to review the Acts of Virginia General Assembly and the Virginia Constitutions from 1869 through 1970.

In 1870 the division superintendent was required to visit and examine all schools within his district as often as "practical." He was to condemn unsafe buildings and to consult with the school board before erection of new schools. If a dispute arose over the location of a schoolhouse, the superintendent was to conduct a hearing to resolve the issue. If the representatives of each board of district school trustees were tied in a vote to resolve the matter, the superintendent was to cast the deciding vote.

Two years later, in 1872 the division superintendent lost his authority to hold and preside over a hearing and to break a tie vote in disputed matters pertaining to schoolhouse placement. In 1875 the superintendent was to serve as chairman with any two other uninvolved trustees to hear complaints about schoolhouse location and finally to decide the issue.

In 1903 the division superintendent was responsible for approval of plans before building construction and was required to continue to condemn unsafe buildings. As a member of the school trustee electoral board, under certain conditions, the superintendent could advise concerning the final decision about disputed location of school buildings. However, he was no longer required to visit and examine all schools within the district.

The division superintendent lost authority for approval of plans before building construction in 1903. This authority was transferred

back to him in 1919. In 1914, as a member of the school trustee electoral board, the superintendent could vote in the decision to allow use of building by non-school groups.

Shortly after the Constitutional revision in 1928 the division superintendent lost all legal authority to vote in matters brought about by aggrieved citizens that could not be resolved at a mutually satisfactory level.

From 1928 through 1970 the division superintendent could give approval for building usage for non-school function subject to board approval. He continued to be responsible for condemnation of unsafe buildings and for the approval of plans before construction from 1928 through 1970.

Conclusion

Since the beginning of statewide free public education in Virginia in 1870 there has been a decrease in the division superintendent's legal authority in the area of buildings. A detailed description of five specific areas provided evidence for rejection of the third hypothesis.²⁰

A summary of these powers revealed that the division superintendent completely lost legal authority in two specific areas that were concerned with school buildings. He gained increases in two areas, and his authority remained constant in one area. Because of the complete loss of authority in two areas, the third hypothesis could not be completely supported and was rejected.

²⁰Refer to Diagram Number 3.

Chapter V will explore the legal authority of Virginia division superintendents from 1869 to 1970 in the area of policy formulation and execution.

CHAPTER V
POLICY FORMULATION AND EXECUTION

The legal authority of Virginia division superintendents in the area of policy formulation and execution has undergone revision since the inception of statewide public education in 1869-70.

This study hypothesized that there was an increase in the legal authority of division superintendents in the area of policy formulation and execution from 1869 to 1970. It was further hypothesized that increases came from mandatory Acts of the Virginia Assembly. Legal authority of the division superintendent was examined by analyzing Virginia Constitutions from 1869 through 1970, as well as all applicable Act of the Virginia General Assembly.

Article VIII of the 1869 Constitution embraced the issue of free public education in Virginia. There was no specific mention of the legal authority of local superintendents in the area of policy formulation and execution. However, the General Assembly was directed to prescribe the duties for all school officers.¹ As a result, legislation was enacted which affected the division superintendent in the area of policy formulation and execution.

Chapter 259 of the 1870 Acts of Assembly gave the local superintendent authority to formulate and execute policy. The sixth clause

¹Article VIII, Section 12, Constitution of 1869.

of Section 14 charged the county superintendent "To assist in the organization of boards of district school trustees, with the privilege of being present at all meetings of such boards, and participating in discussions and questions therein, but not of voting."² This act not only charged the county superintendent with the duty of helping to organize school boards, but allowed him to be present at all board meetings with non-voting participation guaranteed. This was an obvious advantage for the local superintendent in the area of policy formulation and execution. Another advantage was granted by the seventh clause of Section 14. It gave the local superintendent the legal authority ". . . to advise with and council the school trustees and teachers in relation to their duties, and to call special attention to any neglect or violations of any laws or regulations pertaining thereto."³

The eleventh clause of Section 14 in Chapter 259 required the clerks of the boards of district school trustees to make detailed annual reports, or more often if necessary. These reports were to include statistics of the public free schools of their respective districts and were to be submitted to the county superintendent.⁴ The tenth clause of Section 24 stated that the board of school trustees was to report on any special matter when required by the county superintendent

²Chapter 259, 1870 Acts of Assembly, Section 14, Sixth Clause.
Approved July 11, 1870.

³ _____, Seventh Clause.

⁴ _____, Eleventh Clause.

and to send him a formal annual report.⁵ By being able to gather statistics and reports from district clerks and school trustees, the county superintendent could help formulate and execute policy though largely through an advisory capacity.

In 1872 the General Assembly approved Chapter 107 which made the county superintendent of schools the ex-officio president of the county school board. Although not given voting privileges, the superintendent was allowed to attend and participate in all county school board meetings.⁶ The county superintendent was also given the right to call meetings of the county school board whenever he considered it necessary, or at the request of two district board chairmen.⁷ The county superintendent was also required to fix a date for the regular annual meeting if the school board could not agree on one.⁸ These regulations influenced the local superintendent's legal authority in policy formulation and execution.

Chapter 12 of the 1876-77 Acts of Assembly created a school trustee electoral board for each county in the state. The county superintendent of schools was appointed to be one of three members and directed to serve as clerk.⁹ The county school board was composed of

⁵Chapter 259, Section 24, Tenth Clause.

