1953

An abstract of Idaho Supreme court decisions affecting education

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AN ABSTRACT OF IDAHO SUPREME COURT DECISIONS AFFECTING EDUCATION

by

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B. A. Montana State University, 1951

resented in partial fulfillment of the requirements for the degree

of

Master of Arts

MONTANA STATE UNIVERSITY

1953

Approved by:

Chairman, Board of Examiners

Dean, Graduate School

Aug 18 1953

Date

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CHAPTER I

INTRODUCTION

The purpose of this thesis was to abstract and present in simple form a collection of public school cases that have been brought before the Supreme Court of the State of Idaho, from 1890 to 1950. Only cases that were appealed to the Supreme Court were used, no consideration was given to those which were carried only to the District or other minor courts. Supreme Court Decisions are used as precedents in future cases and form one of the foundations of school law. They influence all legal questions which arise within the State of Idaho and also serve as a basis for future legislation.

The cases were briefed to bring out the question before the Court, the point or rule of law upon which the decision was made, and the final ruling of the court showing whether or not the case was affirmed or reversed.

The thesis can be useful to school administrators, teachers, and other interested persons when a legal question confronts them. A source of case law, emphasising the rule and decision of the Court is provided in a manner easily understood and readily located. This collection of cases could be used as reference material for a course in school law.

The authority of the court is recognized as the final informant regarding the question in litigation. The abstracts

were prepared as the case was reported with no editing or personal views injected, to alter or change the facts or the rule established by the Court. Care has been taken to use the language of the Court where ever possible. This seems advisable because a legal term expresses the thoughts of the Court in a manner that could not be improved. If the terminology was changed extensive explanations would be necessary and could possibly change the meaning or intention of the Court.

The manner of briefing the cases is an accepted form used by law students and lawyers. Each case included the following information: The citation, consisting of the name of the case, volume and page number and the date of decision by the Supreme Court. Following this are the facts of the case, the rule of law or the opinion of the Court, and the decision indicating whether the lower Court was upheld or reversed in its decision.

The cases reported can be found in the following references:

The Idaho Reports[1] and Pacific Reporter.[2] The Idaho Report series covers all of the cases tried in the Supreme Court of Idaho. They are separated in seventy-one volumes,

[1] Idaho Reports, Volumes 1 to 71, St. Paul Minnesota, West Publishing Company, 1886 - 1951.

[2] Pacific Reporter, Volumes 1 to 288, St. Paul, Minnesota, West Publishing Company, 1883 - 1950.

commencing in 1886 up to and including 1950. The reports cover all points of law, such as bonds, teachers, school insurance, etc., reporting each case when it is appealed to the Court.

The Pacific Reporter system reports all of the cases decided upon by the Supreme Courts in the nine Western States. The cases in Idaho are reported in two-hundred volumes (Pac. Series), and two-hundred twenty volumes (Pac. 2nd Series).

The cases are the same with only minor changes in the editing. No changes are made in facts or rules of the cases. In doing the research the cases in both Reports were reviewed and referenced in this thesis.

The Key system of reporting was used to outline and index the cases. This seemed advisable so that interested persons could find cases in other states by referring to the key numbers. If the rule of law has not been decided upon in one state, reference to others is easily made.

The Key system is used by the West Publishing Company and is identified by them only. State Reporters do not use this method but all regional reporters do. This makes for easy reference to similar cases in other states. The same Key number is used to identify a legal subject in the Pacific Reports as in the Atlantic Reports.

For example: Key no. 146 under Schools and School districts deals with teachers pensions. If a case does not appear in the Pacific Reporter, it may appear under the key

number in another Reporter, provided one has reached a Supreme Court. There are seven regional reports covering the forty-eight states.

In the Key system of reporting and in the Table of Contents in this thesis the cases are listed under topics which in turn are listed under general headings. Key 9 is a topic dealing with cases concerning "power to establish and maintain in general".

The abstract is divided into ten chapters.

Chapter I. Introduction.

Chapter II. Establishment of School lands, funds, and regulations in general.

Chapter III. Creation, alteration, existence and dissolution of Districts.

Chapter IV. Government, officers and District Meetings.

Chapter V. District property, contracts and liabilities.

Chapter VI. District debt, securities and taxation.

Chapter VII. Claims against District.

Chapter VIII. Teachers.

Chapter IX. Pupils, conduct and discipline in schools.

Chapter X. Summary.

Bibliography.

When referring to the table of contents some key numbers will have opposite them the phrase "no case in Idaho". This means that no cases have been reviewed by the Supreme Court in Idaho. To find a case in point the reader will have to refer to the number in another reporter.

THE FOLLOWING TERMS USED IN THE THESIS ARE DEFINED AS FOLLOWS:

Writ: An order issued in the name of the sovereign power, or in the name of a court or judicial authority, commanding the performance or non-performance of some act.

Mandamus: A writ issued by a court against a lower court or against a corporation or an individual, to enforce some duty.

Respondent: A person who responds, or makes reply; a defendant.

Defendant: A person required to make an answer in a legal action.

Appellant: One who appeals from a decision of law.

Decree: An authoritative order or decision deciding what is, or what is not to be done.

Prohibition: A declaration or injunction forbidding some action.

Conversion: Illegal taking and using the property of another person as if it were one's own.

Injunction: A court writ requiring a party to do or restrain from doing certain acts.

Demurrer: A plea that there is a defect in the pleading constituting a legal reason why the opposing party should not be allowed to proceed.

Judgment: The determining, as in a Court, what conforms to law and justice also, the decree or sentence of a Court.

Petition: A formal request, addressed to an official person or body, for some privilege or right.

CHAPTER II

ESTABLISHMENT OF SCHOOL LANDS, FUNDS, AND REGULATIONS IN GENERAL.

Key 9. Power to establish and maintain in general.

No cases in Idaho.

Key 10. Constitutional and Statutory provisions.

(a) Fenton vs. Board of Commissioners of Ada County. (1911).

(b) Evans vs. Huston, (1915) 29 Idaho 559 (150 P 14)

Facts: This is an original application to the court for a writ of mandate to Fred L. Huston, as auditor of the State of Idaho, to issue a warrant in payment of the January, 1915 salary to G. A. Axline, principal of the Albion Normal School, and to charge the same against money of the Albion school fund which had accrued previous to the first day of January 1915. A sufficient amount of money remained in the fund to pay the warrant on the mentioned date.

The alternative writ was issued admitting the allegations. It also stated that all endowment incomes are to be placed with the income from the state treasury and are to be used for the "support and maintenance of the institution commencing on the first Monday of January, 1913 and including January first of 1915".

Question: The question which involves Schools and School District and is a part of this thesis is found in points No. 4, 5, 7 and 8. The question to be determined by the Court is, whether or not the position of the State Auditor is correct

or if legal appropriations of said funds have been made by the legislature. It is contended that under the statutes there is a continuing appropriation of funds, and that warrants can be drawn upon them without any further appropriation.

Operation of Statute.

Rule - 4. Perpetually from the first day of January one-half of all of the money is set apart for the support and maintenance of the Normal School. The money is available immediately when the fund is created.

Rule - 5-6. The general appropriation act of 1905, Section 3 provides "that all moneys belonging to funds created by law for specific purposes are hereby appropriated for such purposes."

Rule - 7. The act of 1905 makes an appropriation of income accruing from said school fund and continues such appropriation until ammended or repealed by the legislature.

Rule - 8. Appropriation of Income. Held, that the balance remaining in the school fund and the income from that fund during the year of 1915 and 1916 have been appropriated for the support and maintenance of the school, and are available for that purpose.

(c) State vs. Enking. (1941) 115 P 2nd 97

This is an application by the State of Idaho, on the relation of F. B. Kinyon for a writ of prohibition commanding Enking, State Treasurer, to refrain from further proceedings

upon the sale of "1941 Idaho State Institution Improvement Bonds" to be paid our of the permanent education fund. Motion denied and writ granted.

Facts: This action was brought by the state on relation of Kenyon as a taxpayer and in behalf of other taxpayers in the state. The State Department of Public Investment was buying the bonds with money out of the education fund. Approval was granted by the Board of Land Commissioners and State Board of Examiners, who directed the defendent to sell the bonds.

Question: Does the Constitution, sec. 11, Act IX authorize the loan of "the permanent education funds other than funds arising from the disposition of University lands on state bonds?

Rule: The omission of the word "state" from the enumeration of securities that might be accepted on the loaning of permanent endowment funds other than funds arising from disposition of University lands, could not be held to be a mistake on part of Legislature where the language used was not ambigious or uncertain.

Under the constitution as ammended, the permanent educational fund cannot be loaned on State bonds.

Decision: Writ granted. Upholding the decision of the lower Court.

(d) Hansen et al vs. Independent School District No. 1 in Nez Pierce County. (1939) 98 P 2nd 959.

Facts: In 1934 Respondent owned one half of what is now Bengal Field, and that year the balance of the ground was purchased by the Associated Students of Lewiston High School. The field was later improved by the P.W.A. with the aid of public contributions. On April 12, 1937, respondent leased the field to A. B. Kierbits, owner of a professional baseball team, and night baseball was initiated under the agreement.

Question: Was the lease of the school playing field legal?

Rule: The cost of equipping the field amounted to $8000.00 which was raised by private contributions. Respondent pledged none of its fund, nor contributed anything to the venture. The lease is carefully drawn so district liability is eliminated. The result so far as respondent's finances are concerned is that, it now has a baseball field fully equipped, without incurring expenses, and with complete rights to use it for all school purposes.

It is a universal rule that the leasing of school buildings and parks for private purposes which are not inconsistent with the conduct of the school, is not an unconstitutional use of school property. It did not pledge the funds and credit of the District.

Decision: Affirmed.

(e) Kieldsen vs. Barrett. (1931) 27 Idaho 559 (297 P 405)

Facts: Kieldsen seeks a writ of mandate commanding

the state treasurer to transfer from the farm mortgage fund to the public school endowment fund, certain moneys alleged to have been wrongfully placed in the farm mortgage fund, and all other moneys coming into the possession of the defendant from the sale or rental of lands granted to the State of Idaho by the United States for the support of the common schools, and from the sale or rental of lands acquired by the state under foreclosure of mortgages taken as security for moneys loaned out of the public school endowment fund.

Question: Was the statute created by the Act of March 19, 1923 (Laws 1923, c, 107) establishing a mortgage revaluing fund unconstitutional?

Rule: The statute is not unconstitutional because repayment of moneys advanced by fund for liquidating delinquent taxes are insufficient to realize both original investments and taxes paid. The deplete sum would return to public school fund.

Key 11. School system and establishment or discontinuance of schools and local educational institutions in general.
No cases in Idaho.

Key 12. Application of school system to cities and incorporated towns and villages.
No cases in Idaho.

Key 13. Separate schools for colored pupils.
No cases in Idaho.

Key 14. State and County Educational Institutions.

No cases in Idaho.

Key 15. Application to school purposes of school lands and proceeds thereof.

No cases in Idaho.

Key 16. School funds.

No cases in Idaho.

Key 17. Creation and Sources.

(a) School District, No. 27, in Cassia County vs. Village of Twin Falls et al. (1907) 13 Idaho 471 (90 P 735).

Facts: This is an action of District No. 27 against the Village of Twin Falls for the purpose of recovering one-half of the monies collected by the village authorities under its ordinances for liquor licenses and also one-half of all fines collected from violation of its ordinances. The court sustained a demurrer filed by the village and entered judgement and presents the following proposition.

Question: Because the School District does not lie within the corporate limits of the village but includes it, and a large area of surrounding territory; did the state intend that it pay one-half of the income derived from fines and penalities?

Rule: Under the provisions of section 2231 Rev. Statutes the duty of city and village officers is to pay one-half of all the moneys collected within the limits of their

respective municipalities from fines or penalities and for liquor and other licenses to the trustees of the school district within the limits of which the municipal corporation is situated, and the fact that the district embraces a larger territory than the village is no excuse or reason for a failure to pay over such money.

