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THE SUPREME COURT OF NORTH CAROLINA AND THE PUBLIC SCHOOLS

by

Michael G. Pierce

A Dissertation Submitted to
the Faculty of the Graduate School at
The University of North Carolina at Greensboro
in Partial Fulfillment
of the Requirements for the Degree
Doctor of Education

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1987

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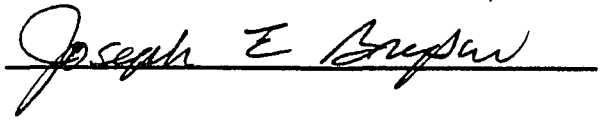

APPROVAL PAGE

This dissertation has been approved by the following committee of the Faculty of the Graduate School at the University of North Carolina at Greensboro.

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March 30 1987
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March 30, 1987
Date of Final Oral Examination

PIERCE, MICHAEL G. The Supreme Court of North Carolina and the Public Schools. (1987) Directed by: Dr. Joseph E. Bryson, Pp. 309

An examination of American public education clearly evinces the authority of the states in the management and operation of their public schools. It is apparent that the state courts -- specifically, the highest state courts as evidenced by the decisions of the Supreme Court of North Carolina -- have played a significant role in defining the state's role in public education. This study provides insight in the areas of (1) governance, (2) employees, (3) pupils, (4) torts, (5) finance, and (6) property as they have been adjudged by the Supreme Court of North Carolina.

The following questions were proposed for this study: (1) What are the landmark decisions of the Supreme Court of North Carolina affecting the public schools? (2) What legal principles affecting the public schools have been established by the decisions of the Supreme Court of North Carolina? (3) How do the decisions of the Supreme Court of North Carolina parallel or give direction to the development of the public schools of the state? (4) What are the trends or emerging issues evident in the decisions of the Supreme Court of North Carolina affecting the public schools?

The following general conclusions can be made concerning the Supreme Court of North Carolina and the public schools: (1) The Court has considered more questions related to finance than to any other issue; (2) The Court established an approval rate of fifty-eight and one-half

percent for the decisions of lower court decisions; (3) The decisions of the Court on taxation stymied the growth of the public school system for a while and reflected the major involvement of the Supreme Court in the schools; (4) Boards of education exercise discretionary power which the Court will usually not restrain -- the most pervasive legal principle identified; (5) The Court gives meaning to the law and limits its interpretation showing no attempt "to make" law; (6) Boards of county commissioners and boards of education have prescribed roles in the operation of the public schools; (7) Boards of education must always act in the best interest of students; (8) Boards of education must respond to alternative settings for the compulsory education of children and to questions concerning rights of personnel in employment.

ACKNOWLEDGEMENTS

I wish to express appreciation to the committee members who have directed my program of studies: Dr. Joseph E. Bryson, Dr. Dale L. Brubaker, Dr. R. Fritz Mengert, and Dr. John A. Humphrey. Dr. Dwight F. Clark was a member at the time of his death. My special gratitude is extended to Dr. Bryson whose unfailing interest in me as a person and educator, good humor, encouragement, and guidance facilitated the completion of this dissertation.

Special recognition is extended to Mr. Jerry G. Shaver, who was my supervising principal and later central office supervisor during part of his tenure with the High Point Public Schools. His positive guidance and encouragement helped me make the decision to enter educational administration and to seek my doctorate.

The most important recognition is extended to my mother, Doris B. Pierce, who passed away while I was working on my dissertation. Her love and encouragement made this possible.

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CHAPTER I

INTRODUCTION

Role of the Federal Government and the States in Education

The federal government has no inherent power. Any authority it does embody must be delegated in or implied inside the Constitution of the United States. The power which the federal government has in education is inferred from the Preamble to and a clause within the Constitution itself.

> We the people of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.[1]

> The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; . . .[2]

The founding fathers disagreed on the meaning of the general welfare clause.[3] James Madison asserted that it gave no substantive powers to the federal government while

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[1] Preamble, U. S., Constitution.

[2] U. S., Constitution, art. I, sec. 8, cl. 1.

[3] Lee O. Garber and Newton Edwards, The Public Schools in Our Government Structure, 2d ed. (Danville, Ill.: The Interstate Printers and Publishers, Inc., 1970), p. 4.

Alexander Hamilton believed that it gave to Congress broad and extensive powers to tax and to spend.[4] According to Hamilton, such authority was not restricted by the delegated powers in the Constitution. In 1936 and 1937, respectively, the Supreme Court of the United States accepted the Hamilton interpretation[5] and expressed the opinion that Congress may tax and spend for purposes related to the general welfare.[6] Limitations on this power of the federal government to control education and the extent to which Congress may tax and spend for it have never been fully determined.

> Whether the federal government will refrain in the future, as it has rather generally done in the past, from exercising the power to control educational policy which may be vested in it remains to be seen.[7]

Since the Constitution of the United States has no delegated powers in education, it is, therefore, an accepted principle that the states have full and complete control over educational policy unless otherwise restricted by federal or state constitutions. Education, then, is a power reserved to the states by the Tenth Amendment. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States

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[4]Ibid.

[5]United States v. Butler, 297 U. S. 1 (1936).

[6]United States v. Davis, 301 U. S. 619 (1937).

[7]Garber and Edwards, p. 9.

respectively, or to the people."[8] Edward C. Bolmeier states: "The express provisions for the establishment, organization, and control of public education are contained in the state constitutions and statutes. . .".[9] Accordingly, all state constitutions expressly provide for the creation of a state system of public education.[10] The Constitution of North Carolina both encourages education and calls for a uniform system of schools in the following sections of Article IX.

> Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.[11]

> The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.[12]

Responsibility of the Federal and State Courts

The courts consider cases arising from the laws affecting education. These laws adhere to the following

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[8]U. S., Constitution, amend. X.

[9]Edward C. Bolmeier, The School in the Legal Structure, 2d ed. (Cincinnati: The W. H. Anderson Company, 1973), p. 111.

[10]Legislative Drafting Research Fund of Columbia University, Constitutions of the United States National and State (Dobbs Ferry, New York: Oceana Publications, Inc., July 1985).

[11]N. C., Constitution, art. IX, sec. 1.

[12]N. C., Constitution, art IX, sec. 2, cl. 1.

hierarchy in ascending order: regulations by local boards of education, actions by state education agencies, state statutes, state constitutions, federal statutes, and the federal constitution. There are two systems of courts in the United States: federal and state. Federal courts are limited only by the grant of judicial power in the United States Constitution.[13] They hear cases involving citizens of different states or the states themselves, cases concerning federal law, and cases representing appeals from decisions of the highest state courts. Such appeals are based on the provisions in or meaning of the United States Constitution. If a case represents both a federal and a state law question, then the federal courts determine the state questions according to the court rules of that state. State courts hear almost every type of case with the exception of those assigned to the federal judiciary. They are bound not only by their own state constitutions and laws but also by the United States Constitution and federal laws. If state courts must determine a federal question, they follow the rules of the governing federal court and they may determine federal law in the absence of a federal decision.[14]

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[13]William D. Valente, Law in the Schools (Columbus, Ohio: Charles E. Merrill Publishing Co., 1980), p. 14.

[14]Ibid.

The courts play an important role in American society. They embody judicial review: the power to hear and to decide cases and to declare laws unconstitutional. To cite Bolmeier once again:

> The state judiciary . . . has no authority or responsibility to legislate. The proper function of the courts is threefold: (1) they rule on the constitutionality of legislative enactments, (2) they interpret laws, and (3) they settle disputes.[15]

By interpreting the laws within jurisdictions and settling disputes, state courts may determine the intent of the legislatures when enacting a particular law.[16] Neither the authors of state constitutions nor members of state legislatures could foresee the questions or controversies which might arise later concerning their actions.

Statement of the Problem

Whereas education is a state rather than a federal function, the states have control over it. In carrying out this function, the individual states show fundamental similarities. Differences exist in form rather than substance and in degree rather than basic approach.[17] With such similarity the states naturally influence one

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[15]Bolmeier, p. 112.

[16]E. Edmund Reutter, Jr. and Robert R. Hamilton, The Law of Public Education (Mineola, New York: The Foundation Press, Inc., 1970), p. 8.

[17]Ibid., p. vi.

another. As a consequence, there is a need to better understand the role of the State of North Carolina in public education. What provides the basis for this understanding? According to Richard Strahan,

> The fact that education plays such an important role in our society has prompted numerous court cases which have been required to define its function. In addition to the ideas which have been contributed by educational theorists or philosophers, the courts have had to formulate a theory of education based upon what they deem to be the fundamental nature of our society and to insure the public welfare.[18]

Since the courts are called upon to define the function of education and since most of the cases involving public education are heard in state courts,[19] it is important to have a basic understanding of North Carolina court decisions which have affected the public schools. This review should come from those decisions determined by the state's highest court, the Supreme Court of North Carolina. Such a framework can provide a means for analyzing cases, synthesizing judicial interpretations, and compiling a record of judicial decisions which not only will define the purpose and direction of public education in North Carolina but will also identify the role of our state's highest court in the development of the North Carolina public schools.

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[18]Richard D. Strahan, The Courts and the Schools (Lincoln, Nebraska: Professional Educators Publications, Inc., 1973), p. 36.

[19]Valente, p. 14.

Examining specific topics within decisions of the Supreme Court of North Carolinacan provide an important reference for educators, parents, students, legislators, and the public-at-large.

Questions to be Answered

The purpose of this study is to have a basic understanding of the Supreme Court of North Carolina decisions affecting the public schools. Listed below are four key questions to be answered through this study:

1. What are the landmark decisions of the Supreme Court of North Carolina affecting the public schools?

2. What legal principles affecting the public schools have been established by the decisions of the Supreme Court of North Carolina?

3. How do the decisions of the Supreme Court of North Carolina parallel or give direction to the development of the public schools of the state?

4. What are the trends or emerging issues evident in the decisions of the Supreme Court of North Carolina affecting the public schools?

Scope of the Study

This study represents a reading of decisions of the Supreme Court of North Carolina from 1810 through 1986. Only those cases which were first listed in the case notes of the Public School Laws of North Carolina and were then listed in the schools category of the North Carolina Digest or West's South Eastern Digest were studied. These cases on the public schools were reviewed in the areas of (1) governance, (2) employees, (3) pupils, (4) torts,

(5) finance, and (6) property. Cases of a general education nature were studied if they had some significance for the public schools.

Methods, Procedures, Sources of Information

This study utilized North Carolina Reports as the primary source of court decisions for the period studied. Cases are grouped under the following major headings developed for legal research reporting by the National Organization on Legal Problems of Education: (1) governance, (2) employees, (3) pupils, (4) torts, (5) finance, and (6) property.[20] NOLPE organizes its reporting system into two additional headings: bargaining and higher education. These have not been selected for this study since the State of North Carolina prohibits collective bargaining and since the public schools include only elementary and secondary education, usually terminating with the twelfth grade. The statute reads thus:

> Any agreement, or contract, between the governing authority of any city, town, county, or other municipality, or between any agency, unit, or instrumentality thereof, or between any agency, instrumentality, or institution of the State of North Carolina, and any labor union, trade union, or labor organization, as bargaining agent for any public employees of such city, town, county, or other

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[20]Philip K. Piele, ed., The Yearbook of School Law 1984 (Topeka, Kansas: National Organization on Legal Problems of Education, 1985).

> municipality, or agency or instrumentality of government, is hereby declared to be against the public policy of the State, illegal, unlawful, void and of no effect.[21]

A broad, but thorough history of the development of the public schools in North Carolina is reported to provide a reference point for determining landmark decisions and the role of the Supreme Court of North Carolina in this development.

Since it was essential to determine whether a need existed for this research, a search was made of the Comprehensive Dissertation Index. It revealed only one dissertation which related to the subject of this study, "A Summary and Analysis of North Carolina Court Decisions Relating to Professional School Personnel and Public School Pupils."[22] However, it is limited to cases concerning teachers and pupils originating in North Carolina. Not only did it focus on decisions of the Supreme Court of North Carolina, but it also looked at decisions from United States District Courts and the United States Court of Appeals. It was helpful only to the extent that it revealed the scope of a related study which was limited to two very specific

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[21]N. C. Gen. Stat. 95-98 (1975).

[22]Wayne Quinton, "A Summary and Analysis of North Carolina Court Decisions Relating to Professional School Personnel and Public School Pupils" (Ph. D. dissertation, Duke University, 1968).

areas, involved decisions other than those of the Supreme Court of North Carolina, and was completed nineteen years ago.

Due to the fact that this study was limited to North Carolina, sources such as Readers' Guide to Periodical Literature, Education Index, and the Index of Legal Periodicals proved of little help. In fact, two computer searches from the Educational Resources Information Center (ERIC) failed to produce information which was directly related to this specific study. The librarian of the North Carolina Supreme Court was contacted for assistance and could provide no help in locating secondary sources for a review of literature related to this study. The law school journals from the University of North Carolina at Chapel Hill, Duke University, Wake Forest University, North Carolina Central University, and Campbell University reported information found in the primary sources and seldom focused on cases of the Supreme Court of North Carolina. Fortunately, primary and secondary sources were available for tracing the development of the public schools in North Carolina.

Cases coming before the Supreme Court of North Carolina were located in the North Carolina Reports. These were also located in the North Carolina Digest and West's South Eastern Digest 2d. Due again to the fact that this study was limited to North Carolina, research sources

customarily used in legal research such as Corpus Juris Secundum, American Jurisprudence, the National Reporter System, the American Digest System and the NOLPE School Law Reporter were not used. All cases were read and categorized according to the NOLPE legal reporting system.

Definition of Terms

For the purposes of this study, the following selected terms are defined:

Public Schools: Public schools are established under the laws of the state, in the various districts, counties, or towns, maintained at the public expense by taxation, and open with or without charge to the children of all the residents of the town or other district.

Governance (Govern): Governance is to direct and control, rule, or regulate by authority from established laws or by arbitrary rule.

Employees: Employee refers to some permanent employment or position; a person working for salary or wages.

Pupils: A pupil is a youth or scholar of either sex under care of an instructor, tutor, or teacher.

Torts: Tort is a private or civil wrong or injury. It may be the infraction of some public duty by which special damage accrues to the individual. Three elements of every tort action are existence of legal duty from defendant to plaintiff, breach of duty, and damage as proximate result.

Finance: Finance is generally considered to be money resources.

Property: Property is that which belongs exclusively to one and represents rights which are guaranteed and protected by the government. It is also

commonly used to denote everything which is the subject of ownership.[23]

Design of the Study

The remainder of the study is divided into five major parts.

Chapter II traces the historical and major development of education, specifically the public schools in North Carolina.

Chapter III looks at the organization and development of the Supreme Court of North Carolina including a review of the available literature concerning it.

Chapter IV analyzes the principles and concepts found in cases which have been decided by the Supreme Court of North Carolina.

Chapter V is a detailed analysis of particular cases selected for their authoritative or illustrative value.

Chapter VI reviews and summarizes information provided in the preceding chapters and answers the questions posed in the introduction.

The Appendix contains a listing of the constitutional provisions concerning the North Carolina public schools and the Supreme Court of the State of North Carolina.

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[23]Henry Campbell Black, Black's Law Dictionary, Fourth ed. (St. Paul, Minn.: West Publishing Co., 1951), pp. 1512, 824, 617, 1399, 1660, 758, 1382.

CHAPTER II

EDUCATION IN NORTH CAROLINA

Overview

The history of the public schools in North Carolina is a story of vision, frustration, and fulfillment.

The State emerged from the colonial period with no public schools but saw them created in the first half of the Nineteenth Century. They collapsed with the end of the Civil War and the Reconstruction Era did little to further the cause of education. A particular hindrance was a conservative North Carolina Supreme Court which steadfastly stymied efforts until 1907 to provide through special taxes the support of public schools.

The beginning of the Twentieth Century was a progressive era for the cause of education. While the Great Depression brought financing problems to the schools, they remained open. The State was forced to accept full responsibility for a uniform system of public education.

The latter half of the Twentieth Century saw successful racial integration of the schools. This period also saw a strong commitment to comprehensive and quality education in order to meet the needs of students and to encourage the professional development of teachers and administrators.

The history of education in North Carolina is a march to excellence.

The Church of England established schools in early North Carolina, and teachers were usually clergymen. Those who were not had to meet specified religious qualifications in order to teach. Education meant an elementary level instruction, with an apprenticeship system. Together they represented the first approach to a formal system of education in the state. Over a period of time, the Assembly authorized schoolhouses and made provisions for their financing. Although advocates of education believed that the Constitution of North Carolina of 1776 called for the establishment of public schools, the Assembly did not provide for them, even though it did charter academies.

North Carolina entered a progressive era after the War of 1812. It recognized government's role in bringing about the virtues of Jacksonian Democracy. Archibald D. Murphey, "Father of Public Education in North Carolina," advanced a system of public education as early as 1817. Although the specifics of the plan were not approved by the General Assembly, it did approve a Literary Fund for the public support of the schools in 1825. This was the action which many thought had been called for in the Constitution of North Carolina of 1776.

The first common school law was enacted in 1839. Although structure and standards for a public school system were evolving, organizational and financing problems inhibited the development of a true public school system. To address the leadership needs of the system, the General Assembly authorized the position of general superintendent of the common schools. The first state superintendent was Dr. Calvin Henderson Wiley, who served until the end of the Civil War. He provided effective leadership by introducing new ideas, improving the quality of teachers, applying standards to the expenditures of money, and rallying support for the schools.

Nevertheless, the end of the War saw the closing of the common schools and the collapse of the common school system. The period of Reconstruction and the latter years of the Nineteenth Century were a difficult time for education. The economic, social, political, and legal changes brought about by the Civil War and its aftermath impacted adversely on the cause of the public schools. Although the Constitution of North Carolina of 1868 and subsequent legislation spoke to the importance of education, little was actually accomplished.

County commissioners were empowered to levy a special school tax to support a four months' school term. But in a stunning blow to the cause of education, the North Carolina Supreme Court rejected such a levy in Lane v. Stanly and

Barksdale V. Commissioners of Sampson County. This action stymied public school financing for many years. It was the result of public indifference, a hatred for taxation, little concern for illiteracy, and the conservative, reactionary philosophy of the times.

Although the state-wide administration of the schools fell in disarray due to carpetbagger rule, there were some advances in education. The Freedmen's Bureau aided the cause of Negro education. The graded school movement advanced the development of education. Improvements in teacher education and training continued.

The beginning of the Twentieth Century found a renewed interest in education. Governor Charles B. Aycock and educator Charles D. McIver among others led a campaign in support of public schools. Efforts were made to equalize financing for the school districts of the state. The North Carolina Supreme Court had by now reversed its earlier decisions and permitted county officials to levy the special school tax needed to fund a mandated term. Teacher training and certification improved. A State Board of Examiners prepared questions, graded examinations, and certified teachers. The raising and distributing of proceeds from special school taxes on the basis of race ended. New initiative strengthened the public schools. Black schools shared in this development, although they generally suffered in comparison to those for whites. As a consequence of the

Depression, the state finally assumed full responsibility for a uniform system of education. Regulations were adopted for bus transportation, and the administration of the state school system was further clarified.

The last thirty-five years has seen the end of segregation and an emphasis on new and expanded programs to meet the needs of young people. The adoption of the Basic Education Program promises an adequate education for every child in North Carolina. Teacher training and certification standards continue to improve, and a career plan offers hope for improving the status and compensation of teachers. These developments represent a sincere commitment to education based on equity and quality.

Colonial North Carolina

Although there were no public schools in colonial North Carolina, early missionaries of the Church of England tried to establish a church and a school in every settlement of the colony. As a result, elementary education was provided by private tutors who were usually clergymen. Students traveled to Virginia, the Northern Colonies, England, or Scotland for advanced studies.[1]

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[1]Hugh T. Lefler, ed., North Carolina History Told By Contemporaries (Chapel Hill, N. C.: The University of North Carolina Press, 1965), p. 156.

Public education was first mentioned in a law of the province providing for the compulsory education of destitute orphans; this was a Christian effort to make sure that orphans would not become an economic burden. They were bound to someone who was not only to teach them a trade but also to teach them to read and to write.

> At a court held in the house of Thomas White, February 26, 1694, little William Pead, a five-year-old, destitute orphan boy of old Albemarle County in North Carolina was bound to the Honorable Thomas Harvey and Sarah, his wife. It was written in the records of the court that the said Thomas Harvey should teach the little fellow to read before he became twenty-one years of age. This is the first time we find in our public records any official statement of what should be taught a child in North Carolina.[2]

By the end of the 1600's this apprenticeship system was in place. In addition to providing a minimum of formal schooling for orphans, it provided assistance for poor children, free illegitimate children, girls and boys. It implied the existence of schools or a means of education.[3]

The Assembly of 1745 authorized other public buildings and a schoolhouse for Edenton. Penalties collected under the act and monies already on hand in town treasuries from the sale of town lots (and from the future sale of same) provided financing. Other funds came from private donations

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[2]M. C. S. Noble, A History of the Public Schools of North Carolina (Chapel Hill, N. C.: The University of North Carolina Press, 1930), p. 198.

[3]Edgar W. Knight, "One Hundred Years of Public Education," North Carolina Education, February 1936, p. 195.

to town commissioners, who could sue and collect from delinquent subscribers. Due to state aid and its recognition as a public institution, the building in Edenton was considered a "public" schoolhouse.[4]

In 1754 the Assembly appropriated £6,000 for a "public school," although it was not known what was exactly meant by the term. Control and regulations were to remain with the governor, council, and Assembly. Whatever the intent, the appropriated money was never used to support a public school: "The good which resulted from this appropriation was that the Assembly had gone on record in favor of at least one public school for the province at the expense of the public treasury."[5]

In 1766 the Assembly made a corporate body out of the subscribers who in 1764 had given to a fund for building a schoolhouse and teacher residence in New Bern. For the first time in North Carolina, the term "public school" was applied directly to a local educational institution.[6] It received town lots and the proceeds of a tax on all rum and other liquors from the Assembly. This act of incorporation also provided benefits for the education of the poor who could not educate their children:

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[4]Noble, p. 11.

[5]Ibid., pp. 12-13.

[6]Ibid., p. 14.

> This was the beginning of free public education in the state, a beginning that has expanded into a public school system supported almost entirely by public taxation and devoted to the education of all the children of the state.[7]

The Assembly action of 1766 had two specific implications for education in the province: the beginning of state aid to education and the beginning of free admission for poor children into tax-financed schools. The state aid to schools incorporated by the Assembly usually came from the gift of public land, money from the sale of town lots, or a liquor tax. Two trends in North Carolina's early education began to emerge. Indigent orphans were apprenticed not only to learn a trade but also to learn to read and write, and the Assembly chartered private schools and provided schoolhouse sites. These two actions eventually blended together into a single tax-supported system of free public schools for all white children.

Prior to the American Revolution, the chief test of teachers was a religious one. Teachers had to be members of the established Church of England. This requirement was especially true if a teacher taught in a school chartered by the Assembly. In 1730 the instructions to the first governor appointed by the Crown indicated that no one could

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[7]Clyde A. Erwin, "The Growth of Public Education," North Carolina Education, February 1936, p. 216.

teach or maintain a school who did not have a license from the Lord Bishop of London. As a consequence, the basic test to be a teacher was a religious one.

On 18 December 1776, delegates meeting in Halifax, North Carolina, approved a constitution which said:

> That a school or schools shall be established by the legislature, for the convenient instruction of youth, with such salaries to the masters, paid by the public, as may enable them to instruct at low prices; and, all useful learning shall be duly encouraged and promoted in one or more universities.[8]

This forty-first article of the North Carolina Constitution of 1776 was a literal copy of section forty-four of the Pennsylvania Constitution adopted 28 September 1776 except that the North Carolina copy left out "in each county" after the word established. North Carolina and Pennsylvania were the first states to call for the establishment of schools in their free constitutions.[9]

Although the advocates of education believed this constitutional provision meant the establishment of public schools, the legislature did not provide them. Its failure to establish public schools came from an abiding hatred of taxation.[10] Even if the state founders may have

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[8]N. C., Constitution, art. 41 (1776).

[9]U. S., Bureau of Education, Chapter from the Report of the Commissioner of Education for 1896-97, "Chapter XXIX. Beginnings of the Common School System in the South," by Stephen B. Weeks, (Washington, D. C.: Government Printing Office, 1898), p. 1389.

[10]Clyde A. Erwin, p. 217.

envisioned schools for those who could afford them and who wanted to go to school, they did not commit themselves to a system of universal public education. Nevertheless, the principle of state aid and endorsement of schools was established:

> It is well to note that the educational clause in our first constitution never contemplated the establishment of any kind of school supported entirely by public taxation, such as the schools provided for in the school law of 1838-39 and maintained free of tuition from 1840 to 1865. The original idea was simply to help in some way by paying enough to the teacher to enable him to lower his rates of tuition and thus place his school in reach of a greater number of people.[11]

While the legislature did not respond to the implied authorization for public schools, it did provide for subsidized academies. These were usually private, chartered by the state, sectarian, and open only to boys. Of the 177 chartered before 1825, only thirteen were for girls and only a few provided instruction for free Negroes. Financing usually came from lotteries.[12]

In 1760 the first academy in North Carolina was established in Wilmington by the Reverend James Tate. In that same year, Crowfield Academy (which was the forerunner of Davidson Academy) was established. Queen's College, an English institution known by its American name, Liberty Hall Academy, in Charlotte, was the last school to seek a

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[11]Noble, p. 27.

[12]Lefler, p. 168.

charter from the Crown and the first to receive one from the the newly formed State. The second school chartered by the State was Science Hall, Hillsboro, and it was given the same privileges as Liberty Hall Academy. It was allowed to raise money by lottery: "This is probably the first instance in the history of the free State in which the aid of the government to schools extended beyond the mere formal granting of charters."[13]

If there were to be a fund for schools, it had to come from means other than a public school tax. As a consequence, lotteries were used in the eighteenth and early nineteenth centures to finance not only academies, but also churches, bridges, canals, and other public works.

Warrenton Academy, Warren County, chartered in 1786, was to have $3,000 raised by lottery and the town commission was directed to use monies on hand for the school. This was the first instance in North Carolina of local taxation for schools.[14] In addition to lotteries, other funding for academies chartered by the state came from the outright gift of land income from property, exemption from taxation, and authority to raise subscriptions. Because funding by lottery generated debate on the morality of gambling, it was prohibited by law in 1834.

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[13]U. S., Bureau of Education, p. 1389.

[14]Ibid., p. 1393.

An act was passed by the legislature in 1800 providing for public schools in New Hanover County. There is no indication of the exact nature of the public support. However, the trustees were given the right to hold land and the school was called a "public school." Between 1790-1840 over three hundred academies were chartered in North Carolina. Eventually, they would be supplanted by public graded schools and high schools:

> The general character of these acts is the same. A number of persons, sometimes including representative men of the State as well as those of local prominence, were given corporate powers and absolute control over the management and direction of the school, and were usually made cooperative. The schools generally had power to grant certificates, but the right to grant degrees was specifically denied. These acts also gave power to the trustees to sue for and recover by action of debt or otherwise the sum of money which had been subscribed for the schools but on which payment had been refused. In some cases the pupils and teachers were exempted from service in the militia. Some were named for the most prominent benefactor, and provision was made for this in case a person should claim such distinction at any time in the future. The trustees usually chose the teachers. There was sometimes exemption from taxation. In the earlier charters special provision was made that such were not to be considered as any of the academies for which provision had been directed in the constitution.[15]

The North Carolina Constitution of 1776 mentioned no qualifications for teachers. Even though the denominational test had been eliminated, teachers still had to meet certain moral and religious qualifications. These remained the basic requirements for teaching until the beginning of

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[15]Ibid., p. 1392.

the nineteenth century. Academic qualifications generally required some knowledge of reading, writing, and "ciphering."[16]

Nineteenth Century to the Civil War

North Carolina entered a progressive reform movement following the War of 1812. It placed great importance on the common man and reflected the impact of Jacksonian Democracy. The historical implications are as follows:

> The most revolutionary feature of the new movement was its repudiation of the prevalent philosophy that government is a necessary evil and its bold acceptance of the concept that a democratic government is the servant of the people and their most effective agency for self-development. The leaders of the new movement also believed that the state government should take the lead in a positive constructive program for the development of the state and for the solution of its problems.[17]

Recognizing this role of government, the need for universal education for all white children, and the fulfillment of Jacksonian Democracy, Archibald D. Murphey, "Father of Public Education in North Carolina," worked for public schools, academies, and colleges. The first great advocate of public education in North Carolina, he submitted to the General Assembly in 1817 plans for a system of public

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[16]James E. Hillman, "Teacher Certification," North Carolina Education, February 1936, p. 206.

[17]Hugh T. Lefler and Albert Ray Newsome, North Carolina: The History of a Southern State, Revised ed. (Chapel Hill, N. C.: The University of North Carolina Press, 1963), p. 313.

education. He urged the establishment of a corporate body which would distribute state funds according to the numbers of whites in an area and which would provide for administration of the schools.[18]

The corporate body proposed by Murphey would become known as the Literary Board and would eventually be composed of the governor, the chief justice of the North Carolina Supreme Court, speaker of the state senate, speaker of the state house, the state treasurer, and their successors. Among its corporate powers would be those to create districts, to establish schools, to appoint local school officers, to determine the qualifications for teachers, and to establish teacher salaries. Curriculum responsibilities included setting the course of study and the use of examination results for the promotion of pupils from elementary to high school to college.[19]

The graded school system which Murphey also proposed would have had students progressing from primary schools to academies and on to the university. The curriculum in those schools would have consisted of reading, writing, and arithmetic. Boys could have advanced to the academies, where the course of study would have included classical languages, mathematics, geography, astronomy, and history.

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[18]Lefler, p. 164.

[19]Lefler and Newsome, p. 315.

From the academies white males could have gone to the university. Murphey wanted primary schools established in each township, the source of funding for the primary schools and academies being a combination of state and local resources. Murphey believed that tuition should be charged to those who could afford to pay, but all white children were to be eligible for primary schools.[20]

Murphey advocated state development of textbooks. In addition to reading, writing, and arithmetic, he believed that the Bible should be taught using the Old and New Testaments. Moreover, the curriculum could be expanded if the local community or teacher wanted to enhance its reputation through the program it offered.[21]

His plan had two major shortcomings: it was a combination of charity and tuition, and it discriminated against females and Negroes. As a result, the legislature refused to enact Murphey's proposal. However, agitation continued for the establishment of some type of public supported school system.

Finally, in 1825, the legislature approved a Literary Fund, which called for funds for school support from both state and local resources. This combined approach to the funding of our public schools has continued to the present.

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[20]Ibid.

[21]Noble, pp. 199-200.

Called "An Act to Create a Fund for the Establishment of Common Schools," but commonly referred to as "The Literary Fund Law of 1825," it became law on 24 January 1826.[22] North Carolina was the third state after Virginia to approve such a fund for the support of the common schools. The monies for the fund came from dividends on bank stocks, the unexpended balance from sales of land, $2,100 in cash, dividends from navigation companies, license taxes, and money from the United States given to North Carolina for the removal of the Cherokee Indians.[23]

The implementation of the finance legislation came from agitation by advocates of education and reformers rather than from the general public. As with other Southern states, North Carolina represented factors inhibiting such development: a sparse population, an absence of local governmental and administrative units directly responsible to the people, lack of ways and means for supporting schools, capital in land and slaves, few sources of taxation, and a population with a strong adversity to taxes.[24]

No distribution of monies from the fund was to be made until it had accumulated a sufficient balance to be used by

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[22]Ibid., pp. 45-46.

[23]William K. Boyd, "The Literary Fund in North Carolina," North Carolina Education, February 1936, p. 203.

[24]Ibid.

the schools: "This bill passed both Houses, but while it was a beginning of an earnest endeavor for public schools, years were to pass before the income was sufficient for an practical purposes."[25]

The Literary Fund signaled an end to private schools and the importance of the common schools. It also represented the first time that the state actually provided funding for the schools called for in the Constitution of North Carolina of 1776. However, the monies for the Literary Fund came from state investments and not from taxation. There remained the belief that taxes could be used only for specific governmental activities, of which the common schools were not yet a part:

> In 1834 the fund amounted to $139,403.99 1/2, which was invested in 1,200 shares of stock in the Bank of the State of North Carolina. There were other investments in 1835. As yet nothing had been done for the schools. The literary board, in fact, seemed to look on itself as little more than an agent for the investment of funds, and its reports are almost entirely financial in character. Further, the State, corporations, and individuals looked on the fund as a reserve on which they could draw in time of need. As a result, there were none to urge the cause of the schools.[26]

In response to this lack of action, the state legislature in 1836-1837 made changes in the Literary Fund. Its board was altered and the legislature designated the

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[25]Samuel A'Court Ashe, History of North Carolina. Volume II. From 1783 to 1925 (Spartanburg, S. C.: The Reprint Company, 1971), p. 300.

[26]U. S. Bureau of Education, p. 1419.

study of the common schools of North Carolina. The board was also to submit a plan for the common schools which would address the condition and needs of the state.

As the result of an educational revival which began in 1836 and which was due in part to the receipt by the state of a part of its national surplus, the first common school law was ratified on 8 January 1839. Known as the Cherry Bill, it was entitled "An Act to Divide the Counties of the State in School Districts and for other Purposes" and was an endorsement of much of what Archibald D. Murphey had proposed in 1817.[27] Thus, North Carolina adopted a common school system supported by the Literary Fund and county-wide school tax. The tax, which had to be approved in a vote of the people in each county, was voted in by sixty-one of sixty-eight counties, generally by large majorities.[28]

In 1846 Rowan and Edgecombe were the last counties to vote in favor of this contributory tax and, as a consequence, schools were free to every white child in North Carolina. The first payments from the Literary Fund were made during 1838-1839 to Tyrrell County, Cherokee County, Richmond County, and Macon County. The first public school

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[27]S. Huntington Hobbs, Jr., North Carolina, Economic and Social (Chapel Hill, N. C.: The University of North Carolina Press, 1930), pp. 248-249.

[28]Noble, p. 300.

in North Carolina opened on 20 January 1840 in Rockingham County.[29] By 1846 every county had at least one public school:

> In its very first section this law called upon the people to vote for or against a tax for the support of common schools, a tax which was to yield one dollar for every two dollars that should be furnished from the Literary Fund. And the vote thus called for was so worded as to put the voter squarely on record as being for or against the education of the masses. He who favored the cause was to vote a ticket with the word "school" written on it, and he who opposed was to vote a ticket with "no school" written on it. This blunt and direct method no doubt won many votes for the schools in the election which followed for, as a rule, one does not like to say on his ballot that he wants "no school."[30]

The School Law of 1839 was filled with good intentions and pointed the state in the right direction. However, it did have significant omissions. While county officials had discretionary authority to establish schools, nothing was stated about the provision of schoolhouses. In addition, nothing was delineated about teachers, their qualifications, or who would actually employ them. In fact, the term teacher was not in the 1839 law. The School Law of 1839 included no indication of when schools should begin or what should be taught. In fact, little was provided to guide and direct the central board in its relationship with county superintendents, school committeemen, or teachers. No

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[29]Lefler and Newsome, p. 351.

[30]Noble, p. 60.

specific duties were given to district committeemen. In general, they were to assist county superintendents in school matters in their districts:

> In counties which voted for schools the justices of the county courts elected not less than five nor more than ten persons as superintendents of common schools. These superintendents were to divide the county into common-school districts of not more than six miles square and were to appoint for each school district not less than three nor more than six school committeemen, whose duty was to assist the superintendents in matters pertaining to the schools in their respective districts.[31]

The law of 1839 was weak in providing supervision or delineating the organization and administration of the schools. There was no state administrative control and no state superintendent until 1853. Until that time the Literary Board served as chief executive of the school system. Management was left to local officers. Counties had no uniformity of organization and many local reports were not made; in addition,

> The novelty of public school, the conservatism of the people and their dislike of taxation, the persistence of the idea that public schools were associated with charity, the lack of adequate equipment and trained teachers, and the hostility of the private schools and academies helped to bring discouraging results from the new system. It seemed that the political leaders were willing to allow the school system to drift and disintegrate.[32]

In 1840-1841 the legislature mandated the first school tax in all counties and made it the responsibility of the

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[31]U. S., Bureau of Education, p. 1421.

[32]Lefler and Newsome, p. 352.

county courts, who had the authority and power to levy a school tax which could not be more than one-half of the funds from the Literary Fund. The distribution was to be based on the federal population in the state with slaves counted as three-fifths.[33]

As a consequence of this distribution system, counties with large numbers of slaves received more money although no schools were established for the slaves. This inequality meant that more money went to white children in the east than to those in the west. The legislature of 1844-1845 made the tax discretionary, but the legislature of 1854-1855 made it mandatory. It also provided that the total monies in a county from the tax and the Literary Fund had to be divided equally among the districts. An 1856-1857 law directed the board of county superintendents, with the advice of the state superintendent, to divide funds to the districts on a per capita basis. Only white children were counted. Then in 1858-1859 the legislature enacted a law requiring the division of funds in order to provide equal facilities for the education of white children.[34]

The legislature of 1840-1841 specified other changes in addition to those concerning taxation. The Literary Board

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[33]Ibid., p. 351.

[34]Noble, p. 144.

would administer the Literary Fund, send distribution of the fund to counties, prepare and send forms to county officials to show progress of schools, and potentially provide penalties for those county officers who did not comply with the law.[35] Counties which had voted a tax for schools in 1838 could appoint no less than five and no more than ten superintendents of common schools to hold office for one year.

A board of county superintendents was to establish school district boundaries, hear appeals from districts, distribute funds to districts, provide general supervision and control of the schools, and determine the number of teachers needed. The chairman of the superintendents was to send to the Literary Board reports from the school committees and to submit such other reports as the Board required. The free white electors in each school district were to elect by ballot three men as school committeemen to serve terms of one year. They were to be a corporate body in charge of the schools with the following duties: provide schoolhouses, take a census of those between the ages of five and twenty-one, employ teachers, and visit the schools. This action in 1841 is considered by many to be the real beginning of a state-wide system of education in North Carolina in spite of its administrative problems:

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[35]U. S., Bureau of Education, p. 1422.

> Thus it will be seen that the common schools were under the joint control of what might be called a tri-board system. The Literary Board controlled and directed the Board of County Superintendents, and it, in turn controlled and directed the school committee which was the local body of control. But nowhere along the line of this chain of Literary Board, Board of County Superintendents, and school committee was there the touch or directing hand of any single officer clothed with any definite and effective administrative power.[36]

The legislature in 1840-1841 required school committees to get "suitable" teachers as monies were available for employing them. By 1844-1845 the committees were required not only to employ suitable teachers but also to consider the qualifications and moral character of those who were employed to teach.[37] In 1846-1847 the legislature empowered the board of county superintendents to appoint committees of five members to examine the mental and moral qualifications of applicants who had to be approved or "certified" before they could teach.[38] By 1852 the legislature required boards of county superintendents to have examining committees. The first state superintendent in 1854 could require teachers to be examined in reading, spelling, writing, arithmetic, grammar, and geography.[39]

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[36]Noble, p. 84.

[37]Ibid., p. 205.

[38]U. S., Bureau of Education, p. 1430.

[39]Noble, p. 203.

By 1850 important advances had been made for the 3,000 common schools in the state. The average term of the common schools was three and one-half to four months. The average teacher's monthly salary was $26, and the total cost of the state's common school system was $278,000 with $100,000 coming from local taxes and the remainder from the Literary Fund.[40]

In spite of these major advancements, problems persisted. Some counties would not levy a tax and the monies coming from the Literary Fund were often inadequate. In some counties committee members took the money which was available for schools and used it for themselves. There was no system for holding committee members accountable for their actions.[41] In some places it was difficult to find people to serve as school committee members. Even when people could be found to serve as committee chairmen, they often failed to make the reports which were required and could then be fined for neglect.[42]

Other problems faced the common schools about 1850. There were incompetent teachers, and many teachers were fired capriciously. Since most students came from among the very poor, the common schools received an unsavory

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[40]Lefler and Newsome, p. 363.