⁶Chapter 107, 1871-72 Acts of Assembly, Section 2. Approved February 21, 1872.

⁷ _____, Section 3.

⁸ _____, Section 4.

⁹Chapter 12, 1876-77 Acts of Assembly. Approved January 11, 1877.

a representative from each district school board. Therefore, this act placed the county superintendent in the position of being able to give his direct and personal advice in the selection process of district school boards and, consequently, the county school board. A clause in Chapter 12 stated that this act was not to interfere with the duty or responsibility of municipal councils, who did not involve the superintendent of schools in the selection process of the city school board.¹⁰ By having this direct role in the selection process of school boards, the county superintendent increased his legal authority in the area of policy formulation and execution.

Following the enactment of the 1902 Constitution, Chapter 509 was approved by the General Assembly in 1903 which restructured the public free school system in Virginia. Section 1428 addressed the issue of legal authority for policy formulation and execution. "The public free school system shall be administered by the following authorities, to wit: A state board of education, a superintendent of public instruction, division superintendents of schools, and district and county school boards."¹¹ Section 1439 specified "The powers and duties of the division superintendent shall be fixed by the State Board Education."¹² With this framework the specific legal authority of the division superintendent in the area of policy formulation and execution was developed.

¹⁰Chapter 12, 1876-77 Acts of Assembly. Approved January 11, 1877.

¹¹Chapter 509, 1902-03-04 Acts of Assembly (Extra Sessions), Section 1428. Approved December 28, 1903.

¹² _____, 1439.

Some of the legal responsibilities of the division superintendent approved by the General Assembly in 1903 were, in effect, the same as those previously held. Chapter 509, Section 1442 of the 1902-04 Acts of Assembly continued to make the division superintendent the ex-officio president of the county school board.¹³ Section 1443 gave him the right to call a meeting when necessary, or requested by two chairmen of district boards.¹⁴ Section 1445 charged the superintendent with the responsibility of setting the date for the regular annual meeting of the board if the board itself could not agree.¹⁵ Section 1466 required the district board of school trustees to make an annual report or to report on any matter when required by the district superintendent of schools.¹⁶ All four of these acts continued legal authority that the district superintendent previously held.

Section 1446 of Chapter 509 specified that the county school board was to make their annual report to the superintendent of public instruction including details of their official acts for the preceding year. This report was to be submitted through the division superintendent.¹⁷ By being directly involved with both the county and district school trustee boards, the division superintendent increased his exposure to the respective boards and increased his influence in

¹³ Chapter 509, Section 1442.

¹⁴ _____, Section 1443.

¹⁵ _____, Section 1445.

¹⁶ _____, Section 1466.

¹⁷ _____, Section 1446.

formulating policy.

Section 1450 of Chapter 509 created a school trustee electoral board in each county.¹⁸ However, the division superintendent was made the voting chairman of this three member school trustee electoral board.¹⁹ Although there was no mention of the division superintendent's legal authority to assist in the organization of school boards in the 1902-04 Acts of Assembly, he retained some control of the process of selection for school board members as chairman and voting member of the school trustee electoral board.

Chapter 509 increased the division superintendent's legal authority in policy execution by involving him with the census-taking process and with the selection of census takers. Section 1463 required the division superintendent to coordinate the census reports of the deaf and blind and to transmit them to the superintendent of schools for the deaf and blind.²⁰ Starting in 1905 the division superintendent had to approve the board's appointment of census takers.²¹ By becoming involved with the school aged census procedure and by holding the power of approval for census takers, the division superintendent gained legal authority which could be used to influence the formulation and execution of policy.

Between the adoption of the 1902 Constitution and the 1928

¹⁸ Chapter 509, Section 1450.

¹⁹ _____, Section 1451 and Section 1453.

²⁰ _____, Section 1463.

²¹ _____, Section 1462.

revision, the division superintendent's legal authority in the area of policy formulation and execution continued to evolve. In 1906 Chapter 240 of the Acts of Assembly provided for the subdivision of existing larger school districts. The division superintendent was entitled to be present and to take part in the discussion of any district meeting, to answer all questions, to give advice and instructions, but not to vote.²² His legal authority remained the same with passage of this act.

Chapter 248, also approved in 1906, amended the division superintendent's role in the school trustee electoral board. "The division superintendent shall be the clerk, and the board shall elect one of its members chairman."²³ Although retained as one of three voting members, the division superintendent lost some authority in policy formulation and execution by being removed from the chairmanship.

In 1915 the division superintendents were required, as were all school trustees and teachers, to notify the state superintendent of public instruction when distributors and publishers did not promptly furnish all necessary books.²⁴ For the first time in Virginia, the division superintendent was legally involved in the textbook procurement.

In 1918 the division superintendent had the legal responsibility to become involved with the non-attendance of school aged children. He

²²Chapter 240, 1906 Acts of Assembly, Section 1470, Seventh Clause. Approved March 15, 1906.

²³Chapter 248, 1906 Acts of Assembly, Section 1451. Approved March 15, 1906.