Decision: Judgment for plaintiff affirmed.

(b) Idaho Gold Dredging Co. et al vs. Balderston. (1936) (58 Idaho 692) 78 P 2nd 105.

Facts: In this case there are separate actions filed by the Idaho Gold Dredging Company and others, and by the United Mercury Mines Company and others, to restrain the enforcement by Balderston, Commissioner of Law Enforcement, of an occupation excise tax on mining. Judgment for defendants and plaintiffs appeal.

General demurrer was interposed, sustained, and the complaints were ordered dismissed, whereupon stipulations were entered into suspending, pending the appeal, the enforcement of the statute.

There are thirty-two points of law set out in this case. Only one applies to Schools and School Districts, and this one only will be reviewed for the reader. The point mentioned in No. 18 and is as follows:

The plaintiff alleges that a part of the tax is to be placed in the Public School fund, but the school district is not a municipal corporation within the meaning of the statute

and therefore is not entitled to a portion of the money.

Rule: There is no exclusionary language in the law which deprives the legislature of the power to put into the Public School Funds other moneys than those under which the statute states must be paid into it. The losses therein must be supplied by the state, as required by Article 9, Section 2 of the Constitution. The legislature is left without limitation, other than constitutional, to provide money for schools.

Decision: Affirmed.

Key 18. Investment and Administration.

(a) State vs. Fitzpatrick. (1897) 5 Idaho 499 (51 P 112).

Facts: This action was brought by the State to foreclose a mortgage against Fitzpatrick and Godsden. The State Land Commissioners made a loan, secured by the mortgage, from the permanent school fund by authority given the State Board by the Constitution and an Act giving the Board duties to provide for the selection, location, protection, rental and sale of public lands, and for the investment of funds arising from the sale and leasing of such lands. Judgment was granted for defendants and plaintiff appeals. (Sec. 1266 - Rev. Statutes, 1887).

Question: Does provision of section 1266, Rev. Statutes, 1887 apply to the State in this case?

Rule: The Statute is not applicable to the State in a suit brought by the State to forclose a mortgage taken to secure the payment of a loan made from the permanent school fund. The State Constitution declares that the permanent school fund shall forever remain inviolate and intact, and all interests shall be expended in the maintenance of the public schools. The legislature is prohibited from enacting anything that would directly or indirectly divert either principal or interest to any other purpose.

Decision: Reversed.

(b) Parsons vs. Diffendorf. (1933) 23 P 2nd 236 (53 Idaho 219).

Facts: Original action by Parsons as State Auditor against Diffendorf as State Commissioner of Public Investment.

The proceeding is for a writ of prohibition to prevent the defendant from selling certain bonds which is entirely beyond his jurisdiction and power in several respects.

Question: (1) Does the department of public investment have authority in law to sell securities in which the permanent funds have been invested?

(2) Does the Constitution prohibit the purchase of said lands with permanent education funds of the State?

Rule: The State Commissioner of Public Investment is without authority to sell authorized securities purchased with permanent education funds, but funds can be reinvested in payment of securities originally purchased.

Decision: Motion to quash denied. Writ issued.

(c) State vs. Peterson, et al. (1939) 97 P 2nd 603 (61 Idaho 50).

Action by the State of Idaho against Peterson and his wife to foreclose a mortgage executed by defendant in favor of plaintiff to secure a loan out of the Public School endowment fund. The Trial Court sustained a durmur to plaintiffs, ammended complaint, and judgment of dismissal was entered.

Facts: April 24, 1924 respondents gave their note for a loan of $4700.00 from the permanent education fund. By agreement date of maturity was extended from April 24, 1929 to July 1, 1932. Interest to July 16, 1932 was paid December 16, 1932 thus starting the statute to run as at least of latter date and the rate there-after remained due and unpaid.

Question: Could the mortgage be foreclosed upon, under Sections 2-516 and 5-225 of the Idaho Code which provides that no more than a five year period can run after default before action is begun?

Rule: Public School endowment funds are "trust funds" of the highest order and an action to foreclose a mortgage to secure a loan from the Public School Fund is not barred by the statute of limitations. The Constitution provides that the Public School fund shall forever remain inviolate and intact, while the state is handling that "trust fund", it is a trustee performing a high Constitutional public duty.

Decision: Reversed and remanded.

(d) Girard vs. Diefendorf. (1934) 34 P 2nd 48 (54 Idaho 867).

This is an action for prohibition by Girard as Secretary of State against Ben Diefendorf, State Commissioner of Public Investment.

Facts: On September 11, 1933 Springfield School District No. 57, Bingham County issued certain tax anticipation negotiable notes in which they promised to pay the Department of Public Investment $1500.00 with interest on the first day of July, 1934. All conditions which must be done precedent to making the note were done according to the law.

The action begins when it is made known that the defendant intends to make a loan in anticipation of a negotiable note. The writ was issued stopping him from making the loan.

Question: Could the loan be made with a negotiable note as security, out of the Public School Fund?

Rule: The tax anticipation negotiable note issued by a School District is not a school bond on which permanent school funds could be loaned. The statute provides that the money can only be loaned when the District issues bonds in the manner subscribed by statutes governing the issuance of school bonds.

Decision: Writ granted.

Key 19. Apportionment and disposition.

(a) State vs. Fitzpatrick. (see Key 18)

(b) Pike vs. State Board of Land Commissioners. (1911) 19 Idaho 268 (112 P 477).

Facts: This is an application for a writ of prohibition against the State Board of Land Commissioners, whereby Plaintiff seeks to restrain them from selling a large tract of land. This land is a part of the several grants given to the State on its admission into the Union. The specific grants, parts of which go to make up the total area of the tract to be sold, are as follows; Scientific schools, State Penitentiary, State Normal School, charitable institutions, Agriculture College, and Insane Asylum.

The lands are covered with timber and in 1902 the state sold to the Potlatch Lumber Co. the timber standing and growing on the entire area. They were given twenty years from the date of sale to remove the timber. At the end of that period that which remained was to revert back to the state. In 1910 the lumber company made application to the state to buy the lands, their application was accepted, because they already owned the timber on it.

Question: The complaint is alleged that the land is worth much more than the appraised value and that it violates Section 8 of Article 9 of the Constitution, wherein it is provided "that not to exceed twenty-five sections of school land shall be sold in any one year, and to be sold in subdivisions of not to exceed 160 acres to any one individual,

company or corporation."

Rule: This has reference only to section 16 to 36 in each township and does not embrace lands granted by Congress for specific purposes. The Constitution does not limit the amount that may be sold to individuals except as to sections 16 to 36 of each township, commonly known as school lands, and which are granted to the State for the use of public free common schools of the State.

Decision: Writ gnashed and action dismissed.

(c) State vs. Hoover. (1911) 19 Idaho 299 (113 P 455)

Facts: This case is a submission of controversy between the State and E. M. Hoover, upon an agreed statement of facts, as to the validity of a sale of land. There was a judgment sustaining the validity of the sale, and the state appeals.

Rule: All of the questions were disposed of in the case of Pike vs. State Board of Land Commissioners[1] and the judgment of the lower Court should be affirmed.

(d) Independent School District No. 1 vs. Common School District No. 1. 55 P 2nd 144 (56 Idaho 426).

This action is by Independent School District No. 1 against Common School District No. 1, on account of misapportionment of funds. From a judgment for plaintiff, defendants appeal.

Facts: On July 5, 1930, Plaintiff brought this action

against Defendant alleging that they had unlawfully received an apportionment of money between January 1, 1926 and July 1, 1929. It was not alleged that the money was misapportioned at the instance of the School District, but it was received in error and properly used by the Defendant. The apportionment for the period was based on Chapter 134, 1931 Session laws. The mistake in apportionment was made by the County Superintendent's office when the computations were not accurate.

Question: Where school funds have been improperly apportioned, can the District which has received less than it's proportional share maintain an action against the District which received more than its share, and compel the payment out of future apportionments?

Rule: A School District is a body corporate, with power to sue and to be sued. This gives the district power to prosecute and defend such actions as they deem necessary for protection of school funds, property or interests. In an action such as this, where funds have been misapportioned the one receiving less than the law allows may sue the one receiving more than the law allows. In actions for money due as a result of misapportionment the plaintiff may find relief on grounds of "mistake", rather than on liability.

Dicision: Affirmed.

(e) Evans vs Huston. (see Key 10)

CHAPTER III

CREATION, ALTERATION, EXISTENCE, AND DISSOLUTION OF DISTRICTS.

Key 21. Nature and status as corporations.

No cases in Idaho.

Key 22. Constitutional and statutory provisions.

(a) Woods vs. Independent School District No. 2 (1911) (124 P 780) 21 Idaho 734.

Facts: This is a petition by Woods and others to the Board of County Commissioners of Lewis County for the creation of a Common School District, out of territory within Independent School District No. 2. From a judgment affirming an order of the Commissioners granting the petition, Independent School District No. 2 appeals.

Question: Does the Board of County Commissioners have the power to grant the petition and create a new school district, out of territory previously organized into an Independent School District?

Rule: They are a part of Independent District No. 2. It is presumed that they are in the district by choice. Because times have changed and the patronage of the school has increased and conditions have arisen which made it more convenient to have a new school district created is not a reason why this court should set aside the provisions of the law and privide a means by which they may sever themselves from the district.

Decision: Reversed.

(b) School District No. 12 of Lincoln County, et al, vs. School District No. 33, et al. 25 Idaho 554 (139 P 136) 1914.

The Board of County Commissioners of Lincoln County made certain orders reorganizing school district territory from which orders School District No. 12 and others appealed to the District Court. From judgment affirming the orders, School District No. 12 appeals.

Facts: In 1913 the Legislature created the counties of Minidoka and Gooding from territory which was formerly Lincoln County. It also provided that the boundary lines between the counties of Lincoln and Gooding shall divide any school district; such fractions of school districts shall be considered as unorganized territory and it shall be the responsibility of the county commissioners in the counties where the fractions of school districts are located to divide the moneys and indebtedness of the districts as they see fit.

The bill was passed in the month of January and school was in session. Each bill carried an emergency clause making the bill operative at once. No provisions were made to take care of the children in school. When the bill was passed dividing the counties, about eight districts were left disorganized. The Shoshone (No. 12) District was claiming practically all of it.

By action of the County Commissioners the property of the railroad was divided among the districts. District No. 12

appealed the orders of the Commissioners to the District Court. The lower Court affirmed the action of the Board of Commissioners. From that judgment appeal is taken.

Question: Did the Board of Commissioners have the power to divide the tract of land and the railroad among the unorganized districts?

Rule: The officers entrusted with the problem were authorized to attach the unorganized territory and give it to adjoining schools as they saw fit.

Decision: Judgment affirmed.

(c) In re annexation of Common School District Nos. 18 and 21 to Independent School District No. 1, Minidoka County. (1932) 15 P 2nd 732.

Application for annexation of Common School District Nos. 18 and 21 to Independent School District No. 1, from a judgment affirming an order of the County Commissioners the Oregon Short Line Railroad appeals.

The Common School lapsed, under Chapter 215, Session laws 1921 and became a part of the unorganized territory of Minidoka County. Through this territory that was Common District No. 18 ran several miles of railroad track. When it was annexed to District No. 1, the Railroad Company appealed to the District Court.

Appellant alleges that the area in question is barren, unproductive, and uninhabited.

Question: Was the appellants contention that the County Commissioners did not have the power to make the annexation, and abused their discretion in doing so?

Rule: It is the rule of the Court that the County Commissioners having exercised power of annexing unorganized territory within lapsed School District to organized district, when all statutory conditions were present, there could be no abuse of discretion though additional taxable territory was thus taken into the district, rather than leaving it in an unorganized district.

Decision: Affirmed.

(d) Carlson vs. Mullen, 29 Idaho 295 (162 P 332) (1917).