[41]U. S., Bureau of Education, p. 1438.

[42]Ibid., p. 1437.

reputation. In some cases the schoolhouses were occupied by the destitute seeking shelter. Older students often forced out younger ones, and overcrowding also resulted from more students attending in the fall when they were not needed on farms.

One explanation for these problems was the lack of leadership. Until 1853 the Literary Board actually served as the chief executive of the state common school system, but the operation of the schools was left to local officials with no training or experience. As a consequence, the state legislature on 4 December 1852 created the office of General Superintendent of Common Schools for the State. This officer was to be chosen by the legislature for a two-year tenure. The legislature selected Dr. Calvin Henderson Wiley as the first state superintendent, and he began his duties on 1 January 1853. Through his eminent leadership, the common schools of North Carolina became a beacon among the Southern states.[43]

The duties specified for Dr. Wiley included receiving reports on the numbers of certificates awarded to male and female teachers by county chairmen. He obtained reports on the conditions of the schools and reported them to the governor and legislature. Dr. Wiley supervised the schools adeptly and enforced the laws concerning schools. He also

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[43]Lefler and Newsome, p. 363.

gave school committeemen information on teacher qualifications, distributed forms, compiled school laws, and established other necessary institutions.[44]

One of the most critical issues which Dr. Wiley faced was the training and certification of teachers. Until this time the only act of certification was examination in each county by a committee of no more than five to determine mental and moral qualifications of teachers and to issue one-year certificates to those who passed such scrutiny. This certification was important since salaries were contingent upon this endorsement.[45]

To improve the certification of teachers, Braxton Craven, president of the Normal College in Randolph County, published in 1850 a plan for the preparation and education of teachers.[46] The state legislature in the same year gave the school the authority to issue certificates. Its recipients, thus, had the right to teach in any of the common schools in the state. With such a certificate, teachers did not need to undergo any additional examination by county school committee members. In return for a loan from the state, this Normal College continued to prepare

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[44]U. S., Bureau of Education, p. 1430.

[45]Ibid.

[46]Knight, p. 197.

teachers until 1859, when it became Trinity College and ended this particular relationship with the state.[47]

By 1855 there were 2,995 school districts in the State.[48] On 10 February 1855 the state legislature passed a new education law. It was a revision and reenactment of the basic school law without the return to the old decentralized former system. This new law defined sources of revenue for the Literary Fund and regulated the common schools as they had been previously.[49] As a result of this new education law, the duties of the superintendent "were directed largely to introducing new ideas, to improving the quality of the teachers, and to securing punctuality and faithfulness in the disbursement of money."[50]

Civil War

North Carolina entered the Civil War Era with one of the best public school systems among the Southern states. It was already providing students with a good foundation (albeit elementary) in reading, writing, arithmetic, geography, grammar, North Carolina history, and United States history. Improvements continued on 23 December 1864 with the legislature on passing a graded school bill which

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[47]Ibid.

[48]Noble, p. 158.

[49]U. S., Bureau of Education, p. 1441.

[50]Ibid.

would enlarge and extend upon the common schools. It established a graded school in any common school district whereby students who had completed instruction in the common schools could go on to advanced study. For the first time the schools, including primary and graded, were termed "the public schools of North Carolina" and

> When funds would justify, the school was to be divided into the primary and high school departments, and it was the duty of the superintendent to recommend a course of study for the higher departments.[51]

Under the leadership of Dr. Wiley, the schools in North Carolina remained open during the Civil War. Concerned that the Literary Fund might be used to finance the war, he successfully rallied officials and the legislature to protect the fund. In 1861 a bill was introduced into the General Assembly to use the school fund for military purposes, but it was rejected. This attitude prevailed during the war, enabling the schools to remain open although there were reduced financial resources and fewer teachers. In the spring of 1861 the finances from the Literary Fund were temporarily diverted making disbursements late that year. Nevertheless, after this occasion disbursements were paid regularly.

With the end of the Civil War, the common school system in North Carolina collapsed. Most of the principal in the

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[51]Ibid., p. 1459.

Literary Fund had been retained in state banks and railroad stocks, which were considered the best investments at the time.[52] Unfortunately, the end of the war brought about the collapse of the state's banking system. As banks failed, the investments in them were worthless. Railroad stocks paid no dividends.[53] Some of the county chairmen had invested county school funds in Confederate bonds, which were of no value at war's end.[54] In his last report of 18 January 1866, Dr. Wiley recommended that any monies left in the Literary Fund be paid directly to the schools; however, these funds were inadequate to salvage the loss of other revenues.

Dr. Wiley remained in office as state school superintendent until the Constitutional Convention Ordinance of 19 October 1865 abolished all offices which were in existence as of 26 April 1865. He saw the pre-eminent Southern school system come to devastation along with almost every other institution. But it had taken great courage to start a system of common schools and to bring to fruition a public school system in North Carolina:

> The introduction of a school system in North Carolina was a courageous undertaking. The people were

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[52]U. S., Bureau of Education, p. 1460.

[53]Boyd, p. 284.

[54]Ibid.

conservative, there were few nearby examples of public education effort, and the experiment was a novelty.[55]

Reconstruction Era

The Reconstruction Era following the Civil War was a difficult time for the cause of public education in North Carolina. Partisan politics, carpetbagger rule, concerns about freedmen, fear of mixed schools, and poverty created indifference toward the public schools. These conditions and the loss of the Literary Fund contributed to the feeling of demoralization.[56] State railroad and state bank investments were sold at low prices and any securities held in North Carolina or the Confederacy were worthless. The conservatives who were in control made no appropriations for the schools and virtually assigned responsibility for public education to the counties. Although General Assembly action in 1866 approved school support through taxation, few counties levied any taxes for the schools.[57]

The Constitution of North Carolina of 1868, necessary for the state's readmission to the Union, devoted an entire article to education. It provided for an elective superintendent and required the General Assembly, through taxes or otherwise, to provide for a general and uniform system of free public schools open to children ages six

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[55]Knight, p. 196.

[56]Lefler and Newsome, p. 499.

[57]Ibid.

through twenty-one.[58] However, legislation never provided for a free and uniform system of public schools. Such a system did not occur until 1933, when the legislature extended the term of school to eight months and accepted the responsibility for underwriting a minimum program.[59]

Although the Reconstruction Constitution and legislation advocated a minimum term and provided various ways to raise and distribute money, inequalities still existed. The limit set by the Constitution on property taxation aided in the inequity. The Constitution provided that the ad valorem tax could not exceed 66-2/3 cents on $100 of property, and the poll tax could not exceed $2.[60] Disparities were further exacerbated with the graded schools of the 1870's because wealthy districts levied local taxes to provide for the graded schools.

County commissioners were given the financial responsibility to maintain and operate the schools and were to be indicted if they did not provide at least a four months' school term and at least one school in each district.[61] The legislature was empowered to pass a

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[58]Ibid.

[59]J. Henry Highsmith, "Secondary Education in North Carolina," North Carolina Education, February 1936, p. 220.

[60]Erwin, "A State Supported School System," North Carolina Education, February 1936, p. 234.

[61]Lefler and Newsome, p. 499.

compulsory attendance law. This Constitution and the School Law of 1869 re-enacted many of the school laws from 1839 and the subsequent ante-bellum period. Three major changes were a school term of four months, provision for a general school tax, and education for Negroes.

In 1869 the state legislature approved a poll tax of $1.05 on every male between the ages of twenty-one and fifty. Seventy-five percent of this tax was to be paid to the state treasury in order to finance the public schools.[62] Also $100,000 was approved to pay teacher salaries. The aggregate of these amounts would presumably assure a four months' school term.[63] Unfortunately, these funds were never provided, for there was a shortage of monies in the treasury:

> The 1869 school law, a very intelligent and liberal one for its day, might have produced an excellent school system had the act been rigidly enforced. But the effective school system envisioned by the authors of this law was only partially established. The fact that the administration of the school system was in the hands of Superintendent of Public Instruction, the Reverend S. S. Ashley. . ., a carpetbagger from Massachusetts, and his assistant, J. S. Hood, a Negro carpetbagger, created suspicion and lack of confidence. The State's financial resources were limited, schoolhouses were few and in bad repair, and none of the State's appropriation of $100,000 was immediately available for schools. The collection of

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[62]Noble, p. 315.

[63]Hugh T. Lefler, History of North Carolina. Volume II (New York: Lewis Historical Publishing Company, Inc., 1956), pp. 640-641.

> poll taxes was incomplete, and many townships failed to provide schools in accordance with the law.[64]

Charles Coon, who studied school support and North Carolina courts, identified three difficulties facing the development of the public school following 1868.[65] First were the indifference to the problem of illiteracy and widespread repugnance for taxation necessary to alleviate it. Second,

> . . .centers around the singularly narrow and reactionary interpretation placed by our highest court during all those thirty-six long years upon section one of Article V of our State Constitution as it read before it was amended in 1922, which interpretation resulted in such a limitation of taxation as to render impossible any adequate financial support of the pathetically meager minimum four months school term prescribed by the Constitution of 1868.[66]

Third was the conservative interpretation placed on Section 7, Article VII, which held that the cost of schoolhouses and the support of the schools was not an essential municipal expense except under certain conditions. Streets, bridges, utility plants, town halls, fire stations, market houses, and slaughterhouses were considered the necessary expenses.

> The principle of public taxation had been approved, but the application of that principle of the needs and changed conditions of the state proved very difficult. The theory of the law enacted was that through taxation a school fund sufficient to furnish comfortable

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[64]Ibid., p. 641.

[65]Charles L. Coon, "School Support and Our North Carolina Courts 1868-1926," The North Carolina Historical Review, July 1926, p. 3.

[66]Ibid.

> schoolhouses and pay the salaries of teachers for four months would be provided. But this theory was never realized as fact. Under the law the township committee gave the township trustees an estimate of the additional amount of money needed to meet the expenses of a four months term. If after a vote of the people the township trustees failed to levy the tax then it was the duty of the county commissioners to levy and collect it.[67]

The General Assembly provided the machinery in 1868-1869 to establish public schools and the means to support a four months' school term. However, this commitment was nullified by public distaste for taxes, indifferent public attitude about illiteracy, and opposition from local officials and the courts. While some local officials tried to carry out the law, many did nothing.[68]

In Township Number 3 of Craven County, the people voted against a township level in regard to the establishment of public schools. Despite their vote, the county commissioners levied the necessary tax. In return, angry citizens sought an injunction against this levy and its collection, claiming that it was not a necessary expense and disregarded the equation of taxation provisions of the Constitution.

The Superior Court which heard the Craven County tax case ruled against the citizens. On appeal, the North Carolina Supreme Court in Lane v. Stanly reversed the

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[67]Erwin, "A State Supported School System," p. 234.

[68]Coon, p. 7.

decision of the Superior Court.[69] The decision held that townships could not tax for school purposes, that counties could not levy township taxes for school purposes from general county taxes, and that any county tax for school purposes must observe the equation of taxation. No tax was levied, and the four months' school term died insofar as it was dependent upon any additional tax from the township to supplement the state funds. This decision of 1870 served to retard educational progress in the State:

> Indeed, the enemies of the schools won a great victory by virtue of the provisions of that memorable case of Lane v. Stanly. They had secured the opinion of our highest court that the people, acting through their General Assembly, could not exercise their taxing power for schools over the townships (school districts) through the county commissioners, even in aid of the school term those same commissioners were made indictable for not maintaining, because schools for townships (school districts) and for other municipalities created by the General Assembly were not such a necessary municipal expense for which taxes could be levied without the approval of a majority of the qualified (registered) voters.[70]

Another factor affecting the low state of public education in the state following the Civil War was the talk of mixed schools for whites and Negroes. There is no evidence that any desegregation actually took place during this period. In fact, there were no public schools for

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[69]Erwin, p. 234.

[70]Coon, p. 9.

Negroes prior to 1865.[71] The Constitution of North Carolina of 1868 made no reference to the separation of the races in the school; however, the Constitution was amended in 1875 to provide for separate schools for whites and Negroes.[72] The legislature in 1877 approved two normal schools, one for each race. The normal school for whites was a summer session at the University of North Carolina, while the one for blacks was established in Fayetteville.[73]

Efforts for the education of blacks in North Carolina came from a variety of sources. Humanitarian organizations and churches from the North worked to help illiterate Negroes and to establish schools for blacks. The Peabody Fund expended money for teachers and normal schools, while the Rosenwald Fund assisted with construction of schoolhouses. The most active educational agency for Negro education was the Freedmen's Bureau.[74]

The United States Congress approved an act for a Bureau for the Relief of Freedmen and Refugees on 3 March 1865. It was organized in North Carolina on 15 July 1865 and operated until 1 January 1869. The Freedmen's Bureau opened 431

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[71]W. F. Credle, "Schoolhouses During the Century," North Carolina Education, February 1936, p. 271.

[72]Lefler and Newsome, p. 502.

[73]Knight, p. 197.

[74]Lefler, North Carolina History Told by Contemporaries, p. 329.

schools for blacks, employed 439 teachers, and at one time had more than 20,000 students enrolled in its schools.[75] But it was greatly resented.

Recovery from Civil War

> The first tangible movement toward recovery in education came about in the towns and cities of the state from 1870 on. While some limited private endowments had been available and while the common school fund had been established, schools failed to function because of the lack of a sound taxation system to provide the funds. This placed the responsibility for the development of education squarely upon local shoulders.[76]

Greensboro accepted this challenge and became the first school system in the state to establish a system of graded schools. Its city charter, which was amended in May 1870, called for a school district coterminous with corporate limits which would operate graded schools for an eight months' school term.[77] It also approved special local funds to supplement state monies. In May 1875 the charter was amended again, obligating the district to an increase in taxes for the benefit of public schools.[78]

During the years 1875-1885, free public graded schools were established in Greensboro, Raleigh, Salisbury,

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[75]Ibid., p. 328.

[76]G. B. Phillips, "The Development of the Graded Schools," North Carolina Education, February 1936, p. 211.

[77]Ibid.

[78]Ibid.

Goldsboro, Durham, Charlotte, Wilmington, Fayetteville, and Winston-Salem. This movement gained strength with legislative action in 1876. The towns and cities which established graded schools usually adopted special taxes for their support. Legislation in 1881 and 1883 made additional provisions for graded schools, whereupon more communities approved special taxes in order to better their school facilities. Empowering trustees to act for the graded schools was the beginning of the special charter systems which existed until 1933. They are today's city administrative units.

The graded schools ". . .became the light set upon a hill urging and beckoning on the whole program of educational endeavor."[79] The communities which adopted graded schools extended the school term and generally improved education in their areas. Graded schools made possible instruction in music, art, physical education, and vocational education. An emphasis was placed on supervision and trained school personnel, and according to G. B. Phillips, "curriculum building and curriculum supervision [became] a direct result of the graded school system sponsored by some communities in the state."[80] Equipment standards and buildings were better planned. Since systems

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[79]Ibid.

[80]Ibid., p. 212.

with graded schools paid higher salaries, they attracted teachers with better qualifications. Graded schools improved conditions for both students and teachers, eventually, facilitating special classes, health programs, testing activities, study groups, and additional teachers to reduce student-teacher ratios.

By January 1877, with Democrats again in control of the State government, the legislature approved eight and one-third cents tax on property and twenty-five cents poll tax to be levied annually by the county commissioners for the support of the schools. In addition to these state and poll taxes, a tax on liquor was to go to the school as well as the revenues from fines, forfeitures, and penalties.[81] Legislation in 1877 enabled county commissioners to levy annually a special tax to maintain one or more public schools in each school district for a four months' school term. The levy could be undertaken only if other revenues provided were insufficient and if it had been submitted to and approved by the voters. However, this direction was not mandatory upon the commissioners.

By 1881 the legislature increased the property tax to twelve and one-half cents on $100 and approved a poll tax of thirty-seven and one-half cents.[82] Of particular

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[81]Noble, p. 384.

[82]Ibid., p. 389.

importance, it changed the word "may" in section 26 of the law of 1877 to "shall," which made levying a special tax mandatory rather than discretionary.[83] In addition to this slight increase in tax support for the schools, the legislature of 1881 also provided for county superintendents and county teachers' institutes, authorized additional normal schools for each race, and established standards for the examination of public school teachers.

Of course, tax rates varied throughout the counties of North Carolina, while power development and industrial growth made some counties wealthier than others. At the same time there was a demand for better schools:

> The financial strength of the counties measured in terms of property valuation varied. As a consequence the tax rate was the same in all parts of the state; but the length of term, notwithstanding the constitutional requirement for uniformity, was unequal.[84]

In response to the inequity and insufficiency of taxes levied by the State in support of public schools to maintain one or more schools in each district for a four months' term, the General Assembly in 1885 authorized county commissioners in every county to levy a special tax annually. This special tax could exceed the 66-2/3 tax authorized in the Constitution in order that schools could operate for a period of four months or more. The General

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[83]Ibid.

[84]Erwin, "A State Supported School System," p. 235.

Assembly said that a minimum four months' school term must be maintained by special county tax approved by the commissioners even if the people did not approve it in referendum, that limitations on the tax rate did not apply to the establishment of schools in each district for a minimum four months' school term, and that the Constitution did not demand a referendum on a tax levy to support the minimum term.[85]

The Commissioners of Sampson County levied a special county tax to provide the four months' minimum term. Once the commissioners proceeded, S. Barksdale and others enjoined the collection. The Sampson Superior Court agreed with Barksdale. On appeal, the Supreme Court in Barksdale v. Commissioners of Sampson County affirmed this decision.[86] The Supreme Court held that commissioners, in levying a tax sufficient to support a four months' school term, could not exceed the tax limitations set by the Constitution and that the action to the contrary by the General Assembly was unconstitutional and void. It further stated that the General Assembly could not authorize a county tax to maintain schools since a special tax was for special purposes, and that when the Constitution did not

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[85]Coon, p. 12.

[86]Coon, p. 13.

give to commissioners the means to provide a four months' term, then they or their employees could not be indicted.[87] According to Coon,

> Surely, that part of the opinion of the court which attempted to nullify the power of the General Assembly even to authorize a special county tax for the support of public schools beyond the tax limitation of Section 1 of Article V of the Constitution reflects the utmost reactionary narrowness of constitutional construction ever promulgated by a North Carolina court. . . . It must be asserted, therefore, that such a court decree as that promulgated in the Barksdale case certainly indicates that the majority of our court as late as 1885 was unable to take any large or broad-minded view of the meaning and intent of the public school provisions of the Constitution of 1868.[88]

As a result of the Barksdale case, many counties were left with schools being open fewer than four months every year. Some towns such as Greensboro, Raleigh, Salisbury, Goldsboro, Wilmington, Fayetteville, Durham, and Charlotte established schools for 180 days by special voter approved taxation granted in advance by the legislature. The Barksdale decision of 1885 remained in effect until 1907, making local taxation for schools practically impossible.[89]

As the Nineteenth Century ended, questions and concerns remained about the qualifications of teachers. In 1869 the office of county examiner was created, and in 1873 three examiners were provided to evaluate prospective teachers.

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[87]Coon, pp. 13-14.

[88]Coon, pp. 14-15.

[89]Knight, p. 198.

In 1881 county superintendents examined applicants and approved one year certificates for the county of issuance. Until 1881 certification was obtained and retained almost exclusively by successful completion of examinations. After 1881 county teacher institutes were begun and remained the primary means for certification until 1922. They were run by county superintendents and teachers were required to attend.[90]

In 1897 a form of state uniformity was achieved with the creation of the State Board of Examiners. These examiners, appointed by the State Board of Education, prepared questions, graded the examinations, and granted First Grade life licenses which were valid for five years in any county of the state. Experience was one means of certificate renewal. Examiners made recommendations through the office of the county superintendent. Later in 1899 county superintendents were given assistance for the operation of the county institutes. Their help came from the State Board of Examiners, from faculty at the normal schools, and from practical teachers who had been approved by the State Board of Examiners.

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[90]James E. Hillman, "The History of Teacher Training," North Carolina Education, February 1936, p. 225.

1900-1915

The years 1900-1915 saw a renewed campaign for education in North Carolina. Its leaders were Thomas J. Jarvis, a former governor; Charles B. Aycock, governor; Charles D. McIver, educator; and Edwin A. Alderman, superintendent of schools in Goldsboro. Governor Aycock called a conference of state leaders to consider public education. Ministers were even encouraged to preach once a year about public education. Strong interest in schools was also supported by superior court judges who instructed grand juries to report on the conditions of the schools.[91] During this time the legislature accomplished the following: passed a compulsory attendance law, provided for public high schools, established farm-life schools, increased the school term from four to six months, and provided a state equalization fund.[92]

One of the first acts of the legislature when Aycock became governor was the appropriation of $100,000 for an equalizing fund. The legislature

> . . .introduced a new principle of school support by appropriating annually an additional $100,000 to be known as an Equalization Fund and to be so distributed as to extend the school term, as nearly as might be, to the four months specified in the Constitution.[93]

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[91]Knight, p. 198.

[92]Ibid.

[93]Erwin, "A State Supported School System," p. 235.

In the same legislature cities and towns, as well as special school tax districts and counties as a whole, were authorized to vote taxes if the state provision would not support one or more schools in a district for at least the four months' term. By 1904 the $100,000 for counties was doubled by the legislature and the old Literary Fund was reorganized into a revolving fund to provide loans for building and improving schools.[94]

By 1907 the legislature authorized the establishment of rural high schools and appropriated annual monies for their maintenance. This authorization began a state system of public secondary education. The Supreme Court in 1917 held that the high school was a part of the public school system and subject to constitutional requirements.

In 1907 the commissioners of Franklin County levied a one cent special property tax and a three cents special poll tax to maintain a four months' term. The levy exceeded the 66-2/3 cents state limit. A taxpayer in the county objected and sought an injunction to prohibit the levy. Collie v. Commissioners of Franklin County went to the North Carolina Supreme Court, which reversed the Barksdale decision of 1885.[95] The decision held that while the limitation on taxing power of the General Assembly remained, it did not

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[94]S. Huntington Hobbs, Jr., p. 251.

[95]Coon, p. 16.

always prevail and should not prohibit other expenses directly provided for in the Constitution. The General Assembly had properly left the amount to county officials, who had the responsibility for providing a four months' term. When it was achieved, then the tax limitations of the Constitution would be in effect. According to Coon,

> That reversal of the Barksdale case was truly a great victory for the schools, as well as for more enlightened constitutional construction. The dead hand of reaction and literalism was no longer to prevail.[96]

Following 1918 amendments mandating a six months' school term, the legislature adopted a plan for the state to support schools for three months, while the county through the property tax would provide the additional three months' support. The county was also to provide for building and other incidental expenses for the complete term. In an effort to assure the mandatory six months' term, the legislature in 1921 created an Equalizing Fund Commission, later to become a State Board of Education, to appropriate monies after specified appropriations had been made in order that an adequate minimum six months' term could be assured in each county. Additional legislation would follow in later years supporting an equalizing fund to insure the mandatory school term.[97]

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[96]Coon, p. 17.

[97]A. M. Proctor, "The Equalization of School Support," North Carolina Education, February 1936, p. 285.

The first two decades of the twentieth century also saw the passage of legislation to regulate the adoption of textbooks. Uniform textbooks were authorized for elementary and high schools. The adoption for elementary schools was the beginning of a uniform adoption system and supply of textbooks to the public schools of the state. In 1901 the General Assembly appropriated money to aid the purchase of books for free public school libraries. Although some of the larger counties had library books prior to this date, this action was the state recognition of the need for books in addition to textbooks.[98]

Teacher certification and training also saw advances. Beginning in 1905, teachers had to be examined not only in the subjects of elementary school but also in the theory and practice of teaching in order to receive their certificates for grades one, two, or three. The five-year certificate was added, with the state superintendent providing a system of graduation, examination, and certification. Certificates were classified into primary, intermediate, and high school levels. The State Board of Examiners prepared questions and graded the examinations. The certificates were approved for acceptance by any county in the state. By 1907 certification standards were extended to high school

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[98]Mary P. Douglas, "The Growth of Our School Libraries," North Carolina Education, February 1936, p. 233.

teachers. In 1915 the State Board of Examiners could accept at its discretion successful experience and academic and professional credits from approved colleges and universities as substitution for an examination. This general approach to state certification continues until today.

The General Assembly in 1881 gave to Goldsboro and Durham the right to establish graded schools independent of their counties and to divide any voter-approved special school taxes on the basis of race. Special taxes on the property of whites were to go for the support of graded schools for whites and those on the property of blacks to schools for them. In 1883 the General Assembly authorized any school district to levy a special tax for schools, the proceeds of which were to be divided on the basis of race. Special acts were also passed legalizing the division of special taxes on the basis of race. Since the Constitution forbade discrimination in favor of the schools of either race, the North Carolina Supreme Court in Pruitt, Pasour and Others v. Commissioners of Gaston County and Riggsbee v. Town of Durham stopped this practice since it did not provide for the uniform levying of taxes and discriminated between the races.[99] This decision was good news for black schools, which in comparison with schools for whites had more poorly prepared teachers, only the four months'

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[99]Coon, p. 21.

term, and inadequate buildings and equipment: "Improvements in Negro public schools followed the same pattern as in white schools, though they were less expensive and poorer in every respect."[100]

1913-1929

North Carolina continued to make advances in public education during the years 1913-1929. The minimum school term increased by four to six months, and school attendance was compulsory for children ages eight through twelve. Improvements were made in school administration and finance. More attention went to the training and certification of teachers. More money was directed to the state equalizing fund, and there was an emphasis on building and equipping modern schoolhouses.

In 1918-1919 vocational education became a part of the public school system as a result of the Smith-Hughes Act approved by Congress in February 1917.[101] It provided a subsidy to the states for teaching agriculture, home economics, trade and industrial subjects and monies for cooperation in the training of teachers and for their supervision. Funds came to the state for the vocational program on a matching basis.

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[100]Lefler and Newsome, p. 558.

[101]T. E. Browne, "Vocational Education in the State," North Carolina Education, February 1936, p. 222.

Special building funds were approved by the state authorizing counties to borrow from the state at low rates of interest to build schools. Special building funds had to be used for schoolhouse construction with the requirement of a definite and county-wide organization. Other requirements were a standard elementary and high school program resulting from consolidation and standards for schoolhouse construction.

Effects of Depression

The Depression of 1929 affected schools as it did every aspect of American life. Property values collapsed. Revenues turned down while school costs rose. All high schools would probably have closed had not the legislature in 1929 approved a tax reduction plan which enabled high schools to remain open for an additional two months beyond the six months required by the Constitution. In effect, the state accepted the responsibility for school operation beyond that one mandated by the Constitution.[102]

The Depression also meant that school building bond issues ceased. The only funding for construction came from the Literary Fund. Limited funds existed for maintenance and upkeep. The General Assembly of 1931 faced a difficult situation. As the costs of education continued to rise, and many counties were unable to collect local taxes in order to

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[102]Erwin, "A State Supported School System," p. 236.

pay their obligation. Some counties had gone to script; some teachers had not been paid in full for the previous year.

Some assistance came from the Federal Relief Agency. Started in North Carolina in 1932, it expended funds for construction and maintenance and the general improvement of school facilities. The Public Works Administration also made funds available for school plant construction.

The State had been trying for some twenty-four years to equalize tax rates through the use of the equalization fund to support a six months' school term. However, a wide range of tax rates remained among counties due to shifting values and school costs. To address these problems, "The State as a whole, therefore, underwrote on the basis of State standards of cost, the operation of the constitutional term in every district of the State."[103] But the State would not pay costs on county standards.

Counties could still supplement each object and item of expenditures to bring their schools up to their own standards. Yet any extension beyond six months of the school term by counties could not be undertaken without a vote of the people. Since 1903 and the education revival

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[103]Biennial Report of the Superintendent of Public Instruction of North Carolina For The Scholastic Years 1930-1931 And 1931-1932, Part I Summary and Recommendations (Raleigh, N. C.: Issued by the State Superintendent of Public Instruction, n.d.), p. 6.

undertaken by Governor Aycock and others, many districts had voted special taxes. But the Great Depression wrought its misery, and in 1933 the legislature abolished all local taxes for the mandated school term.[104]

This action brought about a true state supported system for an eight months' school term funded mostly from state funds and at state standards of costs. Funding came from legislative appropriations, fines, forfeitures, penalties, dog taxes, and the poll taxes collected in administrative units. Other provisions were enacted to reduce costs of the schools. Reduced salary schedules for superintendents, teachers, and principals were adopted. Rural supervisors were eliminated and fewer principals were allocated. The teacher/student ratio was increased. The State School Commission was to manage and supervise the transportation system. And all expenditures were to be monitored for economics. The number of school districts was reduced. Administrative units could still tax to supplement the budget or to extend the term to 180 days, but it could be done only after an approval vote by the people. Only twelve districts could get the voters to approve such an additional tax.[105]

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[104]Erwin, "The Growth of Public Education," pp. 277, 286.

[105]Erwin, "A State Supported School System," p. 264.

One of the factors impacting on school costs was transportation. Originally, no legislation had been enacted specifying those to be transported. Generally, students rode buses if they wanted to go to a better school.

As the State assumed more responsibility for costs, it began to exercise more control over transportation. In 1933 when the State assumed funding for a uniform eight months' term, it also established certain guidelines for transportation.[106] The School Machinery Act of 1935 gave to the State School Commission the authority and the responsibility for operation of a transportation system for students. However, important responsibilities were delegated to local superintendents.

The School Machinery Act approved the establishment of routes by local officials subject to state approval. Maintenance and repairs were to be a local obligation with state supervision and direction. The state provided in each county a garage for maintenance, supplies for the operation of a transportation system, and mechanics. While the state accepted the responsibility for replacing buses, the counties, through local taxation, could provide buses to relieve overcrowding. These actions in the early Thirties

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[106]Claude F. Gaddy, "School Transportation," North Carolina Education, February 1936, p. 232.

laid the foundation for the system still in operation today.[107]

Recovery from the Depression

In 1941, the General Assembly made other improvements in the system of public education. The state increased its support funding for the schools, doubled its support for vocational education, and began the movement toward establishing the twelfth grade. An increase in teacher salaries and establishment of a retirement system for teachers and other state employees were other improvements begun in the Forties.

A continuing source of concern was the supervision and administration of the public school system. Prior to 1943 there were five separate boards involved with the supervision of the public schools. The primary ones were the State Board of Education, which concerned itself with the professional aspects of education, and the State School Commission established in 1933, which supervised the state-financed school program begun then.[108]

By amendments to the Constitution in the early Forties, a single State Board of Education was created. It had the authority to divide the state into school districts and to

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[107]Ibid., p. 262-263.

[108]Paul W. Wager, North Carolina: The State and Its Government (New York: Oxford Book Company, 1947), p. 89.

consolidate them. Teachers were affected through its power to assess their qualifications, to determine the number needed, and to establish salaries for them. The State Board was also to select and adopt textbooks, to make rules and regulations relating to census and attendance, and to establish bus routes. In setting forth criteria for financial records and reports, it administered the state's permanent school funds and expenditures, not only for actual instruction and support activities but also for transportation and operational costs. The State Board also granted permission for local education agencies to take certain responsibilities, as well as administering federal monies received for vocational education.[109]

The Superintendent of Public Instruction was designated the secretary to the State Board of Education and the administrative head and executive officer of the public schools with primary responsibility for directing state operations in instruction and the professional features of administration. One responsibility was to develop and to approve causes for elementary schools and programs and standards for high schools. Other responsibilities were approving building plans, acting as liaison between the state and local education agencies, reporting on the

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[109]S. Huntington Hobbs, Jr., North Carolina: An Economic and Social Profile (Chapel Hill, N. C.: The University of North Carolina Press, 1958), pp. 219-220.

condition of the schools, enforcing the laws and regulations relating to the schools, and generally looking after the interests of the public schools. The Superintendent was to share his administrative duties with a controller, who would be appointed by the Board and who would be concerned with fiscal matters. In the words of historian S. Huntington Hobbs,

> In implementing the constitutional provisions of 1945, which created a State Board of Education and state superintendent of public instruction, the General Assembly of 1945 provided, in effect, for two executive officers of the state board. The constitutional amendment, which recognized the necessity of centralizing responsibility and of placing authority for the several functions relating to schools in a single source, replaced the five agencies existing in 1943 with the single newly created board. In contrast, in violation of the unitary intention of the amendment, the implementing law as set up by the General Assembly in sections 8 and 9 calls for a procedure and course of action based on a division of authority in that it creates both the superintendent of public instruction, with jurisdiction in matters of educational policy, and the controller, with jurisdiction in financial affairs. This division of authority may prove a source of trouble in the event these two officials do not maintain common understanding and friendly cooperation in carrying out their several duties for public education.[110]

1950-1985

The last thirty-five years in North Carolina has seen continued improvements in North Carolina's schools, beginning with the gubernatorial administration of Kerr Scott in 1949-1953, of Terry Sanford in 1961-1965, and of James B. Hunt in 1977-1985. These administrations saw

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[110]Ibid., pp. 220-221.

authorization of bond issues for the schools and creation of programs for gifted students such as the Governor's School, a summer program for gifted students, and the North Carolina School of Science and Mathematics, a residency program. State initiatives in research took place and the State adopted a state-wide kindergarten program and primary reading program. The State also authorized an Annual Testing Program to assess student abilities and a Competency Testing Program to determine the learning of basic skills for high school graduation. Moreover, the Basic Education Program will insure an adequate instructional program for every student in the State.[111]

During this period the State reacted to and undertook the integration of its public schools. Governor William B. Umstead and the General Assembly were generally cautious about implementing the United States Supreme Court decision of 17 May 1954, Brown v. Board of Education of Topeka, which ended the dual school systems based on race.[112] On 3 June 1954 the State Board of Education voted to continue segregation for the 1954-1955 school term.

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[111]N. C., North Carolina State Board of Education, The Basic Education Program for North Carolina's Public Schools Revised January 1986.

[112]Lefler and Newsome, p. 650.

Governor Umstead in August of that same year appointed a committee headed by Thomas J. Pearsall to develop the State's response to the Brown decision. The General Assembly of 1955 adopted the Pearsall Plan, which made changes in basic school laws: (1) eliminated from laws any reference to race; (2) gave local boards the authority for enrollment and assignment; (3) gave ownership, operation, and control of school buses to local units; and (4) provided for yearly rather than continuing contracts for teachers and principals. As a consequence of these changes, blacks had to pursue admission to more than 160 school units rather than to one.

In 1969 a federal district court ruled that the State must take some responsibility in desegration. In a special summer session of the General Assembly in 1956, a constitutional amendment, which was later ratified by the people, provided that if parents did not want their children to go to public schools with members of other races, then they could withdraw them and receive state private tuition grants. The Pearsall Plan, a safety valve, was a peaceful adjustment to integration and made North Carolina a model for the voluntary acceptance of integration. In the summer of 1957, school boards in Charlotte, Winston-Salem, and Greensboro voted to admit black students to formerly all white schools.

In 1966 an NAACP lawyer noted that there were approximately six per cent of black students enrolled with white students. New federal guidelines, notably the Civil Rights Act of 1964, were enacted to encourage Southern desegregation. Freedom of choice was acceptable if it resulted in desegregation; however, in 1968, freedom of choice was negated by the federal courts, which required affirmative action by Southern school districts to desegregate. Most North Carolina desegregation occurred between 1968 and 1972 under plans negotiated with the United States Department of Health, Education, and Welfare via thirty-nine court orders.[113] On the other hand, there was only token integration in North Carolina for more than ten years after the United States Supreme Court decision outlawing segregation. Resistance to integration in the form of Ku Klux Klan rallies, threats, and openings of private schools were all too frequent. But by the 1970's North Carolina had the most completely integrated schools in the nation according to statistics from HEW. [114]

In its continuing emphasis on improving the quality of its teachers, the State Board of Education in October 1978

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[113]Angela Davis, "N. C. Integration: 20 Years of Change," File on the Public Schools of North Carolina, Newspaper Clippings Without Masthead, n.d., Instructional Materials Library, Division of Instructional Services, State Department of Public Instruction, Raleigh, N. C.

[114]Ibid.

adopted a Quality Assurance Program. Its goal was and continues to be a systematic and ongoing approach to quality assurance in both teacher education and certification. In a partnership among local school systems and institutions of higher learning, this program has provided an improved program of professional laboratory experiences. It also emphasizes that success in the teaching professional is demonstrated by the prospective teacher's knowledge in English usage, literature, fine arts, mathematics, social studies, and science. This proficiency must be demonstrated prior to admission into a program of professional studies. QHP identifies the competencies required of teachers for certification and extends professional education of teachers into the first years of full time teaching. It also requires a review of teaching performance prior to issuance of continuing certificates.

As a part of the effort to improve the lot of teachers, the State Board of Education in accordance with a legislative mandate developed and adopted on 5 September 1984 a Career Development Plan for Teachers and Administrators. It is a bold plan for the training, evaluation, classification, differentiation, and salary compensation for those whose performance merits remunerative reward in the State's teaching profession.[115]

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[115]"Career Plan," Chalk Talk (Raleigh, N. C.: North Carolina Association of Educators, Inc., n.d.)

In 1983 the General Assembly considered the reduction in disparities in education spending and services available to the school age children of the State. It directed the State Board of Education to define a basic educational program and its cost. With the adoption one year later of legislation directing the development of a standard course of study for every North Carolina student, the Basic Education Program was enacted. It calls for a basic program of instruction equalizing educational opportunity among school districts. The State will have the responsibility for funding the instructional program while counties must build, operate, and maintain school buildings and grounds. This program defines the curriculum, high school graduation and promotion standards, facilities standards, maximum class size, staffing, and minimum length of the instructional day. As a result of this program, every child in North Carolina, regardless of residence in the state, shall have the same opportunity of an adequate educational program defined by the State. Local administrative units may exceed (at local expense) the basic program in programming, facilities, and staffing. It is expected that this program will be fully implemented by 1993.

TABLE 1

CHART OF IMPORTANT DATES
HISTORY OF EDUCATION
NORTH CAROLINA

1705	Charles Griffin, the first professional teacher in North Carolina, was sent to Pasquotank County by the Society for the Propagation of the Gospel in Foreign Parts through the Established Church of England.
1760	First academy established by Reverend James Tate at Wilmington. Crowfield Academy established in Mecklenburg County near the present site of Davidson College.
1772	A school for little girls established by the Moravians at Salem. This ultimately developed into Salem Female Academy, later Salem College.
1776	Adoption of a constitutional provision for legislative establishment of schools and for a university.
1825	Establishment of the State Literary Fund by General Assembly to subsidize schools.
1839	"An Act to divide the Counties into School Districts and for other purposes" -- first Common School Law drawn by William W. Cherry. It established the principle of combined state and local funds for school support and provided for election of area superintendents. In the election of August 8, nearly every county voted favorably.
1852	Election of Calvin H. Wiley, first General Superintendent of Common Schools.
1860	Plan of graded school system outlined at the annual meeting of the State Educational Association.
1864	Legislature passed graded school bill.
1865	Legislature recognized right of the Negro to be educated. Establishment of: Shaw University, Raleigh, and Washburn Seminary, Beaufort, the first

Institutions for Negroes set up to offer courses above the elementary level.

1868 State Constitution adopted, authorizing the office of State Superintendent of Public Instruction to replace the earlier abolished office of Superintendent of Common Schools, and creating a State Board of Education.

1869 General Assembly added general school tax, a prescribed four-month school term, and education of Negroes.

1870 First public white graded school aided by money from a city treasury established in Greensboro.

1901 Governor Charles B. Aycock's influence increased the number of local tax districts, abolished 300 school districts by consolidation and reorganized the old Literary Fund, setting aside a revolving loan for schoolhouse buildings.

