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LEGISLATIVE TRENDS IN THE DELEGATION
OF SCHOOL POWERS IN TEXAS

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PREFACE

The delegation of powers by the Legislature in carrying out school laws has always been a function of that body. In 1929 Justice Walker, in the case of *Richardson v. Liberty Independent School District*, stated that all powers possessed by school districts have been delegated by the Legislature.¹ The same is true in respect to the powers possessed by the State Board of Education and the county boards of education. All these divisions have been created by law and all their powers delegated by the Legislature. By this study the writer will try to show what trend the Legislature has taken in the delegation of powers concerning schools.

In this study the solution of the following questions will be sought:

1. Is there a tendency toward more delegation of power to the state level of administration?
2. Is there a tendency in the Legislature to give more power to county and local units in the school system?
3. Is the Legislature inclining toward exercising more power on its own initiative?

By the study of laws passed by the Legislature delegating powers and retaining powers, these problems can be answered and a definite trend shown.

¹*Richardson v. Liberty Independent School District*, 22 S. W. (2d) 475 (1929).

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CHAPTER I

CHANGES IN SCHOOL LAWS--1845-1860

Placing of Responsibility-- Constitution of 1845

When Texas joined the Union in 1845, the leaders of this state drew up a new state constitution. The tenth article of this constitution they dedicated to "Education." In Section One of this article they stated

Sec. 1.-A general diffusion of knowledge being essential to the preservation of the rights and liberties of the people, it shall be the duty of the Legislature of this state to make suitable provision for the support and maintenance of public schools.¹

Section Two of this article required that "the Legislature shall, as early as practicable, establish free schools throughout the State, and shall furnish means for their support by taxation of property. . . ." ² In this first state constitution the leaders of this era placed upon the Legislature the responsibility of providing for public education in Texas. The Legislature, however, was not too interested in education and for many years did nothing about it. It seems that our legislators felt that private institutions were supplying sufficient education for the time.

¹H. P. N. Gammel, The Laws of Texas, II, 1297.

²Ibid.

Delegation of Powers to Municipalities by Charters

In 1846 the Legislature passed a law authorizing the Corporation of Galveston to levy a tax for the support of free schools. By this act the City of Galveston could levy and collect a tax ". . . not to exceed one half of one per centum on the real estate within the limits of said corporation, for the establishment of public free schools. . . ." ³ Also, under this act, the machinery for setting up the system was authorized delegating the control of the system to the hands of the corporation.

This act and similar ones were passed during the period of 1846 and 1854. The Legislature delegated to municipal corporations the power to organize and control schools within their limits. These were the first powers delegated by the Legislature of the State of Texas concerning schools.

The School Law of 1854

It soon became evident to the people, and to the Legislature, that something must be done about the educational situation in Texas. The educational question and the railroad question were the two big issues in the election of 1853. Governor E. M. Pease was elected on a platform emphasizing public education. At least two thirds of the members elected to the Legislature that year were pledged to make liberal

³Ibid., p. 1136.

provision for a school system.⁴ Because of this interest, the Legislature passed a law in 1854 setting up a school system. Section One of this act provided for the setting up of a Special School Fund, the interest from which could be used for the support and maintenance of public schools. The remainder of the act is a delegation of powers and duties by the Legislature for the setting up and management of the school system.

First, on the state level, the Treasurer of the State was given the title of ex officio superintendent of common schools. It was his duty to disburse the per capita apportionment to the county treasurer upon ascertaining the number of the population of scholastic age in each county. The assessor and collector of each county was to make a certified report of the number of free white children in his county to the State Treasurer. The state, also, would pay the tuition of any child in the state whose parents were unable to do so themselves. The State Treasurer was to keep records of these transactions, report to the Governor on the condition of the Common School Fund, and make suggestions to the Legislature, as he deemed advisable, on matters relating to the common school system. The Legislature, as well as the people, was still not very interested in state-supported and state-controlled schools. The philosophy of the era was that schools

⁴Fredrick Eby, The Development of Education in Texas, p. 104.

should be maintained by the people who wanted their children to go to school. It was felt that the man without children had no obligation to help furnish education for the children of some other man. Because of these beliefs such powers as were delegated were put in the hands of the local authorities.

Section Two of this first school act stated

That the Chief Justice and County Commissioners shall constitute a board of school commissioners for each county, whose duty it shall be, during the year eighteen hundred and fifty-four, to form their respective counties into school districts of convenient size, and number the same, so that each district in a county shall be known by its appropriate number. Provided, however, that in forming said districts the convenience of neighborhood shall be regarded as much as possible, and each school district shall contain a sufficient number of children for the maintenance of a school. They shall also at the same time, order an election by the qualified voters of each school district, for three trustees for each district. . .⁵

This section set up the machinery for organizing districts in the county with the power delegated to the chief justice and county commissioners, and called for these officers to announce and hold an election for three trustees in each district.

The county assessor and collector was obligated to make a list of the free white population between the ages of six and sixteen in each district and to send one copy to the county clerk and one copy to the Treasurer of the State. This census was to be completed each year before the first

⁵Gammel, op. cit., III, 1561.

day of July. The State Treasurer would, then, pay the per capita apportionment to the county treasurer, who was held responsible for its safe keeping. The county court signed the order for its disbursement. The chief justice of each county made, each year, a list of the indigent children within the county, and the amount of money due for their tuition. This list was then sent to the Treasurer of the State. The Treasurer distributed this money to the county in the same way the per capita apportionment was disbursed.

The district trustees were to hold an election for their district to determine the location of the school building. No district could receive any money until suitable buildings and fixtures were provided. The money from this act could be used for paying teachers' salaries only.

Section Nine further delegated powers to the district trustees as follows:

Sec. 9. That it shall be the duty of the school trustees, for each district, as early as practicable after their election, by giving due notice, to call a meeting of all the patrons of the school in the district, and a majority of those present shall indicate to the trustees the length of time during the year they desire a school, the kind of teacher they want, and the amount of salary they are willing to pay. It shall be the duty of said trustees to observe, as far as possible, such instructions, to employ teachers of suitable moral character and qualifications, to visit from time to time the district school or schools under their charge, to expel a pupil for misconduct, to examine all complaints between teacher and pupil of a serious character, to discharge a teacher for incapacity or improper

conduct, and generally to exercise supervision over the affairs of the school within their district.⁶

Thus the school trustees were given complete power in running their schools. On such matters as the selection and payment of teachers, and the length of time the school would be open, they had to confer with the patrons. This procedure permitted the operation of the schools in keeping with the expressed desires of the people of the communities. The Legislature had no desire at this time to set the length of the school term, the salaries of the teachers, courses to be taught, and other factors that were to be instituted later in governing the school system. They just wanted to set up a system and let the people do what they pleased.

The school law of 1854 was a failure. The county officers did not perform their duties in accordance with its provisions. Because of this neglect the State Treasurer could not perform his duties in the manner required. There were few counties that organized school systems. For these reasons, Governor E. M. Pease, in his message to the Legislature in 1855, recommended that the districting system be done away with, and penalties be placed upon county officers not complying with the law.⁷

⁶Ibid., p. 1463.

⁷E. M. Pease, "Message of the Governor of the State of Texas, to the Sixth Legislature, 1855," quoted in Fredrick Eby, Education in Texas: Source Materials, University of Texas Bulletin No. 1824, 1918, pp. 279-84.

Delegation of Powers Under the Law of 1856

In 1856 a law was passed which instructed the State Treasurer to merge the General School Fund and the Special School Fund into a fund to be known as the School Fund.⁸ This law did away with the districting system. The county officers still retained their duties as far as taking the scholastic census and distributing the per capita apportionment were concerned. If these duties of taking the scholastic census were not performed by the assessor and collector of the county, he could be fined up to five hundred dollars. A school could be set up anywhere, by any group, and receive the per capita apportionment for the length of time the school was in operation. It was the teachers' duty to keep a daily attendance record of pupils as well as the length of their attendance. There were no district trustees to supervise the schools.

This law was a triumph for the private schools in the state, who received money from the state to support their private enterprises. Administration was almost entirely within the hands of the people. The government, also, paid the tuition of the orphaned and the indigent children attending these private schools.

⁸ Gammel, op. cit., IV, 525.

Trend of the Period

The Legislature had been given, by the Constitution of 1845, the duty of supporting and maintaining public schools. The Constitution allowed the Legislature to place one tenth of the general revenue of the state into an available school fund. For eight years the Legislature ignored the question of education, until public sentiment demanded that something be done about it. By the law of 1854 the Legislature maintained no control over schools, but delegated it mostly to the county and local levels of administration. The State Treasurer, as ex officio superintendent, had no power. When this system failed, the law of 1856 was passed, which took the power away from the county officers and the district trustees and placed it directly in the hands of the people. Apparently, this change was wanted by the people.

The trend of this time definitely placed the power in the hands of the people themselves. This can be seen by the powers delegated to the district trustees in the law of 1854, and the placing of power in the hands of the people by the law of 1856. This trend set by the Legislature caused a poor system of schools which forced this state to rank among the lowest in the Nation.