This is a proceeding by Powell and others for the creation of a new school district. Petition was granted by the County Commissioners and the Board of Trustees of School District No. 47 appealed to the District Court. Judgment of the court roused the County Commissioners and they appeal. The judgment was affirmed by the Supreme Court.

Facts: The petition to form a new school district was presented by Powell and others, to the County Commissioners. It was signed by the parents of ten children of school age. The Board of Commissioners granted the petition.

Question: Was the petition sufficient as regards the number of children of school age whose parents or guardians

were signees?

Rule: Two statutes were cited. One required the petition to have the signatures of the parents or guardians of ten children of school age. The other, cited by the Respondent made reference to the independent school districts which required fifteen signatures. Appellant contended that the particular statute was unconstitutional because if confuses Independent District and School Districts, it also required fifteen signatures and not ten. The Court ruled that the intention of the legislature was to establish distinct procedures to create new districts both Independent and otherwise. However, the Court found that the words Independent School District in this act were not dependent upon the rest of the act and may be considered as surplus and void. Signatures of the parents or guardians of ten children of school age are all that is necessary.

Key 23. Creation and Organization.

No cases in Idaho.

Key 24. In General.

(a) Carlson vs. Mullen. (see Key 22)

(b) Smith vs. Canyon County, et al. (1924) 39 Idaho 222 (226 P 1070)

Action by George Smith against Canyon County, Consolidated School District No. 34 and others to set aside school tax and recover amount paid under protest.

Facts: Appellant, whose lands are embraced by the

boundaries of the School District seeks this action to have the special tax levied against his property by the district for the year of 1920 declared invalid, and to recover with interest the sum of $67.57 paid by him under protest. He based his attack on four propositions.

1. The organization was invalid because the Board of County Commissioners acted without authority.

2. The tax was illegal because, at the time of the creation of the district, the school year for 1920-21 had started, and the Commissioners made it effective upon its passage instead of the next school year.

3. Tax was illegal because it was not levied and assented to in an annual meeting of the voters of the district.

4. Tax was illegal because it was not certified to the County Commissioners by the trustees of the District for levy and assessment against his property.

Rule: The remedy to correct errors and irregularities in the action of a Board of Commissioners in a matter over which such Board has jurisdiction is solely by appeal but if such Board has acted without jurisdiction any orders made by it are void.

The next school year or "opening of school year" means the second Monday in September.

Levy of special school tax under law authorizing creation of new School District must be by annual meeting or by trustees. Where the statutes authorize the electors of a

district to hold an annual meeting at a certain time of the year for the levying of taxes, a meeting held at other times is invalid.

Key 24-1. In general.

(a) Pickett vs. Board of Commissioners of Freemont County. (1913) 133 P 112 (24 Idaho 200)

Action by John W. Pickett against the Board of Commissioners of Greemont County. Judgment for plaintiff and defendant appeals.

Facts: This is an appeal from an order made by the Board of County Commissioners confirming the act of creating a Rural High School, and the acts of the Board of Trustees of such district. When taken to the District Court, it held that the district had no existence and set aside the order of the Board. On March 3, 1910 several district petitioned the Commissioners asking that they create the district. This was done and they called for an election to organize the district. They failed to post notice required by law, and it was again brought before the Board. The election was held and a board of trustees was organized.

The school operated and paid warrants amounting to $20,000 for a new building. Taxes were collected, and the school operated for about two years. On July 5, 1912 it was discovered that the votes cast at the election could not be found on file. Two affidavits were filed showing that there were 59 votes cast for the organization, and no votes were

cast against it. On July 8, 1912 the matter came before the board, and the board made the order from which this appeal is taken.

Question: Was there an error in the formation of the district and was it legal?

Rule: After a rural high school has exercised the functions of such district for a period of nearly two years, its legal organization will be presumed, whatever may have been the defects and irregularities in the formation or organization of the district.

Decision: Reversed.

(b) Babbitt vs. Blake.

(c) Morgan vs. Independent School District No. 26-J, in Elmore and Owyhee Counties, Idaho, et al. (1922) (211 P 529) 36 Idaho 372.

This is an action by Shepherd Morgan against the School District from a judgment for the defendant. Plaintiff appeals.

The appellant lives in Owyhee County within the boundaries of the respondent district. He owns land and is a qualified voter in the district. The school at the time was a joint Common District lying in Owyhee and Elmore counties. A petition was presented to the Board of Commissioners of Elmore County to form a Joint Independent District. This was done in the manner prescribed by law. An election was held and car-

ried; trustees were appointed from the district and the school operated for several years. On July 18, 1919 a bond election was held and carried. On April 20, 1920 a second issue was called and found the respondent district to be legal in all respects and appellant was not entitled to relief as alleged in his complaint.

Question: Was the district properly organized?

Rule: Where a Joint Common School District is located in two counties the territory may be formed into a Joint Independent District. The same preliminary steps must be taken as in the organizing of a Common District. The proceedings may be under the supervision of the Board of County Commissioners of either county.

Decision: Decision for respondent. Creation of the District was valid.

(d) Telfer vs. School District No. 31 of Blaine County. (1931) 50 Idaho 274 (295 P 632).

Action by James Telfer and others against School District No. 31 Blaine County to have certain lands decreed not a part of School District 31 and for an injunction restraining assessments and collection of taxes against such lands. From a judgment for defendants, plaintiff appeals.

District No. 31 was formed by reorganization and consolidation of smaller districts over a period of years. Each time a petition to consolidate was presented to the Commissioners they acted in good faith and according to the

laws governing such action. The districts in which the plaintiff resided were made a part of District 31 some ten years before the action was started. In all the consolidation was taking place for a period of twenty years. The District was formed with definite boundaries and performed all of the duties and exercised all of the powers of a regularly organized school district.

Question: Did the plaintiff have a cause for action and could he get an injunction restraining the trustees?

Rule: School Districts having existed, exercising functions of public school districts over well defined territory as a public corporation for ten years can not be attacked by landowners within the district in injunction proceedings against the officers.

Decision: Affirmed.

Key 24-2. Attacking legality of organization.

No cases in Idaho.

Key 25. Independent and other district in incorporated cities, town and villiages.

No cases in Idaho.

Key 26. Rural Independent District and other special organizations.

(a) Morgan vs. Independent School District No. 26-1.

(b) See Key 24-1.

Key 27. Proceedings for organization.

(a) American National Bank of Idaho Falls vs. Joint Independent School District No. 9, Madison County. (1938) 100 P 2nd 826 (61 Idaho 408).

Action by the American National Bank of Idaho Falls against Joint Independent School District No. 9 of Madison County on thirty-three courses of action for money advanced in payment of school warrants. From a judgment for defendant, plaintiff appeals.

Facts: Appellant is the assignee of the warrants issued by the school district. The warrants were issued against taxes levied against the real property of the district. When they were presented to the treasurer for payment, he refused to honor them because of the want of funds. When this happened the bank advanced the money and accepted the warrants and has carried them since.

Question: Had the statute of limitations run against the bank to prevent them from having the warrants paid?

Rule: The statute of limitations applicable to a bank's action against a school district for money advanced in payment of school warrants issued against taxes, was suspended by a moratorium act extending time for payment of delinquent taxes and redemption of lands from tax liens.

Decision: Reversed for the plaintiff. The statute of of limitations had not been exceeded.

Key 28. Defacto districts.

No cases in Idaho.

Key 29. Unorganized territory.

No cases in Idaho.

Key 30. Territorial extent and boundaries.

No cases in Idaho.

Key 31. Alteration and creation of new district.

See Key 102.

Key 32. Change of boundaries.

No cases in Idaho.

Key 33. Consolidation and Union district.

(a) Clay vs. Board of Commissioners of Madison County. (1917) 30 Idaho 794 (168 P 667).

An appeal by Z. T. Clay from an order of the Board of County Commissioners of Madison County creating a new school district. From a judgment for defendants, plaintiff appeals. Affirmed.

Facts: It appears that a petition for the formation of a new school district was filed with the Superintendent of Public Instruction of Madison County on June 15, 1914. The petition was accompanied by a map. Proper notice was given of the hearing before the Board and verbally approved the petition and recommended some modifications of the proposed boundaries. Appellant specifies certain errors for the Court to rule on.

1. The appellant alleges as error the admission of this petition in evidence upon the hearing of the court. He maintains that from the record of the proceedings of the

Commissioners the identification of the petition which the Commissioners acted upon does not appear.

It was held that "on an appeal to the District Court from an order made by the Board of County Commissioners, extrinsic evidence is admissible to determine upon which petition the County Commissioners acted."

2. The appellant further urges that the Commissioners had no jurisdiction or power to grant the petition, and the petition required signatures of a majority of the heads of families before it could be consolidated.

Rule: The Court held that where a School District has been organized by the County Commissioners a future board has expressed statutory power to change the boundaries or divide the district upon a proper petition.

Error is assigned as to the action of the Court in permitting the County Superintendent to testify as to whether or not he approved or recommended the creation of the new district.

The Court held that the recommendation of the County Superintendent does not have to be in writing to give the Board of Commissioners jurisdiction to divide the district.

Decision: Affirmed for the defendant.

(b) Segregation of School District No. 58 from Rural High School District No. 1.

Rural High School District No. 1 vs. School District No. 38. (1921) 200 P 138 (34 Idaho 222)

Facts: A petition was filed with the County Commission-

ers of Nez Pierce County asking for the segregation of School District No. 58 from Rural High School District No. 1.

The petition was insufficient to give the Commissioners of Court jurisdiction to act.

Rule: A petition filed with the Board of County Commissioners for the segregation of a School District from a Rural High School District, need not be drawn with the formal accuracy required of a pleading in a judicial proceeding.

(c) Sizemore et al vs. Board of Commissioners of Jerome County, et al. (1922) 210 P 137 (36 Idaho 184)

This is a petition to the board to create a Rural High School District. The action of the board in favor was affirmed, and appealed to the District Court. Sizemore and others appeal and the case was reversed with direction to dismiss the appeal. All of the assignments of error are based on the contention that the board was without jurisdiction to act. The petition was filed by the County Superintendent of Schools. It was approved by the Commissioners but the boundaries were changed. The election was held and 127 voted in favor and 33 against.

Rule: The addignment of error contended that the Commissioners should have acted according to the petition with no alteration.

It was held by the Court that when the petition is filed it confers jurisdiction on the board to act on the petition and erroneous action does not obstruct the jurisdiction of such

board.

Decision: Reversed.

Key 34. Division.

(a) Clay vs. Board of Commissioners of Madison County. (See Key 33)

(b) Olmstead vs. Carter. (1921) 34 Idaho 276 (200 P 134).

This is an action brought by appellant, a taxpayer, to restrain respondents, as trustees, from issuing or selling certain bonds.

Facts: The complaint alleges that the rural High School District was organized prior to January 18, 1913 and was originally composed of two school districts. The Commissioners entered an order segregating one district from the High School District. A special bond election was held June 24, 1921. The Common School District which was left in the Rural High School District had already issued bonds to the limit permitted by law. The High School District had started to build a building and needed additional money to complete it. An agreement was made with the District which had been separated that a portion of the new building would be used to house their children and be set aside for this use. Three errors were assigned in this case.

1. One was concerning the power of the County Commissioner to segregate a common district from the Rural High School District.

Rule: The Court held that they do have the power even when there were only two in the rural district.

2. The second error concerned implied powers of a District.

Rule: The Court ruled that a School District does not possess implied power except that which is reasonably necessary to exeept that which is reasonably necessary to exercise the powers expressly granted.

3. The third error questioned the authorization of one district to build a school to be used by two districts.

Rule: The Court held that there is neither expressed nor implied power in a School District to expend its fund in completing a school building situated upon the property of, or belonging to another district under an arrangement whereby the two districts shall both enjoy the building when completed.

Key 35. Change of organizations to or from Independent Districts.

No cases in Idaho.

Key 36. Powers of boards or officers and of courts.