1903 The Literary Fund set aside exclusively as a means of building and improving schoolhouses.

1907 Legislature authorized the establishment of rural high schools and appropriated $45,000 annually for their maintenance. Normal schools for teacher training established.

1913 Local bond issues for school construction authorized. Four months compulsory school attendance for ages 8-12. Compulsory Attendance Law passed.

1914 The establishment of the first County Training Schools for Negroes with the aid of the John F. Slater Fund. Money for support of vocational education in public schools including agriculture, trade, home economics, and teacher education provided by Smith-Lever Act.

1915 By this date there was a public high school in every county. Publication of the first list of high schools accredited by the State University. The beginning of the Rosenwald Building Program for Negro schools.

1917 State certification of teachers begun on a definite standard of training. Responsibility of certification of all teachers given to Central State Board of Examiners. Smith-Hughes act providing

Federal aid for the teaching of agriculture and home economics in public schools accepted. High schools declared by the supreme court to be a part of the public school system.

1918 The first accredited high schools for Negroes, all attached to institutions of higher learning -- four state supported and seven private. Aid on equipment in high schools from the General Education Board.

1920 First listing of high schools accredited by the State Department of Public Instruction.

1921 The General Assembly provided the first Special Building Fund of $5,000,000 to be loaned to the counties for building and equipping schoolhouses. The establishment of the Division of Negro Education in the State Department of Public Instruction. The staff included a High School Inspector of Negro schools.

1928 Provisions made for county-wide organization of schools. The first public high schools for Negroes were accredited by the state -- Durham, Reidsville, Wilmington and Method.

1929 Beginning of Rosenwald aid on libraries and bus transportation in Negro schools.

1931 Complete support for a term of six months of school assumed by the state. Minimum state support of school libraries. School Machinery Act passed.

1933 Complete support for a term of eight months of school assumed by the state.

1935-36 State textbook rental plan established.

1937-38 Free textbooks provided for grades 1-8.

1942 Constitutional amendment provided State Board of Education appointed by the Governor. Twelfth grade added.

1943 State-supported school term extended to nine months. School lunch program created.

1946-47 Compulsory attendance age extended from 14 to 16.

1947 General Assembly authorized State Board of Education to use public funds for special education programs.

1953 $50 million bond issue for school construction passed.

1954 U. S. Supreme Court ruled against separation of races in public schools in Brown v. Board of Education of Topeka.

1955 Pearsall Plan presented to General Assembly, resulting in transfer from State Board of Education to county and city boards, complete authority over enrollment and assignment of children in public schools, and buses.

1957 Community College Act passed.

1963 Governor's School, a summer program for gifted students, founded. $100 million bond issue for school construction passed.

1964 National Civil Rights Act passed; discrimination in public education prohibited. First state-funded experimental program, the Comprehensive School Improvement Program (CSIP), implemented. Advancement School for students with learning disabilities established. Learning Institute of North Carolina (LINC) created to provide research in education.

1967 General Assembly provided for free textbooks in all high schools.

1968 Report of Governor Dan Moore's Study Commission of the Public School System of North Carolina.

1969 State-wide experimental kindergarten approved by General Assembly.

1971 State Superintendent designated chief administrative officer of the State Board of Education, as well as secretary. General Assembly's State government reorganization names State Department of Public Education, with the State Board of Education as its head, to include the Department of Public Instruction, the Department of Community Colleges, and the Controller's Office.

1972 First regional education service centers established.

1973 $300 million bond issue for school construction passed. General Assembly provided funds for

ten-month term for teachers, twelve months for principals.

1975 The Primary Reading Program initiated. State Superintendent designated chief administrative officer of the State Board of Education, as well as secretary. General Assembly's State government reorganization names State Department of Public Education, with the State Board of Education as its head, to include the Department of Public Instruction, the Department of Community Colleges, and the Controller's Office. $300 million bond issue for school construction passed. General Assembly provided funds for ten-month term for teachers.

1976-77 Kindergarten made available to all children in the state.

1977 Legislation passed authorizing both an Annual Testing Program and a Competency Testing Program. Testing began in 1978.

1979 Non-public school responsibility removed from State Board of Education.

1980 The North Carolina School of Science and Mathematics admitted its first students -- the first school of its kind in the nation.

1981 A State Board of Community Colleges established.

SOURCE: J. Henry Highsmith, "Secondary Education in North Carolina," North Carolina Education, February 1936, p. 220.

SOURCE: "Through the Years: A History of Public Schools in North Carolina," State Deparment (N. C.) of Public Instruction, January 1983, pp. 5-9.

CHAPTER III

NORTH CAROLINA SUPREME COURT

History

The history of the Supreme Court of North Carolina begins with the first organized government in the state. In the grant of Carolina to the Lords Proprietors, justice was invested in eight sub-kings. Kemp Battle explains, "They were vested with all the royalties, properties, jurisdiction, and privileges of a county palatine,[1] as large and ample as the county palatine of Durham."[2]

The eight Lords Proprietors claimed those same powers which had been used by the Bishop of Durham. These powers included the right to create barons, to appoint judges, and to call Parliament. Among other powers were those to levy taxes, to coin money, to grant pardons, and to approve corporations.

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[1]A count palatine in England or Ireland had sovereign power in a royal province or dependency and royal privileges and rights within his domains. Philip Babcock Gove, editor-in-chief, Webster's Third New International Dictionary of the English Language Unabridged (Springfield, Mass.: G & C Merriam Company, 1971), p. 1623.

[2]Kemp P. Battle, "An Address on the History of the Supreme Court," North Carolina Reports, no. 103 (February 1889), pp. 445-446.

To carry out this government, the Lords Proprietors organized in 1669 under the Fundamental Constitutions of Carolina, or Grand Model. The Supreme Courts so created were to be presided over by one of the Lords Proprietors in person or by deputy.

These were to be eight grand courts. The Proprietors would make up the highest court to be presided over by the oldest member, an approach styled after the Palatine. The other Proprietors would preside over their own courts as chief judges.[3]

In organizing themselves under the Grand Model in 1669, the Proprietors named Anthony Ashley Cooper, then Lord Ashley, later Earl of Shaftesbury, the first Chief Justice of North Carolina. In 1670 Shaftesbury transferred his appointment to his deputy, a Mr. John Willoughby, who became in practice the first chief justice.[4]

Willoughby and the deputies of the other Proprietors became the Council who also served as the upper house of the Assembly of Albemarle. Unfortunately, the Grand Model could not be fully implemented by the Proprietors. As a result, they instructed the Governor and Council to establish courts and appoint judges as nearly as possible to the provisions within it.

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[3]Ibid., p. 447.

[4]Ibid., p. 448.

The Governor and Council became a Court of Chancery exercising almost arbitrary powers as an appellate court to decide equity, common law, and fact. The Chief Justice, as a deputy of the Proprietors, was a member but not necessarily the Chancellor. The Chief Justice presided over the General Court, which was the supreme common law court.[5]

The earliest record of any General Court, in 1694, reported the hearing of cases on the laying out of roads, attachments, actions in debt, trespass, and criminal action. It also heard cases on escheats, assumpsit, and detinue.[6] In 1728 the Proprietors transferred their jurisdiction to the Crown, which assumed it in 1731.

Later the royal governor Johnston dissolved the Assembly and appointed a new meeting place in Wilmington,[7] where the Assembly assigned New Bern as the seat of government and passed a court bill of 1746. The supreme and principal Court of Pleas for the Province, called by its old name, the General Court, was to meet twice a year in New Bern. The Crown and Governor respectively appointed the

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[5]Ibid., p. 449.

[6]Escheats are the forfeitures of lands to the original grantor or lord when one left no heirs. Assumpsit permits recovery of damages for the non-performance of a simple ccontract. Detinue permits the recovery of personal property acquired lawfully, but keeps it without right. Henry Campbell Black, Black's Law Dictionary, Fourth ed. (St. Paul, Minn.: West Publishing Co., 1951), pp. 640, 157, 537.

[7]Battle, p. 458.

Chief Justice and the three Associates. Until this time, the Chief Justice usually sat with two to ten assistants who were justices of the peace. There being opposition to these governmental changes both in the colony and in England, some disorder resulted.[8]

In 1767 a new five year court system was adopted, calling for five judicial districts at Edenton, New Bern, Wilmington, Halifax, and Hillsboro. Court was held twice a year by the Chief Justice and two Associates. However, the act initiating this system was not renewed, and the Province had no higher courts from 6 March 1773 to 24 December 1777.[9]

The royal governor Martin attempted to institute criminal courts by special commission, but public opposition prevented them from being developed. Crime and turbulence were rampant as a result of the suspension of the courts. In preparation for the Revolutionary War, the State Congress meeting in Hillsboro in August 1775 adopted a provisional government and empowered the functions of a judiciary to the Committees of Safety.[10]

The Constitution of North Carolina adopted on 18 December 1776 provided for the separation of legislative, executive, and judicial power. The framers of the

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[8]Ibid., p. 460.

[9]Ibid., p. 463.

[10]Ibid., p. 464.

Constitution envisioned judges of the supreme or appellate court setting in the trial of causes but made no provision for superior court judges.[11] The General Assembly was to select the judges of the Supreme Courts of Law and Equity and Judges of Admiralty. Judges of the Supreme Court were to have adequate salaries and to hold office for "good behavior." The Constitution contemplated that the Supreme and Superior Court Judges should be the same.

In the colonial government, the Chief Justice was a member of the Council; thus, he was a part of the executive branch of government. Since the Council served as the upper house of the Assembly, he also served as a member of the Legislature. Thus, while the North Carolina Constitution of 1776 prohibited the mixing of the three branches of government, this same constitution made the executive and judicial branches almost entirely dependent on the General Assembly. According to Kemp Battle:

> They (judges) held office during good behavior, but they could be removed by repeal of the law authorizing the court. They were to have adequate salaries, but the Assembly had the sole decision as to what was adequate. The Assembly, without the intervention of a grand jury, could prosecute them by impeachment for alleged maladministration or corruption.[12]

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[11]A trial of causes is civil or criminal litigation before a court of justice. Webster's Third New International Dictionary of the English Language Unabridged, p. 279.

[12]Battle, p. 466.

The General Assembly organized the judiciary according to provisions set forth in the North Carolina Constitution of 1776. In 1776 it divided the state into six districts and added others in later years. Judges rode circuits separately but sat together as an appellate or Supreme Court. In the court law adopted 15 November 1777, the term "Superior Court" was used when actually the term "Supreme Court" should have been used because of its supreme jurisdiction.[13]

In 1799 the legislature authorized the court to meet twice a year in Raleigh to hear charges against the Secretary of State and others concerning the fraudulent issue of land warrants and to hear appeals from cases in district courts. This authorization was to expire in 1802, but the responsibility to hear appeals was extended in 1801 for three more years. The court was now called a "Court of Conference" and was made a court of record in 1804. In 1805 the name was changed to "Supreme Court,"[14] although judges were still trial judges.

In 1810 judges were required to give their opinions in writing and to deliver them by voice in open court. They also elected one of their own, John Louis Taylor, as Chief Justice, bringing the new court to six judges. Two

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[13]Ibid., p. 467.

[14]Ibid., p. 476.

continued to represent a quorum, and all judges rode the circuits. Party to a suit in Superior Court now had the right to appeal to the Supreme Court on questions of law. Finally in November 1818 the legislature effected the Supreme Court as promised by the North Carolina Constitution of 1776; that is, it was required to sit in Raleigh to hear appeals, instead of presiding as trial judges. The first session of the newly actualized North Carolina Supreme Court was on 5 January 1819. The legislation of 1818 provided for three judges elected by the General Assembly, who selected one of their own as Chief Justice. John Louis Taylor continued as Chief Justice.

The North Carolina Constitution of 1868 provided for a Chief Justice and four associate justices. Until this time the members of the Court other than the Chief Justice were known as judges. Justices were to be elected by the people to eight-year terms. Vacancies would be filled by the governor until the next general election. Originally, the North Carolina Supreme Court had only three members from 1818 to 1868 and again from 1875 to 1889. From 1868 to 1875 and from 1889 to 1937 the Court consisted of five members.[15] Since 1937 the Court has consisted of the Chief Justice and six Associate Justices.

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[15]John L. Cheney, Jr., ed., North Carolina Manual 1983-1984 (Raleigh, N. C.: State of North Carolina Publications Division, n.d.), p. 766.

The Supreme Court of North Carolina has thus functioned as an appellate court since 1805. Since it is not a trial court, it does not hear witnesses, has no juries, and does not rule on questions of fact. It does hear oral arguments on questions of law coming from records and briefs of cases previously tried by Superior Courts, District Courts, and certain administrative agencies and commissions. Due to its customary judicial business and because of post-conviction appeals arising from United States Supreme Court decisions on constitutional issues, the North Carolina Supreme Court has been one of the most active in the nation.

To relieve some of the workload on the court, the 1967 General Assembly created a Court of Appeals after voters approved authorization of a constitutional amendment. The Court of Appeals and the North Carolina Supreme Court, the highest court in the State, represent the appellate process in the North Carolina judiciary system.

Capital and life imprisonment cases are appealed directly to the Supreme Court while all other cases are initially appealed to the Court of Appeals. When a case has special constitutional significance, the Supreme Court may in some instances hear a case without its passing through the Court of Appeals first. Otherwise, any case may go to the Supreme Court after a determination has been made by the Court of Appeals; however, cases decided by the Court of Appeals involving constitutional issues, general rate-making

cases from the Utilities Commission, and cases decided by a split vote in the Court of Appeals must be given a second appellate hearing by the Supreme Court. Accordingly, it has the final say on important issues of law.

Views on the North Carolina Supreme Court

How has this court and the judiciary been described? Walter Clark, North Carolina Supreme Court Justice, 1902 to 1924, and Chief Justice from 1903 to 1924, summed up the role of the courts in the following way:

> The work of all courts is in large measure temporary; but there is a still larger part which abides and shapes the future. Our civilization is like the coral islands, built by individual and forgotten workers, on whose labors each successive generation climbs to higher things. The work of the courts is a potent factor in our civilization. It bears the impress of the present but remains to instruct the future, as imprints of a passing shower of ages ago are preserved in strata of sandstone.[16]

He believed that the people govern themselves through their representatives and not through their judges. Popular sovereignty required that the judiciary not increase its power over the legislative process. Clark believed that encroachment on this branch reduced the control the people had over their government. To this end Chief Justice Clark believed that judges should enforce the laws, but not make them. The legislature should make rules of law, the

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[16]Walter Clark, "The Supreme Court of North Carolina. III," The Green Bag IV (December 1892): 589-591.

executive should carry them out, and the courts should interpret them.

This approach has become a precedent for the North Carolina Supreme Court. Susie Sharp, Justice of the North Carolina Supreme Court from 1962 to 1975 and Chief Justice from 1975 to 1979 agreed:

> As she once put it, there are four steps in deciding a case: (1) state the facts; (2) state the issue raised by the facts; (3) state the law relevant to the issue; and (4) decide the issues in light of the law.[17]

In adhering to the view of Chief Justices Clark and Sharp, North Carolina Supreme Court justices should apply the law and not enact it. If they believe that legislation is needed, then they should state that opinion; but legislation should not be made through judicial decree. In spite of this philosophy, within limits justices do make law and policy by interpreting statutes and by applying the common law which represents past judicial decisions made in accordance with existing views on public policy.

In reviewing the available, but limited literature on the North Carolina Supreme Court, two views seem to prevail: (1) it has established a good reputation but (2) it stalled for a time the development of education in the state.

One of its clerks had this to say about the North Carolina Supreme Court:

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[17]John V. Orth, "The Role of the Judiciary in Making Public Policy," N. C. Insight 4 (April 1981): 12.

> Probably no feature of our Government has caused so much discussion, received so much admiration, and been more frequently misunderstood, than the Supreme Court.[18]

Chief Justice Clark pointed out that the North Carolina Supreme Court early on established its reputation by being the first state judiciary to declare an act of the legislature unconstitutional, null, and void:

> To this court belongs the distinction of being the first to assert the power and duty of the bench to declare an act of the legislature void for unconstitutionality. This it did in the case of Bayard v. Singleton, at May Term, 1786, shortly before similar action by the Supreme Court of Rhode Island. New York followed with a similar decision in 1791, South Carolina in 1792, and Maryland in 1802. This was novel and strong action then. There were no precedents for it.[19]

At the Centennial Celebration of the North Carolina Supreme Court in 1919, Edwin F. Aydlett, President of the Bar Association, and Chief Justice Walter Clark described the Court:

> During its existence this Court has stood for law, order and justice, and has ably and honestly met its obligations in expounding the law and safeguarding the rights of the State and its people. It is not a

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[18]Edward Murray, "Work of the North Carolina Supreme Court Pamphlets," 267, Duke University Law Library, Durham, N. C., 1.

[19]Walter Clark, "The Supreme Court of North Carolina. I," The Green Bag IV (October 1892): 459.

> law-making body, but its high and solemn duty is to declare what the law is and to construct and apply it to concrete cases regardless of public favor or croaking criticism. It has even been true to its sacred trust, yet progressive and fearless.[20]
>
> The people of North Carolina have every cause to be proud of the reputation and achievements of this honorable court. It is a great court -- great in its conception, in its personnel and in its jurisdiction. Its make-up has been of strong-minded and able men, learned in the law; patient, painstaking, and upright Judges; and at no time in its history has it failed to fully measure up to the purpose of its creation.[21]
>
> The pages of our Reports show that we have not halted with these reforms, but we have set out upon a course that is to emancipate the children by giving them education in the public schools and by limiting the years within which they can be harnessed down to labor, and we are giving to the creators of the wealth of the State some recognition by limiting the hours of labor.[22]

To these views can be added the comments of historians who viewed the Court as reactionary and a stumbling block to educational progress in the State. Lane v. Stanly in 1870 established a precedent against school taxes which would carry into the Twentieth Century, and, in the words of Hugh Lefler, ". . . the Supreme Court decision had thrown a roadblock in the path of educational progress."[23] In

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[20]Edwin F. Aydlett, "Address," Centennial Celebration of the Supreme Court of North Carolina 1819-1919 (Raleigh, N. C.: Mitchell Printing Company, 1919), p. 8.

[21]Ibid., p. 9.

[22]Walter Clark, "Address," Centennial Celebration of the Supreme Court of North Carolina 1819-1919 (Raleigh, N. C.: Mitchell Printing Company, 1919), p. 77.

[23]Hugh T. Lefler, History of North Carolina, Volume II (New York: Lewis Historical Publishing Company, Inc., 1956), p. 643.

1885, the Court had the opportunity to reverse this trend in Barksdale v. Commissioners of Sampson County, but did not:

> In large measure, the responsibility for educational backwardness rested with the reactionary Democratic Supreme Court, which was willing to scrap the law and the Constitution in response to the general opposition to taxation and in defense of the interests and rights of property. The opinions of the court in Lane v. Stanly in 1870 and Barksdale v. Commissioners in 1885 made impossible the establishment of the constitutional four months' term; but these opinions provoked no protest or political effort to surmount the legal obstacle raised by the court. If various constitutional provisions were in conflict, the Supreme Court could have given supremacy to one as well as to another. It sacrificed the educational provisions for those on taxation.[24]

Finally, in the Collie v. Commissioners of Franklin County decision of 1907, this trend was reversed. In fact, as one historian has commented, "This reversal of the Barksdale decision was a great victory for public schools."[25]

It is noteworthy that in the period prior to the adoption of the Constitution of 1868, no appeals went from the North Carolina Supreme Court to the United States Supreme Court. In fact, the State Court has been praised for its reason and logic. And as a consequence, relatively

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[24]Hugh T. Lefler and Albert Ray Newsome, The History of a Southern State, Third ed. (Chapel Hill, N.C.: The University of North Carolina Press, 1973), p. 537.

[25]Hugh T. Lefler, p. 722.

few cases from North Carolina have gone to the United States Supreme Court. Michael R. Smith has noted:

> The decisions advanced such clear reason and scholarly logic that they are frequently quoted today by courts of other states. Indeed their conclusiveness is probably the main reason for the relative lack of cases to reach the Supreme Court since.[26]

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[26]Michael R. Smith, Law and the North Carolina Teacher (Danville, Ill.: The Interstate Printers & Publishers, Inc., 1975), p. 56.

CHAPTER IV

THE LEGAL PRINCIPLES AND CONCEPTS ON PUBLIC SCHOOLS IN DECISIONS OF THE SUPREME COURT OF NORTH CAROLINA

Introduction

In the United States the individual states have the responsibility for and control of the public schools. The Constitution of North Carolina encourages education and calls for a uniform system of schools. Consequently, the state obligation for and power over educational policy are generally accepted legal principles. In North Carolina, as in other states, the courts play an essential role in defining the legal principles which define the function and role of the public schools. A basic understanding of this role is aided by studying the decisions of the state's highest court, the Supreme Court of North Carolina. Analyzing applicable cases and determining the legal principles embodied in them will answer the questions posed by this study. Cases are grouped into specific periods of time according to the scope of the study and are grouped under the major categories of (1) governance, (2) employees, (3) pupils, (4) torts, (5) finance, and (6) property. Cases are reported according to the major legal principles which are reported in each case. A summary of the decisions of

the Court in each category of study elucidates some insight into the Court's record on cases arising from the inferior courts of the state.

Governance

During the period 1894-1979 the Supreme Court of North Carolina decided twenty-three governance cases. Of these, the Court affirmed thirteen, modified and affirmed one, reversed seven, and noted two for error. The twenty-three decisions point out the following legal principles: (1) the purpose of education, (2) constitutional construction and interpretation, (3) power of boards of education, (4) office holding, (5) and other powers of boards of education.

Purpose of Education

The Court has stated the purpose for which the public schools exist and the manner in which they should be operated. It is governance which embodies the purpose for which the public schools were created. In the 1923 Vann v. Board of Commissioners of Sampson County[1] case the Court pointed out that the public schools exist to educate young people mentally and morally under fair and effective laws, rules, and regulations. The public schools, thus, provide a basis for the development and success of society.

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[1]Vann v. Board of Commissioners of Sampson County, 185 N. C. 168 (1923), p. 173.

Constitutional Construction and Interpretation

The Court must consider its actions in light of the meaning of the Constitution and its interpretations. In Hooker v. Town of Greenville[2] the Court in 1902 declared a law of the General Assembly unconstitutional because the legislature could not discriminate in favor of or against either the white or colored races in the distribution of money for the public schools. Furthermore, the Court held that acts of the General Assembly which are so obscurely constructed as to preclude enforcement and those which are clearly unconstitutional are void. In reviewing construction and constitutionality, the Court in the case of Hobbs v. Moore County[3] in 1966 held that if one interpretation holds a law constitutional then that interpretation should be used. This decision of the Court found that interpretations which result in absurd consequences or impossibilities should be avoided, especially when a more reasonable approach would not have such effects. In addition, laws of the General Assembly are presumed to follow the literal meaning inherent in the language of the statutes. Local acts prevail over a general statute when there is conflict between statewide and local

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[2]Hooker v. Town of Greenville, 130 N. C. 472 (1902), p. 478.

[3]Hobbs v. Moore County, 267 N. C. 665 (1966), p. 671.

application. Legislative understanding and intent are important, although Hobbs v. Moore County stresses that

> . . . its meaning can be ascertained from its own terms read in the light of existing statutes which must be deemed to have been known to and considered by the General Assembly.[4]

An interpretation of the Constitution by the Court resolved the question on the ministerial power of a governing body. It would not take a broad view. In 1979 the Court in Hughey v. Cloninger[5] refused to allow a board of county commissioners to appropriate funds for a dyslexic school which was not operated by the board of education. Since it could not adequately provide educational opportunities for learning disabled children, the county commissioners used this funding to assist the children. In this instance, the Court reaffirmed its 1966 ruling in Hobbs v. Moore County Board of Education that if more than one statute governs a particular subject, then the one which specifically concerns it applies. The Court pointed out in Elliott v. Gardner[6] in 1932 that the Court has no basis for amending the Constitution through judicial interpretation.

> If the provisions of Article IX are obsolete or ill-adopted to existing conditions, this Court is without power to devise a remedy. However, liberally we may be inclined to interpret the fundamental law, we

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[4]Ibid., p. 672.

[5]Hughey v. Cloniger, 297 N. C. 86 (1979), p. 91.

[6]Elliott v. Gardner, 203 N. C. 749 (1932), p. 756.

> should offend every canon of construction and transgress the limitations of our jurisdiction to review decisions upon matters of law or legal inference if we undertook to extend the function of the Court to a judicial amendment of the Constitution.[7]

Power of Boards of Education

Local boards of education enjoy considerable discretionary power in addition to that which is specifically mandated. In 1894 in the case of the Board of Education of Duplin County v. State Board of Education[8] the Court recognized that the State Board of Education has the power to make regulations for the public schools and the state education fund. The county board of education in Kreeger v. Drummond[9] in 1952 had the lawful duty to make available an adequate school system for all the children of the county. But in considering the power of the local boards of education, the Court recognized that due consideration must be given to the specific provisions called for by the law. Such cases as Spruill v. Davenport[10] in 1919 proved that the law is mandatory and not directory or optional.

> It is dangerous to attempt to be wiser than the law, and when its requirements are plain and positive, the

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[7]Ibid.

[8]Board of Education of Duplin County v. State Board of Education, 114 N. C. 313 (1894), p. 320.

[9]Kreeger v. Drummond, 235 N. C. 8 (1952), p. 11.

[10]Spruill v. Davenport, 178 N. C. 364 (1919), p. 368.

courts are not called upon to give reason why it was enacted.[11]

County and city boards of education have the responsibility to control and to supervise matters pertaining to the public schools. In the case of Hughey v. Cloninger[12] in 1979 the Court emphasized this principle. In the development of this view, the Court held in 1894 in the case of the Board of Education of Duplin County v. State Board of Education[13] that boards of education are lawful bodies and can sue and be sued. In addition to this corporate status, boards of education have the lawful right to exercise the powers conferred by the Constitution of North Carolina (according to the Court in the 1922 case of Lacy v. Fidelity Bank of Durham).[14] One possible constraint on this power is the restriction on the unlimited expenditure of money. In 1915, in the case of Key v. Board of Education of Granville County,[15] the Supreme Court held that the word approve used in connection with a decision of the board of education actually meant that the

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[11]Ibid.

[12]Hughey v. Cloninger, 297 N. C. 86 (1979), p. 94.

[13]Board of Education of Duplin County v. State Board of Education, 114 N. C. 313 (1894), p. 313.

[14]Lacy v. Fidelity Bank of Durham, 183 N. C. 373 (1922), p. 381.

[15]Key v. Board of Education of Granville County, 170 N. C. 123 (1915), p. 126.

board of education was using its sound judgment in the decision-making process. Decisions of the Court also address the discretionary power of boards of education. The Court in Gore v. Columbus County[16] in 1950 held that the use of discretion by a board of education should be undertaken in good faith. Kreeger v. Drummond[17] in 1952 further emphasized that boards of education should act in good faith in making orders. This decision means that boards of education must recognize any existing facts and how their importance may impact on their determination:

> The General Assembly has no power to authorize local school authorities to exercise an arbitrary discretion, without regard to the existing facts and circumstances involved.[18]

Boards of education as corporate bodies have an existence separate and apart from the members who comprise them. As the Court pointed out in 1952 in the case of Edwards v. Board of Education of Yancey County,[19] boards of education can exercise their power only at regular or special meetings in which a quorum is present. To act legally, boards of education must have a majority vote of

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[16]Gore v. Columbus County Board of Education, 232 N. C. 636 (1950), p. 641.

[17]Kreeger v. Drummond, 235 N. C. 8 (1952), p. 13.

[18]Gore v. Columbus County, 232 N. C. 636 (1950), p. 640.

[19]Edwards v. Board of Education of Yancey County, 235 N. C. 345 (1952), p. 348.

the boards' members. Although not prohibited by statute, the Court indicated in the case of Kistler v. Board of Education of Randolph County[20] in 1951 that it is not wise or expedient for boards of education to meet in executive sessions and exclude the public.

In its corporate status, boards of education may purchase real property and build schoolhouses. In such cases, as the Court in 1959 in McLaughlin v. Beasley[21] pointed out, the individual members of the board possess no power separate from the legal corporate power of the board. Neither can this power be transferred on to the board of county commissioners:

> It is well established that the role of the board of county commissioners in the funding of the school budget is not to interfere with the general control of the schools vested in the board of education.[22]

Boards of education, acting in their corporate capacity, constantly make decisions which fall within their sound discretion. The Court ruled in 1915 in the case of Key v. Board of Education of Granville County[23] that it will not interfere in that capacity.

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[20]Kistler v. Board of Education of Randolph County, 233 N. C. 400 (1951), p. 407.

[21]McLaughlin v. Beasley, 250 N. C. 221 (1959), p. 223.

[22]Hughey v. Cloninger, 297 N. C. 86 (1979), p. 94.

[23]Key v. Board of Education of Granville County, 170 N. C. 123 (1915), p. 125.

> It is the recognized principle with us, upheld and approved in numerous decisions of this Court, that where discretionary powers are conferred on these ministerial boards, the court may not undertake to direct them as to how such powers shall be exercised in a given case. They may compel such a board to act in the premises, but cannot tell them how they must act.[24]

Of course, this discretionary power can become action for adjudication if boards of education enter upon a system of extravagant expenditures. The Court in Lacy v. Fidelity Bank of Durham[25] in 1922 held that such a condition might represent manifest abuse of power requiring judicial scrutiny and control.

In the exercise of discretionary power, boards of education must often make decisions about consolidation, school site selection, and property decisions. In 1922 in Barnes v. Board of Commissioners of Davidson County[26] the Court pointed out that county boards of education may consolidate special tax districts according to relevant State statutes. Gates School District Committee v. Board of Education of Gates County[27] in 1952 re-emphasized this Court principle. The same is true with regard to the adoption of a county-wide plan of organization. County

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[24]Ibid.

[25]Lacy v. Fidelity Bank of Durham, 183 N. C. 373 (1922), p. 381.

[26]Barnes v. Board of Commissioners of Davidson County, 184 N. C. 325 (1922), p. 326.

[27]Gates School District Committee v. Board of Education of Gates County, 236 N. C. 216 (1952), p. 218.

boards of education clearly have the authority to establish new school districts, to consolidate or enlarge existing districts, to levy local taxes, or to issue bonds. These are the legitimate powers of a board of education as expressed by the Court in Blue v. Board of Trustees of Vass Graded School District[28] (1924). However, as the Court indicated in Jones v. Board of Education of Robeson County[29] in 1924, a consolidation order which does not comply with the law and election held pursuant to it is void. Boards of education may also consolidate schools in the same district. As pointed out previously, the courts will generally not interfere in such discretionary decision-making:

> Ordinarily the courts will not interfere with the control and supervision of the school authorities in the exercise of their discretion in creating or consolidating school districts or in the selection of a school site.[30]

The same view was expressed by the Court in the case of Kistler v. Board of Education[31] in 1951. In this decision the Court indicated that the courts will not restrain the sound discretion of a board of education in

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[28]Blue v. Board of Trustees of Vass Graded School District, 187 N. C. 431 (1924), p. 434.

[29]Jones v. Board of Education of Robeson County, 187 N. C. 557 (1924), p. 560.

[30]Gore v. Columbus County, 232 N. C. 636 (1950), p. 640.

[31]Kistler v. Board of Education of Randolph County, 233 N. C. 400 (1951), p. 404.

schoolhouse sites. The exception occurs only in violation of law or manifest abuse of discretion. In its determination in the case of Kreeger v. Drummond[32] the Court held that a board of education exercises its discretion when it decides to discontinue or transfer a school site. Furthermore, the courts will not interfere in creating or consolidating school districts unless boards of education violate the law or manifestly abuse their discretionary duty. The Court in Edwards v. Board of Education of Yancey County[33] in 1952 referred to the plenary power which boards of education enjoy in contracting for a consolidated high school building. In 1959 the Court in the case of McLaughlin v. Beasley[34] called the selection of a school site by a board of education the use of its discretionary power.

Office Holding

The Court has also clarified the conditions for office holding and its liability. It defined office holding in 1898 in the case of State v. Thompson[35]:

> An office is defined by good authorities as involving a delegation to the individual of some of the sovereign

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[32]Kreeger v. Drummond, 235 N. C. 8 (1952), pp. 10, 12.

[33]Edwards v. Board of Education of Yancey County, 235 N. C. 345 (1952), p. 349.

[34]McLaughlin v. Beasley, 250 N. C. 221 (1959), p. 223.

[35]State v. Thompson, 122 N. C. 493 (1898), pp. 495-496.

> functions of government, to be exercised by him for the benefit of the public, by which it is distinguished from employment or contract.[36]

This case held that election to two offices makes the first vacant if the second is accepted. The officeholder himself must decide which position to accept, but the decision is made according to preference and qualification for one of the two. Such a decision is determined by the plain and positive language of the Constitution of North Carolina.[37] For example, on accepting the position of mayor, a school board member violated the prohibition in double office-holding. In the 1952 State ex rel. Atkins v. Fortner[38] case, the Court held that if the member did not voluntarily surrender membership in the board of education, the office was automatically and instantly vacated upon assuming the second office.

In 1919 the Court held in the case of Spruill v. Davenport[39] that a public officer is not liable for damages resulting from an act carried out in the line of duty. On the other hand, it reinforced previous decisions which held that if the act for which the officer is not normally personally liable was wrongful or malicious, then

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[36]Ibid.

[37]Ibid., pp. 497-498.

[38]State ex. rel. Atkins v. Fortner, 236 N. C. 264 (1952), p. 270.

[39]Spruill v. Davenport, 178 N. C. 364 (1919), p. 365.

litigation could be instituted against the public officer to recover damages for the wrong which was committed.

In the case of Russ v. Board of Education of Brunswick County[40] (1950) the Court addressed the removal of commiteemen. School committeemen appointed by a county board of education do not hold office at the pleasure of the board but for a definite time; they cannot be removed at the will or caprice of the board. If the board uses the statutory proceedings for removal, the committeemen should have a notice of proceedings and charges against them and have an opportunity to be heard and to give defense testimony. The county board may not remove a committee member until it makes a determination following a full and fair hearing on the merits of the evidence concerning the cause for removal.

Other Powers of Boards of Education

In defining the powers of boards of education, the Court has identified authority in addition to its mandated and discretionary power. A board of education which succeeds another has the authority of its predecessor. In fact, the successor board has the authority to spend monies for the purpose for which the tax providing the fund was levied, according to Board of Education of McDowell County

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[40]Russ v. Board of Education of Brunswick County, 232 N. C. 128 (1950), pp. 129-130.

v. Burgin[41] in 1934. Also a successor board of education can receive the clear proceeds from court levied fines. In the Board of Education of Guilford County v. City of High Point[42] case, the Court in 1938 held that the total sum of fines and costs in municipal court less only the sheriff's fee for collection must go to the governing body of the schools. The clerk of the municipal court may not retain a percentage for compensation in violation of the provisions of Article IX, Section 5 of the Constitution of North Carolina.

Summary

The Supreme Court of North Carolina affirms that the public schools exist to educate our young people mentally and morally under just and effective laws, rules, and regulations. In determining questions related to these, the Court gives consideration to the constitutionality of legislative enactments. Statute construction which is obscure, which clearly raises questions of constitutionality, and which leads to absurd consequences should definitely be declared null and void. In addition, the courts consider the express language of state laws, statewide and local application of these laws, and

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[41]Board of Education of McDowell County v. Burgin, 206 N. C. 421 (1934), p. 424.

[42]Board of Education of Guilford County v. City of High Point, 213 N. C. 636 (1938), p. 636.

legislative intent. Generally, the Court will not take a broad interpretive view regarding questions of constitutionality. It is the conviction of the Court that its role is not to amend the Constitution of North Carolina through its interpretation of meaning and construction. The Court harmonizes statutes on the same subject, generally focusing on the view which has more specific application.

In looking at the authority vested in boards of education, the Court first considers what the law requires. It recognizes the corporate status of boards of education with the exercise of the powers conferred upon them. In exercising such powers, boards of education must use good faith in their sound judgment and discretionary power. Boards of education make important decisions only with a quorum present. Although not prohibited, boards, in the opinion of the Court, should operate in public view and scrutiny. The authority of boards of education cannot be passed on to boards of county commissioners. Although the Court will not usually exercise judicial restraint on boards of education, it may if there is manifest abuse of the discretionary power. Boards of education often use this discretionary power in deciding questions about school consolidation, school site selection, and property decisions, for example.

In resolving questions about governance, the Court defines office-holding in North Carolina and liability

associated with such office holding. In addition, it speaks to the issue of resultant power of successor boards and recipient of clear proceeds from fines and forfeitures by the appropriate governing body.

Employees

During the period 1939-1984 the Supreme Court of North Carolina ruled on ten cases concerning employees. Of these ten cases, the Court affirmed five lower court decisions; affirmed and remanded one; affirmed in part, reversed in part, and remanded one; and reversed three. The ten cases emphasize the following legal principles: (1) legislative intent, (2) corporate status, (3) immunity from suits, (4) powers of boards of education, (5) certification, (6) judicial restraint, (7) qualified privilege of communication, (8) contracts, (9) employment termination, (10) employee rights, and (11) judicial standard.

Legislative Intent

The Supreme Court of North Carolina stated in the case of Faulkner v. New Bern-Craven County Board of Education[43] in 1984 that any ambiguity in the interpretive meaning of a statute must be viewed in the context of the state constitution and the intent of the legislature. A fair and reasonable interpretation should be used to harmonize

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[43]Faulkner v. New Bern-Craven County Board of Education, 311 N. C. 42 (1984), p. 58.

differences in those statutes which relate to the same subject. The Court also held in Taylor v. Crisp[44] in 1975 that the manifest purpose of the legislature should not be thwarted by any interpretation which leads to absurd consequences. The legislature has intended that North Carolina have good teachers who are held to a higher standard of personal conduct:

> Our inquiry focuses on the intent of the legislature with specific application to teachers who are entrusted with the care of small children and adolescents. We do not hesitate to conclude that these men and women are intended by parents, citizenry, and lawmakers alike to serve as good examples for their young charges. Their character and conduct may be expected to be above those of the average individual not working in so sensitive a relationship as that of teacher to pupil. It is not inappropriate or unreasonable to hold our teachers to a higher standard of personal conduct, given the youthful ideals they are supposed to foster and elevate.[45]

Corporate Status

Local boards of education in North Carolina have corporate status through statutes enacted by the General Assembly. The legislature delineates the powers of a county board of education, which is an agency of the state and therefore has corporate status. In essence, county boards of education may operate and administer the public school system, purchase and hold real and personal property, build and repair schools, sell and transfer school properties, and

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[44]Taylor v. Crisp, 286 N. C. 488 (1975), p. 496.

[45]Faulkner v. New Bern-Craven County Board of Education, 311 N. C. 42 (1984), p. 59.

prosecute and defend suits for and against the corporation (Kirby v. Stokes County Board of Education -- 1949)[46]

> Thus it seems clear that the General Assembly intended to continue the existence of the county board of education as a corporate entity with power to prosecute and defend suits.[47]

Immunity from Suits

It is an accepted doctrine of the Court, stated in Kirby v. Stokes County Board of Education[48] in 1949, that the State is sovereign and may not be sued in its own courts or elsewhere without its consent. This immunity extends to boards of education since they are agencies of the State. Such immunity is absolute and unqualified unless the State or its agencies consent to be sued or waive this immunity. For instance, if a local board of education purchases liability insurance, it waives its extension of sovereign immunity and may be sued, according to the Court's 1979 ruling in Presnell v. Pell.[49]

Powers of Boards of Education

The Supreme Court of North Carolina has continued to stress the legal principle of non-interference in the discretionary power of local boards of education as applied

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[46]Kirby v. Stokes County Board of Education, 230 N. C. 619 (1949), p. 623.