²⁴Chapter 79, 1915 Acts of Assembly (Extra Session), Section 8. Approved March 11, 1915.

was required to make careful investigation into all reported cases of non-enrollment. If no valid reason was found for non-attendance, he was to given wirtten notice to the responsible adult ordering compliance.²⁵ If there was no positive response after a designated number of days, the division superintendent was to "make compliant" before the appropriate legal body.²⁶ By involving the district superintendent in enforcement of mandatory attendance, his legal authority increased in the area of policy execution. The school board was also given the opportunity of appointing a truant or attendance office to fulfill these duties.²⁷

In 1922 the time process and enforcement procedure of the compulsory attendance regulations were modified, but the legal responsibility of the division superintendent remained the same.²⁸ A clause added to Section 8 of Chapter 381 restated the right of the school board to appoint one or more attendance officers, but required approval of the division superintendent before employment.²⁹ This action gave the division superintendent additional involvement in the area of enforcement of compulsory attendance.

In 1922 county school boards and school divisions were created

²⁵ Chapter 412, 1918 Acts of Assembly, Section 3. Approved March 27, 1918.

²⁶ _____, Section 5.

²⁷ _____, Section 4.

²⁸ Chapter 381, 1922 Acts of Assembly. Approved March 24, 1922.

²⁹ _____, Section 8.

to consolidate the several individual school districts. County school boards were given the same duties as held by district school boards.³⁰ However, there were many changes in the superintendent's legal authority in the area of policy formulation and execution. The county school board was designated to meet at times as prescribed by law and when the board felt it was necessary.³¹ The school board did not have to submit its annual report to the superintendent of public instruction "through" the division superintendent.³² All three of these specific actions represented a loss in the legal authority of the division superintendent. He no longer could set the annual date for the school board meeting, he could not call a meeting of the school board when it was necessary, and he did not have a legally specified opportunity to be involved in the development of the board's annual.

An unusual increase in the legal authority of the division superintendent in the area of policy formulation and execution did occur in 1922. If the school board was composed of an even number of members and if they cast a tie vote, the division superintendent was designated to serve as tie-breaker. This authority was granted to the division superintendent from 1922 to 1928 and was the only time under the consideration of this study, 1869 to 1970, that he held such authority.

In 1922 when a vacancy occurred during the regular term of a school board member, the unexpired portion of that term was filled by

³⁰ Chapter 423, 1922 Acts of Assembly, Section 3. Approved March 24, 1922.

³¹ _____, Section 5.

³² _____, Section 17.

the appointment made by the judge of circuit court.³³ Previous to passage of this statute, the three man school trustee electoral board made this type of appointment. Since the division superintendent was both clerk and active member of this electoral board, this action represented a decrease in his authority to become involved in the selection process of county school board members. By not being involved in the selection process of school board members under certain conditions, the division superintendent lost authority, though indirectly, in the area of policy formulation and execution.

A final change in the legal authority of the division superintendent in 1922 was in textbook procurement. He was made the sole individual responsible for checking on prompt and proper execution of district textbook orders.³⁴ He was the only person in each district responsible for reporting violations in agreements of orders to the superintendent of public instruction.³⁵ By having sole responsibility for these actions, the division superintendent increased his legal authority in the area of policy execution.

The Virginia Constitution underwent major revision in 1928. Chapter 471 of the Acts of Assembly revised, consolidated, amended and codified school laws. Section 655 required that the division superintendent be present at all school board meetings and that the school

³³Chapter 423, Section 2.

³⁴Chapter 143, 1922 Acts of Assembly, Section 4. Approved March 9, 1922.

³⁵ , Section 5.

board meet at times provided by law and as necessary.³⁶ Both of these responsibilities were previously approved by the General Assembly. Section 655 specified that at the first meeting of the year the school board must elect one of its members chairman, and upon recommendation of the division superintendent, elect or appoint a competent person to serve as clerk.³⁷ This clause increased the authority of the superintendent by requiring recommendation before the clerk of the board could be appointed.

The legal authority of the division superintendent remained essentially the same in the areas of student attendance, textbook requisition and delivery, and census taking. This situation remained constant through 1970.

In 1928 the annual report of the school board to the State Board of Education was to be compiled and submitted on or before August 1, and was to cover the previous year's work. This report was to be completed "with the assistance of the division superintendent."³⁸ This increased exposure also increased the superintendent's advisory role for policy formulation and execution.

Section 653 of Chapter 471 revised the system of appointing school board members from 1930-1970. The school trustee electoral board was now to be composed of three resident qualified voters who

³⁶ Chapter 471, 1928 Acts of Assembly, Section 655. Approved March 26, 1928.

³⁷ _____, Section 655. Approved March 26, 1928.

³⁸ _____, Sections 620, 621, 683, 684, 685.

were not county or state officers.³⁹ This act not only eliminated the superintendent from the chairmanship but also from serving in any capacity on the school trustee electoral board. The district superintendent no longer had direct legal involvement in the selection process of county school board members and suffered a loss in the area of policy formulation and execution.

After the 1928 Acts of Assembly became effective, the division superintendent had to investigate suspected cases of student non-attendance. He could do this or recommend for board employment attendance or truant officers. He could also recommend census takers for board employment. The division superintendent was required to make requisition of necessary textbooks for the upcoming year. He was to report to the State superintendent of public instruction all cases of price changes and orders not promptly and completely filled.

The division superintendent was to be present at all school board meetings and was to recommend a competent person to serve as school board clerk. He had no legal authority to vote. The school board had to compile the annual report with the "assistance" of the division superintendent. Although this statute was not designated to go into effect until 1930, in 1928 the General Assembly changed the way members of the school board were appointed. The ensuing three member school trustee board was not to include the division superintendent as either chairman or member.