CHAPTER II

DELEGATION OF POWERS FROM THE CIVIL WAR TO 1876

Decline of Interest in Education

When the Civil War began the Legislature lost interest in the public schools. They had their minds fixed on things they considered to be more important. Public school interests died all over the state, while private schools flourished. The people sent their children to private schools and paid their tuition without help from the state. The per capita apportionment was distributed for the last time in 1861 until after the conflict. This apportionment, however, was not seriously missed, since it amounted to only sixty-two cents. The public school system had never become deeply rooted in the hearts of the people. Thus the public schools died during the Civil War.¹

Depletion of the School Fund

In 1856 the Legislature had passed a law giving the Governor, Comptroller, and the Attorney General, as an ex officio Board of School Commissioners, the power to loan money in the school fund to railway companies to help them build

¹Eby, The Development of Education in Texas, p. 150.

their railroads. Most of the public leaders believed this to be a sound investment. Nearly one and three fourths million dollars were loaned to the railroad companies, the last loan being made in 1862.² Even before the war it became apparent that these railway companies could not meet their annual interest payments. When the war began the payments stopped altogether, and for many years no settlement was affected.

In addition to the money lent to the railroads, much of the balance of the school fund was sidetracked to other uses. The money in the State Treasury became so low that the Governor transferred over one and one fourth million dollars to the military board for carrying on the war.³ Thus it was that a school fund of over two and a half million dollars was almost entirely depleted.

In 1856 the Legislature passed a law which set aside all money received from the sale of public lands for the schools, but during the war this law was repealed. When the war ended the Legislature was faced with the duty of setting up an entirely new systems of schools.

Delegation of Powers in 1866

The Constitution of 1866 made the same provisions for education, in Section 1, Article X, as was made in Section 1, Article X, of the Constitution of 1845, by laying the

²Ibid.

³Ibid.

responsibility again upon the shoulders of the Legislature.⁴ The 1866 constitution, also, provided for the office of Superintendent of Public Instruction. This office was to be filled by appointment of the Governor with the consent of the Senate. The Superintendent, Governor, and Comptroller were constituted a Board of Education to have control of the perpetual school fund and common schools under the regulation of the Legislature.⁵

In 1866, the Eleventh Legislature passed a law similar to the law of 1854. The Treasurer of the State, instead of being ex officio superintendent of common schools, was made ex officio treasurer of the public school fund. His duties were the same as they were under the law of 1854 when that official was ex officio superintendent. This law provided that the police courts of each county should have the same powers as those held by the county courts under the law of 1854, except that the police courts now were obligated to appoint a board of school examiners, consisting of five persons, who were to examine all persons proposing to teach school within the district. After the examination, if the person being examined proved qualified to teach, the board of examiners would grant him, or her, a certificate stating what branches the applicant was qualified to teach. No person

⁴"Constitution of 1866," cited in Fredrick Eby, Education in Texas: Source Materials, p. 440.

⁵Ibid.

was allowed to teach until a certificate was obtained. By a law approved the same day, the police courts of the state were authorized to levy a tax for the purpose of paying the tuition of the indigent children of the county. Money collected for the indigent children could be used only for them.⁶ With the delegation of this power to the police courts, the Legislature gave to them a power that had been retained by the Legislature under the law of 1854. The district trustees, under the law of 1866, had exactly the same powers of supervision over the schools as they had under the law of 1854. By this law the Legislature was reverting back to the ideas of delegating powers more to the local units than to the state level of administration. They still believed in local control. This law had the feature that private schools could be used as public schools, if the people so desired.

The Radical Regime

The Constitution of 1866 and the laws passed under it were nullified by the Federal government, when a new element took over the control of the state. This element consisted of "carpetbaggers," Southerners who had been in sympathy with the North, and the newly free Negroes. These people, who took over the control of the government, thought that the people in Texas were very deficient in matters educational. They strongly favored a free public school system, offering equal

⁶Gammel, op. cit., V, 1113-14.

educational opportunities to both the colored and white population.

In 1869, the Republicans drew up a constitution which called for a highly centralized form of education. Under this document the counties were to be divided into districts, and attendance was made compulsory for four months of each year. The permanent school fund was reestablished. All lands and funds were again secured, and the county lands were placed under state control. Any money derived from the sale of any part of the public domain was to be placed in the permanent school fund and could never be used for any other purpose. The available school fund was derived from the income of the permanent school fund, one fourth of the annual revenues from general taxation, and a poll tax of one dollar from every voter between the ages of twenty-one and sixty. Also, local taxation of such an amount "as will be necessary to provide the necessary schoolhouses in each district, and insure the education of all the scholastic inhabitants," both white and colored was authorized.⁷

In accordance with the Constitution of 1869, the Legislature passed the school law of 1870, which provided the system of education the Republicans wanted. Section One of this law provided for a temporary Superintendent of Public Instruction to be appointed by the Governor. At the first general

⁷Eby, Education in Texas: Source Materials, p. 518.

election the office was to be filled by a vote of the people. The term of office was to be for a period of four years. The Legislature delegated to the State Superintendent many powers among which were

Sec. 2. The Superintendent of Public Instruction shall from time to time, as required, recommend necessary legislation to a complete system of education, adapted to the circumstances of the people of the State. He shall furnish the Legislature, at each session thereof, a report of all the free schools in the State, their condition, and the progress of education, and the workings of the system, and suggest such changes as he may deem necessary. Whenever required, he shall furnish either House such information as may be desired in relation to the public schools of the State. He shall have his office at the seat of government. He shall decide all controversies arising out of or relating to public free schools of the State. He shall recommend to boards of school directors and teachers the most approved methods of teaching and discipline, and books to be used. He shall furnish the boards of directors, teachers, tax assessors and county treasurers, all necessary forms and blanks required for the management of schools, and the receipt and disbursement of all the school funds of the State, and the taking of the census of the scholastic population of the State. He shall ascertain the amount of the school fund of the State for annual distribution, and see that the same is duly distributed to the several counties, according to the scholastic population, by the State Treasurer. He shall report annually to the Legislature the amount of the school fund, and the disposition of the same. The fiscal scholastic year shall be the same as the fiscal year of the State Treasury.⁸

The Legislature, by this section, gave the Superintendent a large amount of power for supervising the actions of the board of school directors, and in making recommendations concerning methods of teaching, discipline, and books to be used.

⁸
Gammel, op. cit., VI, 287.

Also, his power of settling controversies relating to public free schools of the state gave him the right to hand down decisions in an administrative capacity.

The Treasurer of the State was authorized to pay to the county treasurer the correct amount due the county according to the scholastic population. He reported to the Governor annually on the condition of the school fund including the distributions made to the several counties. He, also, had the power to authorize the collection of taxes for the several counties.

The State Superintendent was given more power than ever before. The ideas of the leaders were extremely different from those of the people, but the people had little to say at this time about the control of their government.

By this law, passed in 1870, each organized county in the state also composed a school district. The county courts were ex officio boards of school directors for their respective counties. The Legislature placed many powers in the hands of these boards to govern their districts. First, they were to divide their districts into as many sub-districts as would be necessary for public convenience. They were to locate as many schoolhouses as the funds would allow. They could levy and collect an ad valorem tax of 1 per cent for the purpose of erecting buildings, with each sub-district having the benefit of the taxes paid by its own citizens. These directors were to appoint a board of trustees for each

sub-district and a board of school examiners, for each district, to examine those persons who wished to teach. The county court was under the obligation to require parents, or guardians, to send their children to school for four months each year under the penalty of forfeiting the county's share of the school fund for that time.

All difficulties arising in the schools were to be reported to the board of trustees, and the board was to settle them. To settle these difficulties these boards were given the power to remove teachers or expel students for insubordination. They had the power to make such rules and regulations for governing the schools, in their respective counties, as seemed for the best interest of education. These boards of directors were subject to the rules, directions, and supervision of the Superintendent of Public Instruction.⁹ It was the duty of the presiding justice of the police court of the county to report the conditions of the school system in the district to the State Superintendent. The county treasurer was required to keep an account of all money received and all money paid out, and to make a financial report annually to the State Treasurer. The county tax collectors were obligated to take the scholastic census every year and send a copy to the State Treasurer.

The boards of trustees, appointed by the board of directors of the county, were to aid in locating and building

⁹ Ibid., pp. 288-89.

schoolhouses in their sub-districts. This was done under the direction and supervision of the board of directors. The trustees were empowered to employ teachers, and, when necessary, assistant teachers, for not less than four months in the year. These teachers were to have a certificate of recommendation from the board of examiners before they could be hired. The trustees were to have control of the schoolhouses assigned to them by the county board. They could discharge a teacher for incompetency, immorality, neglect, or misconduct in school. It was their duty to visit, inspect, and supervise the school under their charge, subject always to the supervision of the Superintendent of Public Instruction and the board of school directors of the county. The local trustees were to be appointed annually and could be removed for cause by the board of directors of the district.¹⁰

The Legislature directed that the schools should be in operation for at least four months each year. It was the duty of the district attorney of each judicial district to inspect the action of the county boards in his district and to report to the State Superintendent his findings.

The 1870 act placed the State Superintendent at the head of the school system and gave him control over all branches of that system. This was taking the control of the schools from the hands of the people and placing it in the hands of a state administrator. Although this was a great

¹⁰Ibid., pp. 289-90.

amount of control to give to the Superintendent of Public Instruction, he was to receive even more by the law of 1871.

The county and local officials, reflecting the dissatisfaction of the people with the law of 1870, did very little to carry out its provisions. This negligence angered the Legislature, resulting in a new school law passed in 1871. The Legislature, in the 1871 act, took all the power away from the people and from the county and local levels and delegated it to the state officials. The State Superintendent of Public Instruction was to have a broad supervisory control over all of the public free schools of the state. This control was even broader than under the law of 1870. He kept a record of the scholastic population of each county, and apportioned the money of the school fund to the counties according to this scholastic population. He kept records on the school fund and reported its condition, annually, to the Governor. He prescribed and furnished all necessary forms for teachers and officers of the Bureau of Education, and directed the manner and time of making these reports. By this law of 1871, his power was broadened to the point where he was to approve all accounts for compensation of teachers and employees of the Bureau of Education, and for school books and apparatus purchased for public schools before they could be paid out of the Treasury of the State.¹¹

¹¹Ibid., pp. 959-60.

