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School district creation, abolishment and reorganization in North Carolina: A legal history

Roberts, Jan Wayne, Ed.D.

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U·M·I
300 N. Zeeb Rd.
Ann Arbor, MI 48106

School District Creation, Abolishment and Reorganization in North Carolina: A Legal History

by

Jan Wayne Roberts

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

Dissertation Adviser _____

Committee Members _____

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This study provides educators, politicians and laypersons with adequate information regarding the creation, abolishment and reorganization of school districts in North Carolina. There were two major purposes of this study. One was to compare the historical and legal principles of school district organization produced by the state Constitution, general statutes and case law so as to assist these latter groups in making sound educational and legal decisions regarding the organization of school districts in their respective administrative units. The second purpose was to provide information that would enhance efforts to produce significant and equal educational opportunities for all students of the state.

The basic approach utilized for this study was historical in nature. It involved a search of appropriate research centers for documents, books, statutes and case law that pertain to the legal ramifications of school district organization in North Carolina. The data collected by this search was separated into special topics and then examined, analyzed, and synthesized to find the relevant legal and historical facts concerning school district organization. An effort was made to (1) reach a consensus about the importance and relevance of school district organization, (2) draw conclusions about the legal aspects of school

district organization, and (3) make recommendations for future studies concerning school district creation, abolishment, and alteration in North Carolina.

Based upon the analysis of the data, the following conclusions are drawn:

(1) The legal elements for the creation, alteration or abolishment of school districts are found in the state Constitution, in the general statutes, and in the common law taken from court decisions.

(2) In 1988 school districts are used for administrative and attendance purposes only. It has no independence of action, no individuality or personality, at least none separate and differentiated from the state of which it is an integral part.

(3) During most of the 19th and 20th centuries the legal responsibility to create, alter or abolish school districts was with the state legislature. Hence the legislature was able to abolish them, or enlarge or diminish their boundaries, or increase, modify, or abrogate their powers. However, the state legislature no longer has the direct authority to deal with the organization of school districts.

(4) The state legislature has delegated the power to organize school districts to the State Board of Education. This authority to create, alter, divide or merge school districts has been indirectly vested in the local boards of education, but any action they take is subject to existing statutory provisions and to the approval of the State Board of Education.

(5) School district creation, alteration or abolishment is a never-ending, complex task filled with emotion and uncertainty. Boards of education must continuously update or change their district arrangements due to population shifts and legal requirements.

(6) Local boards of education may organize school districts with or without the approval of the people affected by such action.

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CHAPTER I

INTRODUCTION

The state of North Carolina has had a long and colorful history dealing with the creation, abolishment and reorganization of the school districts within its many administrative units. The principles of such creation, abolishment and reorganization are derived from the Constitution of North Carolina, from a multitude of general statutes for educational law, and from numerous court decisions that have been handed down over the past one hundred and fifty years.

A consistent pattern has never been used for organizing the school districts in the one hundred county and forty city administrative units in North Carolina. The widely varying patterns of subdistricts found in the county units represent potentially important questions and problems for the controlling boards of education and the administrative leaders in school planning. These patterns have been affected through the years by geography, politics, taxation, transportation, and a native impulse to maintain the control of the community schools locally. A system having small districts with schools close to the people and controlled locally was looked upon as the epitome of desirable

educational organization. Sometimes such a system has lacked clearly defined lines of authority and tended to encourage the local constituents to maintain the tradition of lay control over the school and school activities. This jealous guarding of the small district may be interpreted, of course, as proof of the tremendous interest of the people in their school, and as a demonstration of how they cherish the right to influence the education of their children.[1]

North Carolina school law defines a "district" as meaning "any convenient territorial division or subdivision of a county, created for the purpose of maintaining within its boundaries one or more public schools. It may include one or more incorporated towns or cities, or parts thereof, or one or more townships, or parts thereof, all of which territory is included in a common boundary."[2]

Although the term "school district" in North Carolina is basically for attendance purposes, these districts and the boards that govern them are also given varied legal and discretionary powers and thus assume additional importance.[3]

The Constitution of North Carolina, as revised in 1868,

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[1] Calvin Greider, Public School Administration (New York: The Ronald Press, Co., 1954), 10.

[2] North Carolina Public School Laws (1986), subchap. 3, art. 7, sec. 115C-69.

[3] North Carolina Public School Laws(1986), subchap. 2, art. 5, sec. 115C-47, no.3.

requires in Article 9, Section 3 that each county of the state shall be divided into districts in which one or more public schools will be operated at least four months.[4] This article was written using the same language as the Law of 1839, titled An Act to Divide the Counties of the State into School Districts, and for other purposes, which was considered the first common school law and the legal authority for the beginning of the system of public schools in North Carolina. This legislative enactment provided that the state should be divided into school districts containing not more than six square miles each irrespective of county borders. Over the years the length of term has been updated to the present nine months, but the provision to divide the counties of the state into districts is still mandated by constitutional and statutory law.

Today, school district organization within the state often changes to meet the specific needs of students, parents, communities, and leaders in the counties and educational administrative units. However, these changes are not occurring at the same fast rate as during the period from 1839 to 1933, when the number of school districts in many counties went from one or two to one hundred or more. The uncertainty that surrounded the school district from its beginning in 1839 has subsided, and today there is a more clearly established educational environment controlled by

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[4] North Carolina Constitution (1868), art.9, sec. 3.

politics, legislative action, and constitutional mandates about school district organization.