[47]Ibid., p. 624.

[48]Ibid., p. 623.

[49]Presnell v. Pell, 298 N. C. 715 (1979), p. 721.

to provisions set forth in the statutes. In 1971 in Still v. Lance[50] the Court refused to review the wisdom used by boards of education in making employment determinations. In respect to this discretionary authority, the Court in the case of Harris v. Board of Education of Vance County[51] in 1939 expressed the opinion that in the exercise of authority and power boards of education must act in good faith. Thus, in employment decisions approval may be given or withheld according to the boards' judgment.[52] However, those who feel they have alleged wrongs may seek injunctive relief upon proper pleadings, finding by the courts, and a hearing. This approach is generally the extent to which the courts will go in controlling the discretionary power of boards of education in personnel decisions:

> He may upon proper pleadings, and upon a finding by the court, upon a hearing, that the action of the county authorities was in fact arbitrary and capricious and actuated by selfish and personal motives, apply for and obtain a mandatory injunction compelling the defendants to proceed to act upon the election and to grant or withhold their approval in good faith, uninfluenced by selfish or personal motives. This is as far as the courts may go in controlling the action of administative units or governmental agencies. When a public official fails to act in accord with the wishes of the majority of those whom he serves, the relief is usually through the ballot box.[53]

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[50]Still v. Lance, 279 N. C. 254 (1971), p. 263.

[51]Harris v. Board of Education of Vance County, 216 N. C. 147 (1939), p. 150.

[52]Ibid., p. 151.

[53]Ibid.

This principle of discretionary power embodies the employment decisions which boards of education make. As agencies of the state, boards of education have the sole authority to employ teachers. G.S. 115-359 (in 1950) noted that by express declaration or necessary implication a school committee could dismiss or reject employment of a principal or teacher before the end of a school year. However, approval or disapproval for this action must come from the county board of education. Otherwise, it has no validity according to the 1952 ruling of the Court in Iredell County Board of Education v. Dickson[54] which held:

> The action of the district school committee was without validity in law, however, because it was not approved by the county board of education in meeting assembled at any time before the close of the school term.[55]

In deciding whether or not to give a teacher career status by voting to re-employ or dismiss a teacher, boards of education use their discretionary power as the Court held in the case of Taylor v. Crisp[56] in 1975.

In exercising its authority and power, boards of education must meet as corporate bodies with a quorum present. The Court held in the case of Iredell County

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[54]Iredell County Board of Education v. Dickson, 235 N. C. 359 (1952), p. 362.

[55]Ibid., p. 363.

[56]Taylor v. Crisp, 286 N. C. 488 (1975), p. 494.

Board of Education v. Dickson[57] in 1952 that a board is composed of different members having power only when meeting together as a corporate body in regular or special meetings. Board members cannot act individually, informally, or separately. Similarly, action resulting from informal and individual consultation between the superintendent and a board chairperson is not valid since such consultation does not derive from the power of the board meeting in its corporate status.[58]

Legislative power in North Carolina was conferred upon the General Assembly by the Constitution of North Carolina, Article II, Section 1. It cannot be transferred to any other officer or agency without the establishment of standards or its guidance. In its decision of 1971 the Court in the case of Guthrie v. Taylor[59] stated this fundamental legal principle quite clearly:

> This power it may not transfer to another officer or agency without the establishment of such standards for his or its guidance so as to retain in its own hands the supreme legislative power.[60]

The Constitution of North Carolina delegates the power to make rules and regulations to administrative boards or

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[57]Iredell County Board of Education v. Dickson, 235 N. C. 359 (1952), p. 363.

[58]Ibid.

[59]Guthrie v. Taylor, 279 N. C. 703 (1971), p. 712.

[60]Ibid.

agencies. Such delegated power is absolute except to the extent limited by the Constitution of North Carolina, the United States Constitution, the legislature, or the agency which derives its power from the Constitution. Generally speaking, no questions about such delegation arise under the United States Constitution since the distribution of power among state organs, divisions, or agencies is a decision for the State itself.[61]

Certification

As the Supreme Court of North Carolina will not substitute its judgment for that of the local boards of education, it applies the same standard to the decisions of the State Board of Education. In the case of Guthrie v. Taylor[62] the Court in 1971 applied this standard to the development of certification requirements for the teachers of the state:

> There being a reasonable basis for the opinion reached and expressed by the State Board of Education, in the exercise of the legislative power conferred upon it by the Constitution of North Carolina, this Court is not authorized to substitute its judgment for that of the State Board of Education and to declare the regulation, adopted by the Board, invalid on the ground that, in our opinion, some other method for earning the required credits for renewal would be equally as satisfactory in result.[63]

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[61]Ibid., pp. 712-713.

[62]Ibid., pp. 715-716.

[63]Ibid.

The General Assembly may delegate to administrative officers and agencies the authority to develop rules and regulations for the individuals who compose a trade or a profession. However, the General Assembly must likewise establish the standard which the officers and agencies will use to exercise discretionary judgment. Otherwise, the governing statute is unlawful.[64] The Constitution of North Carolina confers enumerated powers upon the State Board of Education. When the General Assembly is silent on a particular issue, then by its enumerated powers the State Board of Education has the constitutional authority to promulgate and administer regulations for the certification of teachers. Under such conditions this authority is limited only by the Constitution of North Carolina.[65] Certification standards are also applicable unless they are unreasonably discriminatory and thus violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution or a similar clause in Article I, Section 19, of the North Carolina Constitution. If the standards are so arbitrary and unreasonable as to deprive one of liberty or property, then they may violate the Due Process Clause of the Fourteenth Amendment to the United

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[64]Ibid., p. 712.

[65]Ibid., p. 710.

States Constitution or a similar prohibition in the Land Clause of Article I, Section 19, of the North Carolina Constitution.[66]

The Court in Guthrie v. Taylor[67] in 1971 provided further guidelines which make possible certification requirements for the teachers of North Carolina. To classify individuals on a reasonable basis and to provide different treatment does not validate the Equal Protection Clause of the United States Constitution or Article I, Section 19, of the Constitution of North Carolina. Obviously then, certification standards can be established for those who teach in the public schools of the state. Such requirements are a reasonable basis for the improvement of classroom performance. Guthrie v. Taylor provides:

> It cannot be deemed arbitrary for the State to insist that the teachers in its public schools keep their own knowledge abreast of such changes. Nor is it arbitrary to require that this be done by one or more procedures, which may reasonably be deemed likely to produce the desired result, to the exclusion of other procedures which might also be deemed reasonably likely to do so. Such choice between possibly effective procedures is for the rule making authority, not for this Court.[68]

Judicial Restraint

The Supreme Court of North Carolina's recognition of the discretionary judgment of boards of education or state

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[66]Ibid., p. 713.

[67]Ibid., pp. 713-714.

[68]Ibid., p. 714.

agencies is not absolute. The Court recognizes that some review of this discretionary power is possible. But this review process should occur only after the agency of the State establishes the record, gets the facts, and makes a decision. The Court in Presnell v. Pell[69] in 1979 recognized that this limited review assures judicial restraint:

> The avoidance of untimely intervention in the administrative process is a long recognized policy of judicial restraint. This policy acquires the status of a jurisdictional prerequisite when the legislature has explicitly provided the means by which a party may seek effective judicial review of particular administrative action.[70]

In fact, G.S. 115-34 (in 1976) required any challenge to the action of a county or city board of education to come before that body before being submitted for judicial review. Any appeal from an administrative decision goes directly to the Superior Court of North Carolina. Effective administrative remedy provided by the legislature must be used before effective judicial remedy can be undertaken.[71]

Qualified Privilege of Communication

Communication between school employees is qualified or under conditional privilege only if it is made in good

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[69]Presnell v. Pell, 298 N. C. 715 (1979), p. 722.

[70]Ibid.

[71]Ibid.

faith. In addition, the Court held in Presnell v. Pell[72] in 1979 that for subject and scope of communication to be conditional or qualified, it must come from one having the right to uphold it or the legal right or duty in reference to it and must be made to someone who has a corresponding interest, right, or duty. Conditional or qualified privilege becomes actionable in court if express or actual malice occurs.

Contracts

Whereas boards of education have the responsibility for operating the public schools, they may make contracts within the limits prescribed by corporate status as a part of the machinery to carry out this function. Teachers and principals enter into contracts with boards of education and must seek any remedy for breach of that contract from the boards of education which enter into the contracts. In the Kirby v. Stokes County Board of Education[73] case (1949), the Court summarized the key principles of disputed contract resolution. Since the Courts must consider what the contract actually requires. The presumption of law holds that authorities must demonstrate regularity in the

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[72]Ibid., p. 720.

[73]Kirby v. Stokes County Board of Education, 230 N. C. 619 (1949), p. 628.

performance of duties, a complainant must show that the contrary has occurred. Mutuality of agreement means that there is neither doubt nor difference in understanding of the contract by the contracting parties. Differences indicate no agreement. A contract, certain and definite, defines the nature and extent of service to be performed, the place of service, and the person for whom the service will be rendered. Compensation is also delineated. If these conditions are not met then no enforcement of the contract can ensue. A contract means both what is specifically expressed and what is implied.[74] In the 1952 Iredell County Board of Education v. Dickson[75] case, the Supreme Court of North Carolina held that the implication of state law was the re-election of teachers and principals in the same manner as the original selection. Elevating a probationary teacher to career status (tenure) is a discretionary decision of a board of education. If not selected to tenure, then a probationary teacher is without a contract. In order to provide teachers of ability and to offer protection from dismissal for reasons other than just cause the State adopted G.S. 115-142. In 1975 in the case

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[74]Iredell County Board of Education v. Dickson, 235 N. C. 359 (1952), p. 361.

[75]Ibid., p. 362.

of Taylor v. Crisp[76] the Court summarized the reasons for the enactment of this statute:

> The manifest purpose of G.S. 115-142 was to provide teachers of proven ability for the children of this State by protecting such teachers from dismissal for political, personal, arbitrary or discriminatory purposes.[77]

Employment Termination

The listing of specific reasons for which a teacher may be dismissed, demoted, or employed on a part time basis gives job security to teachers. Failure to fulfill expectations of the contract may constitute cause for dismissal. For example, in North Carolina neglect of duty is cause for dismissal. However, it is defined neither by statutes nor by the Supreme Court of North Carolina. Yet in 1981 according to the Court in Overton v. Goldsboro City Board of Education[78], a review of cases from other states brings about a common sense definition. In taking this common sense approach, the Court has further applied the standard of reasonableness.[79]

> Regardless of the circumstances to which "neglect of duty" is sought to be applied, we think that

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[76]Taylor v. Crisp, 286 N. C. 488 (1975), p. 496.

[77]Ibid.

[78]Overton v. Goldsboro City Board of Education, 304 N. C. 312 (1981), p. 318.

[79]Ibid., p. 319.

> dismissal under the statute on this ground alone cannot be sustained unless it is proven that a reasonable man under those same circumstances would have recognized the duty and would have considered himself obligated to conform.[80]

As in all cases which come before the courts, determination should be based on already established legal principles, even though some of the questions which must be resolved can be answered only case by case.[81]

Employee Rights

The Court held in Presnell v. Pell[82] in 1979 that there is no constitutional right to an administrative hearing prior to dismissal. Of course, in spite of this, due process must be somehow guaranteed to public school employees. The Fourteenth Amendment to the United States Constitution is applicable to the issue of discharge only if the procedures relating to it violate property or liberty interests. While a property right or vested interest can come from or be created by statute, ordinance, or express or implied contract, its scope is determined by state law.[83] The Court addressed this issue in 1979 in considering the dismissal of a school cafeteria manager who was discharged without a pre-termination hearing.

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[80]Ibid.

[81]Ibid., p. 322.

[82]Presnell v. Pell, 298 N. C. 715 (1979), p. 719.

[83]Ibid., p. 723.

> We conclude that the mere dismissal of plaintiff without a pre-termination hearing did not abridge a proprietary interest of constitutional magnitude.[84]

In addition, the Court in Presnell v. Pell[85] addressed the liberty issue. A liberty interest exists if the right to the common occupations of life is affected by unreasonable restrictions enacted by the State or its agencies. In such a situation an employee may submit a claim. Weight is given to the claim if future employment may be negatively affected not only by dismissal but also by dismissal based on unsupported charges which were not refuted. However, the Court held that due process requirements could be met at a hearing held before or at a reasonable time after discharge.

Judicial Standard

The general judicial review standard stated in G.S. 150A-51 (formerly G.S. 143-315) called for the reversal of decisions by boards of education which are prejudicial to petitioners. The Court in the case of Thompson v. Wake County Board of Education[86] in 1977 held that such a condition can arise from administrative findings, inferences, conclusions, or decisions based on neither

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[84]Ibid., p. 724.

[85]Ibid.

[86]Thompson v. Wake County Board of Education, 292 N. C. 406 (1977), p. 410.

competent material nor substantial evidence as a part of the entire record. The standard of review according to this case is a "whole record" test. Although a court may reach a different conclusion on the first hearing of contradictory evidence, it cannot replace the board's judgment. However, in considering all the evidence, the court may consider whatever in the "whole record" takes away from the evidence presented by a board of education. Thus, a court must consider both that evidence which supports the board of education's decision and any contradictory evidence or inferences arising from the evidence. The Court further required that trial judges, in considering the "whole record" test, must look at not only the complete testimony but also the determination of a Professional Review Committee empowered to make findings. Its recommendation is considered to be competent evidence. Findings by an impartial panel may lessen the substantiality of evidence in a board of education's decision. This is especially true if the panel draws conclusions different from those conclusions determined by the local board of education. A court must then decide if the competent evidence is substantial. Substantiality occurs if a reasonable mind can accept the facts and inferences adequate for the conclusions drawn.[87]

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[87]Ibid., p. 414.

In the case of Thompson v. Wake County Board of Education, the following conclusion was drawn:

> If a career teacher's ability to maintain good order and discipline at school is to be judged solely by one incident, the evidence of that incident should be clear. We hold the evidence that Mr. Thompson neglected his duty to maintain order and discipline was insubstantial in view of the entire record.[88]

In a dismissal hearing a court must apply the "whole record" test and then determine if the substantiality of the evidence supports dismissal. In 1984 in the Faulkner v. New Bern-Craven County Board of Education[89] case, the Court summed up the "whole record" test by requiring the consideration of all testimony, by considering the report of the Professional Review Panel as competent evidence, and by determining the substantiality of the evidence. Thus, the entire record, fact and conclusions, substantiality of evidence, and preponderance of evidence are all factors in any determination.

Hearsay evidence is also allowable since the rules of evidence do not apply to board hearings in dismissal proceedings. In effect,

> . . . rules of evidence shall not apply to such hearings and the board may give probative effect to evidence that is of a kind commonly relied upon by

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[88]Ibid., p. 415.

[89]Faulkner v. New Bern-Craven County Board of Education, 311 N. C. 42 (1984), pp. 50-51.

reasonably precedent persons in the conduct of serious affairs.[90]

Summary

The Supreme Court of North Carolina holds that any ambiguity in the meaning of statutes must be understood in light of the State Constitution and legislative intent, harmonized to reduce this ambiguity, interpreted reasonably, and intended to give North Carolina good teachers. To carry out the operation and administration of the public schools, boards of education have corporate status. However, as agencies of the state boards of education enjoy the sovereignty of the state and may not be sued without consent unless they waive immunity or purchase liability insurance. Repeatedly the Court has refused to control the discretionary power of boards of education in such issues as employment decisions. In exercising their power, boards of education must meet as a corporate body rather than as individuals, with a quorum present. The powers which boards of education enjoy flow from constitutional definition to legislative delegation to agencies of the State. In carrying out these powers, the State Board of Education as an agency of the State may require certification requirements for teachers. The Supreme Court of North Carolina, in exercising judicial restraint concerning the discretionary power of boards of education or State

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[90]Ibid., p. 57.

agencies, will review decisions only in prescribed circumstances and only after the board of education or state agency establishes a record, gets the facts, and makes its own determination. Employees of boards of education in exercising their duties and responsibilities enjoy qualified or conditional privilege only if it is made in good faith. In carrying out powers, boards of education as corporate bodies may enter into contracts with their teachers and principals. Employment termination may occur if expectations upon which the contract is based are not fulfilled. In such matters, cases coming before the Court are decided on established legal principles which include the constitutional rights enjoyed by employees. In determining cases involving employees the Court uses the judicial standard of the "whole record."

Pupils

During the period 1924-1985 the Supreme Court of North Carolina ruled on fourteen cases concerning pupils. Of these the Court affirmed six lower court decisions, ordered a new trial in one, found error in one, dismissed the appeal in one, found error in and remanded one, reversed and ordered a new trial in one, reversed and remanded one, affirmed in part, reversed in part, and remanded one, and reversed one. The fourteen cases address the following legal principles: (1) power of boards of education, (2) general and uniform system of public schools,

(3) compulsory attendance requirements, (4) discipline, (5) assignment, (6) discrimination, (7) school fees, (8) home instruction, (9) vaccination, (10) secret societies, and (11) contract transportation.

Power of Boards of Education

The Constitution of North Carolina makes provision for a general and uniform system of public education. However, the actual establishment and operation of the public schools is within the control of the legislature subject only to constitutional provisions. The General Assembly has delegated to boards of education the authority to make those rules and regulations which are necessary for the successful management of the public schools.

The Supreme Court of North Carolina has consistently supported the power of boards of education in carrying out management of the schools for the welfare of pupils. In 1944 the Court in Coggins v. Board of Education of City of Durham[91] held that the Court will abide by the decisions of boards of education unless the boards act corruptly, in bad faith, or in the manifest abuse of their power.

General and Uniform System of Public Schools

The Constitution of North Carolina mandates certain provisions to carry out this general and uniform system of

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[91]Coggins v. Board of Education of City of Durham, 223 N. C. 763 (1944), p. 769.

public schools. In the case of Frazier v. Board of Commissioners of Guilford County[92], the Court in 1927 summarized some of those provisions enacted by the General Assembly. These listings include funding through taxation and otherwise, the absence of tuition for those between the ages of six and twenty-one, and the division of the state into districts. These provisions also allowed for the establishment of a longer term than the minimum set by the Constitution in accordance with the General Assembly's judgment and response to the wishes of the people:

> It cannot be too often emphasized that the controlling purpose of the people of North Carolina, as declared in their Constitution, is that a State system of public schools shall be established and maintained -- a system of schools supported by the State, and providing for the education of the children of the State -- and that ample power has been conferred upon the General Assembly to make this purpose effective.[93]

Compulsory Attendance Requirements

The State has the inherent right to prescribe compulsory attendance for its children. However, as the Court pointed out in State v. Lewis[94] in 1927, this requirement cannot require all school age children to attend the public schools. To do so would serve as an infringement on the rights of private schools.

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[92]Frazier v. Board of Commissioners of Guilford County, 194 N. C. 49 (1927), p. 61.

[93]Ibid., pp. 61-62.

[94]State v. Lewis, 194 N. C. 620 (1927), p. 621.

It is expected that those in control of school-age children shall send their children to school. Failure to comply with this requirement may result in criminal charges. In such a condition, the Court in 1924 in State v. Johnson[95] held that a parent could not be held accountable solely by the proof of failure to send the children to a public school. There could be no valid conviction unless the inference of the evidence showed that the parent failed to send school-age children to any properly conducted and recognized school for the time required during the scholastic year:

> It will be observed that the statute does not make the failure to cause the attendance of a child, between the ages mentioned, in the public school a crime, but the offense is defined as the failure on the part of the parent, guardian, or other person having control of such child, to cause said child to attend school continuously for a period equal to the time the public school of the district shall be in session.[96]

In another case, a parent removed her daughter from the public schools and enrolled the girl in a non-public school. In State v. Vietto[97] the Court in 1965 held that there was no violation of the Compulsory Attendance Law since the State's proof that the non-public school was not approved by the State was entirely speculative. The Court stated that substantial evidence of the offense must be demonstrated.

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[95]State v. Johnson, 188 N. C. 591 (1924), p. 594.

[96]State v. Lewis, 194 N. C. 620 (1927), p. 621.

[97]State v. Vietto, 297 N. C. 8 (1979), p. 12.

In addition, it must consider both competent and incompetent evidence which has been placed in the record. Even if the evidence is viewed in the light most favorable to the State, speculative testimony alone requires a directed verdict of not guilty.

Discipline

Even though children have a right to attend the public schools, this right is not absolute. The Court held in 1944 in Coggins v. Board of Education of City of Durham[98] that effective schools must establish reasonable rules and regulations to operate the schools in an orderly manner:

> The right to attend school and claim the benefits afforded by the public school system is the right to attend subject to all lawful rules and regulations prescribed for the government thereof.[99]

In this decision the Court affirmed that the authority to make rules and regulations should be used to maintain successful management, good order, and discipline:

> It is generally held that local school authorities have the inherent power to make rules and regulations for the discipline, government, and management of the schools and pupils within their district.[100]

A county board of education has the authority to provide control and supervision over all matters pertaining to the public schools within the board's administrative

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[98]Coggins v. Board of Education of City of Durham, 223 N. C. 763 (1944), p. 767.

[99]Ibid.

[100]Ibid.

unit. These powers and duties are conferred upon boards of education. Such power includes whatever is necessary and expedient to provide for good management of and discipline within the schools[101]:

> In doing so, however, it will be kept in mind that the local board is the final authority so long as it acts in good faith and refrains from adopting regulations which are clearly arbitrary or unreasonable.[102]

In the opinion of the Court, to substitute its opinion and judgment for that of a board of education would seriously impair the government of the schools. Such an approach would place boards of education in a precarious position according to the Court.

Coggins v. Board of Education of City of Durham asserts:

> The Court, therefore, will not consider whether such rules and regulations are wise or expedient. Nor will it interfere with the exercise of the sound discretion of school trustees in matters confided by law to their discretion.[103]

Assignment

Boards of education have the responsibility for assigning students to specific schools within their jurisdiction. The Court ruled quickly on cases coming before it regarding enrollment in and assignment to schools since in the 1960's they were of public importance and

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[101]Ibid., p. 768.

[102]Ibid., p. 769.

[103]Ibid.

needed clarification. The Court in 1956 in the case of Joyner v. McDowell County Board of Education[104] established some basic guidelines for challenging assignments. It held that parents should apply by name to appropriate school officials for enrollment of the parents' children only. Parents could not apply for others unless the parents were the guardians or were serving in loco parentis. Due to the differences in the ages of children, the grades they had completed, as well as teacher-student ratios, some applications might be accepted while others might not -- hence, the rationale for considering applications individually rather than en masse.

The Court also stated that boards of education should establish the rules and regulations governing the filing of applications for reassignment prior to the opening of school. This case also pointed out that parents having applications rejected could appeal to the boards for a hearing, and then to Superior Court for a jury trial, where the cases should be prosecuted individually and not collectively.[105] In Applications for Reassignment of

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[104]Joyner v. McDowell County Board of Education, 244 N. C. 164 (1956), pp. 168-169.

[105]Ibid.

Pupils[106] (1958), the Court continued the precedent established in Joyner about the right to submit an application for reassignment. Such a right is the privilege of the parent, guardian, or person serving in loco parentis for the child seeking reassignment:

> The history of the statute, we think shows that the "person aggrieved" permitted to appeal from a decision of a school board assigning a child is the child assigned or some one acting in behalf of that child.[107]

This case also held that parents unhappy with the operation of a school due to assignment of another pupil must seek the reassignment of the parents' own children. Only the parties to a hearing have a right to receive the decision of the board of education. The remedy is not to appeal the assignment of the other pupil[108]:

> To say that the parent of every child has a right to challenge the assignment of another child because the assignment is not in the best interest of his child or to challenge the right for any of the other reasons provided by statute would, for all practical purposes, make the administration of the public school system an utter impossibility.[109]

In re Hayes[110] the Court in 1964 addressed the issue of assignment. It emphasized that parents dissatisfied with

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[106]Application for Reassignment of Pupils, 247 N. C. 413 (1958), p. 420.

[107]Ibid.

[108]Ibid.

[109]Ibid., p. 421.

[110]In re Hayes, 261 N. C. 616 (1964), p. 621.

the assignment of children should apply in writing to boards of education for a hearing. The Court emphasized that assignment decisions should take into consideration the welfare of children:

> It is worthy of note that the statute places all emphasis on the welfare of the child and the effect upon the school to which reassignment is requested.[111]

In re Varner[112] the Court in 1966 re-emphasized the legal principles already established: county and city boards have the authority to assign and reassign students, the courts can hear appeals from the orders of boards of education, and the welfare of the children must govern decisions on assignment requests. It limited the right to reassignment when it would interfere with the proper order of the schools; when it could endanger the instruction, health, or safety of other students; or when assignment was to or from another jurisdiction without the consent of both boards of education. Furthermore, the board could not abdicate or delegate its responsibility to act in the best interest of children.

Discrimination

In Anson County, a bond order and election for two of nine project facilities were described as suitable for colored children. The question raised centered on alleged

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[111]Ibid., p. 622.

[112]In re Varner, 266 N. C. 409 (1966), p. 415.

discrimination against the white race. The Court said in Constantian v. Anson County[113] in 1956 that no discrimination against white children existed in violation of the Constitution of North Carolina, Article IX, Section 2. The nine projects mentioned made one complete program which at the judgment and discretion of school officials would provide plant facilities for all the children of Anson County. The Court held that ". . . the bond order on its face does not show discrimination against children of the white race."[114] The Constitution of North Carolina, 1868, with amendments in 1875, provided for a general and uniform system of public schools, tuition free for children between the ages of six and twenty-one. The amendments provided for separate schools for the white and colored race provided there was no discrimination in favor of, or to the prejudice of either. In this case the Court found that the authorization of bonds was for the overall capital outlay needs for all Anson County children. The program which differed from plant facilities was not an issue according to the findings of the Court. Once the administrative unit received funds from the board of county commissioners, the commissioners no longer had any responsibility for funds administration. This case established the principle that

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[113]Constantian v. Anson County, 244 N. C. 221 (1956), p. 223.

[114]Ibid., p. 224.

physical plant facilities and equipment exist for teaching and are irrespective of consideration of race. Being suitable for colored children meant additional plant facilities would be available where colored children were taught.[115] Were the bonds and election invalidated in 1954 by Brown v. Board of Education of Topeka? The interpretation of the Court held that the Constitution of the United States did not require either a compulsory or voluntary state system of public schools. Such a decision was exclusively a matter of state policy. Brown did not require that children of different races be taught in the same schools. It provided that children could not be excluded from attending the school of their choice solely on the basis of their race. If the State or an agency of the State provided for such exclusion, then the exclusion would represent a violation of Constitutional rights under the Equal Protection Clause of the Fourteenth Amendment. Enforcement of the 1875 amendment to the Constitution of North Carolina would then be violative of the Equal Protection Clause.[116] However, such was not the issue in the question before the Court; in the words of the 1956 Court:

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[115]Ibid., p. 225.

[116]Ibid., p. 227.

> No one can now foretell in what localities or in what buildings or to what extent children of the white race and children of the colored race will be taught in the same public schools in North Carolina.[117]

Even in disagreeing with the decision in Brown, the Court did recognize that the Constitution of the United States takes precedence over the Constitution of North Carolina[118]:

> Our deep conviction is that the interpretation now placed on the Fourteenth Amendment, in relation to the right of the state to determine whether children of different races are to be taught in the same or separate public schools, cannot be reconciled with the intent of the framers and ratifiers of the Fourteenth Amendment, the actions of the Congress of the United States and of state legislatures, or the long and consistent judicial interpretation of the Fourteenth Amendment. However that may be, the Constitution of the United States takes precedence over the Constitution of North Carolina.[119]

School Fees

As already noted, the Constitution of North Carolina provides for a general and uniform system of free public schools. Does this mean that the public schools may not charge students incidental and instructional fees? In 1980 in Sneed v. Greensboro City Board of Education[120] the Court said "no."

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[117]Ibid.

[118]Ibid., p. 229.

[119]Ibid., p. 228-229.

[120]Sneed v. Greensboro City Board of Education, 299 N. C. 609 (1980), p. 610.

> We find no constitutional bar to the collecting by our public schools of modest, reasonable fees for the purpose of enhancing the quality of their educational effort.[121]

The 1970 amendment to the Constitution of North Carolina, Article IX, Section 2 (2) uses the language of free public schools. Plaintiffs in this case argued that the public schools could not charge incidental or instructional fees since the language prohibiting these was clear and unambiguous. The Court said it must interpret the language according to the intent of the framers who wrote it and the citizens who ratified it. Such interpretation would take into account the history of the provision, its antecedents, the situation prior to its adoption, and the purposes to be accomplished in its enactment. The Court found that the word "free" had been used in the Constitution of North Carolina, 1868, and in other sections of Article IX calling for free public schools. Thus, its use in the 1970 changes was not a compelling or substantive change[122]:

> Second, a review of the general history of the development of our public schools establishes that the state's provision of "free" schools has never been understood to require the absence of modest, supplementary support given by those able to pay it.[123]

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[121]Ibid.

[122]Ibid., p. 613.

[123]Ibid., p. 614.

In explaining its conclusion, the Court reviewed the history of charges and the common schools of North Carolina. It found that Archibald Murphey's plan of 1817 called for charging tuition to children who were able to pay. The charitable feature of the common schools was abandoned in 1839, but the schools were "free" only in the sense that tuition and capital costs were paid by state and local funds. North Carolina, except for the period following the Civil War, maintained its "free" schools. It was not until 1969 that the General Assembly provided basic textbooks to all students at no rental charge. The Court also said that the 1963 General Assembly recognized fees when it said that none could be collected from students or school personnel unless the policy calling for such fees was approved by local boards of education in their official minutes[124]:

> Prior to the 1970 constitution revision, then, there was little to indicate that either the members of our General Assembly or the officials responsible for administering our "free" public schools have ever understood the word "free" to encompass more than the notion of free tuition.[125]

The Court also found no intent on the part of the framers of the 1970 revision to make the radical change necessary to make the public schools totally "free." Similarly, the voters showed no evidence of believing they

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[124]Ibid., p. 614-615.

[125]Ibid., p. 615.

were ratifying an era of totally "free" public schools.[126] The Court recognized that as long as public funds covered physical plant, personnel salaries, and maintenance of a general and uniform system of public schools, the public schools of the state were "free" of tuition. There was no violation of constitutional provision of free public schools when students and parents who could afford to do so paid for use of personal supplies and materials or boards of education charged modest, reasonable fees for supplementary materials used by students.[127]

The Court, however, did hold unconstitutional a waiver policy for those who due to economic hardship could not pay the incidental or instructional fees. It did not pass review since the policy provided no means for notifying parents or students of any changes in policy or the procedures for obtaining a waiver.[128] Since enrollment could be denied in the second semester for failure to obtain a waiver and failure to pay such fees, equal access to participation in the school system was denied, thus violating the State Constitution and procedural due process. The Court said such deficiencies could be corrected by informing students and parents about the meaning of the

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[126]Ibid., p. 616.

[127]Ibid., p. 617.

[128]Ibid., p. 618.

waiver policy and the implementation of a confidential application process to meet procedural due process.[129]

Home Instruction

In 1985 in the case of Delconte v. State[130], the Court held that home instruction is a non-public school within the context of state statutes and is not prohibited by school attendance statutes.[130] This determination was made since the General Assembly has provided that the attendance at a private church or religious charter school or a qualified non-public school satisfies the state's compulsory attendance requirements. Specifically, home instruction meets the standards since it receives no funding from the state and, thus, qualifies within the meaning of the statutes as a non-public school. Particularly significant, the Court ruled that there is nothing so intrinsic in the nature of the word school which precludes home instruction although, clearly, such an interpretation was not the intent of the legislature nor is it supported by most authorities.[131] Delconte v. State points out that:

> The state strenuously argues, as the Court of Appeals thought, that a majority of jurisdictions hold that home instruction cannot be a "private school" under compulsory school attendance laws because of what

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[129]Ibid., p. 619.

[130]Delconte v. State, 313 N. C. 384 (1985), p. 389.

[131]Ibid., p. 392.

> the word "school" intrinsically means. Our analysis of the cases on the question convinces us that a majority of jurisdictions have not so held.[132]

In making this ruling the Court noted that the legislature has never actually defined what a school is. Rather, it has passed laws that have established objective criteria which schools must meet to comply with the compulsory attendance laws. Specifically, a historical review of the compulsory attendance law does not give any legislative intent to apply it to a particular instructional setting. In fact, as the Court observed, the State has recently relaxed rather than tightened its standards for non-public schools. In addition, the Court said that to preclude home instruction based on attendance standards would mean possible conflict with the Constitution of North Carolina since it requires the General Assembly to allow education in settings other than the public schools[133]:

> It is clear that the North Carolina Constitution empowers the General Assembly to require that our children be educated. Whether the constitution permits the General Assembly to prohibit their education at home is not so clear.[134]

Thus, this issue remains unresolved.

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[132]Ibid.

[133]Ibid., p. 400.

[134]Ibid., p. 400-401.

Vaccination

The Court ruled in State v. Miday[135] in 1963 on vaccination requirements and exemptions. It held that a religious organization does not have to forbid vaccination for its teachings to come within the meaning of the statutes applicable to those children whose parent, parents, or guardians are bona fide members. A jury must decide whether the teachings of the religious organization justify the position against vaccination or immunization. Moreover, conviction under the compulsory attendance laws is not appropriate if parents try to keep children in school without waiving religious rights.[136]

Secret Societies

Some boards of education have had to address the issue of membership by students in Greek letter fraternities or sororities. The Court in 1944 stated in the cases of Coggins v. Board of Education of City of Durham[137] that secret societies are against the best interests of the schools. When voluntary cooperation sought from parents failed, the Durham board adopted rules prohibiting such membership. The Court agreed that adopting such rules were within the authority of the law and that they were neither

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[135]State v. Miday, 263 N. C. 747 (1965), p. 751.

[136]Ibid., p. 753.

[137]Coggins v. Board of Education of City of Durham, 223 N. C. 763 (1944), p. 768.

unreasonable nor unlawful discrimination or deprivation of rights within the meaning of the Fourteenth Amendment.[138] Parents who disagreed with such an approach were urged to voice opinions at the ballot box.

Contract Transportation

In State ex rel. North Carolina Utilities Commission v. McKinnon[139], the Court found in 1961 that the statutes governing the operation of school buses said nothing about the transportation of athletic teams or school bands. Therefore, the Court held that boards of education have the inherent right to contract for such transportation.

Summary

The General Assembly empowers local boards of education to enact rules and regulations which are necessary to manage the public schools. The Court supports the enactment of those rules and regulations which provide for the welfare of students unless local boards of education have acted corruptly, in bad faith, or in the abuse of their power. This power of boards of education is a part of the general and uniform system of public education which the Constitution of North Carolina mandates. One inherent right of the State and its agencies is the enactment and

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[138]Ibid., pp. 769-770.

[139]State ex rel. North Carolina Utilities Commission v. McKinnon, 254 N. C. 1 (1961), p. 11.

enforcement of compulsory attendance requirements, which anticipate that parents enroll school-age children in school. However, regulations do not require enrollment in the public schools. Failure to enroll a student could even lead to criminal conviction under certain circumstances. In making such a determination, the Court holds that substantial evidence of any non-compliance, along with any competent or incompetent evidence, must be considered. Purely, speculative evidence requires a directed verdict of not guilty.

Students have the right to attend the state's public schools, although this right is not absolute. It must be exercised within the framework of the rules and regulations adopted by local boards of education to operate and manage the public schools in an orderly manner. The Court will not interfere in this power of local boards of education unless those rules and regulations are clearly arbitrary, prejudicial, or unreasonable.

Another power exerted by boards of education is the enrollment of and assignment of students to the public schools. Only parents, guardians, or those serving in loco parentis can pursue challenges to enrollment and assignment regulations. The Court recognizes that there are many reasonable factors which might affect such enrollment and assignment; however, local boards of education should establish proper rules and regulations as well as a

challenge process prior to the opening of school. Dissatisfied parents, guardians, or those serving in loco parentis may not challenge the assignment of other students, only their own. Those unhappy with the decisions of local boards of education should be allowed to a hearing before the boards. The Court has reiterated that in these decisions the welfare of the child should be of paramount consideration.

In a bond issue in which funds were approved for facilities suitable for colored children, the plaintiffs argued that such approval constituted discrimination against the white race. In rejecting such an allegation, the Court took issue with the correctness of the 1954 decision in Brown v. Board of Education of Topeka, even though it did reaffirm that the Constitution of the United States takes precedence over the Constitution of North Carolina.

The Court has also been called upon to rule upon the incidental and instructional fees which local boards of education may adopt. At the heart of the issue was the meaning of "free" in relation to a general and uniform system of public schools. In considering the history surrounding the development of the public schools in North Carolina and legislative intent, the Court held that such fees were allowable, but a waiver policy known to students and parents was mandatory. Its implementation required a

confidential application process to meet constitutionally guaranteed due process.

Home instruction is not prohibited by the state's school attendance laws. It may also meet certain standards as a non-public school. In fact, the Court specifically ruled that there is nothing so intrinsic in the nature of the word school to preclude home instruction. In fact, the legislature has never defined specifically the meaning of school and its prohibition would raise serious constitutional questions.

In other decisions relating to students, the Court has ruled that a jury must determine whether the teachings of a religious organization justify a position against vaccination or immunization. It supports the prohibition on student membership in secret societies adopted by a board of education. Such prohibition was clearly within the realm of the board of education meeting its responsibility to act in the best interest of students. The Court also supports the right of local boards of education to undertake contract transportation.

Torts

During the period 1951-1963 the Supreme Court of North Carolina heard six cases on torts. Of these the Court affirmed five lower court decisions and reversed and remanded one. The six cases address the following legal principles: (1) power of boards of education, (2) liability

of boards of education, (3) liability of officials and employees, (4) waiver of immunity, (5) school bus liability, and (6) contributory negligence.

Power of Boards of Education

Statutes and the Supreme Court of North Carolina establish and clarify the powers and duties of the State Board of Education and the local boards of education. In the 1959 Turner v. Gastonia City Board of Education[140] case, the Court recognized that the General Assembly created the State Board of Education with specifically assigned duties. As an agency of the State it has statewide application. This case also recognized that the two classes of local administrative units, county and city, have duties which are local in nature. County and city administrative units have the general powers to control and supervise within their respective areas:

> The State contributes to the school fund, but the local boards select and hire the teachers, other employees and operating personnel. The local boards run the schools.[141]

Liability of Boards of Education

State statutes make both county and city administrative units corporate bodies which can sue and be sued. As the Court in the case Fields v. Durham City Board of

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[140]Turner v. Gastonia City Board of Education, 250 N. C. 456 (1959), pp. 462-463.

[141]Ibid., p. 463.

Education[142] pointed out, the giving of corporate status did not also mean that the General Assembly waived immunity from torts for these boards of education. This case further emphasized that the prior decisions of the Supreme Court of North Carolina supported such immunity unless it was waived by statute or established under the Tort Claims Act:

> It is clear that the Legislature has not waived immunity from tort liability as to county and city boards of education, except as to such liability as may be established under our Tort Claims Act, but has left the waiver of immunity from liability for torts to the respective boards and then only to the extent such board has obtained liability insurance to cover negligence or torts.[143]

In the 1952 Smith v. Hefner[144] case, the Court further commented on the liability immunity of boards of education. It confirmed the principle that the state cannot be sued in its own courts as sound public policy. The only condition under which suit may occur is if the State by statute has consented to such a suit or has waived immunity from suit. Likewise, the same principle applies to boards of education which act as agencies of the State.

Liability of Officials and Employees

In general, boards of education and the administrative units which they govern are not responsible for the torts

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[142]Fields v. Durham City Board of Education, 251 N. C. 699 (1960), p. 700.

[143]Ibid., p. 701.