The law of 1871 provided for a State Board of Education to be composed of the Superintendent of Public Instruction, the Governor, and the Attorney General of the State. The Board was empowered to adopt all rules and regulations for the establishment and promotion of public schools, to provide for the examination and appointment of teachers, and to fix their compensation. It was authorized to define the course of studies in the public schools, and to direct the class and kind of apparatus and books to be used. The Board prescribed the duties of the board of directors, but they could not prevent the segregation of students for the peace and success of the school. By this provision the Legislature prevented the Board from passing any rule requiring that both the white and colored children must attend the same school. The Board was instructed to report to the Legislature, from time to time, such amendments to the school laws as it deemed necessary, and to state the reasons for wanting these amendments. It was also empowered to prescribe the manner of collecting and disbursing taxes for schoolhouses.¹²

The Superintendent of Public Instruction was empowered to appoint, with the approval of the Governor, one supervisor of education for each judicial district in the state. The supervisor was to serve for four years. He could be removed for incompetency, malfeasance, or neglect of duty. These

¹²Ibid., pp. 960-61.

supervisors were empowered to lay off and sub-divide the counties of their respective judicial districts into school districts, and were empowered to appoint five school directors for each school district. The actions of these supervisors were to be subject to the control and revision of the Superintendent of Public Instruction. The supervisors were obligated to enforce all rules and regulations adopted by the Board of Education.¹³

The Legislature designated the board of school directors in each district to require the attendance of all children of scholastic age for a period of not less than four months each year. All parents and guardians were made responsible for the school attendance of their children and were subject to a fine if their child, or children, did not attend. The directors could levy a tax for the purpose of building schoolhouses, but the manner of collection and disbursement of this tax was to be prescribed by the Board of Education.¹⁴

This law completely did away with local power and delegated it all to the Superintendent of Public Instruction and the Board of Education. The county level of control was done away with, because these officials did not perform their duties under the law of 1870. All persons connected with the school system were directly under the control of the Superintendent of Public Instruction or the Board of

¹³Ibid., p. 960.

¹⁴Ibid., pp. 960-61.

Education. This was the most highly centralized system of education that Texas had ever had. The "radical" group saw that this was the only way they could secure the type of education that Texas needed, and because of this, they delegated all the power to the state agencies.

The Return of Control to the Democrats

In 1872 the Southern Democrats regained control of the state government. When the Legislature met in 1873, it immediately started tearing down the system of education then in operation, and began to set up a new system. One of the first moves did away with most of the powers of the State Superintendent by delegating these back to the county and local levels.

Under the new law the Superintendent's duties were mainly to apportion the school fund among the several counties, and to advise and counsel, with experienced and practical school teachers, as to the best methods of conducting public free schools. He could offer this advice, but he could not force it upon the schools. It was his duty to report the conditions of the schools in the state to the Governor and the Legislature. He was authorized to furnish all forms and blanks for reports to and from the state and local school officers. He was to be general advisor and assistant of the county superintendents of the state. The State Comptroller and State Treasurer were to draw warrants and pay out money,

respectively, to the county treasurers for their portion of the school fund.¹⁵

Five school directors were to be elected in each county. These directors chose one of their number to act as presiding officer and to act as ex officio county superintendent. It was the duty of this board to divide the county into school districts. The county superintendent examined all persons wishing to teach. On the first Monday of November of each year the county superintendent made his report to the Superintendent of Public Instruction. The county court could remove a county superintendent for failing to make this report. The county superintendent could allow children living in one district to attend the school of another district if it was for the convenience of the scholastic population. The parents could send their children to other districts, or counties, to school if they so desired.

The county board of directors were empowered to define the course of study for the public schools in their respective counties, and to determine the class and kind of school books and apparatus to be used in the schools. They were empowered to prescribe the duties of the trustees and the teachers.

Each district elected three trustees for one year terms. The trustees were required by the school directors to take

¹⁵Ibid., VII, 536-39.

the scholastic census immediately following their election. It was their duty to hire competent teachers for at least four months each year and to provide the necessary schools and schoolhouses for the scholastic population of the district.¹⁶

The Legislature, in this act, laid down the rules themselves in regard to taxes, duties of the teacher in keeping records, compulsory attendance, and length of school term. This act returned the control of the school system to the people from whom it had been wrested by the Republican regime.

Trend of the Period

Following the Civil War the Legislature had little time for education and thus, little was done for education on the state level. The trend was toward control by the county and local levels of administration. The state officials were given very little authority other than the disbursement of the school fund to the several counties of the state. As the people wanted, all supervision and administration was placed in the hands of the police courts of the counties and the local trustees.

In 1870 the Legislature passed a law which placed a large amount of power in the hands of the Superintendent of Public Instruction. The powers given to the county and local

¹⁶Ibid., p. 542.

levels were about the same as they had been under the law of 1866. The Superintendent of Public Instruction served as the general supervisor over the entire system. The county courts worked under him with some power delegated to local trustees. The law of 1870 failed because the people on the local and county level would not cooperate with those on the state level. Because of the failure of this system, the school law of 1871 was passed. This law took all the authority from county and local levels and placed it in the hands of the state administrators of education.

When the Democrats again gained control of the Legislature they immediately took the power away from the Superintendent of Public Instruction, and did away with the State Board of Education. The power then reverted to the county and local levels where it was to remain for a long period of time.

The delegation of powers changed rapidly in this period from decentralization of power to centralization of power, and back again to decentralization.

CHAPTER III

DELEGATION OF POWERS FROM 1876 TO 1900

The Law of 1876

In 1875 a new state constitution for the State of Texas was drawn up and ratified on February 15, 1876. There was considerable controversy at the convention as to what type of educational system should be set up. On one extreme there were those who did not believe in state supported education in any form. On the other extreme there were those who wanted a highly centralized form of education. The two factions agreed on two points only. They were as follows:

1. There must be separate schools for the white and colored children.
2. The school fund must never again be diverted to any purpose but the one for which it was intended.¹

The educational article of the Constitution of 1876 was drawn up with very disappointing results in many areas. Because of the political hatred of the "radical" element, the good points, as well as the bad, of the Republican system of education were done away with.

The office of Superintendent of Public Instruction was abolished. Compulsory education no longer existed. The system of redistricting the counties was eliminated. The free

¹Eby, The Development of Education in Texas, p. 169.

school age was defined as being eight to fourteen years inclusive. The county school lands, which had been turned over to the Legislature under the Constitution of 1869, were returned now to the management of the respective counties. The Constitution in Section 1, Article VII, declared it to be ". . . the duty of the Legislature of the State to establish and make suitable provision for the support and maintenance of an efficient system of public free schools."²

The Legislature provided for a system of public free schools by the law of 1876. The Governor, Comptroller, and the Secretary of State were designated a State Board of Education. It was made the duty of this Board to distribute, annually, the available school fund of the State to the several counties. This apportionment would be made before September first of each year. This was the date designated in the law for the scholastic year to begin. The Governor of the State served as President of the Board. A majority of this Board could carry out the duties assigned to it by law. The Board kept records of its proceedings. These records had to be signed by the President of the Board. It was authorized to keep on file all reports and documents received from the various school officers throughout the State. The Board could counsel and advise county school officers and teacher on the best methods of conducting schools, but it could not

²Mumme et al. v. Marrs et al., 40 S.W. (2d) 31 (1931).

force these schools to accept this advice. The Board of Education had printed, after each session of the Legislature, all the school laws, and then had these distributed to the school officers and teachers of the State. The report of the Board of Education was placed before the Legislature at each session. The Board of Education had no administrative powers. Evidently the people did not, as yet, want control from the State level.

The State Comptroller kept a separate account for the available school fund. At every meeting of the Legislature he made a report estimating the amount to be received in that fund for the next two years, so that the Legislature might appropriate that money for the establishment and support of public free schools.

The Treasurer of the State received and held, as a special deposit, all school moneys. He reported to the Governor, thirty days before the meeting of any session of the Legislature, or at such other times as the Board of Education might require, the condition of the permanent and available school funds. He could pay money out of the available school fund, only, on a warrant of the State Comptroller, issued on certificates of the Board of Education. Each warrant had to have the endorsement of the party to whom the money was payable.

Section 19 of the 1876 act provided the scholastic age as follows:

All children between the ages of eight and fourteen years shall be entitled to the benefit of the available free school fund, under this act, without regard to race or color.³

It was the duty of each county tax assessor to take the scholastic census of his county. The census contained the name, age, sex, and race of all children between the ages of eight and fourteen inclusive. The tax assessor made three copies of the census and sent them to the clerk of the county court. The court clerk secured the approval of the county judge, who in turn forwarded one copy to the Board of Education. The county clerk recorded the census in a book set aside for that purpose only. Until this census had been approved by the county judge the tax assessor could not receive any compensation for his work.

The county treasurer under the law of 1876 was made treasurer of the available public free school fund for his county. It was his duty to keep a record of all school funds received by him. He credited each district with the amount apportioned to it by the county judge.