(a) Babbitt vs. Blake. (See Key 24-1)

(b) School District No. 12 of Lincoln County vs. School District No 33. (see Key 22)

(c) Clay vs. Board of Commissioners of Madison County. (see Key 33)

(d) In reannexation of Common School District No. 18 and 21. to Independent District No. 1. (see Key 22)

(a) Babbitt vs. Blake. (1913) 25 Idaho 52 (136 P 211).

An action by Babbitt and others, Trustees of Joint School District No. 18 against Patrick H. Blake and others, Board of County Commissioners of Clearwater County. From a judgment for defendants, plaintiffs appeal.

Facts: In the creation of Clearwater County from a portion of Nez Pierce County, the boundary line separating the two counties divided School District No. 118 which was a district within Nez Pierce County. By mutal agreement of the County Superintendents the number of the district was changed from 118 to 18, but no changes were made in the boundaries. On May 31, 1912 a petition was filed with the Board of Commissioners for the creation of a common school district out of that portion of Joint District 18 then lying within the boundaries of Nez Pierce County.

The Board granted the petition and a new district was formed. No appeal to the order was taken and this action was brought before the Court nearly six months after the school district was created.

Question: Did the Board of County Commissioners have authority to create the district?

Rule: Under the provisions of the school laws of the state, the Board of County Commissioners has the authority and power to create new districts out of any territory within

the County, or change the boundaries of existing districts.

Decision: Judgment for defendants affirmed.

Key 37. Proceedings in general.

(a) Clay vs. Board of Commissioners of Madison County. (see Key 33)

(b) In re annexation of Common School District No. 18 and 21 to Independent School District No. 1. (see Key 22)

Key 37-1. In General.

(a) Clay vs. Board of Commissioners of Madison County. (see Key 33)

Key 37-2. Meetings and mode of action in general.

(a) Gaiser et al vs. Steele. (1914) 25 Idaho 412 (137 P 889).

This is an original action for a writ of mandamus by William Gaiser and others against Edgar C. Steele, District Judge.

Facts: The plaintiff in the case filed a petition with the County Superintendent of Schools of Nez Perce County requesting that School District No. 63 be segregated from Rural High School District No. 1. The petition was presented to the representatives of the District No. 1 the petition was dismissed. The Plaintiff appealed to the District Court which remanded the case back to the County Commissioners and advised a hearing on its merits.

Question: Should the trial court, after determining the question of law, proceed to try the case, or did it pro-

perly remand it to the County Commissioners.

Rule: When the County Commissioners dismissed the petition for the segregation of a Common School District from a Rural High School District upon the ground that the law authorizing such action had been repealed, and the petitioners appealed from such order to the District Court, and the District Court, and the District Court held and decided that the Board of Commissioners erred in dismissing the case, and holding that the law authorizing such petition had been repealed, there was no further issue to try. The District Court properly remanded the petition to the County Commissioners.

Key 37-3. Petition or consent.

(a) Wheeler vs. Board of County Commissioners of Bingham County. December 2, 1918 176 P 566 (21 Idaho 766)

This is an appeal from an order of the District Court affirming an order of the Board of County Commissioners of Bingham County creating School District No. 64 of territory theretofore embraced wholly within the boundaries of District No. 28.

Appellant questions the sufficiency of the number of signers of the petition for the creation of the new district. It was signed by the parents and guardians of fifteen children of school age who reside within the district, but not by two-thirds of the heads of families.

Question: Were the fifteen signatures enough to pro-

perly form a district?

Rule: A petition for the creation of a school district by the division of a district must, in order to authorize the Board of County Commissioners to create the same, be signed by at least two-thirds of those who are heads of families and residents of the district to be divided. Petition is insufficient.

Decision: Judgment for defendants reversed.

Key 37-3. Petition or consent.

(a) Wheeler vs. Board of Commissioners of Bingham County.

(b) School District No. 15 vs. Blain County.

Key 37-4. Notice.

No cases in Idaho.

Key 37-5. Records, orders and reports.

No cases in Idaho.

Key 38. Submission or question to popular vote.

No cases in Idaho.

Key 39. Review of proceedings.

(a) Gaiser vs. Steele. (see Key 33)

(b) Clay vs. Board of Commissioners of Madison County. (see Key 33)

(c) In re annexation of Common School District No. 18 and 21 to Independent School District No. 1. (see Key 22)

Key 40. Operation and effect

No cases in Idaho.

Key 41. Adjustment of pre-existing rights.

School District No. 15 in Blaine County from a judgment affirming an order of the County Commissioners creating School District No. 61, plaintiff appeals.

Didtrict No. 15 appeals from the order which allowed the district to be created out of a portion of the district without first requiring the bonds be apportioned between the remaining area and the new district. Appellant claims that the County Superintendent should have apportioned the indebtedness before the new district was created.

Question: Was the County Superintendent duty bound to make this apportionment before the District was formed?

Rule: The duty of the County Superintendent to apportion the indebtedness of an organized district, between a new district formed out of an old district and the remaining area, should be exercised only after the necessary legal steps have been taken, and the apportionment is not a necessary prerequisite in the formation of a district.

Key 41-2. Property and funds.

No cases in Idaho.

Key 41-3. Proceedings for apportionment of assets and liabilities.

(a) School District No. 15 in Blaine County vs. Blaine County.

Key 42. Formation of districts and annexations and detachment of territory for special purposes.

No cases in Idaho.

Key 42-1. In General.

No cases in Idaho.

Key 42-2. High School and graded school districts.

(a) Pickett vs. Board of Commissioners of Fremont County. (see Key 24-1)

(b) In re segregation of School District No. 58 from Rural High School District No. 1. (see Key 33)

(c) Sizemore vs. Board of County Commissioners. (see Key 33)

Key 43. Enumeration of children for school purposes.

No cases in Idaho.

Key 44. Dissolution.

No cases in Idaho.

CHAPTER IV

GOVERNMENT, OFFICERS AND DISTRICT MEETINGS.

Key 45. Administration of School affairs in general.

No cases in Idaho.

Key 46. Constitutional and statutory provisions.

(a) Rural High School No. 1 vs. School District No. 37. (1919) 182 P 859 (30 Idaho 325)

This case is based on a petition to the Board of County Commissioners for segregation of School District No. 37 from Rural High School District No. 1. From an order granting the petition the Rural District appealed to the District Court, and from its judgment affirming the order the Rural District appeals.

Question: The one question, as assignment of error, that applies to schools is the authority of the Commissioners stating that they acted under a statute that had been ammended?

Rule: The Court held that statutes which repeal all or parts of acts in conflict therewith, and dictate that said act is intended to constitute a complete code and system for the government of Common Schools, do not repeal statutes providing for review on appeal from actions of a Board of County Commissioners.

Decision: Motion to dismiss appeal granted.

Key 47. State Boards and officers.

No cases in Idaho.

Key 48. County Boards and officers.

No cases in Idaho.

Key 48-1. Appointment or election.

No cases in Idaho.

Key 48-2. Eligibility and qualifications.

(a) Bradfield vs. Avery. (1909) 102 P 687 (16 Idaho 769).

Facts: Appellant was elected to the office of County Superintendent of Schools in Owyhee County. Respondent contests the election on the ground that appellant did not have one year's experience as a teacher in Idaho. He did hold a valid first grade certificate. The respondent demurred to the complaint on grounds of insufficiency of facts. The demurrer was overruled. It was found that appellant was a graduate of a normal school in Pennsylvania. The State Board of Education in Idaho would not issue a certificate because the college was not on the accredited list. Otherwise she was eligible. A first grade certificate was issued by the County Superintendent even though the college she attended was non-accredited. She had proof of having taught twenty-seven months in Pennsylvania. The statutes of Idaho required a County Superintendent to have two years of supervised teaching in Idaho.

Question: Was she eligible for the job?

Rule: The provisions of the statute that no person shall be eligible to the office of Superintendent of Public

Instruction except a practical teacher of not less than two y years experience in Idaho, one of which must have been while holding a valid first grade certificate issued by a County Superintendent, "relates to the time the person so elected is inducted into office." If the person does not have the qualifications at the time of election,but becomes qualified at the time he is inducted into office he is eligible to fill the office of County Superintendent.

Decision: Reversed.

(b) People vs. Hadletz.

Key 48-3. Term of office, vacancies, and holding over.

No cases in Idaho.

Key 48-4. Removal.

No Cases in Idaho.

Key 48-5. Compensation.

No cases in Idaho.

Key 48-6. Powers and Duties and liabilities in general.

(a) Common School District No. 61 in Twin Falls County vs. Twin Falls Bank and Trust Company. (1931) 4 P 2nd 342 (50 Idaho 711)

Facts: On the 14th day of September, 1928, a forged warrant was presented to the bank with an apparently proper signature. On the back of the warrant were two signatures; one was a fictitious name, the name of the County Superintendent, and her assistant. The bank accepted the warrant,

presented it to the auditor who paid it out of the funds of the District. The appeal is from a judgment in favor of the plaintiff.

Question: The question is whether or not the respondent is estopped and barred from recovery herein by the acts of the various County officials in acceptance and payment of the forged order in question, or by its own negligence is guilty of lacks in the discovery of the forgery and not giving notice to the appellant.

Rule: A School District is an agency of the State created solely for operation of a school system and derives its powers from the state. Its officers act only in a governmental capacity and when they act in performance of their duties they cannot estop a District from maintaining action to recover their money wrongfully taken. No lacks can be imputed to School District in public and governmental capacity as to bar it from recovering the money.

Decision: Affirmed in favor of the plaintiff.

Key 48-7. Appeals from decisions.

No cases in Idaho.

Key 48-8. Criminal responsibility.

No cases in Idaho.

Key 48-9. Officers of towns and school officers.

No cases in Idaho.

Key 49. Officers of towns as school officers.

No cases in Idaho.

Key 50. District Meetings in general.

(a) Petrie vs. Common School District No. 5 in Ada County. (1927) 255 P 318 (44 Idaho 92).

This is an action brought by taxpayers against the trustees of District No. 5, to stay them from certifying a 5 mill tax for tuition and declare the levy void. They also ask that a contract for improvement be declared void and the Trustees be enjoined from issuing warrants in payment on indebtedness on account of furniture purchased to furnish a new building.

Question: The only question is, do the findings support the judgment?

Rule: The annual school meeting is empowered to exercise functions of a deliberative assembly at which qualified electors may discuss general questions of interest. In this case no inquiry was made at the general meeting, but the issue was listed only as tax for General School purposes. No sum of money was stated. The Court held that this attempt to levy the special tax by the trustees was unauthorized and the contract for the addition to the school void, because they did not observe the statute requiring them to stay within their income.

Decision: Affirmed.

Key 52. Creation and constitution.

No cases in Idaho.

Key 53. Appointment or election, qualifications, and tenure. No cases in Idaho.

Key 53-1. Appointment or election in general.

No cases in Idaho.

Key 53-2. Eligibility and qualifications.

No cases in Idaho.

Key 53-3. De facto Officers.

No cases in Idaho.

Key 53-4. Term of office, vacancies, and holding over.

No cases in Idaho.

Key 53-5. Resignation and removal.

(a) Corker vs. Cowan. (1917) 164 P 85 (30 Idaho 231).

This action was brought for the purpose of depriving the respondent of her office as member and Clerk of the Board of Trustees of District No. 6 of Elmore County, and obtaining a judgment of $500. against the respondent.

Two causes of action were set out in the complaint. She was charged with intentionally charging the school district large sums of money for her services as clerk. She was making additional charges for services rendered in taking the school census.

The second cause of action was that respondent failed to perform her duties required by law.

Rule: In answer to these two charges the court ruled

that in such a case if it can be shown that the person did charge and collect illegal fees and if she did neglect her duties the person could be removed from the position. The Court found that the extra money she received taking the census was paid under contract for services independent of her duties as clerk and could be accepted by her.

Decision: Affirmed.

Key 54. Compensation.

No cases in Idaho.

Key 55. Powers and functions in general.

No cases in Idaho.

Key 56. Mode of action in general.