[144]Smith v. Hefner, 235 N. C. 1 (1952), p. 6.

committed by school officials or employees. In addition to this accepted view, the Court in the case of Smith v. Hefner[145] in 1952 held to the principle that public officials carrying out their duties involving discretion and judgment cannot be held personally liable for mere negligence. Accordingly, an official cannot be held liable unless the alleged and proven act or failure to act was corrupt or malicious. On the other hand, even when an employer has governmental immunity, an employee of that governmental unit may be held individually liable for negligence in carrying out prescribed duties.[146] In the case of Eller v. Board of Education v. Buncombe County[147] in 1955, the Court reaffirmed prior decisions that boards of education enjoy immunity from liability of its members or agents except that which might be established under the Tort Claims Act. Of course, an employee is distinguished from a public official such as a member of a local board of education. In the 1959 Turner v. Gastonia City Board of Education[148] case, the Court stated this legal principle when it held that the board of education was

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[145]Ibid., p. 7.

[146]Ibid.

[147]Eller v. Board of Education of Buncombe County, 242 N. C. 584 (1955), pp. 585-586.

[148]Turner v. Gastonia City Board of Education, 250 N. C. 456 (1959), p. 462.

not liable for the tort of the board's employee since a board of education retains governmental immunity unless there is provision for waiver of immunity. Any immunity is not retroactive preceding any provision which makes waiver possible.

Waiver of Immunity

Immunity can be waived only to the extent that a board of education is indemnified by insurance for negligence or tort. In 1955 the General Assembly provided that any county or city administrative unit could waive its governmental immunity from liability for damages, death, or injury to person or property by obtaining liability insurance. It could then waive the liability by negligence of tort of any agent or employee of the local board of education, provided the agents or employers were acting within their authority or employment.[149] The Court in the case of Clary v. Alexander County Board of Education[150] in 1975 held specifically that the purchasing of liability insurance waives governmental immunity to the extent that a local board of education is indemnified by insurance for such negligence or tort. In this way, the purchase of insurance removes any argument of governmental immunity by a board of education:

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[149]Ibid., p. 461.

[150]Clary v. Alexander County Board of Education, 286 N. C. 525 (1975), p. 530.

> Although there is no allegation or admission as to the amount of liability insurance defendant had procured and therefore nothing to show the extent of defendant's waiver of governmental immunity, waiver of governmental immunity to any extent was sufficient to preclude the granting of motions for directed verdicts on the ground of governmental immunity.[151]

In addition, the Court in Huff v. Northampton County Board of Education[152] in 1963 emphasized also that no liability in tort exists unless the board of education waived immunity in accordance with the Tort Claims Act.

School Bus Liability

Injuries resulting from accidents occurring in the operation of school buses have often been the cause for suits to recover damages. In such cases the Supreme Court of North Carolina has adhered to its stand on liability immunity and waiver of liability. The North Carolina Session Laws of 1955 relieved the State Board of Education for responsibility of the operation of school buses and empowered county and city boards of education to transport students enrolled in county or city administrative units. In the 1963 Huff v. Northampton County Board of Education[153] case, the Court held that any award against a county board of education under the Tort Claims Act must come from the negligent act or omission of a bus driver employed by the

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[151]Ibid., p. 531.

[152]Huff v. Northampton County Board of Education, 259 N. C. 75 (1963), p. 79.

[153]Ibid., p. 77.

board of education and not from a negligent act or omission of the board:

> However, as heretofore pointed out, the Tort Claims Act does not authorize a recovery against a county board of education for the negligent act or omissions of its agents, servants and employees except for a claim based upon a negligent act or omission of a driver of a school bus employed by the board from which recovery is sought.[154]

Contributory Negligence

The Tort Claims Act provides no recovery unless the plaintiff claimant can show no contributory negligence. The Court in Huff v. Northampton County Board of Education[155] in 1963 affirmed this legal principle in finding that a student was not free from contributory negligence:

> We think the plaintiff's evidence tends to show that she moved from the rear of the bus immediately before the fight occurred and while the bus was in motion and voluntarily entered into the fight that resulted in her injuries.[156]

In the 1975 Clary v. Alexander County Board of Education[157] case, the Court enlarged on this legal principle of contributory negligence. It held that in considering issues of negligence and contributory negligence, all evidence must be viewed in a light most favorable to the plaintiffs. The Court also found that contributory negligence is an

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[154]Ibid., p. 79.

[155]Ibid., p. 78.

[156]Ibid.

[157]Clary v. Alexander County Board of Education, 286 N. C. 525 (1975), p. 532.

affirmative defense. As a consequence the burden of proof of contributory negligence rests on the defendant.

Summary

The State Board of Education and boards of education enjoy governmental immunity from suit unless immunity is waived. This immunity is a well-established legal principle. Both classes of local administrative units, county and city, have the authority to control and supervise within their respective jurisdictions. As corporate bodies they may sue and be sued; however, as already stated these administrative units have immunity from suit unless it has been waived by state statute or established under the Tort Claims Act. The purchase of liability insurance for damages, death, or injury to person or property by a board of education generally waives governmental immunity from suit. It is also a generally accepted legal principle in North Carolina that public officials carrying out their duties involving discretion and judgment cannot be held personally liable for negligence unless the act or failure to act was corrupt or malicious. However, the employees of units which enjoy governmental immunity may be held individually liable in carrying out prescribed duties. Awards resulting from bus accidents, for example, must come from the negligent act or omission of its agents. In such

cases the Tort Claims Act provides no recovery unless the plaintiff claimant can show no contributory negligence.

Finance

During the years 1871-1970 the Supreme Court of North Carolina decided forty-three finance cases. Of these forty-three cases, the Court affirmed twenty-five lower court decisions, modified and affirmed four, affirmed with no error one, found no error in two, reversed six, reversed and remanded one, found error in two, and found error and remanded two. The forty-three decisions address the following legal principles in public school education: (1) necessary purpose of public schools; (2) tax-levying and bond elections; (3) consolidation and taxation; (4) bond issues, general and uniform system of public education; (5) role of county board of commissioners; (6) role of the board of education; (7) school fund distribution and supplementary tax levies; (8) debt assumption, budget surplus; (9) fines, forfeitures, and other specified sources of funds; (10) racial segregation, and (11) transportation.

Necessary Purpose of Public Schools

The Supreme Court of North Carolina wrestled with the question of whether or not education was a necessary expense in the late nineteenth and the early part of the twentieth centuries. In 1871 the Court faced this question in Lane

v. Stanly.[158] It was the judgment of the Court that then Article VII, Section 4, of the Constitution of North Carolina gave to townships the corporate powers necessary for the purposes of local government. The Court held that the legislature defined "local" when it empowered townships to lay out and alter highways; to establish ferries, bridges, and cartways; to appoint overseers of roads and to allow toll bridges and gates across highways. In addition, local government could provide for a township house. However, no mention of schools or the poor was made. The 1871 Supreme Court alleged:

> We have already seen that public schools are not one of the enumerated subjects over which township trustees have control. But it is insisted that, as education is necessary to good government, they have implied power over it. This would be entitled to much consideration if public schools were not otherwise provided for. They are otherwise provided for.[159]

The court found that the School Law Acts of 1868-1869 provided for school committees in each township to provide for four months schools. These committees, being given corporate status, had responsibility for the management and supervision of the schools according to then Article VII, Section 2, of the Constitution of North Carolina. The County Commissioners had the authority to levy school taxes, keep monies in the treasuries, and disburse monies upon the

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[158]Lane v. Stanly, 65 N. C. 153 (1871), p. 154.

[159]Ibid.

order of the school committee. But the Court emphatically said that neither school committees nor township trustees had taxing power for school purposes.[160] In this decision the General Assembly according to then Article IX, Constitution of North Carolina, was to provide by taxation and otherwise for a general and uniform system of public schools. The Court explained why taxation by school committees and township trustees was prohibited. A general and uniform system " . . . is not to be subject to the caprice of localities, but every locality, yea, every child, is to have the same advantage and be subject to the same rules and regulations."[161] The Court then asked? "But would this be if every township were allowed to have its own regulations and to consult its own caprices?"[162] The Court stated that as a consequence, some townships would then have no schools, some inferior ones, and others extravagant ones. The result would be no uniformity in the purpose of government to provide all citizens with a good education. Nevertheless, Lane says:

> The conclusion is that townships have not the power of taxation for school purposes, either through their trustees or committees. Nor has a county the

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[160]Ibid., p. 155.

[161]Ibid., p. 156.

[162]Ibid.

> power to lay township taxes, as distinguished from the general county tax for school purposes.[163]

The Court had not altered its opinion in 1892 when in the Board of Education of Bladen County v. Board of Commissioners of Bladen County[164] the Court reaffirmed its previous decisions that the county commissioners could not levy a tax beyond limitations imposed by then Article V, Section 1, of the Constitution of North Carolina. Specifically, the Laws of 1885 authorizing commissioners to levy annually a special tax to cover the deficiency in the state levy was unconstitutional since it was not a special tax provided for in then Article V, Section 6, of the Constitution of North Carolina.[165] The Court specifically said that it was important to stand on its previous decisions unless there was error.

However, in 1907 the Court reversed its opinion on the necessity of a local tax for special school purposes. In the case of Collie v. Commissioners of Franklin County[166], the Court expressed the opinion that interpretations change

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[163]Ibid., p. 157.

[164]Board of Education of Bladen County v. Board of Commissioners of Bladen County, 111 N. C. 578 (1892), p. 579.

[165]Ibid.

[166]Collie v. Commissioners of Franklin County, 145 N. C. 170 (1907), pp. 171-173.

as indicated by the actions of the General Assembly. The Court held that such changes of interpretation were important:

> As those cases involve a construction of certain sections of the Constitution relating to a question of taxation and involve no right affecting the life, liberty or property of the citizen, we can see no reason why they should continue to guide us if time and reflection have convinced us that they are not correct interpretations of the letter and spirit of our organic law.[167]

The Court noted that sessions of the General Assembly had tried to make it possible for county commissioners to levy an annual special tax to make up the deficiency when the state tax did not provide for a four months' term in each school district. In the 1907 Collie v. Commissioners of Franklin County[168] case, the Court found that Article V of the Constitution of North Carolina placed limitations on the taxing power of the General Assembly and that maintenance of a four months' school term was a necessary expense utilizing a special tax for such purposes. However, in the opinion of the Court, the limitation did not always prevail and did not prevent the effect of another article of equal importance:

> . . . We must not interpret the Constitution literally, but rather construe it as a whole, for it was adopted as a whole; and we should, if possible give effect to each part of it. The whole is to be

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[167]Ibid., p. 171.

[168]Ibid., p. 173.

> examined with a view to ascertaining the true intention of each part, and to giving effect to the whole instrument and to the intention of the people who adopted it.[169]

By this reasoning, in order to provide for those necessary expenses which are specifically authorized in the Constitution, the limitation does not apply:

> The purpose of our people to establish by taxation a general and uniform system of public schools, wherein tuition shall be free of charge to all children of the State, and that such schools shall be open every year for at least four months, is so plainly manifest in Article IX of the Constitution that we cannot think it possible they ever intended to thwart their clearly expressed purpose by so limiting taxation as to make it impossible to give effect to their directions.[170]

The logic of the Court assumed that many schools could not be kept open for the mandated four months' term without the special levy. This interpretation made possible the enactment of the provisions of the Constitution of North Carolina, recognizing that Article V was not intended to prevent the county commissioners from carrying out their duty to provide at least a four months' school term. The General Assembly left the amount to be levied unspecified but required the county commissioners to observe the equation between property and poll tax fixed in the Constitution of the State.

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[169]Ibid.

[170]Ibid., p. 174.

The Court later addressed other issues related to taxation and necessary expenses. In the 1914 Board of Education v Wake County[171] case, the Court found that school taxes are not included in county funds for the purpose of ordinary county expenses. As a consequence, school monies could not be charged with a proportionate expense of preparing and computing the tax lists of the county: "The Tax for schools is a State tax, and it was not intended that they should contribute to the ordinary expenses of the county."[172] In addition, the Court held in Fuller v. Lockhart[173] that fixed charges including insurance, within provision of the Constitution of North Carolina, met a public and necessary expense. In the 1942 case of Bridges v. City of Charlotte[174], the Court added that contributions to the State Retirement System met the required necessary interpretation since they reflected the reasonable demands of social progress.

Tax Levying and Bond Elections

Many of the cases in finance concerned elections on tax levying authority and bond issues. The Court held in

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[171]Board of Education v. Wake County, 167 N. C. 114 (1914), p. 116.

[172]Ibid.

[173]Fuller v. Lockhart, 209 N. C. 61 (1935), p. 69.

[174]Bridges v. City of Charlotte, 221 N. C. 472 (1942), p. 481.

Younts v. Commissioners of Union County[175] in 1909 that a vote on a special school tax was not invalidated by the fact that a registrar had been absent from the district for two of the twenty days required by law for registration to vote. It further specified that an election is not invalidated when the Board of County Commissioners fix and publish the date of the election and a majority of the voters approve of the levy by voting in the place where all elections were usually held. It was obvious to the Court that all voters knew of the place to vote and had been given fair and full opportunity to vote. In the 1924 Plott v. Board of Commissioners of Haywood County[176] case, the Court reinforced this decision by holding that irregularities of registrations did not invalidate an election since the outcome of the election would have been the same anyway. The Court held in 1912 in Gill v. Board of Commissioners of Wake County[177] that before permitting the people to vote on levying a tax and before forming a special school district, county commissioners must receive a petition signed by one-fourth of the freeholders in the territory. In the 1913 Gregg v. Board of Commissioners of Randolph

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[175]Younts v. Commissioners of Union County, 151 N. C. 582 (1909), p. 586.

[176]Plott v. Board of Commissioners of Haywood County, 187 N. C. 125 (1924), p. 131.

[177]Gill v. Board of Commissioners of Wake County, 160 N. C. 176 (1912), p. 176.

County[178], the Court held that in an election on the issuance of bonds no citizen affected by the election was deprived of the right to vote. This presumption was based on the legality and regularity of acts of public officers. Also, issuance of bonds after a lapse of time following an election did not void the right of issuance since there was no evidence of abuse of power.[179] In another case concerning the validity of a petition for a special election authorizing a school tax levy, the Court in 1916 in Chitty v. Parker[180] held that the one-fourth endorsement of the petition by freeholders was a protection to landowners against taxation voted by a majority of nontaxpayers. Later the Court in Weesner v. Davidson County[181] in 1921 said that the legislature clearly intended that elections for special school tax districts should be held no less than two years after a previous election. Legislative intent could be determined by the caption of the law only if the meaning of the text was unclear. However, it could not control the meaning of the text if it was clear. In the 1922 Miller

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[178]Gregg v. Board of Commissioners of Randolph County, 162 N. C. 479 (1913), p. 484.

[179]Ibid.

[180]Chitty v. Parker, 172 N. C. 126 (1916), p. 129.

[181]Weesner v. Davidson County, 182 N. C. 604 (1921), p. 606.

v. Duke School District No. 1[182] case, the Court reinforced previous decisions that school districts, empowered by the legislature to hold election on specified bond issues, could levy a special tax to provide for the bonds. The proceedings on elections continued when in 1924 the Court (Sparkman v. Board of Commissioners of Gates County[183]) ruled that the voters of a new school district had the right to vote and, thereby, determine a tax levy. Sufficient and substantial compliance with the law validated elections according to the Court in 1924 in Carr v. Little[184] and in 1925 in Board of Education of Yancey County v. Board of Commissioners of Yancey County[185]. In the latter case the Court also held that calling for an election was not a discretionary duty, but a ministerial or mandatory one when undertaken in accordance with state statutes. In 1934 the Court in Forrester v. Town of North Wilkesboro[186] summed

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[182]Miller v. Duke School District No. 1, 184 N. C. 197 (1922), p. 201.

[183]Sparkman v. Board of Commissioners of Gates County, 187 N. C. 241 (1924), p. 247.

[184]Carr v. Little, 188 N. C. 100 (1924), p. 112.

[185]Board of Education of Yancey County v. Board of Commissioners of Yancey County, 189 N. C. 650 (1925), p. 652.

[186]Forrester v. Town of North Wilkesboro, 206 N. C. 347 (1934), p. 352.

up its view that elections are not voided when substantial compliance with the law has been met:

> We see no prejudicial error on the record, but we may say that all elections should be carefully conducted under the law, of course a substantial compliance is all that is required, but public officers cannot be too careful in these matters.[187]

Consolidation and Taxation

In the twentieth century the Court has determined a large number of cases related to consolidation and its congruent taxation. In the 1922 Paschal v. Johnson[188] case the Court did not object to a proposed bond issue since county boards of education were authorized by the General Assembly under special conditions to consolidate local tax districts and special charter districts. Additionally, the Court held that special school tax districts served as quasi-public corporations exercising a governmental function in the administration of the school laws. As a consequence, they were bound by constitutional provisions against contracting for other than necessary purposes except by a vote of the people. Thus, voters must impose upon themselves any tax or tax increase. The resulting obligation accrued to any consolidation district.

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[187]Ibid.

[188]Paschal v. Johnson, 183 N. C. 129 (1922), p. 132.

The Court extended upon this principle in 1922 in Perry v. Cox[189] when it ruled that the combination of a local school tax district with an area not already voting a special tax for the purposes of the schools required a separate vote upon the question of taxation in order to conform with then Article VII, Section 7, Constitution of North Carolina. In this case the Court again emphasized that the courts had a responsibility to harmonize the provisions of different statutes and to give each its appropriate significance. In another consolidation case, the 1922 Court in Board of Education of Buncombe County v. Bray Brothers Company[190] judged that the county board of education at its discretion could ask for an election on consolidation or the formation of a new district. In addition, the board could submit the question of a special tax or the issuance of bonds at the same time as the election on consolidation as long as the provisions of the law were observed. In 1952, the Court still answered questions related to consolidation and the rights of voters. In Gates School District Committee v. Board of Education of Gates County[191], the Court held that the consolidation of

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[189]Perry v. Cox, 183 N. C. 387 (1922), p. 392.

[190]Board of Education of Buncombe County v. Bray Brothers Co., 184 N. C. 484 (1922), pp. 486-487.

[191]Gates School District Committee v. Board of Education of Gates County, 235 N. C. 212 (1952), p. 216.

a non-special school tax district with a special tax district could occur with the approval of voters in the non-special tax district. In such a situation the consolidation had to be for administrative or attendance purposes and not for a supplemental tax.

Bond Issues, General and Uniform System of Public Education

The determination of bond issues faced the Court during the Depression Era. In the 1932 Reeves v. Board of Education of Buncombe County[192] case, the Court ruled that counties could assume special district bond payments as a county-wide obligation instead of levying a tax upon the district wherein the bonds were approved. The specific and special legislative authority for the issuance of bonds and establishment of maturity dates was affirmed by the Court in 1934 in the case of Taylor v. Board of Education of Davidson County.[193] In 1942 the Court in Bridges v. City of Charlotte[194] upheld the County Finance Act, which permitted counties to issue bonds and notes for schoolhouses and the purchase of the land necessary for schools. In addition,

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[192]Reeves v. Board of Education of Buncombe County, 204 N. C. 74 (1933), p. 76.

[193]Taylor v. Board of Education of Davidson County, 206 N. C. 263 (1934), p. 265.

[194]Bridges v. City of Charlotte, 221 N. C. 472 (1942), p. 479.

they could levy taxes to pay the principal and interest on the bonds. In such situations counties were acting not as municipal corporations serving local governmental purposes, but as administrative agencies of the state providing for a state system of public schools as planned by the General Assembly. Counties were prohibited from paying bonds issued under a special act from county funds until that responsibility was assumed by the counties under statute provisions, according to the Court in the 1958 case of Strickland v. Franklin County.[195]

The Court also established some flexibility in the use of funds derived from bond sales. In the 1966 Dilday v. Beaufort County Board of Education[196] case, the Court held that the funds from bonds could be used for purposes comparable to the original purpose for which the bonds were approved if changing conditions necessitated a different use to serve educational needs. The Court specified, though, that such a reallocation could not be excessive, had to be necessary for maintenance of the constitutionally mandated school term, and had to result from a request from the local board of education. Of course, the approval of county commissioners was obligatory for such reallocation.

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[195]Strickland v. Franklin County, 248 N. C. 668 (1958), p. 673.

[196]Dilday v. Beaufort County Board of Education, 267 N. C. 438 (1966), pp. 449-450.

Similarly, in the 1949 Atkins v. McAden[197] case, the Court stated that the board of county commissioners could reallocate proceeds of bonds to different projects only if the change was necessary to carry out the original purpose of the bond issue.

Local boards of county commissioners and education share with the state certain responsibilities for the maintenance of the general and uniform system of public education in North Carolina, but from time to time the Supreme Court of North Carolina has been called upon to clarify the roles of these instrumentalities of government.

Role of County Board of Commissioners

In the 1934 Evans v. Mecklenburg County[198] case, the Court pointed out that the General Assembly directed counties as the administrative units of the state to provide by taxation or otherwise for the constitutionally mandated school term. This provision could be accomplished without submitting the question of bonds to the voters. This case also identified some of the areas considered necessary for the maintenance of the school term, including school sites, buildings, auditorium, shops for a technical school, sewage

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[197]Atkins v. McAden, 229 N. C. 752 (1949), p. 755.

[198]Evans v. Mecklenburg County, 205 N. C. 560 (1934), p. 564.

disposal plants, and toilet facilities.[199] Following this decision in 1933, the Court in 1934 in City of Hickory v. Catawba County[200] held that providing for the maintenance of public schools in the county rested primarily upon the Board of County Commissioners. Such a role was constitutionally mandated, but the manner in which such support was accomplished relied on statutory provisions. At the same time in 1934, the Court also emphasized the role of county commissioners in maintaining the state system of public schools in the case of Taylor v. Board of Education of Davidson County.[201] The decision recognized the often-held Court opinion that a board of county commissioners serves as an administrative agency of the State and can, therefore, issue notes and county bonds to acquire sites, build necessary schoolhouses, and operate the public schools without seeking the approval of the voters. In such circumstances the action of a board of county commissioners must comply with the Constitution of North Carolina. Another case similarly dealt with the role and responsibility of county commissioners. In the 1936

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[199]Ibid., p. 565.

[200]City of Hickory v. Catawba County, 206 N. C. 165 (1934), p. 172.

[201]Taylor v. Board of Education of Davidson County, 206 N. C. 263 (1934), pp. 264-265.

case of Marshburn v. Brown[202], the Court held that county commissioners have the duty to maintain in each school district one or more schools (for a then mandated term of six months) and to provide adequate buildings and equipment. Furthermore, this decision recognized that if the county commissioners fail to do so and the school district must thereby issue bonds to accomplish this requirement, then the board of county commissioners at the request of the county board of education, may assume the indebtedness of the district. In this way, the commissioners carry out the mandate imposed by the Constitution of North Carolina.

Role of the Board of Education

In questions of finance, the Supreme Court has identified the role of local boards of education. In 1930, the Court held in Wilkinson v. Board of Education of Johnston County[203] that the county board of education must determine what changes should occur in its budget provisions if the board of county commissioners does not fund the full request. In this case, as well as in Reeves v. Board of Education of Buncombe County[204] in 1932, the Court pointed out that the courts never interfered with the sound

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[202]Marshburn v. Brown, 210 N. C. 331 (1936), p. 338.

[203]Wilkinson v. Board of Education of Johnston County, 199 N. C. 669 (1930), p. 672.

[204]Reeves v. Board of Education of Buncombe County, 204 N. C. 74 (1933), p. 79.

exercise of board discretion unless manifest abuse of this power is evident. Fuller v. Lockhart[205] in 1935 observed that the local board of education exercised such sound discretion when the board entered into a contract with a mutual fire insurance company to insure its school buildings. The board did not lend its credit in so doing. The Court remarked: "Ordinarily, the Board of Education has discretion in matters of this kind, and usually its action is not reviewable."[206]

The Court has also addressed the county board of education's discretionary power in consolidation, location, and site selection. In Feezor v. Siceloff[207] the Court in 1950 held that in using school bonds, the county board of education in considering such consolidation, location, and site selection could make changes as long as the purpose for which the bonds were issued remained the same. In another case, the Court recognized that city and county boards of education constitute separate and distinct governmental agencies with the responsibility for the control and management of school funds. As a consequence, the Court in Branch v. Board of Education of Robeson County[208] in

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[205]Fuller v. Lockhart, 209 N. C. 61 (1935), p. 67.

[206]Ibid., p. 69.

[207]Feezor v. Siceloff, 232 N. C. 563 (1950), p. 566.

[208]Branch v. Board of Education of Robeson County, 233 N. C. 623 (1951), p. 625.

1951 stated that boards might sue for the protection or recovery of school funds. Interestingly, this case also pointed out that if public officers were derelict in the performance of official duties, then a taxpayer could take action on behalf of the public agency or political subdivision when proper authorities neglected or refused to act[209]. Of course to prevent arbitrary taxpayer litigation, the court explained:

> The law takes cognizance, however, of the disruptive tendency of officious intermeddling by taxpayers in matters committed to the decision of public officers. Consequently, it decrees that a taxpayer cannot bring an action on behalf of a public agency or political subdivision where the proper authorities have not wrongfully neglected or refused to act, after a proper demand to do so, unless the circumstances are such as to indicate affirmatively that such a demand would be unavailing.[210]

In later judgments, the Court further delineated the role of the board of education. In the 1953 Parker v. Anson County[211] case, the Court recognized that a board of education has the authority to operate the schools, to determine building needs, plant facilities, and equipment and by resolution to present the board of county commissioners with this information. Specifically, the

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[209]Ibid.

[210]Ibid.

[211]Parker v. Anson County, 237 N. C. 78 (1953), p. 86.

board of education, and not the board of county commissioners, has the authority to determine whether the county should have one central high school or two high schools. Once the board of county commissioners has determined what funds are necessary, its jurisdiction ends. The authority to execute a plan remains the responsibility of the board of education. Any control over expenditures which the board of county commissioners has cannot be construed to interfere with the exclusive control of the schools vested in a county board of education.[212] The 1966 Dilday v. Beaufort County Board of Education[213] judgment expressed a similar conclusion.

In 1952 the Court in Lamb v. Board of Education of Randolph County[214] spoke to the need for the board of county commissioners and the board of education to cooperate. It held that the board of county commissioners and the board of education should together resolve whether to use funds for a particular named purpose or for some other related purpose. Furthermore, the courts should not review such actions. When funding differences between the board of county commissioners and board of education are unresolvable,

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[212]Ibid., p. 87.

[213]Dilday v. Beaufort County Board of Education, 267 N. C. 438 (1966), p. 448.

[214]Lamb v. Board of Education of Randolph County, 235 N. C. 377 (1952), p. 380.

then the Clerk of Superior Court might be called upon to determine the appropriate funding level. In such cases appealed to Superior Court, the court was limited to a consideration of assigned errors and statute noncompliance. In 1954 in the Board of Education of Onslow County v. Board of County Commissioners of Onslow County[215], the Court held that the record should stand since findings did not show arbitrary abuse of statutory duty.

In the 1942 Bridges v. City of Charlotte[216] case, the court summed up the relationship between the State, boards of county commissioners, and boards of education in this fashion.

> The public school system, including all its units, is under the exclusive control of the State, organized and established as its instrumentality in discharging an obligation which has always been considered direct, primary and inevitable. When functioning within this sphere, the units of the public school system do not exercise derived powers such as are given to a municipality for local government, so general as to require appropriate limitations on their exercise; they express the immediate power of the State, as its agencies for the performance of a special mandatory duty resting upon it under the Constitution, and under its direct delegation.[217]

School Fund Distribution and Supplementary Tax Levies

Other areas in finance which have come before the Court

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[215]Board of Education of Onslow County v. Board of County Commissioners of Onslow County, 240 N. C. 118 (1954), p. 121.

[216]Bridges v. City of Charlotte, 221 N. C. 472 (1942), p. 478.

[217]Ibid.

have considered the distribution of the county school fund and supplementary tax levies.

The Court spoke to the manner in which the county school fund should be distributed. In the 1915 Board of School Commissioners of City of Charlotte v. Board of Education of Mecklenburg County[218], the Court said that the fair method for distributing county school funds to each district was on a per capita basis.

The Court has also addressed the issue of supplementary tax levying to operate schools at a higher standard than that provided for by the State. In one case a special election was called to approve an ad valorem tax to supplement from year to year the fund for school purposes. The funds were not limited to increasing the standard state school term. The Court held in 1934 in the case of Freeman v. City of Charlotte[219] that the funds could be used to supplement any object or item of school expenditure at discretion of the school commissioners. In another case arising in Charlotte, the Court held in 1942 in Bridges v. City of Charlotte[220] that contributions to the State

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[218]Board of School Commissioners of City of Charlotte v. Board of Education of Mecklenburg County, 169 N. C. 196 (1915), p. 198.

[219]Freeman v. City of Charlotte, 206 N. C. 913 (1934), p. 913.

[220]Bridges v. City of Charlotte, 221 N. C. 472 (1942), p. 484.

Retirement Fund were mandatory, did not require submission to popular vote, and were not affected by the maximum tax rate adopted by Charlotte in voting a supplementary tax levy for salaries. In the 1952 Gates School District Committee v. Board of Education of Gates County[221] case, the Court spoke to the question of voter approval of supplementary tax levies:

> A tax of this character cannot be levied in this State unless it has been approved by a majority of the voters who voted in favor of such tax in an election duly held as provided by law in the area in which the tax is to be levied. Consequently, when an area is consolidated with an administrative unit that has voted a supplemental tax and no election has been held in the area added to or consolidated with such administrative unit, then no supplemental tax can be legally levied in any of the consolidated area.[222]

The board of county commissioners also has been given the authority to add or supplement items of expenditures in the current expense fund. Such expenditures might be for additional personnel and/or supplements to salaries of personnel. A tax levy sufficient to provide for these may be established either with or without the approval of voters. The General Assembly has conferred such authority on the board of county commissioners, who cannot act unless the county board of education has proven a need for such

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[221]Gates School District Committee v. Board of Education of Gates County, 235 N. C. 212 (1952), pp. 217-218.

[222]Ibid.

supplements. The Court addressed this issue in 1968 in its decisions in the case of Harris v. Board of Commissioners of Washington County.[223]

Debt Assumption, Budget Surplus

Debt assumption and budget surpluses have also been addressed by the Court. In the 1924 Lovelace v. Pratt[224] case, the Court upheld the legislature's authority to assume and direct counties to pay the indebtedness for schoolhouses used to maintain the state- mandated term. During the Great Depression, the Court ruled that a board of county commissioners could assume the payment of bonds previously issued by school districts for buildings, equipping schoolhouses, and other expenses necessary for the maintenance of schools for the constitutionally mandated term. In 1934 in the case of City of Hickory v. Catawba County[225], the Court further stated that the school district was not required to pay out of its taxable property a debt that was imposed on the county by the Constitution. In 1937 in the case of Mebane Graded School District v. Alamance County[226], the Court held that the County of Alamance had

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[223]Harris v. Board of Commissioners of Washington County, 274 N. C. 343 (1968), p. 355.

[224]Lovelace v. Pratt, 187 N. C. 686 (1924), p. 690.

[225]City of Hickory v. Catawba County, 206 N. C. 165 (1934), p. 172.

[226]Mebane Graded School District v. Alamance County, 211 N. C. 213 (1937), pp. 226-227.

the obligation to assume the school indebtedness for the Mebane School District as the County had done for every other school district in the County. The Court ruled in the case of Johnson v. Marrow[227] in 1947 that securities constituted an unencumbered school sinking fund surplus, such surpluses to be kept by the county treasurer. This case also found that the General Assembly might designate or change the custodian of sinking fund securities or direct expenditure of the surplus school funds provided it was for a school purpose. However, if such a surplus was needed for outstanding and unpaid bonds for which the sinking fund had been created, then the General Assembly could not authorize a diversion. The county retained the right to use any surplus to meet the budget requirements for erection, repair, and equipment of school buildings. The surplus could also be taken into consideration in the preparation of future budgets and tax levies. In addition, in this instance the Court held that the law does not contemplate a surplus. It also restated the view that a board of county commissioners and not a board of education was charged with determining expenditures for the erection, repair, and equipping of school buildings.

In 1917 the Court made a significant ruling on high schools. The Board of Education of Granville County had

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[227]Johnson v. Marrow, 228 N. C. 58 (1947), p. 61.

requested 10 cents on 100 dollars' valuation from the board of county commissioners to maintain the public schools. The commissioners set a rate of 5 cents. The Board of Education instituted proceedings to have a necessary amount fixed. The Superior Court judge ruled that the request for a high school was appropriately eliminated since the high school for which funds were requested was not a part of the public school system. The North Carolina Supreme Court in 1917 upheld this view in Board of Education v. Board of Commissioners of Granville County[228]:

> In reference to the high school in the town of Oxford, on the record as now presented, this item or claim was properly disallowed. That, being in strictness a town or city high school, governed by local authority and accessible only to the school population of the specified district, is not a part of our public school system, within the meaning of our Constitution, and is not entitled to have a special allowance made for it in the yearly estimate of the county board of education.[229]

It should be noted that this decision rested on the fact that no contract for the school had been entered into by the county board of education and approved by the State. However, county high schools were considered a part of the public school system and could receive special allowances. High schools in towns or cities with at least 1,200

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[228]Board of Education v. Board of Commissioners of Granville County, 174 N. C. 469 (1917), p. 471.

[229]Ibid., pp. 473-474.

inhabitants could similarly receive money, but in this case the high school was under no such authorizing contract.

Fines, Forfeitures, Other Specified Sources of Funds

The Court has addressed use of funds from fines, forfeitures, and other specified sources by the schools. In 1954 the Court held in Board of Education of Onslow County v. Board of County Commissioners[230] that the funds accruing from fines, forfeitures, and other specified sources were usually used for maintenance of facilities and fixed charges. However, the Court said that they could be used to supplement any object or item in the current expense budget for which state funds were available.

Racial Segregation

In 1966 the Court spoke forcefully on the issue of racial segregation. The Board of Education and the Board of County Commissioners in Beaufort County attempted to provide their constituents with racially segregated schools since that was the intent when voters approved certain bonds. In the 1966 Dilday v. Beaufort County Board of Education[231] case, however, the Court stated that the provision in the North Carolina Constitution calling for separate public

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[230]Board of Education of Onslow County v. Board of County Commissioners of Onslow County, 240 N. C. 118 (1954), pp. 126-127.

[231]Dilday v. Beaufort County Board of Education, 267 N. C. 438 (1966), p. 451.

schools for the children of the white and colored race had been invalidated by the 1954 Brown v. Board of Education of Topeka. It also pointed out that the Constitution of the United States took precedence over the Constitution of North Carolina. In this decision the Court warned that in order for Beaufort County to get any federal aid for education, it would need to comply with federal law and the specifications of Title VI of the Civil Rights Act of 1964. Parents who believed that their children were being deprived of equal protection under the law could upon written complaint get the Attorney General of the United States to initiate relief in the appropriate United States district court. Chief Justice Sharp summed up what was in the best interest of children:

> Under the decisions of the Supreme Court of the United States and the Acts of Congress, the Board of Education of Beaufort County can no longer legally impose segregation of the races in any school. Therefore, the real question to be resolved by the County Board of Education, the Board of County Commissioners, and the State Board of Education is whether it is in the best interest of the children who live in District III to have a single integrated high school or three integrated high schools. The question whether the schools of Beaufort County will be integrated in the future is no longer open. . . . It behooves defendants to see to it that the citizens understand the exigencies which confront not only defendant Boards but every member of the body politic. Democracy is based upon the premise that the citizenry, if educated and enlightened, will do what is required of it to preserve government by law. The preservation of our form of government, therefore, depends upon an adequate system of public education.[232]

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[232]Ibid., p. 452.

Transportation

In 1971 in Styers v. Phillips[233] the Court was called upon to answer the question of whether the State Board of Education could allocate to counties and cities funds from the General Assembly to transport urban pupils to and from schools located within corporate limits of cities and towns. It found that the State, counties, or cities had no duty to allocate funds for such purpose. The Court found that ". . ..it is quite clear that whether any school board shall operate a bus transportation system is a matter in its sole discretion. . . ."[234] The State Board must adopt safety regulations, give advice to the establishment of school bus routes, and provide counsel on the acquisition and maintenance of buses, and answer other pertinent questions. Furthermore, the State Board is in charge of allocating all funds appropriated by the General Assembly for transportation. However, the General Assembly decision to transport some urban pupils but not others was overturned since the policy violated the Equal Protection Clause of the United States Constitution. The State did not appeal this decision.[235] Styers v. Phillips stated:

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[233]Styers v. Phillips, 277 N. C. 460 (1971), p. 464.

[234]Ibid., p. 465.

[235]Ibid., p. 467.

> The Federal District Court enjoined the State from providing funds for the transportation of any pupils within a municipality unless it provided transportation on an equal basis for all pupils residing within the city and living more than one and one-half miles from the school to which they were assigned.[236]

Summary

In 1871 the Supreme Court of North Carolina ruled peremptorily that neither school committees nor townships had taxing power for school purposes. Thus, the provision for a general and uniform system of public education derived from the action of the General Assembly in statewide application. This view held until 1907, when the Court, recognizing that interpretations change as conditions change, stated that county commissioners could levy a special tax to make up the deficiency when the state tax did not make possible the required four months' term in each school district. After crossing this threshold in taxation, the Court addressed other issues related to it. It has ruled that school taxes are not included in county expenses, that fixed charges including insurance are necessary expenses, and that contributions to the State Retirement System are also necessary expenses within the broadened interpretation of the Constitution of North Carolina.

Tax levying and bond elections concerned the Court over a period of time. It has been called upon to answer sundry questions concerning the validity of tax levies and bond

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[236]Ibid., pp. 467-468.

issues. Most of these decisions answered technical questions regarding substantial compliance with the law.

Similarly, the Court has been called upon to answer questions on consolidation and taxation. As in the tax levying and bond election issues, the Court responded on the basis of constitutional and statute provisions. It did address the legal principles of harmonizing different statutes and discretionary power of boards of education.

During the Depression, the Court was often called upon to rule on the legality of bond issues and their uses. As with other questions on finance, the Court responded with the application of state statutes. In so doing, it considered constitutional provisions, state statutes, the role of the State, boards of county commissioners, and boards of education. It again recognized the discretionary power of boards of education.

In considering school fund distribution and supplementary tax levies, the Court stated that a fair method of distributing the county fund was on a <u>per capita</u> basis. It also held that funds could be used to supplement any object or item of school expenditure.

Debt assumption and budget surpluses were also addressed by the Court, particularly during the Depression years. It responded to these questions with application of the law allowing debt assumption. The Court also suggested

that surpluses should not be contemplated, but when they did occur, they should be applied to the sinking fund or future budgets.

In other actions the Court once held that a town or city high school could not receive financing from the board of county commissioners since it was not a part of the public school system. It also held that funds from fines, forfeitures, and other specified sources could be used to supplement the current expense budget as well as for facilities and fixed charges.

Of particular interest was the firm stand the Court took on racial segregation concerning use of approved bonds. The Court said that citizens should accept the law of the land and get on with what is required to preserve government by law. Transportation questions about providing school buses for some urban students and not others meeting the same qualifications were settled by federal court action and General Assembly action.

Property

During the years 1908-1975 the Supreme Court of North Carolina decided fifteen property cases. Of these the Court affirmed eleven lower court decisions, modified and affirmed two, found no error in one, and dismissed the appeal on one. The sixteen decisions speak to the following legal principles: (1) discretionary power of boards of education, (2) assignment of power to others, (3) lease of and

condemnation of property, (4) other legal issues: the constitutionality of statutes, and board of education hearings and interpretations of statutes.