It was the duty of each county judge to appoint, annually, a board of school examiners for his county consisting of three well educated citizens of the county. This board examined all persons who desired to teach school. The applicant could teach school only upon the receipt of a certificate of qualification from the county judge. Action of the county judge

³Gammel, op. cit., VIII, 1038.

was based on a report from the board of examiners approving the qualifications of the applicant.⁴

A community system was set up, whereby, any group of people could organize themselves into a school community. In order to form a school district the people of a community submitted to the county judge a petition containing the names of the parents who wished to organize the district. This petition, among other things, contained the names and ages of all the children to be instructed. The county judge, when convinced that the petition was made in good faith, entered an order, in a book kept for that purpose, sanctioning the establishment of the school community. The county judge appointed three school trustees for each school community.

The school trustees could hire only teachers who had received a certificate of qualification as provided by law. They decided such matters as how long the school should be in operation and when the term should be held. The teachers and the trustees signed contracts which stated the length of the term and the salary of the teacher. The teacher could not receive more than a dollar and fifty cents per child per month. This contract was filed with the clerk of the county court. The trustees could ask the county judge to cancel a teacher's certificate for any misconduct or immorality which, in the opinion of the trustees, rendered that teacher unqualified to teach.

⁴Ibid., p. 1040-41.

Each teacher had to keep an accurate record of the daily attendance of each pupil, and any other statistical information required by the Board of Education. These records were filed with the county courts, and forwarded by the county judge to the Board of Education. The teachers chose the textbooks to be used, subject to the approval of the trustees of the district.

The act of 1876, also, granted to any incorporated town in the state the right to control its own schools, including the right to levy a tax, not to exceed one cent on the dollar valuation, for the support of the schools. The town would also receive the per capita apportionment from the state.⁵

This law took the powers away from the state administrative agencies and placed them, again, in the hands of the local voters. The state agencies now had no direct supervisory control over the schools. The county and local officials formed their own districts, and determined how long the school term should be taught and how much salary should be paid the teachers. The people were very glad to be out from under the control of a system of centralized education. Once again they were free to organize their schools as they desired instead of being told what they must do. They could send their children to school if they desired, but were not compelled to do so, as had been the case under the rule of

⁵ Ibid., pp. 1041-45.

the Republicans. Once again they were free to exercise their individual prerogative in regard to their schools. They loved freedom and wanted it to extend to matters educational.

The Law of 1879

In 1879 the Legislature amended the act of 1876. This new law broadened the powers of the Board of Education. Under this new law the Board could advise and counsel with the school officers of counties, cities, and towns as to the best methods of conducting the public schools and were

. . . empowered to issue instructions and regulations binding for observance on all officers and teachers in all cases where the provisions of the school law may require interpretation in order to carry out the designs therein; also, in cases that may arise in which the law has made no provision, and also where necessity requires some rule in order that there may be no hardships to individuals and no delays or inconvenience in the management of school laws.⁶

By this provision the Board of Education was permitted to interpret the law and issue regulations to carry out the provisions of the law. Where there was no law, the Board could issue rules to avoid hardships to individuals, or inconvenience in the management of school affairs. This broadened its powers considerably. This act was the first step in delegating more powers to the state level of administration.

⁶Ibid., p. 1469.

Delegation of Powers to Municipalities

When the framers of the Constitution drew up that document, they inserted a section which gave the Legislature the power to constitute any municipal corporation a separate and independent school district. Article XI, Section 10, of the Constitution, placed this power in the hands of the Legislature as follows:

Sec. 10. The Legislature may constitute any city or town a separate and independent school district. And when the citizens of any city or town have a charter, authorizing the city authorities to levy and collect a tax for the support and maintenance of a public institution of learning, such tax may hereafter be levied and collected, if, at any election held for that purpose, two-thirds of the tax payers of such city or town shall vote for such tax.⁷

By the law of 1876, the Legislature gave municipalities the legal right to become independent school districts. The law of 1879 further regulated the maintenance and management of the public free schools of the cities of the state. Section One of this act delegated control to municipalities in the following language:

Section 1. Be it enacted by the Legislature of the State of Texas, that any city or town in this state may acquire the exclusive control of the public free schools within its limits.⁸

To acquire this control a petition, signed by at least fifty voters, had to be presented to the mayor, who then

⁷ Eby, Education in Texas: Source Materials, p. 667.

⁸ Gammel, op. cit., VIII, 1376.

ordered an election to determine whether the voters wanted the schools to come under the control of the city. Also, the voters decided in this election if the schools should be under a board of trustees or a board of aldermen of the city. If a majority of the voters agreed that the city should assume control of the schools within its limits and decided that a board of trustees should have control over them, then the mayor ordered an election for the purpose of electing the trustees. The six candidates receiving the largest number of votes were to become the trustees. The county judge, of the county in which the city was located, and the mayor of the city were to be ex officio members of this board of trustees.⁹ The board members established schools and governed them as they saw fit so long as they did not pass any rule or regulation contrary to the laws of the state. By the setting up of this system of schools, the Legislature gave the people of these municipalities almost complete control of their schools.

In 1881, the Seventeenth Legislature passed a law giving towns and villages the power to incorporate for school purposes only. By this law, any town or village could incorporate for free school purposes only, if it had no desire to incorporate for general municipal purposes. The choice was made by a vote of the people. When the people of a village or town decided, by vote, to incorporate for school purposes,

⁹Ibid., p. 1377.

it was the duty of the county judge to order the election of five trustees for the town. These trustees were given the following powers:

Article 541c. The trustees elected in accordance with the preceding article, shall be vested with the full management and control of the free schools of such incorporated town or village, and shall in general be vested with all the powers, rights and duties, in regard to the establishment and maintaining of free schools, including the powers and manner of taxation for free school purposes, that are now conferred by the laws of this State, upon the council or board of aldermen of incorporated cities and towns, as the same is prescribed by title 78, chapter 3, of the Revised Statutes.¹⁰

This law gave the small communities an opportunity to set up independent school districts and to have the complete management of the schools within their limits. They would receive their pro rata share of the available school fund to which they were entitled, according to their scholastic population. This law put the small towns and villages on a better footing with the larger towns and cities, by allowing them to raise money by local taxation to help support their schools.

Revision of the School Law

In March, 1883 the Legislature passed a joint resolution to amend Sections 4 and 6 of Article VII of the Constitution. In April, 1883, another joint resolution was passed by the

¹⁰
Ibid., IX, 206.

Legislature calling for the amending of Article VII, Section 3, of the Constitution. The proposed amendments were submitted to the people and adopted. The amendment to Section 3 expanded the educational program of the State as follows:

Section 3. One-fourth of the revenue derived from the State occupation taxes, and a poll of one dollar on every male inhabitant of this State between the ages of twenty-one and sixty years, shall be set apart annually for the benefit of the public free schools, and, in addition, thereto, there shall be levied and collected an annual ad valorem State tax of such an amount not to exceed twenty cents on the one hundred dollars valuation, as with the available school fund arising from all other sources, will be sufficient to maintain and support the public free schools of this State for a period of not less than six months in each year; and the Legislature may also provide for the formation of school districts within all or any of the counties of the State, by general or special law, without the local notice required in other cases of special legislation, and may authorize an additional annual ad valorem tax to be levied and collected within such school districts for the further maintenance of public free schools and the erection of schoolbuildings therein; provided, that two-thirds of the qualified property tax-paying voters of the district, voting at an election to be held for that purpose, shall vote such tax, not to exceed in any one year twenty cents on the one hundred dollars valuation of the property subject to taxation in such district, but the limitation upon the amount of district tax herein authorized shall not apply to incorporated cities or towns constituting separate and independent school districts.¹¹

This amendment gave the Legislature the power to create school districts either by general or special laws. Once

¹¹Ibid., p. 440.

again the Legislature could pass laws districting the State if it so desired. The Legislature could give districts the power to vote local taxation for the maintenance of schools within the district and for the erection of school buildings.

Sections four and six of Article VII regulated the lands set apart to the public free school fund and those granted to the counties for educational purposes. It provided for the selling of these lands and the investment of the money received therefrom.

The Eighteenth Legislature in 1884, in special session, by S. B. Nos. 32 and 34, made radical changes in the school laws of the state.¹² The first section of this law contained the first eight sections of Article VII of the Constitution as part of the school law. The Governor, Comptroller, and Secretary of State were constituted a Board of Education, with power to distribute the state apportionment to the several counties and to perform such other duties as were prescribed by Section 8, Article VII, of the Constitution.

By this law the Legislature set down certain regulations to be followed expressly as directed by that body. Direction was made that no sectarian school receive any part of the public school fund. Both the colored and the white population were to receive their pro rata part of the available public school funds. The scholastic age was set between the ages of

¹²Ibid., pp. 570-88.

eight and sixteen years inclusive. White and colored children were taught in separate schools, and no school consisting partly of white and partly of colored children could receive any aid from the public school fund. Schools were to be opened for five days in each week and be closed on such holidays as agreed upon by the trustees. The schools were to be in session for seven hours each day inclusive of intermissions and recesses. These rules and regulations the Legislature made itself, not delegating them to any agency.