No cases in Idaho.

Key 57. Meetings.

No cases in Idaho.

Key 58. Minutes and records.

No cases in Idaho.

Key 59. Orders and resolutions.

No cases in Idaho.

Key 60. Operation and effect of decision.

No cases in Idaho.

Key 61. Appeal from decisions.

No cases in Idaho.

Key 62. Liabilities of members.

No cases in Idaho.

Key 63. District and other local officers.

No cases in Idaho.

Key 63-1. Appointment and qualifications and tenure.

(a) Buck vs. Board of Trustees of St. Maries District No. 15.

Key 63-2. Title and possession of office.

No cases in Idaho.

Key 63-3. Powers, duties and liabilities in general.

(a) Common School District No. 61 vs. Twin Falls Bank. (see Key 48-6.)

Key 63-4. Liabilities on official bonds.

(a) Independent School District No. 6 vs. Carven. (1934) 29 P 2nd 753 (54 Idaho 156).

Action for controversion of money by the Independent School District No. 6, Twin Falls County against A. F. Craven and others. Judgment for Defendant, and Plaintiff appeals.

This is an action to recover $5000.00 from Craven, formerly treasurer of the School District, and $3000.00 from security on his bond, because of misappropriation and conversion of $5000.00. The evidence shows that August 21, 1929 there was on deposit in the bank, of which Craven was cashier, in excess of $5000.00 and on that day, August 21, 1929, $5000.00 was charged against the account. There was no evidence of the School District issuing a check for that amount. The $5000.00 seems to have been withdrawn from the checking account of Craven, as treasurer of the District, and cannot be traced by the banks records. It was evident, however, that the

School District advised Craven to place $5000.00 of the sinking fund in the bank at 4% interest.

The record shows that the bank was the legal depository of funds for the District, that it suspended business about the first of February, 1932, and was placed in the hands of receivers.

Question: Did Carver convert the money for unlawful purposes?

Rule: The evidence does not show that Craven misappropriated or converted the money, nor does it show that it is not still in the Bank. It shows that the money was withdrawn from the checking account, upon request of the Board of Trustees, and placed in another account to draw interest. Evidence that the whole transaction was not disclosed by the banks books does not prove loss of the money nor conversion of it by Craven.

Decision: Affirmed.

Key 63-5. Compensation and accounting.

No cases in Idaho.

CHAPTER V.

DISTRICT PROPERTY, CONTRACTS AND LIABILITIES.

Key 63-1. Appointment and qualifications and tenure.

(a) Buck vs. Trustees of District No. 1, St. Maries. 154 P 373 (28 Idaho 392).

This is an action by Buck against the trustees of School District No. 1 in Benewah County asking the Court for a writ of mandate directing the trustees to re-instate him as Superintendent of Schools.

He alleges that he was contracted for three years. At the end of the first year the Board of Trustees notified him that he was no longer Superintendent of their District. He further alleges that he fulfilled the duties of his office in a faithful, competent, careful, skillful and moral manner. He was not discharged on the grounds that he had been guilty of incompetence, immorality, or gross neglect of duties which are by statute the only grounds for dismissal.

Question: Could he be contracted for three years in this District?

Rule: Under law a Class A Independent District could employ a Superintendent for a period of three years. This type of district was first defined as a school employing thirty teachers, later the number was changed to twenty. This District did not come within the definition of the statute and it was held that the state was not law at the time the contract was entered into between appellant and respondent, because it was

in conflict and when the court finds conflicting laws the rule is that the one prevails which was last signed by the Governor. This did not make District 1. a Class A District and they could not employ the man for three years. They acted beyond their power as a School District.

Key 64. Capacity to acquire and hold property.

No cases in Idaho.

Key 65. Acquisition, use and disposition of property in general.

No cases in Idaho.

Key 66. School buildings.

See Key 97 and 80-86.

Key 67. Authority and duty to provide.

(a) Olmstead vs. Carter. (See Key 34)

Key 68. Location.

No cases in Idaho.

Key 69. Change of side.

No cases in Idaho.

Key 70. Purchase or hiring.

No cases in Idaho.

Key 71. Construction.

No cases in Idaho.

Key 72. Control and use.

No cases in Idaho.

Key 73. Care, maintenance and repairs.

No cases in Idaho.

Key 74. Sale or disposition.

No cases in Idaho.

Key 75. School furniture, books, apparatus, and other appliances.

No cases in Idaho.

Key 76. School Libraries. (See Key 111)

No cases in Idaho.

Key 77. Contracts.

No cases in Idaho.

Key 78. Capacity of district to contract in general.

No cases in Idaho.

Key 79. Powers of district or other board of officers.

(a) Independent School District No. 5, et al vs. Collins. (1908) 98 P 857 (15 Idaho 535)

Action by Independent School District No. 5 against Joseph R. Collins. Judgment for plaintiff and defendant appeals. Reversed.

In this case the School District is attempting to recover a sum of money from Collins alleged to have been paid on a void contract. Collins was a trustee of the District, and in the hardware business. He presented a bill to the board for payment of merchandise sold to the school from his store. He was not a member of the board at the time contract was made, but he was a partial owner of the firm. The rest of the board at no time demanded the return of the money from Collins.

The suit is based on the school law which states that no trustee must be interested in any contract let, or made by the board, and no action can be maintained as such against the board or district upon any contract or obligation in which any trustee is so entrusted, but the same is void.

Question: Does this statute apply when the contract was made previous to Collins becoming a member of the board?

Rule: The statute was enacted for the purpose of prohibiting trustees from making contracts which they were personally interested. The rule is founded in public policy to prevent the risk of abuses of public funds.

In this case, if the contract was entered into prior to his becoming a member of the Board he has the right to present his claim to the Board and it would not be unlawful or corrupt on his part to do so.

Decision: Reversed.

Key 80. Making requisites and validity.

(a) School District No 38 in Twin Falls County vs. Independent School District No. 6 in Twin Falls County. (1942) 131 P 2nd 786.

This is an action by plaintiff to recover the difference between the amount paid under a contract for tuition of pupils sent by defendant to Plaintiff's school and the actual per capita costs incurred for pupils of the receiving district for the same years. From judgment for plaintiff defentant appeals.

On September 7, 1937 plaintiff entered a contract with defendant to instruct the pupils residing within their district. It was agreed by the defendant to pay $25.00 per pupil attending the school. The contract was complied with for the years of 1937-38 and 1938-39.

Question: This action is based on the proposition that the district was not allowed to make such a contract unless they charged the actual per capita cost for education.

Rule: In 1933 a statute was enacted which allowed a School District to contract for reception of pupils from another District at a less rate than average per capita cost. The action was within the constitution and does not deny the school due process of law or equal protection of the law. The contract was immaterial because the district was receiving state funds for the education of the pupils and they would be obliged to use it for their education.

Decision: Reversed.

Key 80-1 In general.

No cases in Idaho.

Key 81. Contractors Bond. (See Key 86)

No cases in Idaho.

Key 81-1. Bonds of text book publishers.

No cases in Idaho.

Key 82. Unauthorized or illegal contracts.

(a) School District No. 15 of Fremont Count vs.

Wood. (1927) 185 P 300 (32 Idaho 484).

This is an action by the School District to recover money paid teachers because they did not have written contracts. In answer to the complaint, it was alleged that the teachers were qualified; services were performed without objection or protest from any source; and the contract, in all respects, was ratified by the School District, by accepting the services and paying the contract price for the services performed. It is further alleged that the School District is not estopped from denying the liability to pay.

Question: Are contracts in writing necessary for employment of a teacher?

Rule: It cannot be said that employment of teachers is prohibited except by written contract, nor can it be said that an oral agreement to teach is void. The rule is that an unauthorized contract with a teacher may be ratified by those having authority to contract. Recognizing the employment and by partly performing the contract, such as making payments for services accepting its benefits.

Decision: Affirmed.

Key 82-2. Ratification.

No cases in Idaho.

Key 83. Implied Contracts.

No cases in Idaho.

Key 84. Construction and operation.

No cases in Idaho.

Key 84½. Modification and rescission.

No cases in Idaho.

Key 85. Performance or breach.

No cases in Idaho.

Key 86. Remedies of parties.

(1) Contracts for text books.

No cases in Idaho.

(2) Contracts for construction of equipment of schools.

No cases in Idaho.

Key 87. District expenses and charges.

No cases in Idaho.

Key 88. Torts.

No cases in Idaho.

Key 89. Liabilities especially imposed by statute.

No cases in Idaho.

CHAPTER VI

DISTRICT DEBTS, SECURITIES, AND TAXATION.

Key 90. Power to incur indebtedness and expenditures.

(a) Independent School District No. 8, Twin Falls, vs. Twin Falls County Mutual Fire Insurance Company. (1917) 164 P 1174 (30 Idaho 400)

This is an action to recover an alleged contract of insurance. From a judgment in favor of respondent, appeal is made. It is alleged that School District No.8 had its buildings insured with the Twin Falls Mutual Fire Insurance Company. The building burned and the Company has made no effort to pay the damages. Respondent alleges that it, the insurance company, is a mutual company and public corporations are prohibited under the constitution from becoming members of such a company. The rule is based upon public policy and is for the purpose of prohibiting companys from indirectly using public funds for private purposes.

Question: Was the insurance policy in force and could the School District recover?

Rule: Section 4 of Article 8 and Section 4 of Article 12 of the Constitution prohibits a School District from becoming a member of a County Mutual Fire Insurance Company. A contract of insurance between a school district and such a company is void and will form no basis for recovery as against the Insurance company for loss by fire.

Decision: Not reversed.

(b) Independent District No. 12 vs. Manning. (1919) 185 P 723 (32 Idaho 400)

Action of mandamus by the School District against Manning and others as Board of Trustees of School District No. 11 to compel the levy of a tax. Judgment was for plaintiff and defendant appeals.

In this action the respondents are demanding that appellant levy a tax to pay a judgment rendered in its favor. They were granted the judgment pursuant to the report of appraisers, appointed to divide the assets of a School District which contained territory now embraced by School District No. 11 of Minidoka County and District No. 12 of Lincoln County. The dissolved district was divided by an act of the legislature creating Minidoka County. When this was done all moneys, bonds and libilities were to be distributed according to assessed valuation.

Question: Was appellant's contention that they were prohibited from incurring indebtedness except by a vote of the taxpayers valid?

Rule: This contention was not valid because the obligation involved is imposed by law, and is not within the constitution?

The board cannot be compelled by mandate to levy a tax. The Court ruled that in a case of this kind the Court will look beyond the judgment to the cause of action on which it was founded to determine whether authority exists to levy a tax in satisfaction of it. When the legislature imposes an obligation

upon a School District it also grants power to levy a tax sufficient to pay it.

Decision: Affirmed.

(c) Boise City National Bank vs. Independent School District No. 40 of Gooding County. (1920) 189 P 47 (33 Idaho 26).

Action for debt by the Boise Bank. Judgment for plaintiff and defendant appeals. The case was affirmed in part and reversed and remanded, with direction to modify the judgment.

During the year of 1910-11 Common School District No. 40 issued warrants amounting to $2,773.58. The warrants were the property of respondent. On April 17, 1913, Independent District No 40 of Gooding County was organized which embraced Common District No. 40. It was admitted that the total income for Common District No. 40 in the year of 1910-11 was $5,647.81. Article 8 of the Constitution declares that any indebtedness or liability of a School District exceeding in any year the income and revenue shall be void unless authorized by two-thirds vote of the electors. It is also provided that the Board of Trustees may use up to 95 per cent of this income even if there is no money deposited with the County Treasurer.

Question: Were the warrants legally issued?

Rule: It was held in the case that the facts do not show that the total amount of warrants were in excess of the 95 per cent allowance for the year of 1910-11, and the indebtedness was valid and the warrants were legally issued.

It was further held that when an Independent District reorganized with a Common District it is by statute obliged to accept and discharge all debts, obligations, and duties belonging to or devolving upon the former Common School District.