In 1934 the General Assembly was empowered to require the

³⁹Chapter 471, Section 659.

removal of the division superintendent from school board meetings upon certain conditions.

The division superintendent shall be present at all meetings of the school board, except on affirmative vote of a majority of members of the board, his attendance may be dispensed with at a special meeting of the board; except when matters pertaining to the division superintendent are under discussion, at which time he shall remain subject to the call of the board.⁴⁰

For the first time since 1870, the division superintendent was not able to attend all school board meetings. This was a broad discretionary loss of legal authority in the area of policy formulation and execution for the division superintendent.

After 1946 the division superintendent had to become involved with requests for rebinding of textbook.⁴¹ Although this was a clerical type activity, it did increase the legal authority of the division superintendent in the area of policy execution.

At the first annual meeting of the school board of any county, city or town, it shall elect one of the members chairman and on recommendation of the division superintendent, elect or appoint a competent person as clerk of the school board, and shall fix his compensation. However, the school board may, in its own discretion, elect the division superintendent to serve as clerk. The chairman and clerk shall be selected annually.⁴²

This act gave the school board the option of making the division superintendent clerk of the board. The clerk of the school board could not directly participate in policy formulation and execution decisions by voting.

⁴⁰Chapter 471, Section 653.

⁴¹Chapter 151, 1934 Acts of Assembly, Section 655. Approved March 24, 1934.

⁴²Chapter 33, 1946 Acts of Assembly, Section 5. Approved March 27, 1946.

Summary

To investigate the hypothesis that from 1869 to 1970 there was an increase in the division superintendent's legal authority in the area of policy formulation and execution and that these increases resulted from mandatory Acts of the General Assembly, it was necessary to review the Acts from 1869 to 1970 and the State Constitutions in effect during this time.

In 1870 the division superintendent was required to assist in the organization of district school boards. He was granted the privilege of being present at all school board meetings. He was also directed to advise and suggest to school trustees and teachers. He could require reports from district school boards and clerks of the board as often as necessary.

In 1872 the division superintendent was appointed ex-officio president of the county school board. In this role he was given the right to call meetings whenever he felt it was necessary and could fix the annual meeting date of the county school board if the members themselves could not.

In 1877 he was made clerk and a member of the three man school electoral trustee board, whose main purpose was to fill vacancies on district school trustee boards. The division superintendent retained all of these legal responsibilities between 1872 and 1903.

The division superintendent was re-affirmed ex-officio president of the county school board in 1903. The right to call meetings as he saw fit and to fix the date for the annual school board meeting if board members could not agree was continued.

The annual school board report had to be made through the office of the superintendent starting in 1903. District boards were required to report on any matter when requested by the division superintendent. In 1903 the division superintendent was required to become involved with census of school aged children, and starting in 1905 he was to give approval of census takers before the school board could hire them.

The division superintendent was made chairman of the school trustee electoral board in 1903. Thus, he increased his role in the selection process of district school board and county school board members.

At the close of 1903 the division superintendent had lost his authority to assist in the organization of school boards. He also lost his duty to advise and offer suggestions to school trustees and teachers. These decreases were counter-balanced by the superintendent's being named ex-officio president of the school board and chairman of the school trustee electoral board. The division superintendent also gained some advisory authority in the census taking procedure and the compilation of the annual school board report to the state.

Between 1903 and the 1928, constitutional revisions further changed the division superintendent's authority in the area of policy formulation and execution. In 1905 the division superintendent was required to give his approval to the board selection of census takers. In 1906 he was no longer designated as chairman of the school trustee electoral board but continued to serve as a member and clerk. In 1915 the district superintendent, along with the district school board, was responsible for ordering the following year's textbooks. The superintendent and teachers were responsible for having textbooks delivered

for contract price, promptly and completely. In 1922 he was made the sole individual responsible for both of these textbook duties within the district. In 1918 the division superintendent became legally involved with investigation of non-attendance of school-aged children and in taking legal measures for compliance. In 1922 the division superintendent received increases in the legal authority to assume his responsibilities with textbooks, census taking, and attendance.

County school districts were required to consolidate small individual school districts in 1922. In situations to which if there was an even number of school board members and there was a tie vote, the division superintendent was to cast the deciding vote.

Tenre were several decreases in the division superintendent's legal authority in 1922. He lost the right to call a school board meeting whenever he deemed it necessary, and the right to set the date, under certain conditions, for the first annual school board meeting. The school board was no longer required to submit the annual report to the state through the office of the division superintendent. The division superintendent was no longer designated ex-officio president of the school board. Lastly, the school electoral trustee board was no longer responsible for appointing members to district school boards when vacancies occurred during the unexpired term of a school board member.

Shortly after the revised 1928 Constitution became effective, three changes in the legal authority of the division superintendent in the area of policy formulation and execution occurred. The school board was required to submit the annual report to the State superintendent of public instruction with the "assistance" of the division

superintendent. As the result of an act passed in 1928, effective in 1930 the school electoral trustee board did not include the division superintendent as either clerk or member. Finally, the division superintendent did gain the right to recommend to the school board, before employment could be offered, a competent person to serve as clerk of the board in 1928.