The office of State Superintendent of Public Instruction was set up by this law. His term of office was set at two years, with an annual salary of twenty-five hundred dollars. He was to be elected at each general election as were other state and county officers. The State Superintendent was given many powers among which were:

Section 13. The superintendent of public instruction shall be charged with the administration of the school law and a general superintendency of the business relating to the public schools of the State; he shall hear and determine all appeals from the rulings and decisions of subordinate school officers, and all such officers and teachers shall conform to his decision, unless they are reversed by the State Board of Education. He shall prescribe suitable forms for reports required of subordinate school officers and teachers, and blanks for their guidance in schools, and shall from time to time prepare and transmit to them such instruction as he may deem necessary for the faithful and efficient execution of the school laws, and by whatsoever is so communicated to them, shall they be bound to govern themselves in the discharge of their official duties. He shall examine and approve all accounts, of whatsoever kind, against the school fund, that are to be paid by the State Treasurer, and upon such

approval the Comptroller shall be authorized to draw his warrant.

Section 14. The State Superintendent shall file all reports, documents and papers transmitted to him and the State Board of Education, by county or city school officers and from all other sources pertaining to public schools, and keep a complete index of the same.

Section 15. The State Superintendent shall advise and counsel with the school officers of the counties, cities, towns, school districts and communities as to the best methods of conducting the public schools and shall be empowered to issue instructions and regulations binding for observance on all officers and teachers in all cases wherein the provision of the school law may require interpretation in order to carry out the designs expressed therein. Also, in cases that may arise in which the law has made no provision, and where necessity requires some rule, in order that there may be no hardships to individuals and no delays or inconvenience in the management of the school affairs.

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Section 17. The State Superintendent shall require of county, city and town superintendents and other school officers and teachers such reports relating to the school fund and other school information and advancing the interest of the public schools, and shall furnish to county, city and town superintendents for the use of such officers and teachers the necessary blanks and forms for making such reports and carrying out such instructions as may be required of them.

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Section 21. The State Superintendent shall be ex officio secretary of the State Board of Education and shall keep a complete record of all its proceedings, which shall be signed by the president of the board and attested by the Superintendent.¹³

The State Superintendent reported the condition of the schools throughout the state to the State Board of Education one month before any session of the Legislature. He was

¹³Ibid.

obligated to have printed and distributed to all school officers all the school laws of the state.

Thus we find that eight years after the regular Democrats took over the government, they restored the office of State Superintendent. The ideas regarding the administration of schools were again changing in the Legislature.

It was the duty of the State Comptroller to keep an account of the amount of the available school fund arising from every source. He drew a warrant upon the State Treasurer, in favor of any county, city, or town for the amount due to the county, city, or town when presented with a certificate issued by the State Board of Education, showing the amount due to these different divisions. He presented to each regular session of the Legislature an estimate of the amount to be received into the available school fund for the succeeding two years. This was done in order that the Legislature could make the appropriations for the support of the schools.

The Treasurer of the State then made a report to the Governor and to the State Board of Education before each session of the Legislature, on the condition of the permanent and available school funds, the amount of each, and the manner of their disbursements.

The county commissioners court was obligated to divide all the territory of the county into convenient school

districts. When these districts were established, they were not to be changed without the consent of a majority of the legal voters in all of the districts to be affected by the change.

The people in any district could tax themselves, not to exceed twenty cents on the one hundred dollars valuation, by presenting a petition, signed by twenty or more property holding tax paying voters, to the commissioners court stating that they wished the court to call an election to determine whether such a school tax should be levied. When this petition was received by the commissioners court an election was ordered for that purpose. If a majority of two thirds of the qualified voters voted for the tax, it became effective and would remain in effect for at least one year. Only one election to determine local taxation was allowed for each scholastic year.

The county judge, under the supervision of the State Superintendent, was given the immediate supervision of all matters pertaining to education in his county. He conferred and counselled with teachers and trustees and visited and inspected schools within the county. He approved all vouchers against the school fund of his county. He approved all contracts between trustees and teachers. He apportioned the pro rata share of the available school fund to each district within his county, and performed all other duties

required of him by the State Superintendent. The county judge was empowered to appoint a board of school examiners, to consist of three teachers with first grade certificates. The examining boards examined all applicants for teaching certificates and reported their findings to the county judge. If the applicant proved qualified the county judge would issue a certificate entitling him to apply for a teaching position within the county. No person could sign a contract to teach school without one of these certificates.

Three trustees were elected in each district to have the management and control of the public free schools. It was their duty to take the scholastic census in their districts and remit the census to the county judge. They were empowered to employ and dismiss teachers. If a teacher were dismissed, he had the right to appeal to the various school agencies up to the Board of Education.

This act of 1884, also, permitted the establishment of the same type of community school system as was organized under the school law passed in 1876.

This law had four important features. It set up the office of State Superintendent of Public Instruction and gave this officer general supervisory control over the public free schools. This was an important step in reorganizing the public school system. This law authorized district or local taxation up to twenty cents on the one hundred dollars

valuation. A State tax of twenty cents on the one hundred dollars valuation, or as much as was necessary to maintain the public schools for at least six months each year, could be levied and collected. The school fund was to be invested in county, and other, bonds, thus enlarging the means of steady investment of the permanent fund.

The duties of the county judge remained approximately the same under this law as they had been under the law of 1876. The powers of the commissioners court were expanded to include more control over the system. The people still maintained a moderate amount of control over their schools. The great change came in the creation of the office of State Superintendent of Public Instruction and the powers assigned to this office.

Creation of the Office of County Superintendent

In 1887, a law was passed which created the office of county superintendent. The commissioners court, when it deemed advisable, could provide for the election of a county superintendent at each general election. At this time, few counties had this office filled because the county commissioners court took little interest in selecting a county superintendent. The county superintendent had the same powers and duties as those exercised by the county judge in the capacity of ex officio county superintendent.

The laws of the State of Texas regarding public education and the delegation of powers to school administrators remained

about the same until the end of the century. In 1885 a law was passed giving cities and towns, that were incorporated for school purposes, the power to vote a bonded indebtedness for the purpose of erecting school buildings within their limits.¹⁴

At the turn of the century, Texas had the largest school fund of all the states in the Union. Texas ranked fifth in the amount of money received from direct taxation, but ranked twenty-eighth in the amount collected from local taxation. The Texas school system ranked approximately thirty-eighth in the Nation.¹⁵

Trend of the Period

When the Democrats drew up the Constitution of 1876, it was their idea to get as far away from the system of centralization of the school system as possible. In the school law of 1876 they followed the plan of placing the power in the hands of the county and local officials with no power at the state level of administration. Most of the powers under this system were placed directly in the hands of the people. Obviously this change met with the approval of the people. They felt they had suffered too much under the centralized system of the Republicans.

¹⁴Eby, The Development of Education in Texas, p. 217.

¹⁵Ibid., pp. 219-20.

It soon became apparent that something more than the law of 1876 was necessary in order for the state to have an efficient school system. Ideas began to change. In 1884 a law was passed that helped to remedy the situation. This law placed part of the control of the schools at the state level, part at the county level, and part at local level. This was the first real move toward more power for the state level of administration. The people had the money to support their schools, and the Legislature hoped by this law to provide the right kind of administration to secure better educational opportunities for the children of the state. The power granted to incorporated cities and towns, and towns incorporated for school purposes only, placed more local control in these districts than in others which were not incorporated.

The trend of this period shifted from no power at the state level of administration and all to the local units, to a division of powers between state and local levels of administration of schools.

CHAPTER IV
STATUTORY TRENDS IN THE DELEGATION OF POWER
TO ADMINISTRATIVE AGENCIES BETWEEN
1900 AND 1949

The School Law of 1905

The school law passed by the Legislature in 1905 set the trend in school legislation to the present day. This law reflected the change in ideas that was beginning to take place in the minds of the people at that time. State Superintendent of Public Instruction, W. F. Doughty, expressed in his biennial report of 1918, how the people in general felt about education. He said:

In dealing with the people of Texas I have found them to be thoroughly progressive in their ideas as to public education. It may be that the citizenship of Texas is long-suffering in many respects, but I have always found them to be thoughtful in their consideration of the State's educational interests, and constructive in their desires for larger and better things for the schools of this State. When people of this State thoroughly understand a good proposition they are willing to give it an impartial trial and adopt it if satisfactory. . . .¹

The machinery provided by the law of 1905 remained in effect for many years. In reality this law was a reconstruction of the school law passed in 1884 with some extensions.

¹W. F. Doughty, Twenty-first Biennial Report, State Superintendent of Public Instruction, 1916-1918, pp. 1-2.

The office of Superintendent of Public Instruction was well established by the time the law of 1905 was passed, so provision was made for it to continue. Until this time the duties of the State Superintendent had been little more than those included as secretary of the State Board of Education. This law provided that at each general election this official should be elected for a term of two years. The general superintendency of the schools of the state was placed in his hands. All appeals from subordinate school officers were made to him. On this section of the law the courts have set the general rule that no relief by the courts can be granted in controversies involving school matters until these controversies have been carried to the State Superintendent and the Board of Education.² There are some exceptions to this general rule. When some subordinate school official violates some provision of the statutes, or abuses his discretion, then action may be taken directly to the courts;³ otherwise, appeals must be made through school channels before courts can grant relief.

All forms and blanks to be used by subordinate school officers and teachers were prepared and furnished by the

²Trustees of Crosby Independent School District v. West Disinfecting Company, 143 S. W. (2d) 749 (1940).

³Bear v. Donna Independent School District, 74 S. W. (2d) 179 (1934).

State Superintendent. The forms were used in transacting official business and conducting the public schools. The subordinate school personnel were required by law to file these reports with the State Superintendent. Failure to do this by a certain date was punishable by a fine.⁴ The courts, however, declared the failure to report was not punishable because no provision was made in the civil or penal statutes as to what the punishment would be.⁵ The records that were sent to the State Superintendent had to be kept and filed by him.