Decision: Affirmed.

Key 91. Constitutional and statutory provisions.

(a) Griffith vs. Owens et al. (1917) 166 P 922 (30 Idaho 647)

Facts: Action for a writ of prohibition against Owens.

The Defendants are Trustees of District No. 24, Cassia County.

They called a bond election which passed 20 to 7. The Board passed a resolution declaring the results of the election and authorized the issuance of the bonds. Some of the voters were not resident freeholders in the district. The number of these persons were sufficient to change the vote, and they voted in favor of the bonds. The constitutionality of an act describing a legal voter is questioned. The act was passed in 1917 and, in brief, is as follows: All persons over the age of 21, who have resided in the district for 30 days preceeding the election are freeholders, including husband and wife when the freehold is community property.

The constitution under Section 2, Act 6 provides: every male or female citizen of the United States, 21 years of age, who has resided in the state for six months and in the

county, where he or she votes, thirty days preceeding the day of election, is a qualified elector.

Question: Was the act in conflict with Section 2, Article 6 of the Constitution?

Rule: The session law of 1917 describing qualified electors of such elections is unconstitutional and void, because it purports to qualify to vote those who belong to a class prohibited and disqualified from voting by Section 2, Article 6 of the Constitution.

Decision: Writ issued.

Key 92. Administration of finances in general.

No cases in Idaho.

Key 92-1. Custody and disbursement of funds in general.

No cases in Idaho.

Key 92-2. Deposits in banks.

No cases in Idaho.

Key 92-3. Reports and statements.

No cases in Idaho.

Key 93. Appropriations.

No cases in Idaho.

Key 94. Payment of indebtedness in general.

No cases in Idaho.

Key 95. Warrants, orders and certificates of indebtedness. No cases in Idaho.

Key 95-1. In general.

No cases in Idaho.

Key 95-2. Issuance, requisites and validity.

(a) Common School District No. 27 vs. Twin Falls National Bank. (1931) 299 P 662 (50 Idaho 668)

Action for conversion by the Common School District No. 27 in Twin Falls County against the Twin Falls National Bank, a corporation. Judgment for plaintiff. Defendant appeals.

Respondent School District sued in conversion to recover an amount of money paid the bank by the treasurer of Twin Falls County on a warrant issued by the auditor of the County to the bank. It was alleged that no order for the warrant was issued by the District and there was no valid debt supporting the warrant. The bank denied the allegation. Appellant demurred to the complaint on the grounds that the complaint failed to state a cause of action and suggested that no order for the warrant was necessary.

Question: Was there a cause of action because no order for the warrant was issued?

Rule: School District suing in conversion to recover from a bank money paid by County Treasurer, as treasurer of the School District, on a warrant issued by the County Auditor alleges that no order had been directed to the County and there was no debt owed the bank, be held immaterial as to the School Districts action against the bank of conversion and it is necessary prerequisite to issuance of a warrant against District Funds.

Decision: Affirmed.

Key 96. Bills and notes. (See Key 111)

Key 97. Bonds.

No cases in Idaho.

Key 97-1. Authority to issue bonds in general.

(a) King vs. Independent District no. 37. (1928) 272 P 507 (46 Idaho 800).

This is a petition for a writ of prohibition restraining defendants from disposing of certain bonds voted at a school election. The attack centers around the notice of the bond election and alleges the following defects:

1. The notice is indefinite, uncertain and ambiguous.

2. It states more than one purpose.

3. It fails to state the form and plan of the bond issue.

4. The Board failed to divide the district for the purpose of the election.

5. Purpose are stated for which bonds may not be voted.

Question: Was the notice sufficient in view of the errors or defects stated by the plaintiff?

Rule: The design of the statute was to provide that the voters should decide upon the issuance of the bonds, not the items for which they should be expended. It limits the purpose, and the Board would be restricted in its expenditure of money to the purposes enumerated on the notice. The purpose of requiring the consent of the voters is, whether bonds

shall issue, not on what the proceeds shall be spent. That is already regulated by statute. The voter is entitled to know and that is made known by statute.

In other words, school districts are limited in issuing bonds to the purposes specified, but at a bond election the purpose is the incurring of an indebtedness as a whole to be expended as specified.

Decision: The alternative writ heretofore issued is quashed.

Key 97-2. Funding Indebtedness.

No cases in Idaho.

Key 97-3. Limitations of amount of bonds.

No cases in Idaho.

Key 97-4. Submission of question of issue to popular vote.

(a) Howard vs. Independent School District No. 1 of Nez Perce County. (1910) 106 P 692 (17 Idaho 537)

Facts: This is an action instituted by Plaintiff, a taxpayer to restrain the officers of the School District from issuing and selling bonds. The purpose of the bond was to buy three tracts of ground and to erect and furnish three school buildings thereon. The Court sustained a demurrer to the complaint and dismissed the action. Plaintiff appeals.

Plaintiff contends that by the act of December 30, 1880 incorporation of the Independent School District compris-

ing the City of Lewiston, becomes unconstitutional and void upon the admission of the state to the Union.

Question: Was the organization unconstitutional?

Rule: The act of Congress organizing Idaho as a territory did not prohibit the territorial legislature from enacting special laws for the organization of school districts. Subsequent territorial amendments are not repugnant to, or in conflict with the Constitution of the State of Idaho.

The Court further held that the mere fact of the existence of an Independent School District under special charter, granted by the territorial legislature does not render the charter obnoxious to the uniformity requirement of the State Constitution.

Decision: Affirmed.

(b) Ashley vs. Richard et al. (1919) 185 P 1076 (32 Idaho 551).

Action by Ashley against Richard and others, Trustees of the School District No. 76 to enjoin the issuance of bonds. From a judgment dissolving a temporary injunction and dismissing the action, plaintiff appeals.

Facts: Appellant commences the action to enjoin respondents from using certain bonds and alleges that:

1. Two-thirds of voters did not vote in favor of the bond election.

2. Five persons who voted were not qualified electors.

3. Judges and clerks fraudently declared the results

of the election. They reported that 14 out of the 44 votes were against the issue and when they knew that 19 had cast votes against it.

4. Election officials did not count five of the votes that were against the election which would have defeated the issue because the required two-thirds would not be had.

Question: Where the defendent's claims that the statutes provide a method of contesting a bond election and a suit in equity for an injunction will not lie.

Rule: In absence of other remedies to prevent the issuance of school bonds, a taxpayer may maintain an action in Court of equity to prevent the unauthorized issuance of bonds, even though an election contest is involved in the action, in order to determine the lack of authority to issue bonds.

Decision: Affirmed.

Key 97-4½. Proceedings to determine validity of bonds.

No cases in Idaho.

Key 97-5. Sale or other disposition of bonds by School District.

No cases in Idaho.

Key 97-6. Form, execution and issuance of bonds.

No cases in Idaho.

Key 97-7. Validity of bonds in general.

No cases in Idaho.

Key 97-8. Ratification and estoppel.

No cases in Idaho.

Key 97-9. Payment.

No cases in Idaho.

Key 97-10. Rights and remedies of holders.

No cases in Idaho.

Key 98. School taxes.

No cases in Idaho.

Key 99. Power and duty to tax.

(a) Fenton vs. Board of Commissioners of Ada County.

(b) Northern Pacific Railroad vs. Shoshone County. (1941) 116 P 2nd 221.

Two actions by the Northern Pacific Railroad Company against Shoshone County and others, consolidated for trial with two actions by Henry A. Scandrett and others, trustees of property of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company against Shoshone County to recover taxes paid under protest.

Facts: Appellants contend that in the phrase, "in those counties within the State of Idaho where property assessed at more than 67% of the total assessed valuation of such counties is situated outside the boundaries of the school district", the words "school district", means all of the school districts in the county. The respondent contends that the words mean one or more school district, organized or unorganized.

Question: Do the words "school districts" include all school districts?

Rule: The words "school districts" under the statute are not to be construed as meaning all school districts in the county. Such construction of the statute would be ineffective. The words were properly construed to refer to any number of counties having the school population specified in the statute and less than 67% of the assessed valuation of the county.

Decision: Judgment for defendant. Affirmed.

Key 100. Purposes and Grounds.

No cases in Idaho.

Key 101. Amount of tax.

(a) Oregon Short Line Railroad Company vs. Minidoka County. (1915) 153 P 434 (28 Idaho 214).

Facts: This action was brought by the Oregon Short Line Railroad Company against School District No. 5, and the County Treasurer to restrain them from collection of taxes based on a 15 mill levy and limit them to a 5 mill levy according to Chapter 88 page 362 of the session laws of 1912. The 15 mill levy was made under Chapter 115, page 434, session laws of 1913. The trial court held that Chapter 88 contested this case and limited the levy to 5 mills.

Question: The question to be decided is whether or not Section 54 of the school laws as amended by Chapter 88 reduced the mill levy to 5 mills, or whether Chapter 115 controls.

Rule: It was the intention of the legislature to reduce the maximum levy from 15 mills to 5 mills. The particular intention of both the house and senate was to reduce the maximum levy that a School District could make.

Decision: Affirmed.

Key 102. Persons and property liable.

No cases in Idaho.

Key 103. Levy and assessments.

(a) Copenhauer vs. Common School District No. 17 of Canyon County. (1910) 52 P 2nd 129 (56 Idaho 182)

This is a suit by Copenhauer against the Trustees of Common School District No. 17, to restrain the trustees from expending money for teachers salaries in excess of $100.00 per month. From judgment decreeing the injunction, the defendant appeals.

Facts: In March 1933 the Trustees of the School District contracted with two teachers at a salary of $140.00 per month. This contract was properly executed in all respects. At the annual school meeting the Trustees presented the school budget of the previous and coming years. The Budget was put on the blackboard where it could be seen and it was decided by those present to discuss each item. When it was found that the Board budgeted $1260.00 for teacher's salaries it was decided by a vote of those present, 32 to 12, that the Board be instructed not to pay more than $100 per month, for combined

teachers salaries for the school year 1933-34 in the sum of $900.00.

The total budget was $1987.60 and no mill levy was voted. The Trustees disregarded the vote of the people and paid the total sum of $140.00 per month until the trial court enjoined them from making further payments in excess of $100.

Later the trustees submitted to the County Superintendent, that the electors had voted for 3½ mills for general purposes, and 3½ for High School tuition or a total of 7 mills. The Trustees admitted at the trial that the levy was erroneous, but the County Commissioners certified the 7 mill levy.

Question: Is the action of electors of a Common School in voting on the annual budget binding on the trustees?

Key 103-1. Making, requisites, and validity in general.

(a) Bramwell vs. Guheen. (1892) 29 p 110 (3 Idaho 347)

This action was brought by Plaintiff to enjoin the defendant, the County Assessor, from collecting taxes assessed on real estate. The ownership and discription is set forth in the complaint. A notice was posted calling attention to a meeting to be held for the purpose of discussing the building of a new school. Tweny-five persons came to the meeting. After discussing the issue all but eight left. At this time the Board appointed election officials and proceeded to have an election to levy 10 mills for the purpose of building a

new school. The notice of the meeting did not specify that an election was to take place.

Question: Plaintiff contends that the election was not valid because it was not held in the statutory manner.

Rule: Where the statute provides for the levy of a special tax by a School District, and prescribes the manner in which such levy must be made, a literal compliance with the requirements of the statute is necessary to the validity of the tax.

Injunction will lie to restrain collection of an illegal tax where it creates a cloud upon title to real estate.

Decision: Reversed.

(b) Fenton vs. Board of Commissioners.

(c) Northern Pacific Railroad vs. Chapman. (1916)

This suit was commenced by appellant to recover an amount of money plus interest on account of alleged excessive School tax. For the year of 1915 the Trustees of the School District levied a special tax for building and repairing school property in excess of 5 mills upon the valuation of the property. The levies were extended on the tax rolls and one-half was paid under protest. The School District refused the money because it was not the full amount.

Question: Did the School Laws of Idaho authorize a levy for special school purposes in excess of 5 mills for the year of 1915?