In 1934 the division superintendent was excluded from school board meetings when a majority of the board members voted approval of this measure, and when matters pertaining to the division superintendent were under discussion. In 1946 he was required to request testbook binding services from the state, in addition to his other textbook responsibilities. Lastly, in 1952 the school board was given the optional authority of appointing the division superintendent to serve as clerk of the county school board.

Conclusion

There have been several increases in the division superintendent's legal authority in the area of policy formulation and execution from 1869 through 1970. There has also been several decreases. Furthermore, not all the increases have been as a result of mandatory acts of the General Assembly. A detailed description of specific areas related to the division superintendent's policy formulation and execution provided evidence for rejection of the fourth hypothesis.⁴³

A summary of the legal authorities in the area of policy formulation and execution indicated that the division superintendent

⁴³Refer to diagram number 4.

completely lost his authority in five areas since the 1870's, gained new authority in five areas, gained new authority for only a brief time and lost it again in two areas, lost authority at the discretion of the school board in one area, and had his authority remain essentially the same in one area. Because of the complete loss in five areas, discretionary loss in one area, and discretionary gain in one area, the fourth hypothesis was rejected.

CHAPTER VI
SUMMARY AND CONCLUSIONS

During this investigation, the legal authority of Virginia division superintendents from 1869 to 1970 was examined. The four areas of the division superintendent's legal authority upon which the study was focused were certificated personnel, finance, buildings, and policy formulation and execution.

The role of the school superintendent is one that is important, complex and arduous. To aid in the identification of the legal status of division superintendents in Virginia an analysis of the selected components of authority was made. The analysis was limited to the Constitutions of Virginia and the Acts of the Virginia General Assembly from 1869 through 1970. Conclusions drawn from this study were presented to establish an understanding of the evolution of legal authority of the division superintendents.

To provide depth and perception, a brief history of the development of Virginia public education and the office of the American superintendent of public schools through 1970 was included.

Until 1870 public education in Virginia existed in only a few localities. Where it had been established, it was clear that the quality was affected by the agrarian economy, the system of slavery and traditional emulation of English society. Schools that provided free

public education were largely intended for poor indigent white children. Thomas Jefferson held the position that public education was necessary in order to have democracy function effectively, and he advocated a state-wide system at the close of the eighteenth century. The Literary Fund was established in 1810 by the General Assembly in order to assist with the support of public education. The fund was not popularly accepted, nor was it extensive enough, to be instituted on a state-wide system. However, the Literary Fund did establish a precedence for state funding of public education in Virginia. Although some popular support for the idea of free public education began to emerge in the first half of the nineteenth century, state funding was not approved until after the Civil War. The deep-seated traditions of the value of private schools continued to have a strong influence on public opinion.

One of the requirements for full re-admission to the Union after the Civil War for Virginia was acceptance of a new State Constitution. The "Underwood Constitution" served this purpose and was ratified by the General Assembly in 1870. Article VIII required the establishment of a state-wide system of free public education.

The Underwood Constitution provided for public school officers, including local school superintendents. Permission to adopt compulsory attendance laws and power to levy taxes for financial support of public schools was given to the General Assembly. The Constitution itself and the idea of a free public education to all was basically unpopular and not accepted by a large percentage of the populace in the 1800's. In spite of this, through the efforts of the first State superintendent of schools, Dr. William H. Ruffner, and others, a firm political and

financial foundation for public education was established and supported by the majority of Virginians by the end of the century. Though the idea of public schools enjoyed a surge of acceptance in the early twentieth century, the schools themselves were often inferior to established private institutions, however.

Progress and acceptance for Virginia's public schools increased at a rapid rate in the early decades of the twentieth century. Unfortunately, in a continuation of the established segregation pattern, much of the improvement was directed towards public schools for white children.

In 1922 Virginia school districts were organized by counties and cities providing for efficient government and state-wide accountability. A modern system of finance was ordered by the General Assembly in 1928, and as a result many of the tedious and clerical duties of the local superintendents in the area of finance were removed.

Retrenchment and decreasing funding with emphasis on improving curriculum were characteristics of public education in Virginia in the 1930's. The 1940's were devoted to wartime growth and inflation. A period of "massive resistance" followed court ordered desegregation in 1957, and several public schools were temporarily closed as an alternative to racial integration. Public schools in one county remained closed even until 1964. The curriculum of the late 1950's and early 1960's gave emphasis to mathematics and science. The 1960's also saw increases in local and federal aid and a drive for quality programs with general improvement.

The position of the local school superintendency slowly developed in the United States. By the mid-nineteenth century many

school boards needed assistance as increasing school populations and complex duties forced them to go outside their own organization to hire superintendents to ease their own burdens. Buffalo and Louisville hired the first local public school superintendents in 1837 with at least thirteen other school systems establishing the position by 1850. Most early superintendencies was established in large cities until 1900, but Virginia established the office for each county and city in 1870.

The development of the American public school superintendency may be divided into five identifiable periods between 1870 and 1970. They were, respectively, founding and establishment from 1837 to 1910; business ("scientific") management from 1910 to 1930; humanization from 1930 to 1945; professional management from 1945 to 1960; and ferment in the 1960's. These eras did not have identifiable dates, but tended to blend into one another with each leaving its imprints and influence upon its successors.