The duty of counselling and advising subordinate school officials as to the best methods of instruction was given to the State Superintendent. He could issue rules and regulations in accordance with the law, binding for observance on the subordinate officials. In cases where no provision was made by the law, the State Superintendent was instructed to issue some rule or regulation to prevent hardships to individuals and prevent delays or inconvenience in the management of school affairs.⁶

This law gave to this official an enormous amount of power in regard to the management of schools throughout the state. He was limited only by the provisions of the statutes. The idea of more centralized control did not antagonize the

⁴Revised Civil Statutes of Texas, 1911, p. 917.

⁵Hall v. State, 188 S. W. 1002 (1916).

⁶Vernon's Annotated Civil Statutes, VIII, 330.

people at this time, as it had after the overthrow of the Republicans.

This law required the State Superintendent to approve all accounts against the school fund before any money could be drawn from the Treasury of the State. On the first day of each month the available school money collected the preceding month was distributed by the State Superintendent to the school districts and counties according to their scholastic population.

The State Superintendent was under the obligation to observe the educational progress of the schools of the state and report his findings to the State Board of Education. The Governor would then lay this report before the Legislature.⁷ By this method the State Superintendent could bring any message of educational need before the legislators and suggest legislation to remedy the need.

The certification of teachers was placed in the hands of the State Superintendent. A State Board of School Examiners was established by the law of 1905 to assist him in performing his certification functions. This Board of Examiners consisted of three competent teachers appointed by the State Superintendent. The State Board of Education prescribed questions to be answered by all applicants for teachers certificates. The county board of examiners gave the tests and

⁷Revised Civil Statutes, 1911, p. 917.

sent them to the State Board of Examiners. The State Board of Examiners examined the papers and made recommendations to the State Superintendent as to the issuance of certificates.⁸ The cancellation of certificates by the State Superintendent was authorized in this act. Any person who violated his contract or was unworthy of teaching the children of the State was subject to have his certificate cancelled. The courts gave the State Superintendent broad powers in determining who was unworthy to instruct the children of the State.⁹

The State Board of Education had been set up by the Constitution of 1876. This board consisted of the Governor, Comptroller, and the Secretary of State. By the law of 1905 the Superintendent of Public Instruction was designated ex officio secretary of the Board, and was required to keep records of the proceedings. This Board apportioned the available school funds for the succeeding scholastic year to all the counties and school districts, according to the scholastic population. The State Superintendent, as ex officio secretary to the Board, certified to the treasurer of each division the amount of money apportioned to each. This certification had to be signed by the Governor and the Comptroller.¹⁰

⁸Doughty, op. cit., pp. 42-43.

⁹Marrs, et al. v. Matthews, 270 S. W. 586 (1925).

¹⁰Texas State Department of Education, Public School Laws of the State of Texas, Bulletin No. 70, 1917, p. 7.

The Law of 1905 empowered the State Board of Education to invest the permanent school fund in the following manner:

Art. 2736. Authorized to invest permanent school fund.--The Board of Education is authorized and empowered to invest the permanent public free school funds of the State in bonds of the United States, the state of Texas, the bonds of the counties of the State, and the independent or common school districts, road precinct, drainage, irrigation, navigation and levee districts of the said State, and the bonds of incorporated cities and towns, and the bonds of road precincts of any county of Texas, and the bonds of drainage, irrigation, navigation, and levee districts of any county or counties of Texas.¹¹

Any district that wished to sell bonds had to submit them to the Attorney General of the State for his approval. Once the Attorney General had approved the bonds they were considered valid and binding obligations upon the district voting them. No district which had voted bonds and submitted them for approval could recall them.¹² A ten day option had to be given to the State Board of Education on all bonds offered for sale in this manner. The State Board could purchase these bonds if they so desired, but if they did, they were obligated to pay the price offered by the highest bona fide bidder. However, if the Board refused to buy the bonds and they were sold to someone else, the Board could not repurchase them. The interest from all bonds bought by the State Board of Education went into the available school fund. The

¹¹Revised Civil Statutes, 1911, p. 579.

¹²Orr et al. v. Marrs et al., 47 S. W. (2d) 440 (1932).

commissioners courts of the several counties were authorized to invest their permanent funds in the same manner.¹³

The Board of Education was given the power to create school districts at any eleemosynary institution in the state where the scholastic population justified the action. When such a district was created, the State Superintendent appointed three trustees to manage the affairs of the district. The Board of Education could make any special regulations for the government of these districts as they deemed expedient.¹⁴

This law provided for the election of a county superintendent upon the petition of two hundred qualified voters of the county. This election was held at the same time as the general election for the county. The county superintendent was empowered as follows:

Sec. 37. The county superintendent of public instruction shall have under the direction of the State Superintendent of Public Instruction, the immediate supervision of all matters pertaining to public education in his county. He shall confer with teachers and trustees and give them advice when needed, visit and examine schools, and deliver lectures that shall tend to excite an interest in public education. He shall spend as much as four days in each week visiting the schools while they are in session, when it is possible for him to do so. He shall organize and hold, with such assistance as may be necessary, at least three institutes for two days each during the school year, for white and colored teachers, respectively; and he shall require the attendance

¹³ Texas State Department of Education, Public School Laws, Bulletin No. 70, p. 7.

¹⁴ Revised Civil Statutes, 1911, Article 2734.

of white teachers upon the institutes for white teachers, and the attendance of colored teachers upon the institutes for colored teachers; provided that a failure to comply with these requirements shall be sufficient cause for his removal from office; and provided further, that an institute of five consecutive days may be held in lieu of the three institutes of two days each; provided, further that the county superintendent of public instruction shall have the authority to cancel the certificate of any teacher who wilfully and persistently absents himself from attendance upon county institutes.

.....
Sec. 39. The county superintendent shall approve all vouchers legally drawn against the school fund of his county. He shall examine all contracts between the trustees and teachers of his county, and if in his judgement such contracts are proper, he shall approve the same; provided, that in considering any contract between a teacher and trustee he shall be authorized to consider the amount of salary promised to the teacher. He shall distribute all school blanks and books to the officers and teachers of the public schools, and shall make such reports to the State Superintendent as may be required by that officer. Immediately after qualifying he shall appoint a county board of examiners, consisting of three resident white teachers holding first grade certificates, who shall serve during the pleasure of the county superintendent of public instruction, subject to the provisions hereafter made. He shall discharge such other duties as may be prescribed by the State Superintendent.

.....
Sec. 41. The county superintendents are hereby empowered to administer oaths necessary in transacting any business relating to school affairs; provided that they shall receive no compensation for administering said oaths.¹⁵

In each county of the state having no county superintendent the county judge was designated to fill that office and perform the duties in relation to it.

¹⁵ Gammel, op. cit., XII, 273-74.

The county commissioners courts were empowered to subdivide all counties into school districts that had not been subdivided previous to 1905. The commissioners courts could redistrict a part, or all, of a county at any time they deemed necessary. The commissioners courts were empowered to change the boundaries of any independent district within a county if the public good demanded such a change. However, the board of trustees had the right to be heard in such a case.¹⁶ The commissioners had the power to levy a tax not to exceed twenty cents on the one hundred dollars valuation of property, for the further maintenance of the public schools provided that two thirds of the qualified property tax-paying voters gave their consent in an election held to determine if the tax should be levied.

In the common school districts of the county three trustees were elected to serve terms of two years. They were constituted a corporate body and could act as such. The act of 1905 gave the trustees of common school districts powers in the following manner:

Sec. 70. The trustees of school districts shall have the management and control of the public schools and public school grounds. . . . They shall have the power to employ and dismiss teachers, but in case of dismissal, teachers shall have the right to appeal to the county and State superintendents.

Sec. 71. School trustees shall determine how many schools shall be maintained in their

¹⁶Ibid., p. 277.

respective districts, and at what points they shall be located; they shall determine when the schools shall be opened and when closed; they shall contract with teachers and manage and supervise the schools, subject to the rules and regulations of the county and State superintendents; they shall approve all teachers' vouchers, and all other claims against the school fund of their district; provided, that trustees of districts in making contracts with teachers shall not create a deficiency debt against the district.¹⁷

In independent school districts of incorporated towns a board of trustees was elected to have the management and control of the schools within the municipality. The same was true of towns or villages, except that the county judge was given the function of overseeing the election of the trustees.

The law of 1905 expanded the powers of the State Superintendent and the county superintendent. The powers delegated under it were divided between state and local administrative agencies. However, the local agencies were subject to the rules and regulations of the state agencies. Therefore, more power was given to the state level of administration than to the local level.

Expansion of Powers Between 1905 and 1920

In 1907 a provision was added to the law which made it compulsory for all counties having over three thousand scholastic population to elect a county superintendent. Up until that time it was left to the people to decide if they

¹⁷
Ibid., p. 287

wanted this official at the head of their county school system.¹⁸ His authority was not increased, but this office was made compulsory under the condition mentioned above.

In 1908 an amendment of the Constitution was passed which was a great aid to rural schools. By this amendment the local taxation limit was raised from twenty cents to fifty cents on the one hundred dollar property valuation. Also, this local tax could be used for equipping the schools, whereas, before it had been used for building purposes only.¹⁹ This was a great advance for the rural schools. They began to levy more taxes. Buildings began to spring up in rural communities. Because of this change, the Legislature in 1909 passed a law requiring the State Superintendent to prepare three sets of building plans to be submitted, on request, to any school district. These plans were to meet the needs of rural schools of various size.²⁰ In 1919, the Legislature passed a school building law which provided for certain specifications and sanitary conditions to be met before rural school buildings could be erected.