Discretionary Power of Boards of Education

In considering property litigation, the Supreme Court of North Carolina has persistently held that decisions on property are within the sound discretion of boards of education. The courts will not interfere unless a violation of state law occurs or the manifest abuse of power is evident. In the 1908 Pickler v. Board of Education of Davie County[237] case, the Court addressed the question of discretionary power in considering the division of townships into school districts and the erection and maintenance of school buildings. The Court held that such decisions are left to the judgment of the boards of education unless there is an allegation of misconduct or violation of state statutes.

> There being no allegation of misconduct, their action cannot be supervised nor restrained by the courts unless in violation of some provision of the statutes:[238]

The court has consistently held that the courts will not meddle in site selection by school committees. The Court in 1908 in Venable v. School Committee of Pilot

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[237]Pickler v. Board of Education of Davie County, 149 N. C. 221 (1908), p. 222.

[238]Ibid.

Mountain[239] upheld the consistency of these opinions in a case in which school systems favoring and opposing removal of a school and its location elsewhere were represented. The Court recognized that state statutes permit school committees to act within their own discretion without judicial restraint unless there is evidence of violation of the law, improper motives, or individual midconduct:

> The Court below having found that there was no fraud or collusion, that the change of site was in accordance with the wishes of a majority of the patrons of the school and to the best interests of the school, this Court cannot reverse that judgment or interfere with the removal, unless we could find that, upon the evidence or on the facts found, there was fraud or collusion.[240]

The 1922 case of Davenport v. Board of Education of McDowell County[241] concerned the location of schoolhouses within the school district. In this instance, the Court ruled that the location of schoolhouses and the conduct of school business are matters best left to school authorities:

> The power and authority of the local school boards are adapted to the full and proper performances of the duties imposed upon them, . . . and we should be careful not unduly to restrict these powers, the full

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[239]Venable v. School Committee of Pilot Mountain, 149 N. C. 120 (1908), p. 121.

[240]Ibid., pp. 121-122.

[241]Davenport v. Board of Education of McDowell County, 183 N. C. 570 (1922), p. 576

> exercise of which is so essential to the efficient conduct and management of our public schools.[242]

Davenport v. Board of Education of McDowell County[243] further specified that the Court has no power to reverse the decision of boards of education in property decisions unless there is a violation of law. In such decisions the boards of education exercise their rightful authority under the law.

In the 1924 McInnish v. Board of Education of Hoke County[244] case the Court held that a county board of education should exercise proper discretion in its power and authority. The selection of school sites and the construction of schoolhouses falls within the assigned duties of boards of education in directing and supervising a school system for children. The Court eschews any involvement in these matters unless there is evidence of gross abuse by a board of education.[245]

In a case involving primarily the lighting of school property, the Court elaborated on the activities which fall within the discretionary power of boards of education. The

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[242]Ibid.

[243]Ibid.

[244]McInnish v. Board of Education of Hoke County, 187 N. C. 494 (1924), p. 495.

[245]Ibid.

Court ruled in 1925 in Conrad v. Board of Education of Granville County[246] that a county board of education had the duty to properly light schoolhouses, to equip them with suitable desks for students, to provide tables and chairs for teachers, and generally to maintain the school term required by the Constitution of North Carolina. This case also held that school buildings could be used for the benefit of the people in the community:

> The manner in which, and the means by which a public school building shall be lighted, to the end that the people of the community in which it is located may use and enjoy it, are properly to be determined by the board of education, in the exercise of their discretion, and of course, in good faith.[247]

The Court will not consider or pass upon the wisdom of a contract which boards of education have entered into for the lighting or maintenance of the school term.

In the 1928 Clark v. McQueen[248] case, the Court ruled on the power of a county board of education to discontinue a high school, to establish a new high school in the district or to transfer a high school to an adjoining school district in another county:

> In the absence of statutory limitations upon the power to perform this duty, discretion is vested in said boards to locate, discontinue, transfer and establish

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[246]Conrad v. Board of Education of Granville County, 190 N. C. 389 (1925), p. 396.

[247]Ibid.

[248]Clark v. McQueen, 195 N. C. 714 (1928), p. 716.

> high schools in the districts of their several counties. In the absence of abuse, this discretion cannot be set aside or controlled by the courts.[249]

In 1937 the Court emphasized in Moore v. Board of Education of Iredell County[250] the discretionary power of local boards of education to select the sites for school buildings in school districts. This privilege to choose school sites was also confirmed in 1950 by the Court in Wayne County Board of Education v. Lewis.[251] Once again the Court held that such a decision resided alone in the sound discretion of local officials unless violations of the law or intentional abuse by local authorities could be proven. This discretionary authority flows from state statutes to school officials. To be sure, according to the Court in the Brown v. Candler[252] case in 1953 local boards must consider many factors in using its discretionary power:

> Indeed, it illustrates the necessity for the legislative vesting in the school authorities the discretionary power to determine which one of the various available sites to be used.[253]

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[249]Ibid.

[250]Moore v. Board of Education of Iredell County, 212 N. C. 499 (1937), p. 501.

[251]Wayne County Board of Education v. Lewis, 231 N. C. 661 (1950), p. 663.

[252]Brown v. Candler, 236 N. C. 576 (1953), p. 583.

[253]Ibid.

In 1972 in Lutz v. Gaston County Board of Education[254] the Court applied the "discretionary judgment" precedent to school consolidation. The Court's role is to consider if a county board or State Board of Education complied with the law and did not unreasonably or arbitrarily exercise manifest abuse of discretion. In the 1975 Painter v. Wake County Board of Education[255] case, the Court expressed the same principle:

> In construing these statutes, our Court has consistently held that the Board of Education determines whether new school buildings are needed and, if so, where they shall be located. Such decisions are vested in the sound discretion of the Board. The Board's discretion with reference thereto cannot be restrained by the courts absent a manifest abuse of discretion or a disregard of law.[256]

Assignment of Power to Others

This discretionary authority cannot be assigned by the board to others. In 1937 the Court in Bowles v. Fayetteville Graded Schools[257] held that the board of education could not give to its property committee the "power to act," for this "power to act" resided solely in

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[254]Lutz v. Gaston County Board of Education, 282 N. C. 208 (1972), p. 213.

[255]Painter v. Wake County Board of Education, 288 N. C. 165 (1975), p. 176.

[256]Ibid.

[257]Bowles v. Fayetteville Graded Schools, 211 N. C. 36 (1937), p. 39.

the discretionary authority of the board of education. The motion to give to the property committee this authority

> . . . should not be construed to constitute the valid delegation of power to the chairman of the property committee to execute a contract for the sale of the property in a manner contrary to the method set out in the statute. The Fayetteville Graded Schools cannot in law be bound thereby.[258]

Lease of and Condemnation of Property

In another case involving the acquisition and lease of property, the Court held that it would not prohibit the constitutional conveyance of property. Boney v. Board of Trustees of Kinston Graded Schools[259] in 1948 concerned the buying of private property by school officers and then its conveyance to the City of Kinston. The Court held that the conveyance in a written contract of property to the City of Kinston for an athletic field and playground was a proper school use of property: "Without a doubt, this is a proper public school use, for physical training is a legitimate function of education."[260] In such situations, however, the courts are available to prevent any unconstitutional diversion of board of education property.

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[258]Ibid., pp. 39-40.

[259]Boney v. Board of Trustee of Kinston Graded Schools, 229 N. C. 136 (1948), p. 140.

[260]Ibid.

In another case involving the lease of school property, in 1958 the Court in State v. Cooke[261] held that the Greensboro City Board of Education had the legislative authority to lease property with presumption of its intended and contemplated use. The Greensboro City Board of Education possessing more land than it needed for school purposes, decided to lease the property to a private corporation to be used for public or semipublic purpose as a golf course. The board of education in its conveyance intended and contemplated that the property should be used without unlawful discrimination because of race, color, religion, or other illegal classification. As a subsequent rejoinder, the Court in State v. Cooke[262] prohibited the denial of use to citizens simply because they were Negroes.

The Court has ruled on the taking of land for public school use. In the 1956 Burlington City Board of Education v. Allen[263] case, the Court held that it is a legislative prerogative limited only by organic law to determine the just compensation to be used in acquiring appropriated property and by the procedures for such acquisition:

> In discharging this function in respect to schools, the General Assembly has delegated to the respective local

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[261]State v. Cooke, 248 N. C. 485 (1958), p. 491.

[262]Ibid.

[263]Burlington City Board of Education v. Allen, 243 N. C. 520 (1956), p. 522.

> school administrative units the authority to take land for school sites and other school facilities and has prescribed the procedure therefor.[264]

Boards of education, as administrative agencies of the State, may select school sites. When boards condemn property not obtained by gift or purchase, the boards of education act in an administrative capacity. Since taking property for public school use is a discretionary decision of boards of education, the courts will not intercede only if there is willful abuse of this discretion or an inherently illegal action.[265]

Other Legal Principles: Constitutionality of Statutes, Hearings and Interpretation of Statutes

In considering the lawful purchase, relocation, or transfer of property by school administrative units, the Supreme Court has also emphasized some other legal principles.

A case concerning the exchange of one parcel of property for another for school purposes by boards of education came before the Court in 1975. In Painter v. Wake County Board of Education[266], the Court ruled that the courts must presume the constitutionality of a state

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[264]Ibid.

[265]Ibid., p. 523.

[266]Painter v. Wake County Board of Education, 288 N. C. 165 (1975), p. 177.

statute. The Court will not declare a statute unconstitutional unless it is clearly so, but all reasonable doubt must be resolved in favor of the statute's validity. The Court assumes that the acts of the General Assembly are constitutionally within its legislative power unless analysis appears clearly to the contrary. Similarly, the Court presumes that boards of education act in good faith and in accord with the spirit and purpose of statute. In the 1948 Boney v. Board of Trustees of Kinston Graded Schools[267] case, the Court held that if reasonable doubt on the constitutionality of a legislative enactment remains, then any questions must be resolved in favor of the lawful exercise of power by representatives of the people.

Lutz v. Gaston County Board of Education[268] held that procedures for board hearings on property questions must be reasonable and in full compliance with state laws. The Court also called for giving plain and definite meaning to broad and ambiguous statutes.

Summary

Decisions on property questions are within the sound discretion of boards of education. The Court will not overrule the judgment of a local board unless there is an

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[267]Boney v. Board of Trustees of Kinston Graded Schools, 229 N. C. 136 (1948), p. 141.

[268]Lutz v. Gaston County Board of Education, 282 N. C. 208 (1972), p. 219.

allegation of misconduct or violation of state statutes. This discretionary power which boards of education enjoy cannot be assigned by them to others. In questions concerning decisions on property issues, the courts presume the constitutionality of acts of the General Assembly and state statute. The Supreme Court of North Carolina will not declare a state statute unconstitutional unless it is clearly so. Hearings on property questions must be reasonable, and must comply with state law. Plain and definite meaning must be given to statutes if their language is obtuse or ambiguous.

CHAPTER V

REVIEW OF COURT DECISIONS

Introduction

This chapter presents a review of authoritative or illustrative decisions in the six categories outlined in Chapter One. An overview is presented for each category and specific facts and judicial decisions are given. A conclusionary discussion of each case is given as it pertains to the category to which it is applied. Categories and cases are listed below:

1. Governance

   State v. Thompson (1898)

   Gore v. Columbus County (1950)

2. Employees

   Still v. Lance (1971)

   Faulkner v. New Bern-Craven County Board of Education (1984)

3. Pupils

   Coggins v. Board of Education of the City of Durham (1944)

   Delconte v. State (1985)

4. Torts

   Fields v. Durham City Board of Education (1960)

5. Finance

   Lane v. Stanly (1871)

   Collie v. Commissioners of Franklin County (1907)

6. Property

   Pickler v. Board of Education of Davie County (1908)

   Lutz v. Gaston County Board of Education (1972)

Governance

Overview

Office holding and the discretionary power of boards of education are among the subjects addressed in the study of governance. The Supreme Court of North Carolina has ruled on dual office-holding in the state and the use of discretionary authority by boards of education in selecting school sites in consolidating schools of a district, and with the approval of the State Boards of Education in consolidating school districts. The positive language of the Constitution of North Carolina forbids dual office-holding even though there may be no incompatibility between the two offices. The discretionary power of boards of education must be made in good faith depending upon existing facts and circumstances.

State v. Thompson

122 N.C. 493, 29 S.E. 720 (1898)

Facts

The defendant was elected a county commissioner in

Bladen County and served in that capacity. Later, the defendant was elected to the Board of Education for Bladen County and began to exercise the duties of that office as well. The Attorney General brought action to turn the defendant out of the office of county commissioner. The Superior Court found that the defendant did not automatically forfeit the office of county commissioner by accepting and qualifying as a member of the Board of Education of Bladen County.

Decision

This case came before the Court to determine if two offices can legally be held at the same time. The argument that membership on a board of education did not constitute office-holding in North Carolina was never seriously put forth. The Court held that a reading of the law made it plain that membership in a county board of education was clearly an office.[1] Although common law placed no limit on a citizen's right to hold several offices, the Constitution of North Carolina prohibited such dual office- holding. The question then which had to be answered concerned the forfeit and vacating of the first office on the acceptance of the second. The Court ruled that such was not the case when holding a federal office conflicted with the acceptance of a state office since the state court had no authority over

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[1]State v. Thompson, 122 N. C. 493 (1898), p. 496.

federal offices: "The general rule however, is otherwise in the States. It is the acceptance of the second that vacates the first."[2] The Court further held that acceptance of a second prohibited office must make the first vacant. Although the citizen has the right to determine which office to retain, the choice is made when the citizen accepts and qualifies for the second office. The public has a right to know which decision has been made.[3] In conclusion, the Court stated that the first office was forfeited and left vacant on acceptance of the second office in accordance with the plain and positive language of the Constitution of North Carolina even though there was no incompatibility between offices as required in making such a determination in common law.[4]

Discussion

The Court enforced the constitutional prohibition on dual office-holding. It considered the language of the Constitution of North Carolina and ruled against the defendant.

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[2]Ibid., p. 497.

[3]Ibid.

[4]Ibid., p. 498.

Gore v. Columbus County

232 N.C. 636, 61 S.E. 2d 890 (1950)

Facts

The Board of Commissioners of Columbus County authorized a bond election for the erection, remodeling and enlarging of school buildings, and acquisition of necessary land and equipment. The bonds were approved and the bond order referred to school buildings for white children in specified districts. Prior to the bond election the superintendent of schools in Columbus County publicized a statement specifying the improvements to be made in certain schools. "Proceeds from the bond issue were thereafter allocated for the purpose of making the above improvements."[5] Afterwards, a new superintendent was selected, who promptly requested a survey of the schools to serve as a guide in their development. When the subsequent survey presented a plan contrary to the information shared with voters prior to the bond election, an act of the General Assembly authorized the Board of Commissioners of Columbus County to reallocate a portion of the funds from the bond issue at its discretion to carry out the new plan. Accordingly, the County Board of Education of Columbus County passed a resolution approved by the Board of Commissioners to carry out this purpose. Citizens

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[5]Gore v. Columbus County, 232 N. C. 636 (1950), p. 637.

obtained a temporary injunction forbidding the obligation of funds contrary to the original published allocation. But the Court ultimately dissolved the temporary restraining order.

Decision

The Court held that the county board of education had the authority by statute to consolidate school districts when such action would better serve educational interests. In such matters the Court affirmed that courts will not interfere with exercise of discretion by school authorities in creating or consolidating school districts, or in the selection of school sites.[6] The Court was then faced with the question of whether there was in fact a lawful reallocation of funds. It concluded that such a reallocation based on the relevant facts and circumstances was allowable; moreover it stressed the important tenet that the "General Assembly has no power to authorize local school authorities to exercise an arbitrary discretion, without regard to the existing facts and circumstances involved."[7] Existing facts and circumstances, not pre-existing conditions, had to be considered in the exercise of discretion in good faith.

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[6]Ibid., p. 640.

[7]Ibid.

Discussion

The Court recognized the legal principle of non-interference in discretionary power of boards of education when made in good faith. As a consequence, the Court would not restrain decisions on consolidation, site selection, and funds reallocation necessitated by changing circumstances.

Employees

Overview

Employment decisions by boards of education are the subject for determination by the Supreme Court of North Carolina in the study of employees. In considering teacher dismissal cases, the Court has ruled that boards of education must adhere to contract requirements, statutory provisions, and the "whole record" test. Employment contracts determine the duration or termination of employment, and statutory provisions govern the basis for termination. Likewise, the standard of judicial review requires boards of education to use the "whole record" test in teacher dismissal.

Still v. Lance

279 N.C. 254, 182 S.E. 2d 403 (1971)

Facts

A public school teacher for four years in the Buncombe County Public School System sued for damages and injunctive

relief when the County Board of Education, acting upon the recommendation of the principal and District School Committee, terminated the teacher's contract. On or before the last day of the last academic year of employment the County Board of Education determined that the teacher's contract would not be renewed. In accordance with the law, the superintendent informed the teacher by registered mail, the County Board of Education provided no hearing for the teacher concerning the termination of the contract.

The written contract between the teacher and the County Board of Education was in the prescribed form and did not specify a termination date. It conformed to school law and stated that the teacher would carry out duties required by the laws of North Carolina and the rules and regulations of the County Board of Education. The Board of Education agreed to pay the teacher for services rendered. The contract also specified that the superintendent would assign the teacher to duties.

Yet, the teacher did not receive from the Board of Education, either orally or in writing, any explanation for termination of contract. As a result, the teacher requested in writing from the Chairman of the District Committee the reasons for termination as well as a hearing by the County Board of Education regarding the termination of the contract.

Decision

The contract conformed to school law and contained no provisions on the duration of employment or means of termination. In lieu of other provisions, the contract was terminable at the will of either party notwithstanding the quality of performance by the other party. However, if business usage or other circumstances showed that the employment was to continue through a fixed term, then the contract could not be ended earlier than the conclusion of the fixed term except for cause or by mutual consent.[8]

> The nature of school operations is such that, in the absence of evidence of a contrary intent, a contract for the employment of a school teacher is presumed to be intended by the parties to continue to the end of the school year and not to be terminable by either party prior to that time and without cause and without the consent of the other party.[9]

The Court held that the contract in accordance with the relevant state statute, did not limit to a specific cause or circumstance the employer's right to terminate the employment of a teacher at the conclusion of the year. The Board was not required to file charges against the teacher, to notify the teacher of reasons for termination of employment, or to allow a hearing on the matter. Such omissions were obviously not an oversight in the statute. Thus, the interpretation of the relevant statute supported

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[8]Still v. Lance, 279 N. C. 254 (1971), p. 259.

[9]Ibid.

the County Board of Education's authority to terminate the teacher's employment as it had done.[10] Other considerations of state statute permitting an appeal to a county or city board of education of decisions in relation to school personnel did not apply since the decision was made by the board of education. Also, the action did not affect the teacher's character or right to teach and, thus, the same statute did not allow for an appeal from the board of education to the Superior Court.[11]

In addition, the Court found that neither the Constitution of the United States nor the Constitution of North Carolina forbade the limitation of teacher contracts to a term of one school year. When the teacher entered into the contract, she did not have the absolute right to continued employment until dismissal for cause. Employment continued until it was terminated according to state statute. Hence, the County Board of Education did not violate its contract with the teacher.[12]

The Court further discovered no violation of the Fourteenth Amendment to the Constitution of the United States. One procedure for dismissal of a teacher during

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[10]Ibid., pp. 260-261.

[11]Ibid., p. 261.

[12]Ibid., p. 262.

the school year for cause and another for termination at the end of the school year are allowable.[13] Still v. Lance explained:

> The vast difference in the consequences of these two actions, insofar as the future effect upon the teacher's professional standing and ability to obtain employment is concerned, is ample basis for classification within the limits of the Fourteenth Amendment and of Article I, s 17, of the Constitution of North Carolina.[14]

In summary, the Court held:

> There is nothing in the record before us to suggest that the action of the County Board of Education was designed to restrict the plaintiff in the exercise of any of her constitutional rights, or as a retaliatory measure by reason of her previous exercise of any such right, or for any reason save the bona fide exercise by the board of the discretion vested in it by the statute for the purpose of operating within the county an effective, properly staffed system of public schools. Consequently, the plaintiff has shown no constitutional right to a notice setting forth the board's reasons for terminating her employment at the end of the school year or to a hearing upon this matter.[15]

Discussion

The Court refused to review the discretionary wisdom of a board of education in an employment decision. Authority for school board actions is set forth in the statutes passed by the General Assembly. Consideration of this matter occurred only after the local board of education had established a record, obtained the facts, and made a

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[13]Ibid., p. 263.

[14]Ibid.

[15]Ibid., pp. 264-265.

decision. Contract provisions and intent were reviewed, and the legal principles embodying constitutional rights of employees were considered.

Faulkner v. New Bern-Craven County Board of Education

311 N.C. 42, 316 S.E. 2d 281 (1984)

Facts

A tenured teacher with the New Bern-Craven County Board of Education was suspended. The grounds for dismissal listed by the superintendent included habitual or excessive use of alcohol, failure to fulfill the duties and responsibilities imposed upon teachers by the General Statutes of North Carolina, neglect of duty, immorality, and insubordination. The teacher requested a hearing before a Professional Review Panel, which found the charges as presented had neither truth nor substance. The charges were based on evidence of consuming alcohol on school grounds or in the classroom and being absent from the classroom for extended periods of time without just cause or excuse. Nevertheless, the superintendent recommended dismissal to the Board of Education, which granted a hearing in executive session. After hearing testimony by witnesses for each side and having considered the report of the Professional Review Committee, the Board made the following findings of fact:

1. The teacher had been continuously employed by the school district since 1969 until his suspension in September, 1981;

2. The evaluations for the three preceding years had been marked satisfactory or better;

3. The teacher had been employed as a career teacher for the 1981-1982 school year at H. J. McDonald Middle School in the areas of seventh grade language arts;

4. During the school year, the principal detected the odor of alcohol on the breath of the teacher, informally reprimanded and warned the teacher against any further conduct of this nature, but did not place a formal complaint in the teacher's personnel file;

5. The principal requested a guidance counselor to talk with the teacher about this problem and she did so;

6. On other occasions during the early part of the 1981-1982 school year, another teacher detected alcohol on the breath of the teacher;

7. A parent going to the teacher to obtain assignments for her child detected the odor of alcohol on the teacher's breath;

8. Other complaints were received in writing and verbally by the principal and superintendent concerning the odor of alcohol on the breath of the teacher during the early part of 1981-1982;

9. The principal directed the teacher to meet with the principal concerning the complaints;

10. The teacher ignored or failed to respond to the principal's directive until summoned by the principal for the teacher's response to the complaints;

11. During the 1980-1981 school year the principal had reprimanded the teacher for extended absences from the classroom during the time the teacher was to instruct and supervise students; in return, the teacher admitted this inadequacy and promised to correct it;

12. During the early part of the 1981-1982 school year the teacher was again reprimanded for absences from the classroom, whereupon the teacher admitted to the absences which were without just cause or excuse.

The Board concluded on the findings that the grounds for dismissal were both true and substantial and therefore voted to dismiss the teacher. The Court of Appeals found that findings 1, 2, and 3 were not in dispute; that findings 4, 5, 6, 7, and 8 were supported by the entire record; that finding 9 was partially supported by the record except that the communication from the principal was not a directive requiring a consultation but a notice of the complaints and an invitation to the teacher to discuss the situation, that the entire record did not support finding 10, that finding 11 did not include a reprimand of the teacher for conduct and that the whole record would show that the matter was treated as a principal-teacher conference aimed at correcting the problem, and in view of the whole record test

finding 12 was supported by the evidence. The Court of Appeals ordered reinstatement of the teacher.

Decision

The Supreme Court of North Carolina granted discretionary review of this case and considered the first ground on which the Board voted to dismiss the teacher: habitual and/or excessive use of alcohol. The Court of Appeals set aside the decision of the Board of Education because the ground of habitual and/or excessive use of alcohol was not supported by the evidence and drinking during duty hours had not been established as a ground for dismissal by the General Assembly. The Court reversed this decision of the Court of Appeals, since " . . . the findings of fact and conclusion of the defendant board of education are supported by substantial evidence and based upon a preponderance of the evidence."[16] The Court held that the evidence presented against the career teacher constituted habitual or excessive use of alcohol and therefore provided lawful grounds for dismissal.[17] In so doing, the Court was guided by legal principles: interpretation of statutes according to legislative intent and harmonizing statutes

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[16]Faulkner v. New Bern-Craven County Board of Education, 311 N. C. 42 (1984), p. 56.

[17]Ibid., p. 57.

which relate to the same subject to attain fair and reasonable interpretation.[18]

Discussion

The Court in this instance ruled that any ambiguity in the meaning of statutes relating to the same subject must be harmonized and interpreted according to legislative intent. The judicial standard of the "whole record" was applied.

Pupils

Overview

Regulations for the discipline, government, and management of the schools and pupils as well as compliance with school attendance requirements are among the subjects to consider in the study of laws relating to pupils. The Supreme Court of North Carolina has addressed the issues of regulations which prohibit secret societies at school and violations of the state compulsory attendance laws. Boards of education have the discretionary authority to make these regulations unless the boards act in bad faith or in abuse of power. State statutes do provide alternate ways in which school-age children may comply with the compulsory attendance law; for example, home instruction meets the criteria for recognition by the state as a non-public school. The legislature has yet to define the word school in order to give it any intrinsic meaning.

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[18]Ibid. p. 58.

Coggins v. Board of Education of the City of Durham

223 N.C. 763, 28 S.E. 2d 527 (1944)

Facts

The original plaintiff was a student in the senior high school administered by the defendant board of education, who had adopted a resolution disapproving the membership of students in secret societies and fraternities. A copy of the resolution was mailed to parents. Among other things, the resolution indicated that previous attempts at enlisting parent and student co-operation in opposing such secret societies had failed. After further investigation, the board decided to end school pupil membership in secret societies. As a result, students were asked to sign a pledge that they would not join or attend the meetings of such organizations and would not support financially or participate in any of their activities. Parents were informed that students who did not sign the pledge would be denied participation in school activities. An illustrative, but not exhaustive list was provided. The student plaintiff admitted membership in a fraternity, had not signed the pledge, and feared that such failure would deny the opportunity to play on the football team and to participate in other extracurricular activities. When the lower court ruled in favor of the board of education, the plaintiff appealed.

Decision

The Court ruled that students have a right, though not an absolute right, to attend school. Rules and regulations may be adopted to insure the orderly management of the schools, and attendance at school is subject to these rules and regulations.[19] The public schools come under the control of the General Assembly, which gives to local boards of education the right to make the rules and regulations necessary for an orderly environment.

In Coggins v. Board of Education of City of Durham, the Court ruled:

> This includes the power to make, promulgate, and enforce such rules and regulations as they, in their discretion, deem reasonably necessary for the good management of the schools and the discipline of its pupils.[20]

The Court said that the rule did not deny the plaintiff instruction in the required curriculum or participation in extracurricular activities. The plaintiff student had to make a choice between compliance with the policy and non-compliance and resulting consequences.

On the other hand, the Court held that those disaffected by rules could seek a remedy at the ballot box. To be sure, the courts had the right to review the

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[19]Coggins v. Board of Education of City of Durham, 223 N. C. 763 (1944), p. 767.

[20]Ibid., p. 768.

unreasonableness of such rules but generally did not as long as they were made in good faith and were not clearly arbitrary or unreasonable. The Court further stated that to substitute the opinion of a court or a jury for that of a local board of education would make the board's position precarious in dealing with such questions.[21] In summary, the Court held that the defendant board could regulate secret societies, that it had acted within its lawful authority, that their regulation was not unreasonable and did not constitute unlawful discrimination against the plaintiff, and that no right guaranteed by the Fourteenth Amendment to the Federal Constitution had been infringed upon.[22]

Discussion

In this case the Court unequivocally ruled that local boards of education have the right to make rules for the orderly management of the public schools. The Court will not interfere in the discretionary power of boards of education unless the boards act corruptly, in bad faith, or in abuse of power.

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[21]Ibid., p. 769.

[22]Ibid., pp. 769-770.

Delconte v. State

313 N.C. 384, 329 S.E. 2d 636 (1985)

Facts

The parents moved to North Carolina from New York. Fundamentalist Christians who conducted religious services at home, the parents believed that the Bible obliged them to teach their children at home. With the approval of the local board of education in New York, the parents had taught their own children at home. Thus, in North Carolina, the parents sought from the State Coordinator of the Office of Non-public Education recognition of this home school as a non-public school. The request was denied; Delconte was prosecuted for violating the compulsory school attendance laws. However, the State voluntarily dismissed the criminal charges, and the parents continued to educate their own children at home. Standardized test scores and schoolwork showed that the two children rated average or better academically. Delconte expressed religious and "sociopsychological" objections to the public schools. Delconte believed the children should be taught at home since the parents objected to some teachings in the public schools -- specifically, the teaching of evolution which they felt was contrary to the Bible. "Sociopsychological" objections stemmed from a belief that sending children away from home at an early age signified parental rejection and made them susceptible to the undesirable influence of

teachers and other students by this logic, therefore, the children should not be exposed to the community-at-large.

The trial court recognized the parents' home school as a qualified non-public school. Otherwise, the compulsory school laws would violate religious freedom guaranteed in the First Amendment to the United States Constitution and Article I, section 13 of the Constitution of North Carolina. The Court of Appeals reversed, concluding that the home instruction did not constitute a qualified non-public school, that compulsory attendance laws prohibited home instruction, and that constitutional rights were not violated by such an interpretation.

Decision

The Court held that enrollment in private church schools or qualified non-public schools did indeed meet the State's compulsory attendance requirements. The parents' home instruction met the standards required of non-public schools and the specified characteristic of receiving no funding from the State. The Court also stated that there is nothing intrinsic in the meaning of the word school which precludes home instruction.[23] "We do not agree that the legislature intended simply by use of the word 'school,' because of some intrinsic meaning invariably attached to the

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[23]Delconte v. State,. 313 N. C. 384 (1985), p. 391.

word, to preclude home instruction."[24] Furthermore, the Court held that most of the authorities cited by the State and the Court of Appeals were faulty in not supporting such a conclusion.

In addition, the Court observed that the General Assembly has never specified what a school is:

> The upshot of this historical review is that we find nothing in the evolution of our compulsory attendance laws to support a conclusion that the word "school," when used by the legislature in statutes bearing on compulsory attendance, evidences a legislative purpose to refer to a particular kind of instructional setting. The legislature had historically insisted only that the instructional setting, whatever it may be, meet certain standards which can be objectively determined and which require no subjective or philosophical analysis of what is or is not a "school."[25]

Lastly, the Court in this case held that to interpret the compulsory attendance statutes as forbidding home instruction would raise constitutional questions. Although the Constitution of North Carolina empowers the General Assembly to educate the citizens of the state, any prohibition on home instruction is unclear. Also, Pierce v. Society of Sisters in 1925 and Wisconsin v. Yoder in 1972 indicated that the United States Supreme Court upholds the fundamental right of parents to guide the religious future and education of their children. However, whether or not the United State Supreme Court would apply this concept

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[24]Ibid., p. 392.

[25]Ibid., p. 400.

to home instruction remains unclear.[26] At any rate, these cases raised serious questions about the constitutionality of a state ban on home instruction.

Discussion

The Court upheld the trial court decision which accepted home instruction as a qualified non-public school. In the opinion of the Court, home instruction met standards established by the state, did not conflict with any state definition of a "school" since none had been adopted by the General Assembly, and complied with freedoms guaranteed in state and federal constitutions.

Torts

Overview

Action against boards of education to recover for injury arising out of alleged negligence are among the subjects in the study of torts. The Supreme Court has ruled on the purchase of liability insurance by boards of education and the waiver of immunity authorized by state statute. Boards of education are immune from tort liability unless immunity is waived or unless liability arises out of the State Tort Claims Act.

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[26]Ibid., p. 401.

Fields v. Durham City Board of Education

251 N.C. 699, 111 S.E. 2d 910 (1960)

Facts

An eleven-year-old student in the Durham City School System was injured during school hours. While on the school grounds, the student stepped through a break in an iron grate which was a part of the drainage system. The school system had corporate status, was administering the public schools, and exercised a necessary governmental function. The plaintiff claimed that the injury resulted from the negligence of the Durham City School System. The defendant board asserted that the board had not waived governmental immunity. The plaintiffs appealed.

Decision

The Court held that state law gave county and city boards of education corporate status. This status included the right to sue and to be sued; on the other hand, insisted the Court, this ". . . does not mean that the Legislature has waived immunity from liability for torts for such boards."[27] No liability exists except that which may be established by the Tort Claims Act or unless immunity from tort liability has been waived. Waiver of immunity from liability occurs only to the extent that a board of

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[27]Fields v. Durham City Board of Education, 251 N. C. 699 (1960), p. 700.

education obtains liability insurance to cover negligence or torts. In summary, the Court held:

> It is clear that the Legislature has not waived immunity from tort liability as to county and city boards of education, except as to such liability as may be established under our Tort Claims Act, but has left the waiver of immunity from liability for torts to the respective boards and then only to the extent such board has obtained liability insurance to cover negligence or torts.[28]

Discussion

The Court maintained and clarified the governmental immunity from suit which boards of education enjoy. Exceptions to the waiver of immunity occur only to the extent provided by law or by the purchase of liability insurance to cover negligence or torts.

Finance

Overview

The power of taxation for school purposes is among the subjects in the study of finance. The Supreme Court of North Carolina has ruled on the manner in which a general and uniform system of public schools must be funded. In so doing, the Court reversed a previous decision and permitted county commissioners to levy annually a special tax which made possible the state-mandated school term. The special levy provided taxation to make up the deficiency in state

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[28]Ibid., p. 701.

funding. The Court approved this levy, although such a levy violated constitutional taxing limitations, under the argument that other constitutional requirements for schools had equal weight with constitutional taxing limitations.

Lane v. Stanly

65 N.C. 153 (1871)

Facts

Taxpayers of Craven County brought action against the Board of County Commissioners and tax collector to restrain the collection of certain taxes levied for school purpose in Township No. 3. The Board of Trustees of the township received from the school committee an estimate of expenses necessary to provide for schools in 1870. When a majority of the qualified voters rejected the proposal, the trustees forwarded the estimate to the Board of County Commissioners, who levied a tax on property to pay the expenses for a school in the township. The complaint alleged that the County Commissioners violated Article VII, Section 7, of the Constitution of North Carolina by levying a tax which had not been approved by a majority of the qualified voters and by disregarding the equation of taxation. The defendants argued that they had acted in accordance with the State Constitution as well as the Act of 1868-1869, which had been enacted to carry out its provisions, and therefore did not require voter approval or equation of taxation because the expenses were necessary. The presiding judge dissolved the

temporary injunction which the plaintiff taxpayers had obtained.

Decision

The North Carolina Constitution, Article VII, Section 4, gave townships corporate powers for necessary purposes. In the Act of 1868-1869, the townships received authority to provide for certain expenses by levying a tax, even though no mention was made of schools or the poor.[29] Schools were provided for elsewhere; according to Lane v. Stanly,

> We have already seen that public schools are not one of the enumerated subjects over which township trustees have control. But it is insisted that, as education is necessary to good government, they have implied power over it. This would be entitled to much consideration if public schools were not otherwise provided for. They are otherwise provided for.[30]

The school committee in each township was empowered to establish and maintain one or more schools in each district for four months out of every year. They were made corporations with management responsibility for the schools. The Township Trustees were excluded; otherwise, two bodies would have been given control over the same organization. While school committees retained management responsibility, supervision of the schools was entrusted to the County Commissioners, who could levy a school tax, keep the school fund, and disburse monies on order of school committees.

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[29]Lane v. Stanly, 65 N. C. 153 (1871), p. 154.

[30]Ibid.

Section 25 of the School Act provided that if the township failed to provide for the schools, the County Commissioners, acting on an estimate of expenses could levy a school tax. Meanwhile, the Court ruled that neither the school committee nor the Township Trustees had any taxing power for school purposes. But even the county commissioners did not have complete control over the public schools: "On the contrary, it was considered a matter of such paramount importance that its supervision is reserved to the State itself."[31] Thus, the Constitution of North Carolina, Article IX, made it the responsibility of the General Assembly to provide by taxation and otherwise for a general and uniform system of public schools:

> So it will be seen that the Constitution establishes the public school system, and the General Assembly provided for it, by its own taxing power and by the taxing power of the counties and the State Board of Education, by the aid of school committees, manage it. It will be observed that it is to be a "system," it is to be "general," and it is to be "uniform." It is not to be subject to the caprice of localities, but every locality, yea, every child, is to have the same advantage and be subject to the same rules and regulations.[32]

The Court reasoned that if every township could make its own rules and regulations, then there could be great variance in the education provided. As a consequence, there would be no uniformity whatsoever. Thus, it was up to the

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[31]Ibid., p. 156.

[32]Ibid.

State to take charge of education.[33] In the words of Lane v. Stanly:

> The conclusion is that townships have not the power of taxation for school purposes, either through their trustees or committees. Nor has a county the power to lay township taxes, as distinguished from the general county tax for school purposes. And in laying the county tax for school purposes, the equation of taxation must be observed.[34]

The Court made the injunction permanent.

Discussion

The Court found that funding for a general and uniform system of public schools was primarily a state responsibility. Nothing in the Constitution of North Carolina gave to townships the authority to furnish monies for the public schools as a necessary expense.

Collie v. Commissioners of Franklin County

145 N.C. 170, 59 S.E. 44 (1907)

Facts

Plaintiff taxpayers sought restraint against the Board of Commissioners which had levied one cent per $100 worth of property and three cents on each taxable poll, even though the levy was for the support and maintenance of the public schools in Franklin County. The levy was in addition to and beyond the limit of 66-2/3 cents on $100 worth of property

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[33]Ibid., p. 157.

[34]Ibid.

and $2 on each taxable poll, which was for general state and county purposes.

The presiding judge dissolved the injunction. The plaintiffs appealed.

Decision

The Court held that it was now called upon to disregard previous case precedents on the question of taxation which had been presented previously. The Court found it advantageous to review the previous cases and the precedents established:

> As those cases involve a construction of certain sections of the Constitution relating to a question of taxation, and involve no right affecting the life, liberty or property of the citizen, we can see no reason why they should continue to guide us if time and reflection have convinced us that they are not correct interpretations of the letter and spirit of our organic law.[35]

The Court further established that former decisions should not be so firmly instilled that they prohibit carrying out other provisions of the Constitution of North Carolina which "promote the progress, prosperity and welfare of the people."[36]

Article IX of the North Carolina Constitution recognized that knowledge was necessary for good government and that education should be encouraged. It further

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[35]Collie v. Commissioners of Franklin County, 145 N. C. 170 (1907), p. 171.

[36]Ibid., p. 172.

provided that in order for education to be practicable, one or more public schools had to be maintained for at least four months of the year in each district. In addition, if the commissioners of a county failed to meet this requirement, then they were subject to indictment. The Court found legislative intent for counties to provide such funds when state resources were inadequate.[37] The decision read:

> At every session the General Assembly has endeavored to give effect to this section of the Constitution by providing that, if the tax levied by the State for the support of the public schools is insufficient to enable the commissioners of each county to comply with that section, they shall levy annually a special tax to supply the deficiency, to the end that the public schools may be kept open for four months, as enjoined by the Constitution.[38]

The Court agreed that Article V of the Constitution of North Carolina was a limitation upon the taxing power of the General Assembly. However, this limitation was not intended to deny another article of the Constitution having equal importance.[39] The important broadened view was as follows:

> We must not interpret the Constitution literally, but rather construe it as a whole, for it was adopted as a whole; and we should, if possible, give effect to each part of it. The whole is to be examined with a view to ascertaining the true intention of each part, and to giving effect to the whole instrument and to the intention of the people who adopted it.[40]

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[37]Ibid.

[38]Ibid.

[39]Ibid., p. 173.

[40]Ibid.