Ruled: Paragraph 54 Session laws of 1913 provides

that no more than 5 mills on each dollar of taxable property shall be levied for the purpose of building, repairing school property and buying equipment and for support of schools. The 15 mill levy is void.

Decision: Reversed.

(d) Petrier vs. Common District No. 5.

Key 103-2. Submission of question to voters.

(a) Bromwell vs. Guheen.

(b) Northern Pacific Railroad vs. Chapman.

(c) Smith vs. Canyon County.

Key 103-3. Statement of purpose of tax.

No cases in Idaho.

Key 103-4. Certificates, estimates, and determination of rate or amount of levy.

No cases in Idaho.

Key 104. Lien

No cases in Idaho.

Key 105. Payment.

No cases in Idaho.

Key 106. Collection and enforcement.

(a) Wilson vs. Lacke . (1910) 111 P 247 (18 Idaho 582).

This is an action to quiet title and has only one point which applies to School law. Because the rest of the case is irrelevant to schools only the one point will be mentioned.

Facts: This is an action to quiet title to certain

lots in Boise.

The lots were sold by the Clerk of the School District by virtue of an alleged delinquency and failure to pay School tax. Judgement was entered for the defendant. The contention is that the treasurer should have made the sale.

Rule: The court held that where it is the duty of the School District to make the sale of land for delinquent taxes, it is sufficient if the Clerk of the School Board attend and make the sale at the instance and request of the treasurer.

Decision: Affirmed.

Key 107. Remedies for erroneous taxation.

(a) Petrie vs. District No. 5. in Ada County.

Key 108. Assessments and special taxes for particular purposes.

(a) Smith vs. Canyon County.

Key 108-2. School building and sites.

(a) Petrie vs. Common School District in Ada County.

Key 108-3. High Schools or grade schools.

No cases in Idaho.

Key 108-4. Payment of indebtedness.

(a) Independent District No. 12 vs. Manning.

Key 109. Poll Taxes.

No cases in Idaho.

Key 110. Disposition of proceeds of taxes and other revenue.

No cases in Idaho.

Key 111. Rights and remedies of taxpayers.

(a) Nuchols vs. Lyle. 70 P 401 (8 Idaho 589)

This action was commenced by appellant, who was a member of the Board of Trustees for District No. 15 in Shoshone County, to enjoin payment of salary to the respondent as compensation to her for teaching. The Board consisted of three persons, one of which was the respondant's husband. Lyle and Young being a majority of the Board hired the respondant to teach in the school. Nuchols, also a Board Member, protested this contract and alleges in court that it is illegal because a Board cannot hire a teacher when it has a financial interest in the teacher.

Question: Can the Board of Trustees hire the wife of one of the members to teach in the school?

Rule: A contract made with the wife of one member of the Board of School Trustees employing her to teach is against public policy and is void if, according to the terms of the Statute and the husband has a financial interest in the contract.

Decision: Affirmed.

(b) Ashley vs. Picahrd.

Key 112. Presentation and allowance of claims.

No cases in Idaho.

Key 113. Action by or against district.

CHAPTER VII.

CLAIMS AGAINST DISTRICTS, AND ACTIONS.

Key 120. Pleading.

(a) Independent District No. 5 vs. Collins.

Key 112. Presentation and allowance of claims.

No cases in Idaho.

Key 113. Actions by or against district.

No cases in Idaho.

Key 121. Evidence.

No cases in Idaho.

Key 122. Trial.

No cases in Idaho.

Key 123. Judgment.

Key 124. Execution and enforcement of Judgment.

No cases in Idaho.

Key 125. Appeal and Error.

No cases in Idaho.

Key 126. Costs.

(a) People vs. Colhern. (1922) 210 P 100 (36 Idaho 340).

Facts: This is a mandamus proceeding by respondent against appellants as Trustees of School Districts No. 6, Custer County. Respondent alleges that the Board moved the school from where it was for some time established, to another location without the consent of the people. They demand that it be returned to its former location. Appellants contend that

it was condemned by the County Board of Health and for that reason they moved it.

Question: Did the Board have authority to move the school upon condemnation of the building by the Board of Health?

Rule: No schoolhouse shall be moved to a new site except when directed by a two-thirds vote of the electors of the District voting at an election for that purpose.

The judgment of this Court supports the lower Court and orders appellant to return the school equipment to the old site and there open and maintain school.

Decision: Remanded with instruction to modify judgment.

Key 127. Eligibility in general.

No cases in Idaho.

Key 128. Teachers Institute. (iii)

CHAPTER VIII

TEACHERS:

Key 129. Certificate of license.

No cases in Idaho.

Key 130. In general.

(a) Bradfield vs. Avery.

Key 131. Requisities of appointment.

(a) School District No. 5 vs. Wood.

Key 132. Revocation.

No cases in Idaho.

Key 133. Selection, appointment and term of employment in general.

(a) Hermann vs. Independent School District No. 1 of Bonner County. (1913)

Action by Adella Hermann against Independent School District No. 1 of Bonner County, Idaho. From a judgment for defendant, plaintiff appeals.

Facts: The action was brought in Probate Court to recover under a contract of employment as a teacher in the High School for the school year, beginning September 5, at a salary of $900.00 due him, payable in ten equal installments, one at the end of each school month and the tenth at the end of the school year.

The complaint alleges that she plaintiff was properly notified by letter that she had been elected to teach in the school. According to the terms of the notice of employment

she was to sign it and return to the Board within ten days or it would consider the offer rejected.

In the meantime her father became ill. She notified the defendants of this and requested a leave of absence until his health improved. She corresponded with the Superintendent of the District and not directly with the Board. After her fathers' death she reported to work. She was then informed by the Superintendent that another person was hired for her particular job, but he could arrange to keep her in the system but it would take a little time.

Several points have been set out to be answered by the court:

1. What law governs teacher contracts?

Rule: In this case Section 84 Laws of 1899 P. 105 applies to this case as the contract was made before the enactment of Chapter 159 Laws of 1911.

2. What was the result when the plaintiff did not sign the letter of acceptance?

Rule: There was no contract between Plaintiff and the School District even though she had been corresponding with the Superintendent.

3. Could the statement of the Superintendent that he would place her in the system if given a little time constitute a contract?

Rule: The Superintendent does not have authority to employ teachers, nor to excuse or waive the conditions of a

contract without expressed authority of the board.

4. Does the Board have the power to dismiss a teacher without notice?

Rule: The Board of Trustees had the discretion to discharge the plaintiff at any time without notice, and without investigation or consideration if any request of the plaintiff even though a contract of employment had been entered into by the District and the teacher.

Decision: Affirmed.

Key 134. Contracts of employment.

See Key 90.

Key 135. Making, requisites and validity.

See Key 131. Corum vs. Common School District No. 21. (1935) 47 P 2nd 889 (55 Idaho 725)

Action for damages for breach of contract by Corum against Common School District No. 21. Judgment for defendant and plaintiff appeals.

Facts: On the last Monday of March, 1932 the School District had its regular meeting. Appellant had applied for a position as teacher in the school and was hired to teach at a rate of $90.00 per month and $5.00 for janitor work. The term of employment started September 6, 1932. The Trustees did not have the regulation contract forms at the time, but later secured them. The contracts were then prepared in triplicate and one copy forwarded to appellant.

At the annual School meeting a new trustee was elected.

The newly elected trustee notified appellant that the contract was void. In answer to this appellant notified the Board that she intended to fill the terms of the contract and expect the Board to do the same. Appellant appeared on September 6 to start teaching in the school but she was refused permission by the Board of Trustees and the teacher in charge of the school.

Appellant brings this action to recover damages sustained by her by the action of the Board.

Question: It is contended by the Board that the contract was not valid, because it was not completely executed at the time the agreement was made because they did not have it in writing.

Rule: Where two members of the board met on the date fixed by statute for holding a regular meeting, at which they agreed to hire the plaintiff as a teacher is a legal meeting giving validity to the contract, furthermore contracts of employment agreed to at a regular meeting, but not reduced to writing and executed until after adjournment are valid, enabling school teacher to recover thereon.

Decision: Reversed.

Key 135-1 Authority to contract in general.

No cases in Idaho.

Key 135-2. Authority to bind successors.

No cases in Idaho.

Key 135-3. Requisites and validity in general

(a) Nuchols vs. Lyle.

(b) Heiman vs. District No. 1.

Key 135-4. Foreman requisites.

(a) Ewin vs. Independent School District No. 8. (1904) 77 P 222 (10 Idaho 102)

Action by Ewin against the School District. Judgment for defendant, plaintiff appeals.

Facts: The action was begun for $300.00 damages for an alleged wrongful dismissal as a teacher in the public schools of the town of Wallace. On the 6th day of April the plaintiff alleges that she entered into a contract with the Board of Trustees to teach in the schools of Wallace for nine months, starting September 2, 1901. On May 17, 1901 the School District was reorganized and changed to an Independent School District. She continued to teach until February 25, 1902 upon which date the trustees released her and prevented her from discharging her duties. From this dismissal she brings action for $300.00 damages. The defendant demurred to the complaint on the ground that it does not state the cause of action.

Question: The only questions involved here are: did the Board have power to dismiss a teacher and were there sufficient to cover an action, more than it is in establishing the power of the Board of Trustees.

Rule: Under Section 84 Session laws of 1899 P 105, the Board of Trustees is empowered with the discretion to discharge teachers without specifying any causes or requiring

any notice to the teacher. The Board has unlimited and unrestricted power to dismiss, either with or without notice to the teacher, and the exercise of such discretion by the Board is not subject to review by the Courts.

Decision: Affirmed.

(b) School District No. 15, in Freemont County ex rel Board vs. Wood et al. (1919) 185 P 300 (32 Idaho 484)

Action by School District No. 15 on the reaction of W. G. Baird against Wood as County Superintendent to recover money paid to teachers of the district. A demurrer to the action was overruled, and judgment issued in favor of defendants dismissing action, the plaintiff appeals.

Facts: This action is to recover money paid teachers on the ground that no written contract had been entered into.

In answer to this it is alleged that the teacher had performed their duties without objection or protest, and the contract was in all respects ratified because there were no objections.

Question: The sole question is whether contracts not in writing are valid.

Rule: The law does not expressly prohibit the employment of teachers except upon written contract, nor has it expressly provided that contracts to teach, other than written are void. Neither does the law provide for employment except

by written contract. It is further held that an unauthorized contract with a teacher may be ratified by those having authority to contract, either by expression or by acts which amount to part performance, or making payment for the services, and acceptance of the benefits.

In this case the Board through their actions rather ratified the contract.

Decision: Affirmed.

Key 135-5. Ratification and estoppel.

See Key 135-4.

Key 136. Construction and operation.

Key 137. Performance or breach.

No cases in Idaho.

Key 138. Remedies for enforcement.

No cases in Idaho.

Key 139. Resignation and abandonment.

No cases in Idaho.

Key 140. Suspension, removal and reassignment.

No cases in Idaho.

Key 140-1. In general.

No cases in Idaho.

Key 140-2. Authority to remove or discharge.

No cases in Idaho.

Key 140-3. Contracts, reserving rights.

No cases in Idaho.

Key 140-4. Grounds for removal or suspension

(a) Herman vs. District No. 1.

Key 140-5. Proceedings and review.

(a) Ewin vs. District No. 8.

Key 140-6. Restatement.

No cases in Idaho.

Key 141. Authority to remove and discharge.

Key 142. Action for damages.

(a) Hayes vs. Independent District No. 9, Twin Falls County. (1928) 262 P 862 (45 Idaho 464)

Action for breach of contract by Hayes against the School District. Judgment for plaintiff.

Appellant was dismissed following public hearing by members of the Board and other interested persons. She then brought this action to recover damages alleging that she had been wrongfully discharged.

Question: Does the Board have the right of dismissal?