In 1915, Governor Ferguson recommended the passage of a compulsory attendance law for the schools of the state. Public sentiment was not greatly in favor of such a law, but,

¹⁸Texas State Teachers Association, Educational Progress, 1911, p. 25.

¹⁹Eby, The Development of Education in Texas, p. 22.

²⁰Revised Civil Statutes, 1911, p. 917.

because of the pressure exerted by educational groups, it passed. This law required all children between the ages of eight and fourteen to attend school for a period of one hundred days each year. Reports on attendance were to be made by the teachers to the county superintendent. The county superintendent was then required to make a report to the State Superintendent. All parents who did not require their children to attend school were subject to fine.²¹

An amendment to the Constitution was passed in 1919, which is known as the "Free Text Book Amendment." This amendment provided for increasing the State ad valorem tax for school purposes from twenty cents to thirty-five cents on the one hundred dollar valuation. Fifteen cents of this tax could be used to supply free textbooks to the pupils of the schools of Texas. Since 1909 there had been a textbook commission to standardize the textbooks of the state. After this amendment this commission was authorized to choose the textbooks for use under the textbook law.²² The Governor and Superintendent of Public Instruction served as ex officio members of the textbook commission.

Delegation of Powers Under the Equalization Program

The first equalization program was passed in 1915. This law provided \$1,000,000 for the aid of the rural schools for

²¹Texas State Department of Education, Compulsory School Attendance, Bulletin No. 53, 1916, p. 1.

²²Ibid., Handbook of Information as to Education in Texas, 1918-1922, Bulletin No. 157, 1923, p. 37.

the biennium ending August 31, 1917.²³ This law was known as the Rural Aid Law.

Provision was made to give the children in rural communities a chance to receive an adequate education. Rural schools up until that time operated only six months or less. With this aid the rural schools could hope to maintain their schools for a longer period of time and so give the children in rural schools a more nearly equal educational opportunity with children in urban communities.

Section 5 of this law gave the State Superintendent the authority to pass on the eligibility of schools in accordance with the requirements of law. He was further authorized to appoint four rural school supervisors to go in his place to inspect the schools applying for aid.²⁴ This aid was to be distributed by the county boards of trustees. The State Board of Education had to approve all aid to the schools.

In 1917 the Legislature appropriated \$2,000,000 for rural aid. This appropriation continued to increase until, in 1947, the Legislature appropriated \$18,000,000 for the biennium ending August 31, 1949.²⁵

²³D. K. Rogers, "An Analysis of Educational Equalization Legislation in Texas" (Unpublished Master's thesis, Department of Education, North Texas State Teachers College, 1940), p. 35.

²⁴Ibid., p. 37.

²⁵Texas, General and Special Laws, Regular Session, 50th Legislature, 1947, p. 401.

In 1931, this aid was thrown open to independent school districts as well as common school districts.²⁶ Bonuses were made from time to time for consolidation. Small independent districts and independent school districts in sparsely settled communities were eligible for this State aid. This aid brought the supervision of all these schools under greater control of State administrative agencies.

In 1945 the equalization law provided for the State Superintendent and state educational administrative agencies to assume the following controls:

Article VI. Duties of the State Superintendent of Public Instruction.--It shall be the duty of the State Superintendent of Public Instruction and the Legislative Accountant to take such action and to make such rules and regulations not inconsistent with the terms of this act as may be necessary to carry out the provisions and intentions of this act, and for the best interest of the schools for whose benefit the funds are appropriated. It shall be the duty of the State Superintendent of Public Instruction to appoint the number of Deputy State Superintendents hereinafter authorized to make a thorough investigation, in person, of the teaching staff and financial condition of each school applying for aid through the Superintendent's office and the depository banks; and no aid shall be given unless it can be shown that all provisions of this act have been complied with, and that such amount of aid actually needed as shown by the approved budget and actual expenditures, and that the funds are being used as approved. The State Superintendent of Public Instruction shall employ twelve (12) Deputy State Superintendents and such other employees as may be authorized in the Departmental Appropriations Bill for the biennium ending August 31, 1947, and shall pay such salaries as are therein authorized and expend such other

²⁶ Rogers, op. cit., p. 44.

monies as therein permitted out of the appropriation as shown for the Equalization Division of the Department of Education as herein provided and allocated . . . ²⁷

The Deputy State Superintendents inspected the schools applying for aid and made recommendations to the State Superintendent, who either approved or rejected the applications. A State Legislative Accountant was appointed by a joint Legislative committee. This accountant audited all applications for aid after they had been passed on by the State Department of Education.

These equalization laws made more schools eligible for this aid. The county administrators were given an increase in power under these acts, but they were under the supervision of State administrators. As time passed and more money was appropriated for this equalization fund, the State Superintendent, Board of Education, and the Department of Education gained more and more power of control. The trend of the Legislature has been to see that these schools come under the control of the state level of administration. This one set of laws has placed more control in the hands of the state administrators than any other since 1905.

Powers Delegated from 1920 to 1949 Other Than
Those Under the Equalization Laws

In 1927 an amendment to the Constitution was passed authorizing the Legislature to establish a State Board of

²⁷ Texas State Department of Education, Public School Laws of the State of Texas, 1945, Bulletin No. 463, pp. 287-88.

Education.²⁸ In 1929 the old Board was eliminated and a new one put in operation. This Board consisted of nine members appointed by the Governor with the advice and consent of the Senate. Each member had to be thirty years of age and a qualified voter. No person actively engaged as a professional educator, at the time of his appointment, could serve as a member of this Board. Also, no person could be a member of this Board who had in any way been connected with textbooks, either as an author, or stockholder, or an employee of a publishing company.²⁹

The duties of the old Board were given to this new Board. In addition, the old Textbook Board was eliminated, and the State Board took over its functions. The State Board of Education was empowered to appoint a textbook committee of five members. This textbook committee was composed of members who were actively engaged in teaching in the public schools of Texas. They examined the books submitted for adoption and made their recommendations, in writing, to the State Board of Education relative to the teachable value of the books submitted. The Board of Education then selected the books to be used in the public schools of Texas.³⁰

²⁸ S. S. McKay, Seven Decades of the Texas Constitution of 1876, p. 222.

²⁹ Gammel, General Laws of the State of Texas, Second and Third Called Session, 41st Legislature, 1929, p. 12

³⁰ Texas State Department of Education, Public School Laws, 1935, Bulletin No. 345, pp. 12-13.

The most important change in the powers of the county board of trustees came in 1927, when they were given the power to change school district boundaries. However, they could only make changes in strict conformity to the statutes. The county board could detach territory from a common school district and add it to an independent district, and under certain conditions, the county trustees had the power to change the boundaries of an independent district created by the Legislature if, in their judgement, the change was demanded for the public good.³¹ These powers have remained effective to the present time.

Trend of the Period

With the change of ideas in the minds of the people after the turn of the century in regard to educational control, there began the trend of placing more power with the state level of educational administration. By the rural equalization laws and other laws passed by the Legislature, administrative control over an increasing number of schools was given to these officials, while the county and local officials maintained about the same powers that were delegated to them in 1905.

The laws that were passed during this period of time were meant to give the children of the state better

³¹C. Wayne Splawn, "Judicial Interpretation of School Law in Texas with Emphasis on School District and Municipal Relations" (Unpublished Master's thesis, Department of Government, N. T. S. T. C., 1947), p. 63.

educational advantages. These laws in almost every instance placed the control in the hands of the state administrative officers to see that the laws were carried out equally over the state, and to see that the best administration possible was given to the school system. For these reasons, the trend has naturally been toward centralization of authority and more powerful state administration.

CHAPTER V

DELEGATION OF POWERS AT PRESENT

The Central Education Agency

In 1947 the Fiftieth Legislature provided for an interim committee, known as the Gilmer-Aikin Committee, to study the educational situation in Texas and report their findings to the next regular session of the Legislature. This committee of legislators, educational leaders, and laymen interested in education, worked out a plan of cooperative study with county and local school officials. When the Legislature met in 1949, three bills had been drawn up by the committee designed to improve the educational situation in Texas.¹ The need for better teachers, along with a general need for better state administration, motivated the work of the committee. The now famous "Gilmer-Aikin" bills were drawn up in the form of Senate Bills Numbers 115, 116, and 117.

Senate Bill 115 provided for the reorganization of the state educational administration system at the top level. All branches of the state educational administration were placed under one agency known as the Central Education Agency.

¹ Rae Files Still, The Gilmer-Aikin Bills, pp. 1-2.

This agency is composed of the State Board of Education, the State Board of Vocational Education, the State Commissioner of Education, and the State Department of Education. This central agency is to carry out all educational functions that are assigned to it by the Legislature, but all functions not specifically delegated to it are to be carried out by the county boards of education and the district boards of trustees. The Central Education Agency has general control of the system of public education at the state level. All educational activities carried on in the state with persons under twenty-one years of age, except education in approved institutions of higher learning, are subject to the rules and regulations of the Central Education Agency. The Central Education Agency is further empowered in the following manner:

Sec. 3. The Central Education Agency shall be the sole agency of the State of Texas empowered to enter into agreements respecting educational undertakings, including the providing of school lunches and the construction of school buildings, with an agency of the Federal Government, except such agreements as may be entered into by the Governing Board of a State University or college. No County Board of Education or Board of Trustees of a school district shall enter into contracts with, or accept money from, an agency of the Federal Government, except under the rules and regulations prescribed by the Central Education Agency.²

This agency is the combination of all the educational offices of the state level of school administration. It is

²Vernon's Annotated Civil Statutes, VIII, 312.

the head of one of the biggest business organizations in the state.