An analysis of eleven specific responsibilities of the division superintendent as designated in the State Constitutions and Acts of the Virginia General Assembly did not support the first hypothesis that the legal authority of Virginia division superintendents in the area of certificated personnel increased from 1869 to 1970 and that the resulting increases were of a mandatory nature. The division superintendent lost legal authority relating to certificated personnel in three areas, received a discretionary increase in two areas; had his legal authority remain the same in one area and experienced a decrease in one area. Because of the one decrease, two discretionary increases, two discretionary increases, and complete loss of authority in three

areas the first hypothesis was rejected.

An analysis of twenty-two specific responsibilities of the division superintendent as designated in the State Constitutions and Acts of the Virginia General Assembly did not support the second hypothesis that the legal authority of Virginia division superintendents in the area of finance increased from 1869 to 1970 and that the resulting increases were of a mandatory nature. The division superintendent lost his legal authority relating to finance in seven areas, had increases in four areas, had his legal authority remain the same in two areas; and had a temporary increase with a subsequent removal in nine areas. Because of the loss in seven areas, the second hypothesis was rejected.

An analysis of five specific responsibilities of the division superintendent as designated in the State Constitutions and Act of the Virginia Assembly did not support the third hypothesis that the legal authority of Virginia division superintendents in the area of buildings increased from 1869 to 1970 and that the resulting increases were of a mandatory nature. The division superintendent lost his legal authority relating to buildings in two areas; experienced increases in two areas, and had his authority remain constant in a final area. Because of the loss in two areas the third hypothesis was rejected.

An analysis of fifteen specific responsibilities of the division superintendent as designated in the State Constitutions and Acts of the Virginia Assembly did not support the fourth, and final, hypothesis that the legal authority of Virginia division superintendents in the area of policy formulation and execution increased from 1869

to 1970 and that the resulting increases were of a mandatory nature. The division superintendent lost his legal authority in five areas, gained new authority in five areas, temporarily increased and subsequently lost authority in two areas, lost authority at the discretion of the board in one area, increased authority at the discretion of the school board in one area, and had his authority remain relatively stable in one area. Because of the loss in five areas, discretionary loss in one area and discretionary gain in one area the fourth hypothesis was rejected.

It was found that within the selected areas of investigation there was no increase in the Virginia division superintendent's legal authority based upon Constitutions and statutes from 1869 to 1970. Examination of other areas such as curriculum and program evaluation needs to be considered.

A review of the literature implies that the expectations and role of the public school have increased and that the influence of the division superintendent had increased accordingly. Therefore, future study should include an analysis of the policies of local Virginia school boards to determine locally designated increases in the division superintendent's duties and responsibilities within the areas examined in this study. Other areas for study would be to explore the relationship between Virginia division superintendents and their legal authority regarding pupil personnel, curriculum and public accountability. Future research should also bring this study up to date to determine developments since 1970. An analysis of a similar nature in other states needs to be done in order to determine if Virginia is unique in this respect. Without such evidence this concern remains

speculation.

It is reasonable to project that the trend of increasing importance and complexity for division superintendents will continue. It may also be projected that legal authority as stated in the Constitution and Acts of the Virginia General Assembly will not depart from a one hundred year trend of declining legal authority for the superintendent. Therefore, it is obvious that if one desires to increase the influence of the office the Virginia division superintendents he/she should not rely upon legislated authority as a source of power.