Rule: The Board has the power to discharge appellant for Breach of Contract. The discharge of a teacher accomplished lawfully and in good faith by the School Board, is a good defense in an action by the teacher for damages resulting from such discharge.

Decision: Affirmed.

Key 143. Compensation.

No cases in Idaho.

Key 144. In general.

No cases in Idaho.

Key 144-1 Rights to compensation in general.

No cases in Idaho.

Key 144-2 Effect of closing a school because of contagious disease.

No cases in Idaho.

Key 144-3. Effect of removal, suspension, or abandonment of employment.

No cases in Idaho.

Key 144-5. Payment, and order therefore.

No cases in Idaho.

Key 145. Actions.

No cases in Idaho.

Key 146. Pensions.

(a) State ex rel. Davis et al vs. Kingsley.(1922)

This is a mandamus proceeding. The action is brought by petitioners as members of the Board of Teachers' Retirement Fund, against the Board of Trustees. The petitioners are demanding that the Board deduct from their salaries the amount prescribed by statute as required to become members and a part of the retirement program.

Question: Does the statute create a binding obligation on the part of the teachers to pay into the fund which can be enforced by defendants?

Rule: Ineligibility to receive an annuity from the Teacher's Retirement Fund is the sole penality provided by law for failure to pay the annual amount prescribed by the

statute and the collection of such amounts from the teachers cannot be enforced.

Decision: Action dismissed.

Key 147. Duties and Liabilities.

No cases in Idaho.

Key 148. Nature and right to instruction in general.

No cases in Idaho.

CHAPTER IX

PUPILS AND CONDUCT, AND DISCIPLINE OF SCHOOLS.

Key 149. Eligibility.

No cases in Idaho.

Key 150. In general.

No cases in Idaho.

Key 151. Race or Color.

No cases in Idaho.

Key 152. Age.

No cases in Idaho.

Key 153. Residence.

No cases in Idaho.

Key 154. Assignment or admission to particular schools.

No cases in Idaho.

Key 155. Proceedings to compel admission.

No cases in Idaho.

Key 156. Health regulations.

No cases in Idaho.

Key 157. In general.

No cases in Idaho.

Key 158. Vacination.

No cases in Idaho.

Key 158-1. In general.

No cases in Idaho.

Key 158-2. Existence of epidemic.

No cases in Idaho.

Key 159. Payment for tuition.

(a) Smith vs. Benford. (1927) 256 P 366 (44 Idaho 244)

The Plaintiff brought this action in mandamus to compel admission of two of his children to school without paying tuition. Judgment was for the defendant in the lower court and plaintiff appeals. Statute requires that tuition be paid for non-resident students.

Question: The question is this case deals with the residence of appellant. There is no dispute over the authority of the District to charge tuition, the claim by the appellant is that his children were residents of the District, even though he moved and they were not living with him.

Rule: Legal residence of a child, in absence of special circumstances, follows that of the father, and the minor cannot establish a legal domicile.

Decision: Affirmed.

(b) Bingham County vs. Bonneville County. (1942) 125 P 2nd 315.

Action to recover tuition by the County of Bingham against the County of Bonneville. From a judgment for Plaintiff, Defendant appeals. Affirmed.

Facts: Respondant recovered in three respective causes of action $714.50 for attendance of thirty-one pupils, residents of appellant county, in the school year of 1936-37 at Independent School District No. 30 at Shelley, $1,091.87 for twenty-six pupils in 1937-38; and $1396.56 for sixty-

seven pupils in 1938-39 under I.C.A. as amended by the 1933 Session laws, Chapter 205, pages 408, 409. The complaint alleges that the Shelley District never notified respondent's School Superintendent of such attendance, hence no certificate was submitted by the Superintendent until 1940.

Question: Was the certificate given within the time specified?

Rule: Under statute, a county was not prohibited from recovering tuition for school pupils for another county through Superintendent, certificate was not sent within prescribed time, since time was not of essence of right to statutory contributions, and statutory provisions concerning timely notice were "directory" and not "manditory" as to cause action.

Decision: Affirmed.

Key 159½. Transportation of pupils to and from schools or provisions in lieu thereof.

No cases in Idaho.

Key 160. Compulsory attendance.

No cases in Idaho.

Key 161. Truants and truant officers and schools.

No cases in Idaho.

Key 162. School terms, vacations and holidays.

No cases in Idaho.

Key 163. Grades or classes and deportment.

No cases in Idaho.

Key 164. Curriculum and courses of study.

No cases in Idaho.

Key 165. Religious instruction and reading of Scriptures

No cases in Idaho.

Key 166. Text books.

No cases in Idaho.

Key 167. Selections and adoption and change.

No cases in Idaho.

Key 168. Duty to furnish.

No cases in Idaho.

Key 169. Control of pupils and discipline in general.

No cases in Idaho.

Key 170. Rules and regulations.

No cases in Idaho.

Key 171. Authority to make.

No cases in Idaho.

Key 172. Reasonableness and validity.

No cases in Idaho.

Key 172½. Construction and operation.

No cases in Idaho.

Key 173. Violation of rules and offenses.

No cases in Idaho.

Key 174. Punishment.

No cases in Idaho.

Key 175. In general.

No cases in Idaho.

Key 176. Corporal punishment.

No cases in Idaho.

Key 177. Expulsion or suspension.

Key 177. Expulsion or suspension.

No cases in Idaho.

Key 178. Graduation and diploma or certificates.

No cases in Idaho.

CHAPTER X

SUMMARY

At least one case was found under each chapter heading. This indicates the numerous questions that can arise concerning legal problems involving education. The educational system is founded on the State Constitution with further elaborations by the State legislature. This contributes to the conflicts that arise through apparent or theoretical contradictions.

As time changes the need and demands of education, so must the laws change. Progress in education is entirely dependent upon a sound legal foundation. The courts recognize this need and are very careful to make their findings consistent with the Constitution, statutory laws, and previous decisions. The Courts are cognizant of their responsibility to meet every question with equity as the rule. They must allow for changing conditions in educational needs and demands.

In order to summarize this thesis it is not necessary to present the results of every case. To do so would be repetitious. Therefore, it seems desirable to limit the summary to a discussion of the more important cases.

Questions involving bonding, taxation and redistricting were the most numerous. This is understandable because in each case property is involved.

Chapter III, Creation, Alteration, Existence and Dissolution of Districts, has eighteen cases, each one dealing with the redistricting or consolidation of school districts. From reviewing the cases it is apparent that the County commissioners once had the power to alter School Districts. In doing so their power was questioned from many points of view. Examples will be found in the following cases:

Woods vs. Independent School District No. 2. In this case the Courts held that the Board of County Commissioners had the power to adjust districts according to changing conditions.[1]

In the case in reannexation of Common School District No. 18 and 21 to Independent School District No. 1, Minidoka County, the County Commissioners were upheld in the annexation of unorganized territory to an organized School District.[2]

In school District No. 12 of Lincoln County et al vs. School District No. 33, the Board of Commissioners was allowed to divide high valued property among existing school districts.[3]

[1] Woods vs. Independent District No. 2. (124 P 780) (21 Idaho 734)
[2] 15 P 2nd 732
[3] 139 P 136

In Carlson vs. Miller the number of signers required and residence of the signer were established.[4]

Special taxes in reorganized districts and the meaning of "the next school year" were established in the case of Smith vs. Canyon County et al.[5]

The Commissioners were upheld on a question involving taxation in a district which was not formerly organized by holding that the area had functioned as a district and the tax was legal. This rule is found in Pickett vs. Board of Commissioners of Fremont County.[6]

This point was again upheld in Telfer vs. School District No. 31 of Blain County.[7] Wheeler vs. Board of County Commissioners of Bingham County established the number of parents or guardians needed to sign a petition to divide a district.[8]

In Bobbitt vs. Blake, the Commissioners were allowed to change the boundaries of existing districts.[9]

Chapter III covers Establishment of school lands, funds, and regulations in general. There are thirteen cases in this chapter. Most of these cases established the fact

4	162 P 332	29 Idaho 295
5	276 P 1070	39 Idaho 222
6	133 P 112	24 Idaho 200
7	295 P 632	50 Idaho 274
8	176 P 566	21 Idaho 766
9	136 P 211	25 Idaho 52

that appropriations are continuous and payments of money can be drawn against the fund as long as the fund is not discontinued or amended by the legislature. Evans vs. Huston.[10] In Hansen et al vs. Independent School District No. 1 in Nez Perce County, leasing a playing field to a professional baseball team was permitted because the funds and credit of the school were not pledged.[11] In six cases the permanent school fund was declared inviolate with no authority granted to any person or agency to spend money out of the principal in six cases.

The Court consistently held that no money could be spent unless it was a sound investment in bonds legally sold and issued, and the money used was to come from the interest and income from the fund.

Chapter VI covers District debts, Securities, and Taxation. Security of public money is a responsibility of every School Board. They are charged with the duty of preserving the funds and being conscientious with expenditures. Public money is to be used for specified purposes but in no way for private use. This was well defined in the case of Independent School District No. 8, Twin Falls vs. Twin Falls County Mutual Fire Insurance Company,[12]

[10] 15 P 14 29 Idaho 559
[11] 115 P 2nd 97
[12] 164 P 1174 30 Idaho 400

where the court held that no public money could be spent in a Mutual Fire Insurance Company because it was indirectly being used for private use. It was further held that such a company would not have to pay any claim for losses because the contract was illegal.

In Independent District No. 12 vs. Manning[13] the School District was upheld in a tax suit when contested by persons within the district alleging that levies must be voted upon before they are valid. The ruling was that when a law imposes an obligation upon a district it also grants power to levy a tax sufficient to pay for it.

Qualified electors for bond issues were defined in Griffith vs. Owens.[14] Here they referred to the Constitution for support in their decision declaring an act by the legislature unconstitutional. In the case of Common School District No. 27 vs. Twin Falls National Bank[15] it was held that an order by a School District is prerequisite to issuance of a warrant against School District funds.

Voters are entitled to know the purpose of bond issues and the notice must state the purpose for incurring indebtedness although itemized expenditures are not necessary as shown in the case of King vs. Independent District No. 37.[16]

13 189 P 47 33 Idaho 26
14 166 P 922 30 Idaho 647
15 299 P 662 50 Idaho 668
16 272 P 507 46 Idaho 800

In the case of Howard vs. Independent School District No. 1[17] it was held that districts organized under special charter, granted by the territorial legislature are not repugnant to or in conflict with the State Constitution and are valid districts with the duties and responsibilities of all other school districts.

There are fifteen cases in Chapter VI, ruling on maximum mill levies, statutory provision for bond election, title to School lands and compensation for teaching.

Chapter VI, Government Officer and District Meetings, reports six cases. The duties and powers of public officials, who administer schools must follow the laws delegated to them by law and are not allowed to interpret or overlook requirements specified. This is pointed out in the case of Petrie vs. Common School District No. 5 in Ada County.[18]

Chapter II defines the powers and duties of School Trustees and has only three cases. This seems to be evidence that School Trustees are not questioned to any extent on issues serious enough to go to the Supreme Court.

Chapter VIII, covering cases on teachers, has seven cases. One case that seemed to be fundamental and important is that entitled, School District No. 15 in Freemont County vs. Wood.[19] The Court held that a written contract

[17] 106 P 692 17 Idaho 537
[18] 255 P 318
[19] 185 P 300

was not necessary to be valid and enforceable. Ratification by authorized board members through acceptance of the benefits of the verbal contract would make it valid.

Chapter IX, Pupils and Conduct, has two cases. Both authorize School Districts to collect tuition for education children outside of their districts.

Absence of laws or statutes provided a basis of action in some cases. The Court then resorted to using "common sense" in finding a solution. This reasoning was used when property and money were so intermingled that it could not be seperated and restored to the original owners.

The cases indicate that most of the conflicts were founded upon a misinterpretation of the law as it was applied to the facts or circumstances of the case. In some cases the constitutionality of an act was questioned and a Court decision was necessary. However, at no time was the intention of the legislature an issue.

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