The State Board of Education

One of the main parts of the new set up is the State Board of Education. This agency took the place of the old State Board that had been created in 1929. This new Board consists of twenty-one members elected on the second Tuesday in November, one member being elected from each of the twenty-one Congressional Districts of the State of Texas. Every two years seven new members are elected for a term of six years. They receive no compensation for serving on the Board, but all their expenses are paid. The Board meets in January, following election in November, to organize. At this meeting rules of procedure are adopted, and a chairman, vice-chairman, and a secretary are elected. No meeting of the Board can be held unless there are fourteen members present. The Board meets in the city of Austin, Texas, on the first Monday in January, March, May, July, September, and November.

Like the State Board of Education, the new Board is the policy forming and planning body for the school system of the state. The Board has the specific responsibility for adopting policies, enacting regulations, and establishing general rules for carrying out the duties placed upon it, or upon the Central Educational Agency, by the Legislature. The Board appoints a State Commissioner of Education every four

years. The State Commissioner of Education is the executive officer through whom the State Board of Education and the State Board of Vocational Education carry out their policies and enforce their rules and regulations. The State Board of Education has the power to suspend the operation of its own rules and regulations as well as those of the State Commissioner of Education in individual cases, and can pass upon appeals made from the decision of the Commissioner in applying these rules and regulations.

This Board of Education is obligated to review the educational needs of the state periodically, and work out the plans that will remedy these needs. The Board evaluates the outcomes being achieved in the educational program of the state. With the advice and assistance of the State Commissioner of Education the Board is to:

1. Formulate and present to the Board of Control the proposed budget or budgets for operating the Minimum Foundation Program of Education, the Central Education Agency, and the other programs for which it shall have responsibility;
 2. Adopt operating budgets on the basis of appropriation by the Legislature;
 3. Establish procedure for budgetary control, expending, auditing, and reporting on expenditures within the budgets adopted;
 4. Make biennial reports covering all the activities and expenditures of the Central Education Agency to the Legislature;
 5. Establish regulations for the accreditation of schools;
 6. Execute contracts for the purchase of instructional aids, including textbooks, within the limits of authority granted by the Legislature;
- and

7. Execute contracts for the investment of the Permanent School Fund, within the limits of authority granted by the Legislature.³

The State Textbook Committee is appointed each year at the regular May meeting of the State Board of Education. The State Commissioner of Education recommends people for this committee and the Board of Education can either accept or reject the recommendations of the Commissioner until fifteen members are chosen. The persons selected must be actively engaged in teaching in the public schools of Texas and must have no connection with any textbook company. This committee recommends books to be used in the schools. The Commissioner may remove books from, but is not allowed to add any to the list as recommended by the textbook committee. He presents the list as approved to the State Board. This agency may remove books from the list, but cannot add any thereto. Upon the final approval of the Board of Education, contracts are awarded for the books to be used.

The State Commissioner of Education

The State Commissioner of Education is appointed by the State Board of Education for a period of four years. His salary is set by the Board of Education. He may be removed by the Board for the conviction of any crime involving moral turpitude or felonious action, or for willful and continuous

³ Texas Senate Journal Supplement, Senate Bills Nos. 115, 116, 117, 51st Legislature, Regular Session, p. 5.

disregard of directions of the Board on matters vital to the operation of the Department of Education and the state school system.⁴

The Commissioner is given all the duties and powers that had been vested in the State Superintendent of Public Instruction. In addition to being Executive Secretary of the State Board of Education, it is his duty to issue teaching certificates to public school teachers and administrators. He, as executive officer of the State Board of Education, must execute the mandates, prohibitions, and regulations established by law, or by the State Board of Education. He can prescribe the rules and regulations for carrying out the responsibilities placed upon him by the Legislature and the Board of Education. He can make suggestions to the Board regarding educational needs of the state and furnish the Board with any information that is necessary to guide it in its deliberations. The Commissioner may delegate ministerial and executive functions to members of the State Department of Education. He may require all necessary reports from subordinate school officials and teachers.

The Commissioner of Education is given the duty for calculating and determining the total sum of local funds that the counties and school districts shall be required to contribute toward the total cost of a Minimum Foundation School Program. This calculation is done with the approval of the

⁴Vernon's Annotated Civil Statutes, VII, 318-19.

State Board. The Commissioner prepares an economic index which fixes the per centage to be contributed by each county for the use of the Minimum Foundation Program. This economic index is computed every four years. The index is based on the assessed valuation of the county, the scholastic population of the county, and the income for the county. School districts were required to raise \$45,000,000, annually, to help support the Foundation School Program during the first years of the new plan.

With these additional delegated powers, the State Commissioner of Education has become the central figure in the educational system of Texas. He and the Board of Education make the rules and regulations for the operation of the schools of the state in those areas where the statutes are silent.

The State Department of Education

The State Department of Education is the professional, technical, and clerical arm of the Central Education Agency. The State Commissioner makes recommendations as to the organization of the Department, and the Board of Education approves the organizational set-up. The State Commissioner appoints all employees under the rules and regulations set up by the Board of Education. This Department adopts the budget for the Central Education Agency. The State Commissioner must approve all expenditures of the Department. The State Department is assigned duties and powers in the following manner:

Sec. 3. The functions of the State Department of Education shall be to carry out the mandates, prohibitions, and regulations for which it is made responsible by statute, the State Board of Education, and the Commissioner of Education. It shall have no power over local school districts except those specifically granted in statute, but it shall seek to assist local school districts in developing effective and improved programs of education, through research and experimentation, consultation, conferences, and evaluation. In discharging these functions the State Department of Education shall make free and full use of advisory committees and commissions composed of professional educators and/or other citizens of the State.⁵

Present Day Trends

Today the county and local units are receiving very little more power than they had in 1949. Instead, they are following the guidance of the state administrative agencies in carrying out the school program. By the passage of the "Gilmer-Aikin" bills the Legislature set up a strongly centralized system of administration. These bills give most of the administrative control to the state level. The county and local units had little change in power. Many people recognize the advantages of this new system. The increase in salary to teachers is greatly appreciated by the people in that profession.

The Legislature is gradually leaving the trend of local control and placing the management of the schools in the hands of persons considered to be capable of handling it.

Fredrick Eby, speaking before a Senate Education

⁵ Ibid., 321.

Committee on the "Gilmer-Aikin" bills, expressed the trend at the present time:

I tell you this is a day of destiny for the education of Texas, and what you do in this Legislature with these bills is going to determine the education of this state for the next one hundred years.⁶

With the passage of these bills the Legislature delegated more control to the state level of administration and continued the trend in this direction.

⁶Still, op. cit., 59.

CHAPTER VI

FINDINGS AND CONCLUSIONS

When the educational system in the state had its beginning in 1846, there was absolutely no state administrative control. The schools were either private or religious in nature. The problem of educating the children of the state was left entirely up to each individual family. This was ironical because one of the reasons Texas had declared its independence from Mexico was that the Mexican Government had not furnished an adequate system of education for the people of Texas. In 1854 an attempt was made to furnish a system of education that would satisfy the people. Most of the control was left to the people. When the Civil War began, any system of public education that had existed before died, and the people were forced to resort to private and religious schools again. This was not a new experience for the people because most of them had been sending their children to these institutions even before the war. During this time the trend in the delegation of powers was definitely toward local control.

The schools had been under a system of decentralization from the beginning. After the war the Democrats drew up their constitution and laws, which reflected the same views that had existed before the war. They again gave most of the powers to the local units of administration.

In 1869 the Republicans gained control of the state government and set up a strongly centralized system of education. The school laws of 1870 and 1871 wrested the control of the schools from the people and placed it in the hands of state administrative officials. The system was run in a militaristic manner with all control at the state level. The Republican Legislature changed the trend from local control to state control.

In 1873 the Democrats regained control of the government and immediately set about placing the control of the schools back in the hands of the people. When they drew up the constitution they did away with the State Superintendent of Public Instruction and delegated the control of the schools back to the people. The state administrative agency was given no supervisory control.

In 1884 the Legislature drew up a law which was the beginning of the delegation of powers into the hands of state agencies of education. This law gave partial control to the state educational administration and partial control to county and local administration.

By the law of 1905 more power was given to the state level of administration. This power continued to grow and expand through the years. The Fifty-first Legislature did away with the old state educational administration and set up a new one. During this time, since 1884, the trend has

been toward more and more control bestowed by the Legislature upon the state administrators of education.

This change came about because of the changing times. As the population in Texas increased and the educational system expanded, it became necessary to enlarge the control of one central agency to see that all sections of the state have an adequate system of education. Local control failed to meet the needs of the people. Ideas began to change. The people saw the need for better administration in the schools. The Legislature recognized these needs and passed laws to remedy the situations as they arose.

Because of the failure of schools to advance in the past few years, in 1947 the Legislature provided for a committee to study the educational needs of the state and make a report so that some remedy could be affected.

By the passage of the laws setting up the present system of state control the Legislature revolutionized the system of education in Texas. It is thought that we now have a better system than ever before. As the years go by, and as further educational legislation is passed, the present law will be the basis from which new laws will be drawn and if the present trend is followed, a complete system of centralized education may result.

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