APPENDICES

DIAGRAM #1
INVOLVEMENT OF THE DIVISION SUPERINTENDENT IN THE
AREA OF CERTIFICATED PERSONNEL

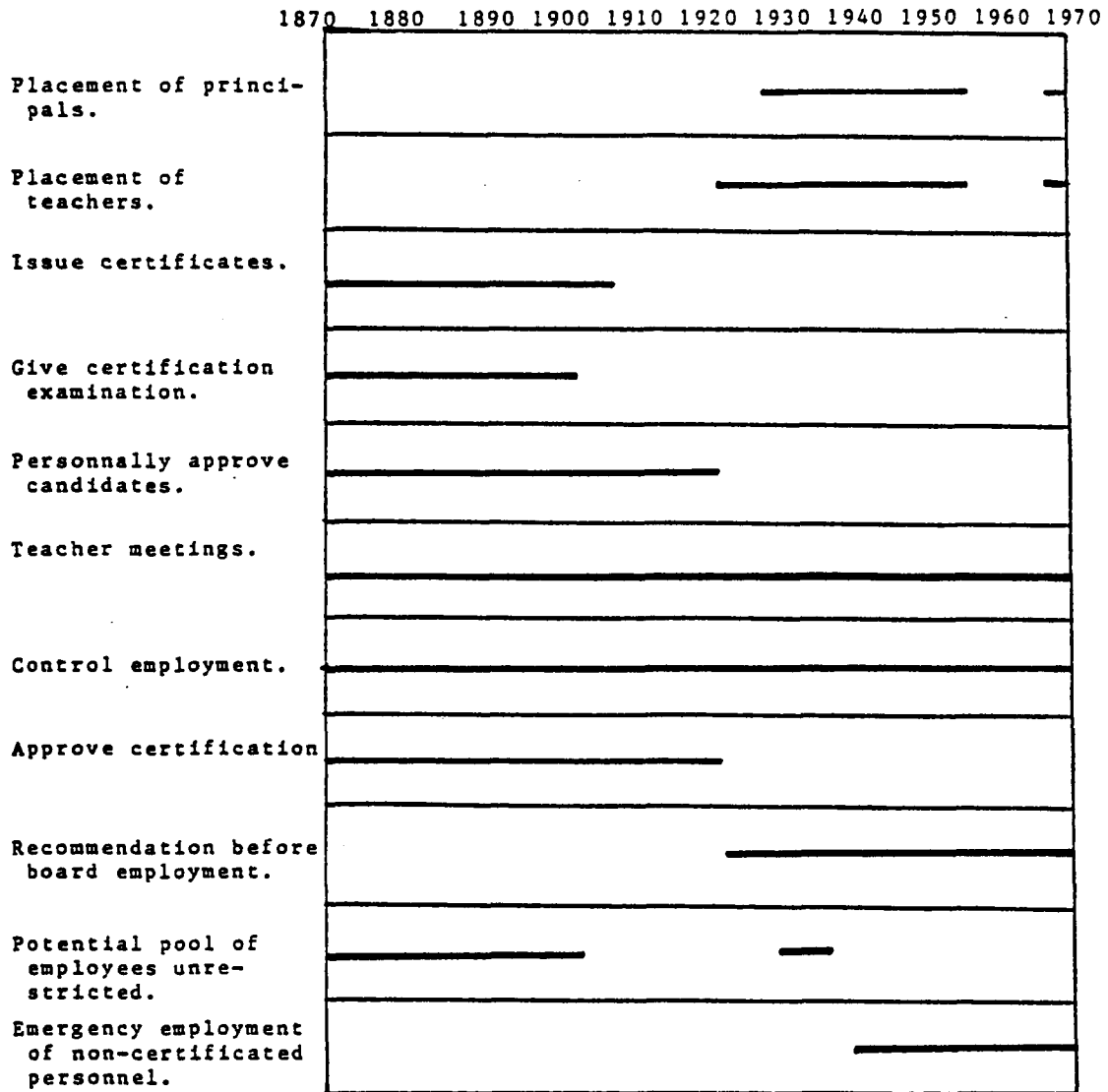


DIAGRAM #3
 INVOLVEMENT OF THE DIVISION SUPERINTENDENT IN
 THE AREA OF BUILDINGS

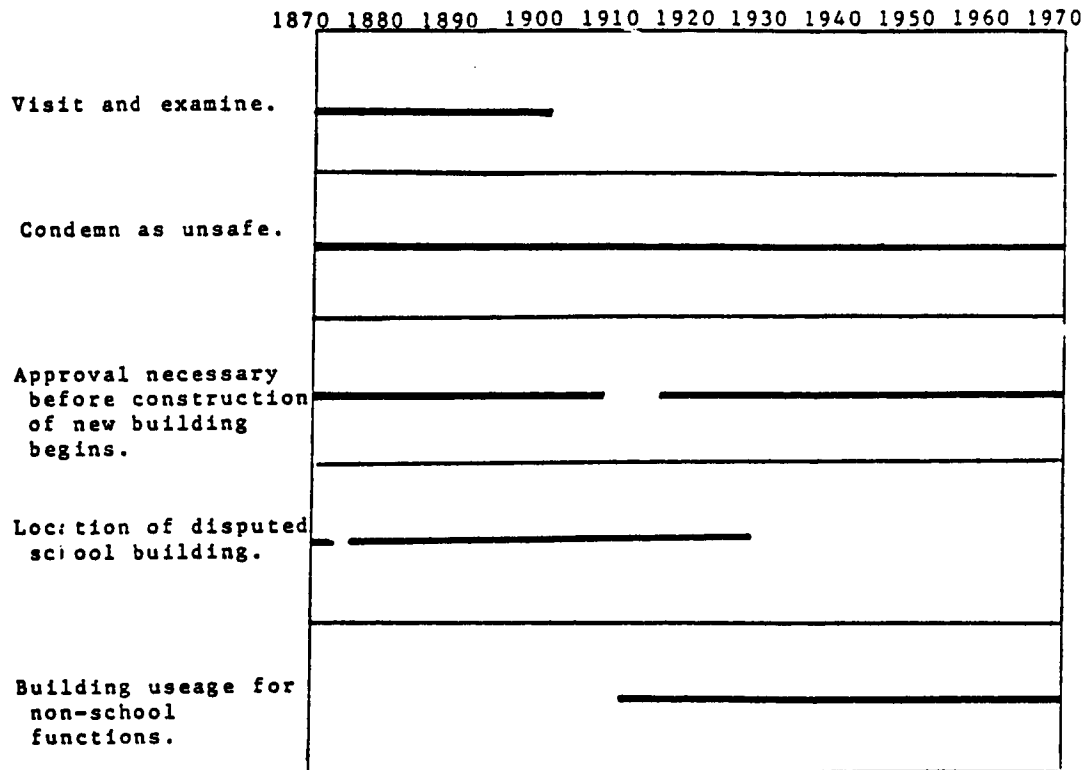
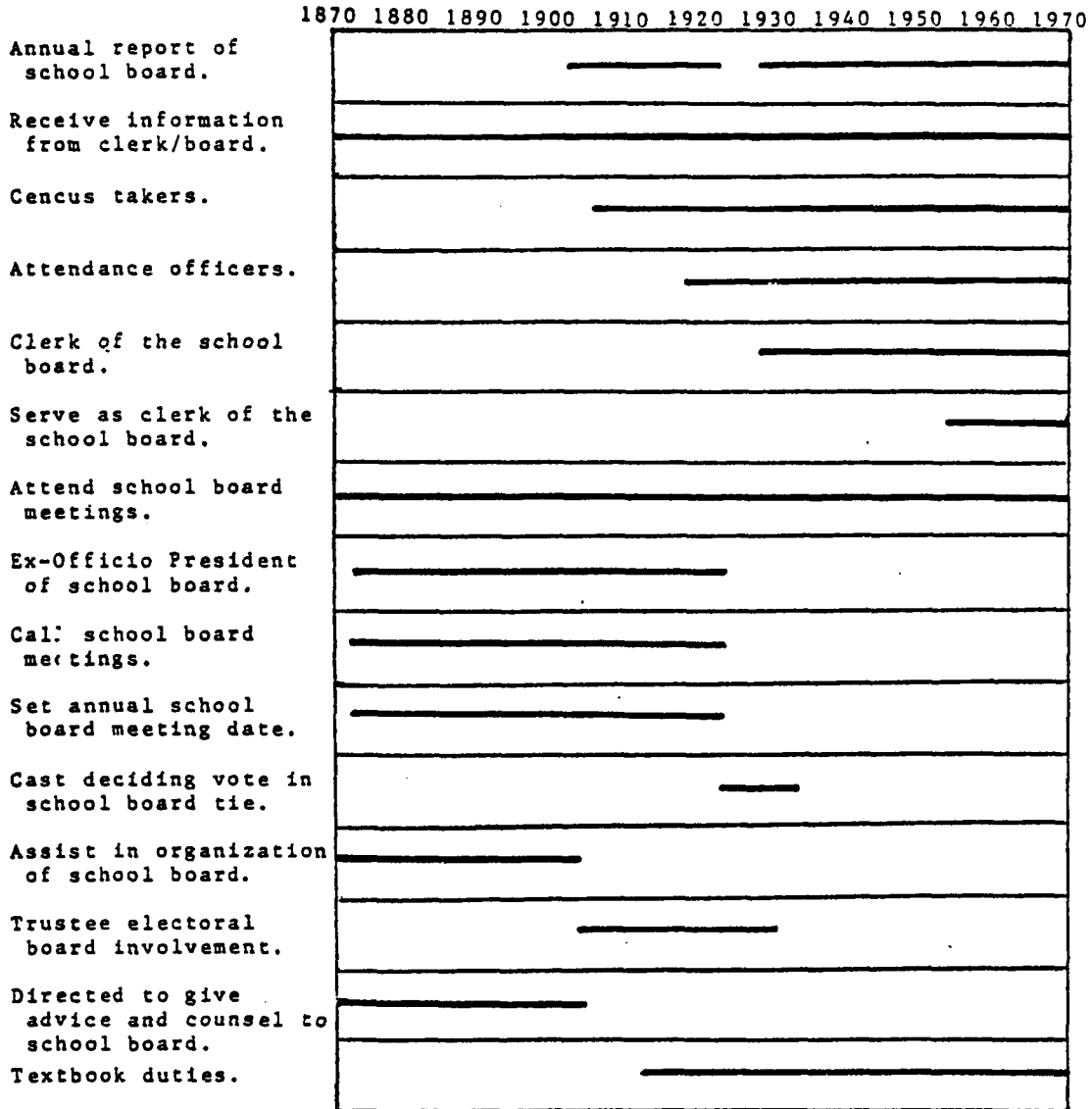


DIAGRAM #4

INVOLVEMENT OF THE DIVISION SUPERINTENDENT IN THE AREA OF
POLICY FORMULATION AND EXECUTION



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ABSTRACT

AN ANALYSIS OF THE DEVELOPMENT OF SELECTED AREAS IN THE LEGAL STATUS OF VIRGINIA DIVISION SUPERINTENDENTS 1869 - 1970

Richard Jay Nelson

The College of William and Mary in Virginia, May 1983

Chairman: Professor Royce W. Chesser, School of Education

The purpose of this study was to investigate the development of legal authority of Virginia division superintendents based upon State Constitutions and statutes between the years of 1869 and 1970. Four specific areas chosen to be investigated because of their importance were, respectively, certificated personnel, finance, buildings, and policy formulation and execution.

Because of recent increases in public school expectations and seemingly parallel increases in the importance and complexity of the office of division superintendent, it was speculated that there would be a corresponding increase in the superintendent's legal authority. The hypotheses stated that between 1869 and 1970 there would be an increase in the Virginia division superintendent's legal authority in the areas of certificated personnel, finance, buildings, and policy formulation and execution. Furthermore, it was hypothesized that increases would be as a result of mandatory Acts of the Virginia Assembly.

Appropriate State Constitutions, Acts of the Virginia General Assembly, and Codes of Virginia were cross referenced, examined, and analyzed to determine fluxuations of the legal authority of division superintendents.

This study found that there has been no overall increase in the legal authority of Virginia division superintendents in the respective areas of certificated personnel, finance, buildings, and policy formulation and execution between 1869 and 1970. This suggests that recent growth in the division superintendent's legal authority must have come from other sources.

Further study of a similar nature is suggested in other areas such as curriculum and pupil personnel. Other states also need to be examined to determine national perspective. Finally, this study might be replicated from 1970 to the present to help determine the current status and direction.