The Court held that the taxing limitation was not directed to expenses provided for by the Constitution. Rather, it was intended for legislative creations:

> The purpose of our people to establish by taxation a general and uniform system of public schools, wherein tuition shall be free of charge to all the children of the State, and that such schools should be open every year for at least four months, is so plainly manifest in Article IX of the Constitution that we cannot think it possible they ever intended to thwart their clearly expressed purpose by so limiting taxation as to make it impossible to give effect to their directions.[41]

In addition, the Court held that the rate of tax to be levied for maintaining a four months' term was left to the General Assembly. County Commissioners were in charge of maintaining the equation between property and poll tax. Once the four months' term was provided, any taxation beyond this limit could be considered void.[42]

Discussion

The Court held that different provisions of the Constitution required equal consideration. As a consequence, taxation beyond constitutional limitation was necessary to provide a four months' term for the public schools.

Property

Overview

School board judgments on building schoolhouses, site

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[41]Ibid., p. 174.

[42]Ibid., pp. 176-177.

selection, and school consolidation are among the subjects addressed in the study of property. The Supreme Court of North Carolina has held that the courts will not supervise or restrain boards of education in their decision-making on school property unless there is misconduct or violation of state statutes.

Pickler v. Board of Education of Davie County

149 N.C. 221, 62 S.E. 902 (1908)

Facts

The Board of Education of Davie County had the duty to divide townships into school districts. However, by law no new school could be established within three miles by nearest traveled route of an already existing school in the township. The present school district had been laid off, site bought, and building erected fifty or sixty years previously. Repairs necessitated a decision by the Board of Education concerning the feasibility of moving the site and building to a new school a mile away. A hearing was held, after which the Board of Education decided not to change the site, but to build a new school building on the old site. A temporary restraining order was obtained, another hearing was held, and the order was dissolved.

Decision

The Court held that dividing townships into school districts and the erection and maintenance of school buildings is best left to the judgment of a local board of education. Since there had been no allegation of misconduct or violation of state law by the Davie County Board of Education, the decision of the Board was not subject to supervision or restraint.[43]

Discussion

The Court upheld its often stated legal principle of non-intervention in the discretionary power of local boards of education. Restraint by the courts could not occur unless there was board violation of statutes or misconduct.

Lutz v. Gaston County Board of Education

282 N.C. 208, 192 S.E. 2d 463 (1972)

Facts

The Board of Commissioners of Gaston County authorized a study of the organization, quality of educational program, population and fiscal policies of the Cherryville City Board of Education, the Gaston County Board of Education, and the Gastonia City Board of Education. The recommendations from the study were (1) consolidate three systems into one, (2) establish six comprehensive high schools, including one

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[43]Pickler v. Board of Education of Davie County, 149 N. C. 221 (1908), p. 222.

in the northwest section of Gaston County, and (3) provide adequate financial support for the recommendations. A citizens committee established by the Board of Commissioners to evaluate the feasibility of implementing the conclusions from the study approved, with some exceptions, those recommendations. It also approved adequate funding methods, the holding of an election on the questions of school consolidation, the issuance of bonds for school construction, and the levying of a uniform local supplementary school tax. Accordingly, the General Assembly authorized an election for these purposes.

The voters approved the merger, the school construction bonds, and a uniform supplemental tax. An interim school board was created. As soon as the Division of School Planning of the North Carolina Department of Public Instruction had reviewed the previous study, the interim school board recommended construction of six comprehensive high schools including the one requested for the northwest section of the county. The permanent Gaston County Board of Education reaffirmed previous decisions and appointed a site selection committee for this high school in the northwest area was created. The committee recommended the purchase of certain property, the recommendation was approved by the Gaston County Board of Education, and the Board of Commissioners approved the expenditure of funds to purchase the property. A duly publicized hearing was held

by the Board of Education of Gaston County on the possible closing of Bessemer City Senior High School and Cherryville Senior High School, which would mean the transfer of students to the comprehensive high school in the northwest area of the county. After the hearing, the Board of Education voted for consolidation and merger of these schools into the proposed Northwest Senior High School. The State Board of Education approved this action.

A temporary restraining order was issued enjoining the Board of Education from purchasing any lands for the proposed construction. The Superior Court concluded that (1) the public hearing complied with requirements of state statutes, (2) there was no manifest abuse of discretion by the Gaston County Board of Education, and (3) the proposed expenditure of funds was authorized by law. The temporary restraining order was dissolved and action dismissed. The Supreme Court of North Carolina allowed initial appellate review.

Decision

The Court held that the case revealed long and careful consideration of discontinuing the existing high schools and for consolidating them into a new Northwest Senior High School. Such action contradicted allegations that the Board had failed to make the studies required by statutes.[44] In

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[44]Lutz v. Gaston County Board of Education, 282 N. C. 208 (1972), p. 216.

carrying out its authority to consolidate schools, the Board used its sound discretion which the courts could not restrain without proof of violation of some provision of law or a manifest abuse of authority.[45] In addition, the Court found that the entry of any order of consolidation came after a public hearing and that procedures for the hearing were reasonable and constituted compliance with the law.[46] Bond notices, bond election, and use of bond funds conformed with lawful requirements.[47] Thus, the Gaston County Board of Education used its rightful discretion in determining the expenditure of bond money.[48]

Discussion

The Court supported the discretionary power of boards of education unless there was a violation of law or the manifest abuse of powers. This case also gave the Court cause to clarify meaning in statutes which contain unclear or ambiguous language.

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[45]Ibid., p. 217.

[46]Ibid.

[47]Ibid., p. 219.

[48]Ibid., p. 220.

CHAPTER VI

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

An examination of the history of American public education clearly evinces the authority of the states in the management and operation of their public schools. Based on an analysis and synthesis of the research presented in this study, it is apparent that the state courts -- specifically, the highest state courts as evidenced by the decisions of the Supreme Court of North Carolina -- have played a significant role in defining the State's role in public education. This study provides insight to educators, parents, students, legislators, and the public-at-large in the areas of (1) governance, (2) employees, (3) pupils, (4) torts, (5) finance, and (6) property as they have been adjudged by the Supreme Court of North Carolina.

Summary

The introductory material in Chapter I identified the historical and constitutional fact that education is primarily a function of the states. The power which the federal government has in education is implied from the preamble to and a clause in the Constitution of the United States. The federal government has only those delegated powers in the Constitution of the United States or those

implied powers which expand the role of the federal government. Education per se is not a power delegated to the federal government, but is a power reserved to the states. The states show more similarities than difference in carrying out this function. A framework for understanding this role in North Carolina is the study of court cases which define this function. This particular study is an analysis and synthesis of the cases which have been decided by the state's highest court, the Supreme Court of North Carolina.

Chapter II presents the historical development of the public schools in North Carolina. This systematic account is used to give the reader a background and summary view of the public schools in the state. This study provides a framework for placing the decisions of the Court in the perspective of the historical development of North Carolina's public schools.

This review reveals that North Carolina saw its first public schools created in the first half of the nineteenth century as a result of the work of Archibald D. Murphey, "Father of Public Education in North Carolina." The first common school law was enacted in 1939, but organizational and financial problems slowed the development of a true public school system. In spite of this lag, the common school system in North Carolina was one of the best in the South by the beginning of the Civil War. At the war's

conclusion the common school system collapsed. The Reconstruction North Carolina Constitution of 1868 emphasized the importance of education but little concrete direction was established. In 1871 the Supreme Court of North Carolina refused to approve funding for the public schools as necessary expenditures within the context of the Constitution. As a result, this and subsequent action by the Court stymied local support for the constitutionally mandated school term. It was 1907 before the Court resolved that constitutional provision for a general and uniform system of public schools carried the same weight as the constitutional limitations on taxation. The remainder of the twentieth century provided a renewed interest in public education highlighted by the progressive era of the early twentieth century and the emphasis on education of the 1960's, 1970's, and 1980's.

Chapter III of this study presents an historical report on the Supreme Court of North Carolina. It also provided a review of the literature which has evaluated the proceedings of the Court. North Carolina began as a grant to the eight Lords Proprietors from the King of England. It later became a crown colony. The court system of early North Carolina as a land grant, as a colony, and as a fledgling state of the United States was modeled after the European system in which the court system was dependent upon either the executive or the legislative branch of government. The Constitution of

1868 established the first real constitutional independence of the judiciary. From that time to the present the court system in the state has evolved into Superior Courts, Court of Appeals, and Supreme Court. The Court of Appeals and the Supreme Court represent the appellate process in North Carolina. Capital and life imprisonment cases are appealed directly to the Supreme Court, while other appeals must first go to the Court of Appeals. In some instances, of course, particularly important questions go to the Supreme Court.

In view of the Court's history, one overriding principle emerges: the belief that the courts enforce the law rather than make it through judicial interpretation. Legislation is appropriately made by the General Assembly and not by the Supreme Court, although the justices may state an opinion on the need for legislative change. Literature on the subject of the Supreme Court presents a consistent picture of a Court of estimable reputation. At the same time, historians have pointed out the reactionary period from 1871 to 1907, during which time the Court thwarted local taxing support for the public schools. Nevertheless, the Supreme Court has been praised for its reason and logic as evidenced by the few cases which have been appealed from the State to the United States Supreme Court.

As a guide to educational and legal research, four questions were formulated and listed in Chapter I of this study. Although Chapters II and III provide a perspective and general answers to these questions, most of the answers were found in Chapter IV, which intends to provide a reference for educators, parents, students, legislators, and the public-at-large.

The first question listed in Chapter I is: What are the landmark decisions of the Supreme Court of North Carolina affecting the public schools? The chief Court decisions concerned the financing of the general and uniform system of public schools at the end of the nineteenth century and the beginning of the twentieth century. The history of public schools in North Carolina and evaluative views about this Court support this response. In addition, the degree to which the Court discussed the issue of local financing for the mandated public school term reflected its concern. Furthermore, the reversal of an already established principle about limited taxation had far-reaching implications for the future of public education in North Carolina.

The second question posed in the introductory chapter is: What legal principles affecting the public schools have been established by the decisions of the Supreme Court of North Carolina?

The major principles are grouped and discussed in the following:

I. Power of the State and Its Agencies

The General Assembly may delegate power to agencies of the State and to administrative officers of those agencies. In doing so, the General Assembly must develop standards for the exercise of discretionary judgment. Delegated power is absolute except to the extent that it is limited by the United States Constitution and the North Carolina Constitution. Any agency of the State which has received enumerated powers exercises constitutional authority to act if the General Assembly makes no decision. Special school districts are quasi-public corporations exercising a governmental function in the administration of public school laws. Boards of education are lawful, corporate bodies which may sue and be sued. They may enact necessary rules and regulations to achieve successful management, good order, and discipline in the public schools. The presumption exists that boards of education act in good faith and in accordance with the spirit and purpose of state statutes and existing conditions. Boards of education must judiciously exercise the powers conferred constitutionally. The Court will not substitute its judgment for that of boards of education unless extravagant expenditures, manifest abuse of power, a violation of law, bad faith, corruption by the board, misconduct, or the arbitrary

exercise of discretion can be proved. These boards of education may exercise power only as corporate bodies, only in regular or special meetings with the presence of a quorum, and only with a majority vote of the quorum present. Boards of education enjoy the authority of their predecessors and are the governing authorities to receive the clear proceeds of fines and forfeitures. In the absence of statutes to the contrary, boards of education have the inherent right to contract for transportation. The power conferred cannot be transferred without standards or legislative guidance. Some actions are not discretionary but are ministerial or mandatory if required by state laws.

II. Liability

Boards of education as agencies of the state enjoy the same immunity from suit as the sovereign state. Immunity exists unless it is waived by statute or the Tort Claims Act, and it is not retroactive. However, the purchase of liability insurance by agencies of the state or boards of education removes governmental immunity. Public officials such as members of boards of education are not personally liable for mere negligence in undertaking official discretion and judgment. No liability exists unless the official acts corruptly or maliciously. Employees of boards of education enjoy immunity, but may be personally liable for negligence in carrying out prescribed duties. Contributory negligence may nullify recovery under the tort

law, although the evidence must always be considered in a light most favorable to the injured party.

III. Judicial Interpretation

The Court gives plain and definite meaning to unclear and ambiguous statutes. However, obscure construction which precludes enforcement necessitates a ruling of unconstitutionality. The Court will determine the legislative intent of unclear statutes by the caption of the law only if the contextual meaning of a statute is ambiguous. The Court uses the interpretation which holds law constitutional in accordance with the context of the Constitution and intent of legislators and citizens who ratify constitutional provisions. Interpretations which produce absurd consequences or impossibilities must be avoided. The Court considers specific provisions of the law and the application of the statute governing a particular subject, with the assumption that laws are constitutional unless the judicial interpretation appears clearly contrary. Doubt regarding constitutionality of a statute is usually resolved in favor of the statute's validity. The Court accepts the obligation to harmonize differences in statutes through fair and reasonable interpretation given to each one. Judicial restraint on the discretionary power occurs only after the State or its agencies have established a record upon which the courts may act. The Court does not take a broad view of constitutional interpretation and will

not amend the Constitution through judicial interpretation. Even though precedents are highly regarded, the Court will change its interpretations if it is convinced that the passage of time and appropriate reflection necessitate such a change. In considering the plain and positive language of the Constitution, the Court has ruled against dual office-holding. Similarly, it recognizes that local acts of the legislature prevail over those with statewide application. Moreover, the Court has clearly recognized the superiority of the United States Constitution over the North Carolina Constitution.

IV. Dispute Resolution

Boards of education may enter into contracts because of their corporate status. The Court considers the expressed and implied meanings of the contract in determining enforcement. It will apply a common sense approach and a standard of reasonableness in this enforcement. Hence, standards cannot be gratuitously discriminatory by class or violation of equal protection and due process provisions of the United States Constitution. The Court encourages the use of administrative remedy rather than a judicial one. In administrative hearings the Court expects sound judgment and compliance with the law. However, there is no constitutional right to an administrative hearing prior to personnel dismissal, and the Fourteenth Amendment to the United States Constitution is applicable only if there is

evident violation of a property or liberty issue. The requirements of due process may be met at a hearing before or a reasonable time after discharge. Boards of education may not remove a committeeman capriciously. Removal can occur only after due process notice of proceedings, charges, opportunities for a hearing, and determination following a full and fair hearing. The Court will consider both competent and incompetent evidence placed in a record. Even hearsay is allowable since the rules of evidence do not apply to boards of education hearings on dismissal. Of course, the Court must consider the substantiality of evidence, with the understanding that speculative evidence requires a not guilty determination. In reviewing the board's judgment in dismissal cases, the "whole record" test should be used. The communication between school employees is qualified or conditional if the school system has acted in good faith.

V. Role of Boards of Education

City and county boards of education constitute separate and distinct government agencies having responsibility for the control and management of school funds. They may determine changes in the budget if the boards of county commissioners do not fully fund the request made by boards of education. The control over expenditures which boards of commissioners have may not be construed to interfere with the exclusive control of schools vested in boards of

education. Specifically, school boards determine the number of schools and their operation. The jurisdiction of county commissioners ends once they approve funding; the plan of execution is the responsibility of boards of education. Boards of education cannot transfer their authority to boards of county commissioners or to committees of the boards of education.

VI. Role of Boards of County Commissioners

Boards of county commissioners are administrative units of the State. In undertaking actions imposed upon them, they must comply with the Constitution. By taxation or otherwise, they must provide for the school expenses entrusted to them in regard to the state system of public schools: i.e., erection, repair, and equipping schoolhouses. In levying taxes to pay principal and interest on bonds, counties act as administrative agencies of the State rather than as municipal corporations serving local government purposes. The legislature has the authority to direct counties to assume indebtedness for schoolhouses.

VII. Funding

At one time the Court held that schools were not a necessary expense. Fortunately, this view was reversed in 1907. Boards of education that disagree with the provisions made by boards of county commissioners may appeal decisions

to clerks of Superior Court and from there to Superior Court itself. That court is limited to consideration of assigned errors and findings. Public schools may charge students incidental and instructional fees. However, boards of education must provide a waiver policy and procedures publicized to students and parents.

VIII. Cooperation of Board of County Commissioners and Boards of Education

The Court calls for cooperation between boards of county commissioners and boards of education. The Court has allowed approval for the use of funds approved for one purpose to be used for another comparable purpose provided there is board of education request and subsequent approval by the board of county commissioners.

IX. Welfare of Students

Boards of education may not abdicate their responsibility to act in the best interest of children. Such a requirement is particularly important in determining school assignments for which rules and regulations should be developed. The Court has spoken forcefully against discrimination among the races, although at one time it disagreed with the interpretation placed on the Fourteenth Amendment in relation to the right of the state to determine whether children of different races should be taught in the same or separate public schools. Later, however, the Court

agreed that boards of education could no longer legally impose segregation. Local boards were admonished to get on with what was in the best interests of all the children. The Court also held that schoolhouses exist for the benefit of the citizens.

X. Actions of School Officials

The Court holds the presumption that public officers will act in due respect to the laws. They must demonstrate regularity in the performance of their duties and must provide for substantial compliance with the law.

XI. Attendance in Public Schools

The right to attend schools is not absolute. Boards of education may establish reasonable rules for attendance in public schools, but although the schools do have this inherent right to prescribe compulsory attendance, this attendance need not be in the public schools. In fact, compulsory attendance requirements cannot be applied to a particular instructional setting. Thus, there is no violation of compulsory school law unless there is evidence of unwillingness of parents to send the children under their control to a recognized school at the appropriate ages. In addition, the Court held that home instruction cannot be forbidden on the basis of the compulsory attendance standards. To do so would bring about conflict with the North Carolina Constitution, for home instruction may

constitute a non-public school. As yet, there is nothing so intrinsic about the word school to preclude home instruction.

XII. Religious Objections to Vaccination/Immunization

Juries must decide on a case-by-case basis whether religious teachings justify a position in opposition to vaccination or immunization.

XIII. Condemnation of Property

The legislative prerogative is limited by organic law. It must be used in appropriating property and in developing procedures for acquisition.

XIV. Taxpayer Intervention

Taxpayers may take action on behalf of a public agency or political subdivision when proper authorities neglect or refuse to act.

The third question listed in Chapter I is: How do the decisions of the Supreme Court of North Carolina parallel or give direction to the development of the public schools of the state?

In two areas it is quite clear that the decisions of the Supreme Court of North Carolina parallel the development of the public schools of the state. In regard to pupils, the school assignment cases fall into the period of school

desegregation. In the category of finance, twenty-three percent of the cases fall within the Depression Era. The summary of legal principles given in the answer to the third question clearly shows the direction given by the Court to the development of the public schools of North Carolina.

The fourth question listed in Chapter I is: What are the trends or emerging issues evident in the decisions of the Supreme Court of North Carolina affecting the public schools? Of the 111 cases reviewed for this study, sixty-five, or fifty-eight and one-half percent, were affirmed by the Supreme Court of North Carolina. In all categories except pupils, the Court affirmed a majority of the decisions from lower courts coming before it. The greatest degree of approval of lower court decisions was in the categories of torts and property. Based on the most recent decisions of the Court according to the framework established by the scope of this study, two issues emerge in the categories of employees and pupils: the challenge to the traditional school setting for educating students and the challenge to employee dismissal actions in the state courts. In the former, the Court upheld home instruction and in the latter recognized the judicial standard of the "whole record" test.

Chapter V presents cases which, because of their authoritative or illustrative value, amplify the findings in

Chapter IV. These cases enable a more comprehensive view of the decisions of the Supreme Court of North Carolina.

Conclusions

Coming to specific conclusions from legal research is difficult since differing circumstances affect the determinations which are made. However, based on the analysis of the cases studied and the principles arising from them, the following general conclusions can be made concerning the Supreme Court of North Carolina and the public schools:

1. The Court has considered more questions related to finance than to any other issue. Forty-three (or approximately thirty-nine percent) of the cases studied concern finance. Governance represented the next highest interest, at twenty-one percent;

2. The Court established an approval rate of fifty-eight and one-half percent for the decisions of lower court decisions. Taking into account decisions which were modified or affirmed in part, the approval rate of lower court decisions is even higher;

3. The decisions of the Court on taxation stymied the growth of the public school system for a while and reflected the major involvement of the Supreme Court in the schools;

4. Boards of education exercise discretionary power which the Court will usually not restrain except under very

specific conditions. This concept is the most pervasive legal principle identified;

5. The Court gives meaning to the law and limits its interpretation to the specific reading of the United States Constitution, Constitution of North Carolina, state statutes, and legislative intent. The Court shows no attempt "to make" law. However, it does reverse precedents as changing circumstances and opinions necessitate;

6. Boards of county commissioners and boards of education have prescribed roles in the operation of the public schools. To avoid a board of education conflict of interest, boards of county commissioners must exercise certain specific funding responsibilities. However, the management of the schools is a responsibility clearly residing with boards of education. Because of their mutuality of interest, responsibility, and authority, boards of county commissioners and boards of education should cooperate;

7. In the management of the schools, boards of education must always act in the best interest of students;

8. Boards of education must respond to alternative settings for the compulsory education of children and to questions concerning rights of personnel in employment.

Recommendations

The National Organization on Legal Problems of Education organizes its reporting system into the categories

of (1) governance, (2) employees, (3) pupils, (4) torts, (5) finance, (6) property, (7) bargaining, and (8) higher education. The last two are not appropriate for this study since the State of North Carolina prohibits collective bargaining and since higher education is not considered a part of the public school system.

Recommendation No. 1

One of the first six categories should be selected for a comprehensive analysis of the cases within that area and the judicial interpretations which establish the record and, consequently, the legal principles of the Supreme Court of North Carolina. Thus, the determinative record of the Court will be complete and comprehensive for that particular category of cases. In the absence of a criterion for limiting the scope of the study, such a decision is necessary since there are potentially 399 cases in all six categories. Based on the limitations set forth in this study, 111 cases were chosen to focus on. A more prescribed scope of study would make possible a more precise developmental record of Court decisions.

Recommendation No. 2

The second recommendation calls for the analysis of the cases which have gone from the Supreme Court of North Carolina to the United States Supreme Court. Such an extension of the study would provide the elaborative and evaluative judgment provided by the nation's highest court.

It would also establish the legal principles which have nationwide application.

Recommendation No. 3

Another means for providing evaluation of the decisions of the North Carolina Supreme Court is the comparison of selected cases in the six categories of the study with decisions determined by other states' highest courts. It has been established herein that the decisions of the state courts have more similarities than differences. As a result, a comparison would reveal the degree to which the decisions of the Supreme Court of North Carolina have comparability with other states, the category representing preponderance of decisions, and the degree of support for lower court decisions. Such a study must be based on the categories established by the National Organization on Legal Problems of Education and by the category assignment of cases in the various legal reporting systems. These requirements are necessary to provide a comparison basis.

Concluding Statement

The study of the decisions of the Supreme Court of North Carolina helps to identify and clarify the function of the State in carrying out its constitutional responsibility for education. It is an important and critical role in developing the foundation of school law upon which the public schools operate.

BIBLIOGRAPHY

A. PRIMARY SOURCES

1. Public Documents

N. C. Constitution. Art. IX, sec. 1.

N. C. Constitution. Art. IX, sec. 2, cl. 1.

N. C. State Board of Education. The Basic Education Program for North Carolina's Public Schools. Revised January 1986.

Preamble. U. S. Constitution.

U. S. Constitution. Art. I, sec. 8, cl. 1.

U. S. Constitution. Amend. X.

2. Federal Court Cases

United States v. Butler, 297 U. S. 1 (1936).

United States v. Davis, 301 U. S. 619 (1937).

3. North Carolina Court Cases

Application for Reassignment of Pupils, 247 N. C. 413, 101 S. E. 2d 359 (1958).

Atkins v. McAden, 229 N. C. 752, 51 S. E. 2d 484 (1949).

Barnes v. Board of Commissioners of Davidson County, 184 N. C. 325, 114 S. E. 398 (1922).

Blue v. Board of Trustees of Vass Graded School District, 187 N. C. 431, 122 S.E. 19 (1924).

Board of Education of Bladen County v. Board of Commissioners of Bladen County, 111 N. C. 578, 16 S.E. 621 (1892).

Board of Education of Buncombe County v. Bray Brothers Company, 184 N. C. 484, 115 S.E. 47 (1922).

Board of Education of Duplin County v. State Board of Education, 114 N. C. 313, 19 S.E. 277 (1894).

Board of Education of Guilford County v. City of High Point, 213 N. C. 636, 197 S.E. 191 (1938).

Board of Education of McDowell County v. Burgin, 206 N. C. 421, 174 S.E. 286 (1934).

Board of Education of Onslow County v. Board of County Commissioners of Onslow County, 240 N. C. 118, 81 S.E. 2d 256 (1954).

Board of Education of Yancey County v. Board of Commissioners of Yancey County, 189 N. C. 650, 127 S.E. 692 (1925).

Board of Education v. Board of Commissioners of Granville County, 174 N. C. 469, 93 S.E. 1001 (1917).

Board of Education v. Wake County, 167 N. C. 114, 83 S.E. 257 (1914).

Board of School Commissioners of City of Charlotte v. Board of Education of Mecklenburg County, 169 N. C. 196, 85 S.E. 138 (1915).

Boney v. Board of Trustees of Kinston Graded Schools, 229 N. C. 136, 48 S.E. 2d 56 (1948).

Bowles v. Fayetteville Graded Schools, 211 N. C. 36, 188 S.E. 615 (1937).

Branch v. Board of Education of Robeson County, 233 N. C. 623, 65 S.E. 2d 124 (1951).

Bridges v. City of Charlotte, 221 N. C. 472, 20 S.E. 2d (1942).

Brown v. Candler, 236 N. C. 576, 73 S.E. 2d 550 (1953).

Burlington City Board of Education v. Allen, 243 N. C. 520, 91 S.E. 2d 180 (1956).

Carr v. Little, 188 N. C. 100, 123 S.E. 625 (1924).

Chitty v. Parker, 172 N. C. 126, 90 S.E. 17 (1916).

City of Hickory v. Catawba County, 206 N. C. 165, 173 S.E. 56 (1934).

Clark v. McQueen, 195 N. C. 714, 143 S.E. 528 (1928).

Clary v. Alexander County Board of Education, 286 N. C. 525, 212 S.E. 2d 160 (1975).

Coggins v. Board of Education of City of Durham, 223 N. C. 763, 28 S.E. 2d 527 (1944).

Collie v. Commissioners of Franklin County, 145 N. C. 170, 59 S.E. 44 (1907).

Conrad v. Board of Education of Granville County, 190 N. C. 389, 130 S.E. 53 (1925).

Constantian v. Anson County, 244 N. C. 221, 93 S.E. 2d 163 (1956).

Davenport v. Board of Education of McDowell County, 183 N. C. 570, 112 S.E. 246 (1922).

Delconte v. State, 313 N. C. 384, 329 S.E. 2d 636 (1985).

Dilday v. Beaufort County Board of Education, 267 N. C. 438, 148 S.E. 2d 513 (1966).

Edwards v. Board of Education of Yancey County, 235 N. C. 345, 70 S.E. 2d 170 (1952).

Eller v. Board of Education of Buncombe County, 242 N. C. 584, 89 S.E. 2d 144 (1955).

Elliott v. Gardner, 203 N. C. 749, 166 S.E. 918 (1932).

Evans v. Mecklenburg County, 205 N. C. 560, 172 S.E. 323 (1934).

Faulkner v. New Bern-Craven County Board of Education, 311 N.C. 42, 316 S.E. 2d 281 (1984).

Feezor v. Siceloff, 232 N. C. 563, 61 S.E. 2d 714 (1950).

Fields v. Durham City Board of Education, 251 N. C. 699, 111 S.E. 2d 910 (1960).

Forrester v. Town of North Wilkesboro, 206 N. C. 347, 174 S.E. 112 (1934).

Frazier v. Board of Commissioners of Guilford County, 194 N. C. 49, 138 S.E. 433 (1927).

Freeman v. City of Charlotte, 206 N. C. 913, 174 S.E. 453 (1934).

Fuller v. Lockhart, 209 N. C. 61, 182 S.E. 733 (1935).

Gates School District Committee v. Board of Education of Gates County, 235 N. C. 212, 69 S.E. 2d 529 (1952).

Gates School District Committee v. Board of Education of Gates County, 236 N. C. 216, 72 S.E. 2d 429 (1952).

Gill v. Board of Commissioners of Wake County, 160 N. C. 176, 76 S.E. 203, 43 L.R.A. (N.S.) 293 (1912).

Gore v. Columbus County, 232 N. C. 636, 61 S.E. 2d 890 (1950).

Gregg v. Board of Commissioners of Randolph County, 162 N. C. 479, 78 S.E. 301 (1913).

Guthrie v. Taylor, 279 N. C. 703, 185 S.E. 2d 193 (1971).

Harris v. Board of Commissioners of Washington County, 274 N. C. 343, 163 S.E. 2d 387 (1968).

Harris v. Board of Education of Vance, 216 N. C. 147, 4 S.E. 2d 328 (1939).

Hobbs v. Moore County, 267 N. C. 665, 149 S.E. 2d 1 (1966).

Hooker v. Town of Greenville, 130 N. C. 472, 42 S.E. 141 (1902).

Huff v. Northampton County Board of Education, 259 N. C. 75, 130 S.E. 2d 26 (1963).

Hughey v. Cloninger, 297 N. C. 86, 253 S.E. 2d 898 (1979).

In re Hayes, 261 N. C. 616, 135 S.E. 2d 645 (1964).

In re Varner, 266 N. C. 409, 146 S.E. 2d 401 (1966).

Iredell County Board of Education v. Dickson, 235 N. C. 359, 70 S.E. 2d 14 (1952).

Johnson v. Marrow, 228 N. C. 58, 445 S.E. 2d 468 (1947).

Jones v. Board of Education of Robeson County, 187 N. C. 557, 122 S.E. 290 (1924).

Joyner v. McDowell County Board of Education, 244 N. C. 164, 92 S.E. 2d 795 (1956).

Key v. Board of Education of Granville County, 170 N. C. 123, 86 S.E. 1002 (1915).

Kirby v. Board of Education, 230 N. C. 619, 55 S.E. 2d 322 (1949).

Kistler v. Board of Education of Randolph County, 233 N. C. 400, 64 S.E. 2d 403 (1951).

Kreeger v. Drummond, 235 N. C. 8, 68 S.E. 2d 800 (1952).

Lacy v. Fidelity Bank of Durham, 183 N. C. 373, 111 S.E. 612 (1922).

Lamb v. Board of Education of Randolph County, 235 N. C. 377, 70 S.E. 2d 201 (1952).

Lane v. Stanley, 65 N. C. 153 (1871).

Lovelace v. Pratt, 187 N. C. 686, 122 S.E. 661 (1924).

Lutz v. Gaston County Board of Education, 282 N. C. 208, 192 S.E. 2d 463 (1972).

Marshburn v. Brown, 210 N. C. 331, 186 S.E. 265 (1936).

Mebane Graded School District v. Alamance County, 211 N. C. 213, 189 S.E. 873 (1937).

Miller v. Duke School District No. 1, 184 N. C. 197, 113 S.E. 786 (1922).

Moore v. Board of Education of Iredell County, 212 N. C. 499, 193 S.E. 732 (1937).

McInnish v. Board of Education of Hoke County, 187 N. C. 494, 122 S.E. 182 (1924).

McLaughlin v. Beasley, 250 N. C. 221, 108 S.E. 2d 226 1959).

Overton v. Goldsboro City Board of Education, 304 N. C. 312, 283 S.E. 2d 495 (1981).

Painter v. Wake County Board of Education, 288 N. C. 165, 217 S.E. 2d 650 (1975).

Parker v. Anson County, 237 N. C. 78, 74 S.E. 2d 338 (1953).

Paschal v. Johnson, 183 N. C. 129, 110 S.E. 841 (1922).

Perry v. Cox, 183 N. C. 387, 112 S.E. 6 (1922).

Pickler v. Board of Education of Davie County, 149 N. C. 221, 62 S.E. 902 (1908).

Plott v. Board of Commissioners of Haywood County, 187 N. C. 125, 121 S.E. 190 (1924).

Presnell v. Pell, 298 N. C. 715, 260 S.E. 2d 611 (1979).

Reeves v. Board of Education of Buncombe County, 204 N. C. 74, 167 S.E. 454 (1933).

Russ v. Board of Education of Brunswick County, 232 N. C. 128, 59 S.E. 2d 589 (1950).

Smith v. Hefner, 235 N. C. 1, 68 S.E. 2d 783 (1952).

Sneed v. Greensboro City Board of Education, 299 N. C. 609, 264 S.E. 2d 106 (1980).

Sparkman v. Board of Commissioners of Gates County, 187 N. C. 241, 121 S.E. 531 (1924).

Spruill v. Davenport, 178 N. C. 364, 100 S.E. 527 (1919).

State ex rel. Atkins v. Fortner, 236 N. C. 264, 72 S.E. 2d 594 (1952).

State ex rel. North Carolina Utilities Commission v. McKinnon, 254 N. C. 1, 118 S.E. 2d 134 (1961).

State v. Cooke, 248 N. C. 485, 103 S.E. 2d 846 (1958).

State v. Johnson, 188 N. C. 591, 125 S.E. 183 (1924).

State v. Lewis, 194 N. C. 620, 140 S.E. 434 (1927).

State v. Miday, 263 N. C. 747, 140 S.E. 2d 325 (1965).

State v. Thompson, 122 N. C. 493, 29 S.E. 720 (1898).

State v. Vietto, 297 N. C. 8, 252 S.E. 2d 732 (1979).

Still v. Lance, 279 N. C. 254, 182 S.E. 2d 403 (1971).

Strickland v. Franklin County, 248 N. C. 668, 104 S.E. 2d 852 (1958).

Styers v. Phillips, 277 N. C. 460, 178 S.E. 2d 583 (1971).

Taylor v. Board of Education of Davidson County, 206 N. C. 263, 173 S.E. 608 (1934).

Taylor v. Crisp, 286 N. C. 488, 212 S.E. 2d 381 (1975).

Thompson v. Wake County Board of Education, 292 N. C. 406, 233 S.E. 2d 538 (1977).

Turner v. Gastonia City Board of Education, 250 N. C. 456, 109 S.E. 2d 211 (1959).

Vann v. Board of Commissioners of Sampson County, 185 N. C. 168, 116 S.E. 421 (1923)..

Venable v. School Committee of Pilot Mountain, 149 N. C. 120, 62 S.E. 902 (1908).

Wayne County Board of Education v. Lewis, 231 N. C. 661, 58 S.E. 2d 725 (1950).

Weesner v. Davidson County, 182 N. C. 604, 109 S.E. 863 (1921).

Wilkinson v. Board of Education of Johnston County, 199 N. C. 669, 155 S.E. 562 (1930).

Younts v. Commissioners of Union County, 151 N. C. 582, 66 S.E. 575 (1909).

4. North Carolina General Statutes

95-98 (1975).

5. Addresses

Aydlett, Edwin F. "Address." Centennial Celebration of the Supreme Court of North Carolina 1819-1919. Raleigh, N. C.: Mitchell Printing Company, 1919.

Battle, Kemp P. "Address on the History of the Supreme Court." North Carolina Reports, February 1889, pp. 445-446.

Clark, Walter. "Address." Centennial Celebration of the Supreme Court of North Carolina 1819-1919. Raleigh, N. C.: Mitchell Printing Company, 1919.

B. SECONDARY SOURCES

1. Books

Ashe, Samuel A'Court. History of North Carolina. Volume II. From 1783 to 1925. Spartanburg, S. C.: The Reprint Company, 1971.

Bolmeier, Edward C. The School in the Legal Structure. 2nd ed. Cincinnati, OH: The W. H. Anderson Company, 1973.

Cheney, John L., Jr., ed. North Carolina Government 1581-1979. A Narative and Statistical History. Raleigh, N. C.: N. C. Department of the Secretary of State, 1981.

Cheney, John L., North Carolina Manual 1983-1984. "The Judicial Branch." Raleigh, N. C.: N. C. Department of the Secretary of State, n.d.

Garber, Lee O., and Newton Edwards. The Public School in Our Governmental Structure. 2nd ed. Danville, Ill.: The Interstate Printers and Publishers, Inc., 1970.

Henderson, Archibald. North Carolina: The Old North State and the New. Chicago, IL.: The Lewis Publishing Company, 1941.

Hobbs, S. Huntington, Jr. North Carolina: An Economic and Social Profile. Chapel Hill, N. C.: The University of North Carolina Press, 1958.

Hobbs, S. Huntington, Jr., North Carolina, Economic and Social. Chapel Hill, N. C.: The University of North Carolina Press, 1930.

Klein, Fannie J. Federal and State Court Systems - A Guide. Cambridge, Mass.: Ballinger Publishing Company, 1977.

Knight, Edgar W. Public School Education in North Carolina. Boston: Houghton Mifflin Company, 1916.

Konkle, Burton Alva. John Motley Morehead and The Development of North Carolina 1796 - 1866. Spartanburg, S. C.: The Reprint Company, 1971.

Leary, Helen F. M. and Maurice Stirewalt, eds. North Carolina Research: Genealogy and Local History. Raleigh, N. C.: The North Carolina Genealogical Society, 1980.

Lefler, Hugh T. History of North Carolina. Volume II. New York: Lewis Historical Publishing Company, Inc., 1956.

Lefler, Hugh T., ed. North Carolina History Told by Contemporaries. Chapel Hill, N. C.: The University of North Carolina Press, 1965.

Lefler, Hugh T.and Albert Ray Newsome. North Carolina: The History of a Southern State. Revised ed. Chapel Hill, N. C.: The University of North Carolina Press, 1963.

Lefler, Hugh T. and Albert Ray Newsome. The History of a Southern State. 3rd ed. Chapel Hill, N. C.: The University of North Carolina Press, 1973.

Legislative Debating Research Fund of Columbia University. Constitutions of the United States National and State. Dobbs Ferry, N. Y.: Oceana Publications, Inc., July 1985.

Noble, M. C. S. History of the Public Schools of North Carolina. Chapel Hill, N. C.: The University of North Carolina Press, 1930.

Reutter, E. Edmund, Jr. Schools and the Law. 4th ed. Edited by Irvin J. Sloan. Dobbs Ferry, N. Y.: Oceana Publications, Inc., 1980.

Reutter, E. Edmund, Jr., The Supreme Court's Impact on Public Education. Phi Delta Kappa and National Organization on Legal Problems of Education, 1982.

Reutter, E. Edmund, Jr. and Robert R. Hamilton. The Law of Public Education. Mineola, N. Y.: The Foundation Press, Inc., Third Reprint, 1972.

Sanders, John L. "A Brief History of the Constitutions of North Carolina." In North Carolina Government 1585-1979, pp. 65-523. Edited by John L. Cheney, Jr. Raleigh, N. C.: Department of the Secretary of State, n.d.

Smith, Michael R. Law and the North Carolina Teacher. Danville, Ill.: The Interstate Printers and Publishers, Inc., 1975.

Strahan, Richard D. The Courts and the Schools. Lincoln, Neb.: Professional Educators Publications, Inc., 1973.

Valente, William D. Law in the Schools. Columbus, Oh.: Charles E. Merrill Publishing Co., 1980.

Wager, Paul W. North Carolina: The State and Its Government. N. Y.: Oxford Book Company, 1947.

2. Periodicals

Boyd, William K. "The Literary Fund in North Carolina." North Carolina Education, February 1936. pp. 203-204, p. 284.

Browne, T. E. "Vocational Education in the State." North Carolina Education, February 1936, pp. 222-223.

Clark, Walter. "The Supreme Court of North Carolina. I." The Green Bag, October 1892, pp. 458-474.

Clark, Walter. "The Supreme Court of North Carolina. II." The Green Bag, November 1892, pp. 521-540.

Clark, Walter. "The Supreme Court of North Carolina. III." The Green Bag, Devember 1892, pp. 569-591.

Coon, Charles L. "School Support and Our North Carolina Courts 1868-1926." The North Carolina Historical Review, July 1926, pp. 3-42.

Credle, W. F. "Schoolhouses During the Century." North Carolina Education, February 1936, pp. 208-210, 268-271.

Douglas, Mary P. "The Growth of Our School Libraries." North Carolina Education, February 1936, pp. 233, 206, 266.

Erwin, Clyde A. "A State Supported School System." North Carolina Education, February 1936, pp. 234-236, 264, 268.

Erwin, Clyde A. "The Growth of Public Education." North Carolina Education, February 1936, pp. 216-217, 276-277, 286.

Gaddy, Claude F. "School Transportation." North Carolina Education, February 1936, pp. 231-232, 262-263.

Highsmith, J. Henry, "Secondary Education in North Carolina." North Carolina Education, February 1936, pp. 220-221, 278-279.

Hillman, James E. "One Hundred Years of the Curriculum." North Carolina Education, February 1936, pp. 218-219, 258.

Hillman, James E. "Teacher Certification." North Carolina Education, February 1936, pp. 206-207, 266-267, 280-281.

Hillman, James E. "The History of Teacher Training." North Carolina Education, February 1936, pp. 224-226, 275.

Honeycutt, Allison W. "Textbook Development." North Carolina Education, February 1936, pp. 227, 229, 261, 274-275.

Knight, Edgar W. "One Hundred Years of Public Education." North Carolina Education, February 1936, pp. 195-199, 284.

Lawrence, R. C. "Schools of a Former Day." The State. May 27, 1939, pp. 7, 10.

Newbold, N. C. "The Development of Negro Education." North Carolina Education, February 1936, pp. 215, 286-289.

Orth, John V. "The Role of the Judiciary in Making Public Policy." N. C. Insight, April 1981, pp. 12-15.

Phillips, G. B. "The Development of the Graded Schools." North Carolina Education, February 1936, pp. 211-212, 290.

Proctor, A. M. "The Equalization of School Support." North Carolina Education, February 1936, pp. 241, 265, 285.

Smith, B. L. "The Academy - the Forerunner of the Public School." North Carolina Education, February 1936, pp. 200-201.

3. Reports

Chapter from the Report of the Commissioner of Education for 1896-97. "Chapter XXIX. Beginnings of the Common School System in the South." By Stephen B. Weeks. Washington, D. C.: Government Printing Office, 1898.

Biennial Report of the Superintendent of Public Instruction of North Carolina. For the Scholastic Years 1928-1929 and 1929-1930. State Superintendent of Public Instruction. Raleigh, N. C.

Biennial Report of the Superintendent of Public Instruction of North Carolina. For the Scholastic Years 1930-1931 and 1931-1932. State Superintendent of Public Instruction. Raleigh, N. C.

Biennial Report of the Superintendent of Public Instruction of North Carolina. For the Scholastic Years 1932-1933 and 1933-34. State Superintendent of Public Instruction. Raleigh, N. C.

Biennial Report of the Superintendent of Public Instruction of North Carolina. For the Scholastic Years 1933-1934 and 1935-1936. State Superintendent of Public Instruction. Raleigh, N. C.

Biennial Report of the Superintendent of Public Instruction of North Carolina. For the Scholastic Years 1938-1939 and 1939-1940. State Superintendent of Public Instruction. Raleigh, N. C.

Biennial Report of the Superintendent of Public Instruction of North Carolina. For the Scholastic Years 1950-1951 and 1951-1952. State Superintendent of Public Instruction. Raleigh, N. C.

Report of the North Carolina State Constitution Study Commission to the North Carolina State Bar and the North Carolina Bar Association. "A Brief History of the Constitution of North Carolina." Raleigh, N. C. 1968.

4. Pamphlets

Denny, Emery B. "History of the Supreme Court of North Carolina: From January 1, 1919 until January 1, 1969." Pamphlets 1022. Duke University Law Library. 20 pp. (Mimeographed.)

Murray, Edward. "Work of the North Carolina Supreme Court." Pamphlets 267. Duke University Law Library. pp. 1-5. (Mimeographed.)

"Through the Years: A History of Public Schools in North Carolina." State Department (N. C.) of Public Instruction. January 1983. (Printed.)

5. Yearbooks

Piele, Philip K. ed. The Yearbook of School Law 1984. Topeka, Kan.: National Organization on Legal Problems of Education, 1985.

6. Dictionaries

Black, Henry Campbell, Black's Law Dictionary. 4th ed. St. Paul, Minn.: West Publishing Company, 1951.

Gove, Philip B. editor-in-chief. Webster's Third New International Dictionary of the English Language Unabridged. Springfield, Mass.: G & C Merriam Company, 1971.

7. Legal Research Aids

Kavas, Igor I. and Bruce A. Christensen. Guide to North Carolina Legal Research. Buffalo, N. Y.: William S. Hein and Co., Inc., 1973.

North Carolina Digest 1778 to Date. Vol. 16 Charlottesville, Va.: The Michie Company, 1937.

Strong's North Carolina Index. 3d. Rochester, N. Y.: The Lawyers Co-Operative Publishing Co., 1978.

West's South Eastern Digest. 2d. St. Paul, Minn.: West Publishing Co., 1982.

8. Unpublished Material

Quinton, Wayne. "A Summary and Analysis of North Carolina Court Decisions Relating to Professional School Personnel and Public School Pupils." Ph. D. dissertation, Duke University, 1968.

9. Other Secondary Sources

Angela Davis, "N. C. Integration: 20 Years of Change." File on the Public Schools of North Carolina Newspaper Clipping without Masthead, n.d. Instructional Materials Library, Division of Instructional Services, State Department of Public Instruction. Raleigh, N. C.

"Career Plan." Chalk Talk. Raleigh, N. C. North Carolina Association of Education., Inc., n.d.

N. C. State Board of Education. Public School Laws of North Carolina. Charlottesville, Va.: The Michie Company, 1986.

APPENDIX A

Constitutional Provisions on Education

CONSTITUTION OF NORTH CAROLINA OF 1776

41. That a school or schools shall be established by the legislature, for the convenient instruction of youth, with such salaries to the masters, paid by the public, as may enable them to instruct at low prices; and, all useful learning shall be duly encouraged and promoted in one or more universities.

CONSTITUTION OF NORTH CAROLINA OF 1868

Article I

Declaration of Rights

Section 27. The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

Article V

Revenue and Taxation

Section 2. The proceeds of the State and County capitation tax shall be applied to the purposes of education and the support of the poor, but in no one year shall more than twenty-five per cent, thereof, be appropriated to the latter purpose.

Article VII

Municipal Corporations

Section 2. It shall be the duty of the Commissioners to exercise a general supervision and control of the penal and charitable institutions, schools, roads, bridges, levying of taxes and finances of the county, as may be prescribed by law. The Register of Deeds shall be ex officio, Clerk of the Board of Commissioners.

Section 5. . . . In every township there shall also be biennially elected a School Committee consisting of three persons whose duties shall be prescribed by law.

Article IX

Education

Section 1. Religion, morality, and knowledge being necessary to good government and happiness of mankind, schools, and the means of education, shall forever be encouraged.

Section 2. The General Assembly at its first session under this Constitution, shall provide by taxation and otherwise for a general and uniform system of Public Schools, wherein tuition shall be free of charge to all the children of the State between the ages of six and twenty-one years.

Section 3. Each County of the State shall be divided into a convenient number of Districts, in which one or more

Public Schools shall be maintained, at least four months in every year; and if the Commissioners of any County shall fail to comply with the aforesaid requirement of this section, they shall be liable to indictment.

Section 4. The proceeds of all lands that have been, or hereafter may be, granted by the United States to this State and not otherwise specially appropriated by the United States or heretofore by this State; also all monies, stocks, bonds, and other property now belonging to any fund for purposes of Education; also the net proceeds that may accrue to the State from sales of estrays or from fines, penalties and forfeitures; also the proceeds of all sales of the swamp lands belonging to the State; also all money that shall be paid as an equivalent for exemptions from military duty; also, all grants, gifts or devises that may hereafter be made to this State, and not otherwise appropriated by the grant, gift or devise, shall be securely invested and sacredly preserved as an irreducible educational fund, the annual income of which, together with so much of the ordinary revenue of the State as may be necessary, shall be faithfully appropriated for establishing and perfecting, in this State, a system of Free Public Schools, and for no other purposes or uses whatsoever.

Section 5. The University of North Carolina with its lands, emoluments and franchises, is under the Control of

the State, and shall be held to an inseparable connection with the Free Public School System of the State.

Section 7. The Governor, Lieutenant-Governor, Secretary of State, Treasurer, Auditor, Superintendent of Public Works, Superintendent of Public Instruction and Attorney General, shall constitute a State Board of Education.

Section 8. The Governor shall be President, and the Superintendent of Public Instruction shall be Secretary, of the Board of Education.

Section 9. The Board of Education shall succeed to all the powers and trusts of the President and directors of the Literary Fund of North Carolina, and shall have full power to legislate and make all needful rules and regulations in relation to Free Public Schools, and the Educational fund of the State; but all acts, rules and regulations of said Board may be altered, amended, or repealed by the General Assembly, and when so altered, amended or repealed by the General Assembly, and when so altered, amended or repealed they shall not be reenacted by the Board.

Section 10. The first session of the Board of Education shall be held at the Capital of the State, within fifteen days after the organization of the State Government under this Constitution; the time of future meetings may be determined by the Board.

Section 11. A majority of the Board shall constitute a quorum for the transaction of business.

Section 12. The contingent expenses of the Board shall be provided for by the General Assembly.

Section 17. The General Assembly is hereby empowered to enact that every child of sufficient mental and physical ability, shall attend the Public Schools during the period between the ages of six and eighteen years, for a term of not less than sixteen months, unless educated by other months.

Amendments of 1875

XXVI. AN ORDINANCE TO AMEND SECTION TWO, ARTICLE NINE, OF THE CONSTITUTION.

The people of North Carolina in Convention assembled do ordain, That section two of the ninth article of the Constitution, be amended by adding the following words:

And the children of the white race and the children of the colored race shall be taught in separate public schools, but there shall be no discrimination made in favor of, or to the prejudice of, either race.

XXVII. AN ORDINANCE TO AMEND ARTICLE NINE OF THE CONSTITUTION, PROVIDING FOR THE PRESERVATION AND INVESTMENT OF THE PUBLIC SCHOOL FUND.

The people of North Carolina in Convention assembled do ordain, That section four of article nine of the

Constitution be stricken out, and two new sections be inserted in said article in lieu thereof, as follows:

Section _. The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; also, all moneys, stocks bonds and other property now belonging to any State fund for purposes of education; also the net proceeds of all sales off the swamp lands belonging to the State, and all other grants, gifts or devises that have been or hereafter may be made to this State and not otherwise appropriated by the State or by the term of the grant, gift or devise, shall be paid into the State treasury; and, together with so much of the ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining in this State a system of free public schools, and for no other uses or purposes whatsoever.

Section _. All moneys, stocks, bonds and other property belonging to a county school fund; also, the net proceeds from the sale of estrays; also, the clear proceeds of all penalties and forfeitures, and of all fines collected in the several counties for any branch of the penal or military laws of the State; and all moneys which shall be paid by persons as an equivalent for exemption from military duty, shall belong to and remain in the several counties, and shall be faithfully appropriated for establishing and

maintaining free public schools in the several counties of the State: Provided, That the amount collected in each county shall be annually reported to the Superintendent of Public Instruction.

Amendment of 1915

AN ACT TO AMEND THE CONSTITUTION OF THE STATE OF NORTH CAROLINA.

The General Assembly of North Carolina do enact:

I. By adding at the end of Article II a new section, to wit:

Section 29. The General Assembly shall not pass any local, private or special act or resolution: . . .

Erecting new townships, or changing township lines, or establishing or changing the lines of school districts; . . .

Amendments of 1917

II. AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA SO AS TO INSURE A SIX MONTHS SCHOOL TERM.

The General Assembly of North Carolina do enact:

Section 1. That section three, article nine of the Constitution of North Carolina be and the same is hereby amended by striking out there from the words "four months" and inserting in lieu thereof the words "six months."

Amendments of 1941

I. AN ACT TO AMEND THE CONSTITUTION PROVIDING FOR THE ORGANIZATION OF THE STATE BOARD OF EDUCATION AND THE POWER AND DUTIES OF THE SAME.

The General Assembly of North Carolina do enact:

Section 1. That Article IX, Sections eight and nine, of the Constitution of North Carolina be amended by substituting for the said sections the following:

Section 8. State Board of Education. The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, shall, from and after the first day of April, one thousand nine hundred and forty-three, be vested in a State Board of Education to consist of the Lieutenant Governor, State Treasurer, the Superintendent of Public Instruction, and one member from each Congressional District to be appointed by the Governor. The State Superintendent of Public Instruction shall have general supervision of the public schools and shall be secretary of the board. There shall be a comptroller appointed by the Board, subject to the approval of the Governor as director of the Budget who shall serve at the will of the board and who, under the direction of the board, shall have supervision and management of the fiscal affairs of the board. The appointive members of the State Board of Education shall be subject to confirmation by the General Assembly in joint

session. A majority of the members of said board shall be persons of training and experience in business and finance, who shall not be connected with the teaching profession or any educational administration of the State. The first appointments under this section shall be members from odd numbered Districts for four years and, thereafter, all appointments shall be made for a term of four years. All appointments to fill vacancies shall be made by the Governor for the unexpired term, which appointments shall not be subject to confirmation. The board shall elect a chairman and a vice-chairman. A majority of the board shall constitute a quorum for the transaction of business. The per diem and expenses of the appointive members of the board shall be provided by the General Assembly.

Section 2. That Article IX, Sections ten, eleven, twelve and thirteen, of the Constitution of North Carolina, be amended by substituting thereof one section, to be designated as Section nine, which shall be as follows:

Section 9. Powers and Duties of the Board. The State Board of Education shall succeed to all the powers and trusts of the President and Directors of the Literary Fund of North Carolina and the State Board of Education as heretofore constituted. The State Board of Education shall have power to divide the State into a convenient number of school districts; to regulate the grade, salary and qualifications of teachers; to provide for the selection and

adoption of the text books to be used in the public schools; to apportion and equalize the public school funds over the State; and generally to supervise and administer the free public school system of the State and make all needful rules and regulations in relation thereto. All the powers enumerated in this section shall be exercised in conformity with this Constitution and subject to such laws as may be enacted from time to time by the General Assembly.

Section 3. That Sections fourteen and fifteen of Article IX of the Constitution of North Carolina shall be changed to Sections ten and eleven of Article IX of the Constitution of North Carolina.

Amendments of 1943

III. AN ACT TO AMEND THE CONSTITUTION PROVIDING FOR THE ORGANIZATION OF THE STATE BOARD OF EDUCATION.

The General Assembly of North Carolina do enact:

Section 1. Article IX, Section eight, of the Constitution of North Carolina is hereby amended by substituting for the said section the following:

Section 8. State Board of Education. The general supervision and administration of the free public school system, and of the educational funds provided for the support thereof, except those mentioned in Section five of this Article, shall, from and after the first day of April one thousand nine hundred and forty-five, be vested in the State Board of Education to consist of the Lieutenant

Governor, State Treasurer, the Superintendent of Public Instruction, and ten members to be appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts, which may be altered from time to time by the General Assembly. Of the appointive members of the State Board of Education, one shall be appointed from each of the eight educational districts, and two shall be appointed as members at large. The first appointments under this section shall be: Two members appointed from educational districts for terms of two years; two members appointed from educational districts for terms of four years; two members appointed from educational districts for terms of six years; and two members appointed from educational districts for terms of eight years. One member at large shall be appointed for a period of four years and one member at large shall be appointed for a period of eight years. All subsequent appointments shall be for terms of eight years. Any appointments to fill vacancies shall be made by the Governor for the unexpired term, which appointments shall not be subject to confirmation. The State Superintendent of Public Instruction shall be the administrative head of the public school system and shall be secretary to the board. The board shall elect a chairman and vice-chairman. A majority of the board shall constitute a quorum for the transactions

of business. The per diem and expenses of the appointive members shall be provided by the General Assembly.

Amendment of 1956

AN ACT TO AMEND ARTICLE IX OF THE CONSTITUTION OF NORTH CAROLINA SO AS TO AUTHORIZE EDUCATION EXPENSE GRANTS AND TO AUTHORIZE LOCAL OPTION TO SUSPEND OPERATION OF PUBLIC SCHOOLS.

The General Assembly of North Carolina do enact:

Section 1. Article IX of the Constitution of North Carolina is hereby amended by adding a Section 12 which shall read as follows:

S12. Education expense grants and local option. Notwithstanding any other provision of this Constitution, the General Assembly may provide for payment of education expense grants from any State or local public funds for the private education of any child for whom no public school is available or for private education of a child who is assigned against the wishes of his parents, or the person having control of such child, to a public school attended by a child of another race. A grant shall be available only for education in a nonsectarian school, and in the case of a child assigned to a public school attended by a child of another race, a grant shall, in addition, be available only when it is not reasonable and practicable to reassign such child to a public school not attended by a child of another race.

Notwithstanding any other provision of this Constitution, the General Assembly may provide for a uniform system of local option whereby any local option unit, as defined by the General Assembly, may choose by a majority vote of the qualified voters in the unit who vote on the question to suspend or to authorize the suspension of the operation of one or more or all of the public schools in that unit.

No action taken pursuant to the authority of this Section shall in any manner affect the obligation of the State or any political subdivision or agency thereof with respect to any indebtedness heretofore or hereafter created.

CONSTITUTION OF NORTH CAROLINA OF 1971

Article I

Declaration of Rights

Section 15. Education. The people have a right to the privilege of education and it is the duty of the State to guard and maintain that right.

Article V

Finance

Section 1. Capitation tax.

(2) Proceeds. The proceeds of the State and county capitation tax shall be applied to the purposes of education and the support of the poor, but in no one fiscal year shall

more than 25 per cent thereof be appropriated to the latter purpose.

Article IX

Education

Section 1. Education encouraged. Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

Section 2. Uniform system of schools.

(1) General and uniform system; term. The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

(2) Local responsibility. The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility or public education may use local revenues to add to or supplement any public school or post-secondary school program.

Section 3. School attendance. The General Assembly shall provide that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means.

Section 4. State Board of Education.

(1) Board. The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of eight years. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

(2) Superintendent of Public Instruction. The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education.

Section 5. Powers and duties of Board. The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

Section 6. State school fund. The proceeds of all lands that have been or hereafter may be granted by the

United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, and devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

Section 7. County school fund. All moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

Amendments of 1969

(To The 1971 Constitution)

V. AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA TO REVISE ARTICLE V CONCERNING STATE AND LOCAL FINANCE.

The General Assembly of North Carolina do enact:

Section 1. The Constitution of North Carolina, as revised and amended by a revision and amendment submitted to the qualified voters by An Act to Revise and Amend the Constitution of North Carolina, H.B. 231, enacted as Chapter 1258 of the Session Laws of 1969, is amended as follows:

(a) Article V is rewritten to read as follows:

Article V

Finance

Section 1. No capitation tax to be levied. No poll or capitation tax shall be levied by the General Assembly or by any county, city or town, or other taxing unit.

APPENDIX B

Constitution Provisions on the Supreme Court

CONSTITUTION OF NORTH CAROLINA OF 1776

A Declaration of Rights

A Declaration of Rights, made by the Representatives of the Freeman of the State of North Carolina.

4. That the legislative, executive and supreme judicial powers of government, ought to be forever separate and distinct from each other.

THE CONSTITUTION

13. That the general assembly shall, by joint ballot of both houses, appoint judges of the supreme courts of law and equity, judges of admiralty and attorney-general, who shall be commissioned by the governor, and hold their offices during good behavior.

9. That no judge of the supreme court of law or equity, or judge of admiralty, shall have a seat in the senate, house of commons, or council of state.

Amendments of 1835

Article III

Section 1. The governor, judges of the supreme court, and judges of the superior courts, and all other officers of this State (except justices of the peace and militia

officers), may be impeached for willfully violating any article of the constitution, maladministration, or corruption.

Section 2. Any judge of the supreme court, or of the superior courts, may be removed from office for mental or physical inability, upon a concurrent resolution of two-thirds of both branches of the general assembly. The judge, against whom the legislature may be about to proceed, shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either branch of the general assembly shall act thereon.

The salaries of the judges of the supreme court, or of the superior courts, shall not be diminished during their continuance in office.

CONSTITUTION OF NORTH CAROLINA OF 1868

Article I

Declaration of Rights

Section 8. The legislative, executive, and supreme judicial powers of the government ought to be forever separate and distinct from each other.

Section 35. All courts shall be open, and every person for an injury done him in his lands, goods, person, or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay.

Article IX

Judicial Department

Section 4. The Judicial power of the State shall be vested in a court for the trial of impeachments, a Supreme Court, Superior Courts, Courts of Justices of the Peace, and Special Courts.

Section 8. The Supreme Court shall consist of a Chief Justice and four Associate Justices.

Section 9. There shall be two terms of the Supreme Court held at the seat of Government of the State in each year, commencing on the first Monday in January, and first Monday in June, and continuing as long as the public interest may require.

Section 10. The Supreme Court shall have jurisdiction to review, upon appeal, any decision of the courts below, upon any matter of law or legal inference; but no issue of fact shall be tried before this court: and the court shall have power to issue any remedial writs necessary, to give it a general supervision and control of the inferior courts.

Section 11. The Supreme Court shall have original jurisdiction to hear claims against the State, but its decision shall be merely recommendatory: no process in the nature of execution, shall issue thereon; they shall be reported to the next session of the General Assembly for its action.

Section 23. The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article; but the salaries of the Judges shall not be diminished during their continuance in office.

Section 26. The Justices of the Supreme Court shall be elected by the qualified voters of the State, as is provided for the election of members of the General Assembly. They shall hold their offices for eight years. The judges of the Superior Courts shall be elected in like manner, and shall hold their offices for eight years; but the Judges of the Superior Courts elected at the first election under this Constitution, shall after their election, under the superintendance of the Justices of the Supreme Court be divided by lot into two equal classes, one of which shall hold office for four years, the other for eight years.

Section 31. All vacancies occurring in the offices provided for by this article of this Constitution, shall be filled by the appointment of the Governor, unless otherwise provided for, and the appointees shall hold their places until the next regular election.

Amendments of 1875

XI. AN ORDINANCE TO AMEND SECTION FOUR, ARTICLE FOUR, OF THE CONSTITUTION.

The people of North Carolina in Convention assembled do ordain, That section four, article four, of the Constitution be amended so as to read as follows:

The Judicial power of the State shall be vested in a Court for the trial of Impeachments, a Supreme Court, Superior Courts, Courts of Justices of the Peace, and such other Courts inferior to the Supreme Court as may be established by law.

XII. AN ORDINANCE TO AMEND SECTION EIGHT, ARTICLE FOUR OF THE CONSTITUTION.

The people of North Carolina in Convention assembled do ordain, That section eight, of article four, of the Constitution be amended so as to read as follows:

The Supreme Court shall consist of a Chief Justice and two Associate Justices.

XIII. AN ORDINANCE TO AMEND SECTION NINE, ARTICLE FOUR OF THE CONSTITUTION.

The people of North Carolina in Convention assembled do ordain, That section nine, of article four, of the Constitution of North Carolina be abrogated, and the following substituted thereof:

The terms of the Supreme Court shall be held in the city of Raleigh, as now, until otherwise provided by the General Assembly.

XIV. AN ORDINANCE TO AMEND ARTICLE FOUR, SECTION TEN, OF THE CONSTITUTION OF NORTH CAROLINA.

The people of North Carolina in Convention assembled do ordain, That article four, section ten, of the Constitution, be amended to read as follows:

And the jurisdiction of said Court over "issues of fact" and "questions of fact," shall be the same exercised by it before the adoption of the Constitution of one thousand eight hundred and sixty eight, and the Court shall have the power to issue any remedial writs necessary to give it a general supervision and control over the proceedings of the inferior Courts.

XVIII. AN ORDINANCE TO AMEND ARTICLE FOUR OF THE CONSTITUTION, BY STRIKING OUT SECTIONS TWENTY-SIX AND TWENTY-SEVEN, AND INSERTING ANOTHER IN LIEU THEREOF.

The people of North Carolina in Convention assembled do ordain, That sections twenty-six and twenty-seven, article four of the Constitution be stricken out, and insert the following:

The Justices of the Supreme Court shall be elected by the qualified voters of the State, as is provided for the election of members of the General Assembly. They shall hold their offices for eight years.

The Judges of the Superior Courts, elected at the first election under this amendment, shall be elected in like manner as is provided for Justices of the Supreme Court, and shall hold their offices for eight years. The General Assembly may, from time to time, provide by law that the Judges of the Superior Courts, chosen at succeeding elections, instead of being elected by the voters of the

whole State, as in herein provided for, shall be elected by the voters of their respective districts.

XIX. AN ORDINANCE TO AMEND SECTION THIRTY-ONE, ARTICLE FOUR, OF THE CONSTITUTION.

The people of North Carolina in Convention assembled do ordain, That section thirty-one, article four of the Constitution of this State, be stricken out and the following inserted in its stead, to wit:

All vacancies occurring in the offices provided for by this article of the Constitution shall be filled by the appointments of the Governor, unless otherwise provided for, and the appointees shall hold their places until the next regular election for members of the General Assembly, when elections shall be held to fill such offices. If any person, elected or appointed to any of said offices, shall neglect and fail to qualify, such office shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of said offices shall hold until their successors are qualified.

XXII. ORDINANCE TO ADD TWO SECTIONS TO ARTICLE FOUR OF THE CONSTITUTION OF NORTH CAROLINA.

The people of North Carolina in Convention assembled do ordain, That the following sections be added to article four of the Constitution:

Section _. Any judge of the Supreme Court of the Superior Courts, and the presiding officers of such Courts

inferior to the Supreme Court as may be established by law, may be removed from office for mental or physical inability upon a concurrent resolution of two-thirds of both houses of the General Assembly. The judge or presiding officer, against whom the General Assembly may be about to proceed, shall receive notice thereof, at least twenty days before the day on which either House of the General Assembly shall act thereon.

Amendment of 1887

The General Assembly of North Carolina do enact:

Section 1. That article four of the constitution of the state be amended as follows: In section six strike out the word "two" and insert instead thereof the word "four."

Amendments of 1935

II. AN ACT TO AMEND SECTION SIX OF ARTICLE FOUR OF THE CONSTITUTION OF NORTH CAROLINA RELATING TO THE SUPREME COURT, AND TO AMEND SECTION FIVE OF ARTICLE FIVE OF THE CONSTITUTION OF NORTH CAROLINA AUTHORIZING THE GENERAL ASSEMBLY TO PASS LAWS EXEMPTING FROM TAXATION NOT EXCEEDING ONE THOUSAND DOLLARS ($1,000.00) IN VALUE OF PROPERTY HELD AND USED AS PLACE OF RESIDENCE OF THE OWNER.

The General Assembly of North Carolina do enact:

Section 1. That section six of article four of the Constitution of North Carolina be stricken out and the following inserted in lieu thereof:

Supreme Court. The Supreme Court shall consist of a Chief Justice and four Associate Justices. The General Assembly may increase the number of Associate Justices to not more than six when the work of the Court so requires. The Court shall have power to sit in divisions, when in its judgment this is necessary for the proper dispatch of business, and to make rules for the distribution of business between the divisions and for the hearing of cases by the full Court. No decision of any division shall become the judgment of the court unless concurred in by a majority of all the justices; and no case involving a construction of the Constitution of the State or of the United States shall be decided except by the Court in banc. All sessions of the Court shall be held in the City of Raleigh. This amendment made to the Constitution of North Carolina shall not have the effect to vacate any office now existing under the Constitution of the State, and filled or held by virtue of any election or appointment under the said Constitution, and the laws of the State made in pursuance thereof.

Amendments of 1953

I. AN ACT TO AMEND ARTICLE IV, SECTION 6, OF THE CONSTITUTION OF NORTH CAROLINA RELATING TO THE RETIREMENT OF MEMBERS OF THE SUPREME COURT AND THE RECALL OF RETIRED MEMBERS TO SERVE ON SAID COURT IN LIEU OF ANY ACTIVE MEMBER WHO FOR ANY CAUSE IS TEMPORARILY INCAPACITATED.

The General Assembly of North Carolina do enact:

Section 1. Article IV, Section 6, of the Constitution of North Carolina be, and the same is hereby, amended by adding at the end of said Section 6 the following:

The General Assembly is vested with authority to provide for the retirement of members of the Supreme Court and for the recall of such retired members to serve on said Court in lieu of any active member thereof who is, for any cause, temporarily incapacitated.

Amendments of 1961

I. AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA BY REWRITING ARTICLE IV THEREOF AND MAKING APPROPRIATE AMENDMENTS OF OTHER ARTICLES SO AS TO IMPROVE THE ADMINISTRATION OF JUSTICE IN NORTH CAROLINA.

The General Assembly of North Carolina do enact:

Section 1. The Constitution of North Carolina is amended by rewriting Article IV thereof to read as follows:

Section 5. Appellate Division. The appellate division of the General Court of Justice shall consist of the Supreme Court.

Section 6. Supreme Court.

(1) Membership. The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. In the event the Chief Justice is unable, on account of absence or temporary incapacity, to

perform any of the duties placed upon him, the senior Associate Justice available is authorized to discharge such duties. The General Assembly may provide for the retirement of members of the Supreme Court and for the recall of such retired members to serve on that Court in lieu of any active member thereof who is, for any cause, temporarily incapacitated.

(2) Sessions of the Supreme Court. The sessions of the Supreme Court shall be held in the City of Raleigh unless otherwise provided by the General Assembly.

Section 9. Assignment of Judges. The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court shall make assignments of Judges of the Supreme Court and may transfer District Judges from one district to another for temporary or specialized duty. The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed. For this purpose the General Assembly may divide the State into a number of judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of District Judges within each local court district shall be made by the Chief District Judge.

Section 10. Jurisdiction of the General Court of Justice.

(1) Supreme Court. The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over "issues of fact" and "questions of fact" shall be the same exercised by it prior to the adoption of this Article, and the Court shall have the power to issue any remedial writs necessary to give it a general supervision and control over the proceedings of the other courts. The Supreme Court shall have original jurisdiction to hear claims against the State, but its decisions shall be merely recommendatory; no process in the nature of execution shall issue thereon; the decisions shall be reported to the next Session of the General Assembly for its action.

Section 11. Forms of action, rules of procedure.

(2) Rules of procedure. The Supreme Court shall have exclusive authority to make rules of procedure and practice for the appellate division. The General Assembly shall have authority to make rules of procedure and practice for the Superior Court and District Court divisions, and the General Assembly may delegate this authority of the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the rights of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure

or practice adopted by the Supreme Court for the Superior Court or District Court divisions.

Section 14. Term of office and election of Justices of Supreme Court and Judges of Superior Court. Justices of the Supreme Court and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may provide.

Section 15. Removal of judges and clerks.

(1) Justices of Supreme Court and Judges of Superior Court. Any Justice of the Supreme Court may be removed from office for mental or physical incapacity by joint resolution of two-thirds of both houses of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the General Assembly shall act thereon. Removal from office for any other cause shall be by impeachment.

Section 17. Vacancies. Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment

of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than thirty days after such vacancy occurs, when elections shall be held to fill such offices: Provided, that when the unexpired term of any of the offices named in this Article of the Constitution in which such vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of the said offices shall neglect and fail to qualify, such office shall be appointed to, held, and filled as provided in case of vacancies occurring therein. All incumbents of said offices shall hold until their successors are qualified.

Section 19. Fee, salaries, and emoluments. The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article; but the salaries of judges shall not be diminished during their continuance in office. In no case shall the compensation of any judge or magistrate be dependent upon his decision or upon the collection of costs.

Section 21. Schedule. Immediately upon the certification by the Governor to the Secretary of State of the amendments constituting this Article, the Supreme Court

and the Superior Courts shall be incorporated within the General Court of Justice, as provided in this Article. All Justices of the Supreme Court and Judges of the Superior Court shall continue to serve as such within the General Court of Justice for the remainder of their respective terms.

Amendment of 1965

An Act To Amend Article IV of The Constitution of North Carolina To Authorize Within The Appellate Division of the General Court of Justice An Intermediate Court of Appeals.

The General Assembly of North Carolina do enact:

Section 1. Article IV of the Constitution of North Carolina is amended as follows:

(2) Section 5 is rewritten to read as follows:

Section 5. Appellate Division. The Appellate Division of the General Court of Justice shall consist of the Supreme Court and, when established by the General Assembly, an intermediate Court of Appeals.

(d) Section 14 is rewritten to read as follows:

Section 14. Terms of office and Election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court. Justices of the Supreme Court, Judges of the Court of Appeals and Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the

Supreme Court and judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may provide.

(e) The caption and first sentence of subsection (1) of Section 15 is rewritten to read as follows:

Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of Superior Court. Any Justice of the Supreme Court, Judge of the Court of Appeals or Judge of the Superior Court may be removed from office for mental or physical incapacity by Joint Resolution of two-thirds of both houses of the General Assembly.

CONSTITUTION OF NORTH CAROLINA OF 1971

AN ACT TO REVISE AND AMEND THE CONSTITUTION OF NORTH CAROLINA.

The General Assembly of North Carolina do enact:

Section 1. The Constitution of North Carolina is revised and amended to read as follows:

Article I

Declaration of Rights

Section 6. Separation of powers. The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.

Section 18. Courts shall be open. All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

Article IV

Judicial

Section 1. Judicial power. The judicial power of the State shall, except as provided in Section 3 of this Article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a co-ordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this Article.

Section 2. General Court of Justice. The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration, and shall consist of an Appellate Division, a Superior Court Division, and a District Court Division.

Section 5. Appellate division. The Appellate Division of the General Court of Justice shall consist of the Supreme Court and the Court of Appeals.

Section 6. Supreme Court.

(1) Membership. The Supreme Court shall consist of a Chief justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. In the event the Chief Justice is unable, on account of absence or temporary incapacity, to perform any of the duties placed upon him, the senior Associate Justice available may discharge those duties.

(2) Sessions of the Supreme Court. The sessions of the Supreme Court shall be held in the City of Raleigh unless otherwise provided by the General Assembly.

Section 7. Court of Appeals. The structure, organization, and composition of the Court of Appeals shall be determined by the General Assembly. The Court shall have not less than five members, and may be authorized to sit in divisions, or other than en banc. Sessions of the Court shall be held at such times and places as the General Assembly may prescribe.

Section 8. Retirement of Justices and Judges. The General Assembly shall provide by general law for the retirement of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court from which he was retired.

Section 11. Assignment of Judges. The Chief Justice of the Supreme Court, acting in accordance with rules of the

Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or specialized duty. The principle of rotating Superior Court Judges among the various districts is a salutary one and shall be observed. For this purpose the General Assembly may divide the State into a number of judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of District Judges within each local court district shall be made by the Chief District Judge.

Section 12. Jurisdiction of the General Court of Justice.

(1) Supreme Court. The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over 'issues of fact' and 'questions of fact' shall be the same exercised by it prior to the adoption of this Article, and the Court may issue any remedial writs necessary to give it general supervision and control over the proceedings of the other courts.

Section 13. Forms of action, rules of procedure.

(1) Forms of Action. There shall be in this State but one form of action for the enforcement of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have

issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

(2) Rules of procedure. The Supreme Court shall have exclusive authority to make rules and procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.

Section 16. Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court. Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular

Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may prescribe.

Section 17. Removal of judicial officers.

(1) Justices of Supreme Court, Judges of the Court of Appeals, and Judges of Superior Court. Any Justice of the Supreme Court, Judge of the Court of Appeals, or Judge of the Superior Court may be removed from office for mental or physical incapacity by joint resolution of two-thirds of all the members of each house of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least twenty days before the day on which either house of the General Assembly shall act thereon. Removal from office for any other cause shall be by impeachment.

Section 19. Vacancies. Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than 30 days after the vacancy occurs, when elections shall be held to fill the offices. When the unexpired term of any of the offices named in this Article of the Constitution in which a vacancy has occurred, and in which it is herein provided that the Governor shall fill the

vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of these offices shall fail to qualify, the office shall be appointed to, held, and filled as provided in case of vacancies occurring therein. All incumbents of these offices shall hold until their successors are qualified.

Section 21. Fees, salaries, and emoluments. The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article, but the salaries of Judges shall not be diminished during their continuance in office. In no case shall the compensation of any Judge or Magistrate be dependent upon his decision or upon the collection of costs.

Amendments of 1971

II. AN ACT TO AMEND THE CONSTITUTION OF NORTH CAROLINA AS AMENDED EFFECTIVE JULY 1, 1971, TO REQUIRE THE GENERAL ASSEMBLY TO PRESCRIBE MAXIMUM AGE LIMITS FOR SERVICE AS A JUSTICE OR JUDGE.

The General Assembly of North Carolina do enact:

Section 1. Article IV, Section 8 of the Constitution of North Carolina, as amended effective July 1, 1971, is rewritten to read as follows:

Section 8. Retirement of Justices and Judges. The General Assembly shall provide by general law for the retirement of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court from which he was retired. The General Assembly shall also prescribe maximum age limits for service as a Justice or Judge.

III. AN ACT TO AMEND ARTICLE IV OF THE CONSTITUTION OF NORTH CAROLINA AS AMENDED EFFECTIVE JULY 1, 1971, TO AUTHORIZE THE GENERAL ASSEMBLY TO PRESCRIBE PROCEDURES FOR THE CENSURE AND REMOVAL OF JUSTICES AND JUDGES OF THE GENERAL COURT OF JUSTICE.

The General Assembly of North Carolina do enact:

Section 1. Article IV, Section 17 of the Constitution of North Carolina, as amended effective July 1, 1971, is rewritten to read as follows:

Section 17. Removal of Judges, Magistrates and Clerks.

(1) Removal of Judges by the General Assembly. Any Justice or Judge of the General Court of Justice may be removed from office for mental or physical incapacity by joint resolution of two-thirds of all the members of each house of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least 20 days before the day on which either house of the General Assembly shall act

thereon. Removal from office by the General Assembly for any other cause shall be by impeachment.

(2) Additional method of removal of Judges. The General Assembly shall prescribe a procedure, in addition to impeachment and address set forth in this Section, for the removal of a Justice or Judge of the General Court of Justice for mental or physical incapacity interfering with the performance of his duties which is, or is likely to become, permanent, and for the censure and removal of a Justice or Judge of the General Court of Justice for willful misconduct in office, willful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Amendment of 1979

AN ACT TO AMEND ARTICLE IV OF THE CONSTITUTION OF NORTH CAROLINA, TO REQUIRE JUSTICES AND JUDGES OF THE GENERAL COURT OF JUSTICE TO BE AUTHORIZED TO PRACTICE LAW.

The General Assembly of North Carolina enacts:

Section 1. Article IV of the North Carolina Constitution is hereby amended by adding a new section at the end thereof to read as follows:

Section 22. Qualification of Justices and Judges. Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment

as a Justice of the Supreme Court, Judge of the Court of Appeals, Judge of the Superior Court, or Judge of District Court. This section shall not apply to persons elected to or serving in such capacities on or before January 1, 1981.

Amendment of 1981

AN ACT TO AMEND ARTICLE IV OF THE STATE CONSTITUTION TO PERMIT RECALL OF RETIRED SUPREME COURT JUSTICES OR COURT OF APPEALS JUDGES TO SERVE TEMPORARILY ON EITHER APPELLATE COURT.

The General Assembly of North Carolina enacts:

Section 1. Article IV, Section 8 of the Constitution of North Carolina is amended by rewriting the first sentence thereof to read as follows: The General Assembly shall provide by general law for the retirement of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court or courts of the division from which he was retired.