Prior to 1923 counties had been historically divided into separate school districts which levied their own school taxes for school support. It was not unusual for district lines and boundaries to be gerrymandered so that advantage could be taken of the wealthy industrial and railroad areas for the school district's tax base. Also, districts had inconsistent rules and regulations about the creation, abolishment and reorganization of district boundaries which led to a complex arrangement of districts. At one time there were approximately 10,000 such small districts found in the state.

Thus, prior to 1923 the county had been acting as an intermediate unit for local school administration in the state. In that year the North Carolina General Assembly adopted legislation making the county the basic unit for the administration of all schools except those in certain districts which, although dependent on the county for taxes, were otherwise exempt from county control. Boards of education were authorized to divide the county into such attendance units or "districts" as they might deem proper and to establish a five-year plan for the consolidation of schools.[5]

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[5] "Your School District", The report of the National Commission on School District Reorganization, (Washington: Department of Rural Education, 1948), 249.

In 1933 the state assumed financial control of the total school program which had been established in the state at that time. The School Machinery Act abolished all school districts -- special tax, special charter, or otherwise-- as were then constituted for school administration or for tax levying purposes.[6] This act required county boards to "redistrict" each county by consolidating many of the smaller districts so as to enhance the efficiency and effectiveness of the units. In addition to forming these county units, the act empowered the state to grant special charters to certain cities and towns to operate a program of public education apart from the county units if they had a school population above 1000 students within their boundaries.[7]

Thus, since 1839 the establishment, alteration and abolishment of school districts have been tempered by many social, economic, and legislative factors. An examination of these factors along with the mandates of the North Carolina Constitution, general statutes, established case law, and the historical background of the establishment of the public school system may open some new avenues for thought that may be beneficial to the decision- making groups or individuals interested in merger or consolidation

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[6] North Carolina, School Machinery Act, General Statutes (1933) 3:4.

[7] North Carolina Public School Law (1923), Chapter 1, art. 3, sec. 28-30:11.

of school districts. Such a study may provide direction and initiative for educational leaders to develop some desirable changes in procedures for school district management.

Statement of the Problem

In light of recent efforts by the General Assembly, the State Department of Public Instruction and the county commissioners of North Carolina to lobby for the establishment of one system per county, it is important for school administrators and boards of education to understand the issues of the creation, abolishment and reorganization of school districts. The effort, to fund one school system per county, would remove many of the special charter districts and call for the total reorganization of the school districts found in each county.

This issue is an emotional one because it interferes with neighborhood or community school concepts that have been a part of the state for years. People are frightened about the sudden aspect of possible or ongoing district changes; they feel that sweeping changes and new layers of bureaucracy will be imposed on them in one giant step, to the detriment of classroom education.[e] It could alter where their children go to school; it could increase the likelihood of crosstown busing and transportation costs; it

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[e] John Alexander, "Muddling Toward Merger May Be Best Tack", Greensboro News and Record, 15 April 1986, A18.

could effect an increase in local taxation levels, and could possibly hinder the creation of an effective school system.

Studies indicate that most of the challenges confronting educational leaders and tax levying authorities today concern issues that deal with school district reorganization: declining school enrollments, changing pupil population patterns, shifting, eroding tax bases, and optimal use of school facilities.[9]

Appropriate solutions to these problems are needed if our educational leaders and tax levying authorities are to be able truly to build instructional programs and educational systems that reflect the desires and aspirations of those whom they serve. This study is a search for these solutions through examination of the mandates found in the state Constitution, in the legislative enactments or general statutes, in the North Carolina public school law over the years, and in the decisions of the state courts dealing with cases relative to school district characteristics. All of these elements have shaped school district policy.

Purpose of the Study

This study is designed to compare the past and present status of school districts by identifying the legal principles concerning their creation, abolishment and

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[9] James L. Mebane, "Decision On Merger Won't Be Hasty", Greensboro News and Record, 17 March 1986, D1.

reorganization. These principles are derived from the Constitution, from statutes enacted by the General Assembly, from legal policies that have been shaped by the courts, and from the history of public school development.

Since a school district is so vital to the fundamental educational rights of society, and since most of the authority and responsibility for operating the schools below the state level is vested in district boards of education, the legal role played by districts within the counties must be clarified.[10] A general knowledge of the constitutional and statutory law affecting this area should be beneficial to those responsible for establishing an administration of the school districts and for those who will reap the benefits of effective school district organization. Laypersons also can be personally affected by decisions made by these groups, therefore, they need to have an understanding of the general workings and legal aspects of the creation, abolishment and reorganization of school districts

Significance of the Study

The importance of this study revolves around the significant educational opportunities of students in North Carolina. How school districts are organized or how they

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[10] North Carolina Public School Laws (1961), subchap. 1, art. 1, sec. 115-4.

are created, abolished or altered can have a direct or indirect impact on the establishment of effective schools, on those activities and commitments which foster quality in teaching and learning, on those educational plans formulated and implemented by the district boards of education, on whether unnecessary duplication of funding and services occurs, and on the happiness of the users of these districts and their families. In order to set the stage for effective schools it is necessary for public school administrators, boards of education, county commissioners, and laypersons to be able to deal intelligently with the many aspects of school district organization; it is imperative that they be familiar with the general principles of law which govern their actions.

Most school officials are fairly well acquainted with the educational statutes of their state. The state department of public instruction publishes periodically a pamphlet containing a compilation of these statutes. School superintendents and other administrators are usually aware of the importance of these publications, but typical citizens who are elected to the board of education or to some school committee usually do not know nor do they take the time to become acquainted with the legal aspects of school district organization until it becomes a volatile

issue in their respective district.[11] Moreover, there is a considerable body of school law, indeed perhaps the bulk of it, which is not found in any legislative enactment and is not clearly understood by the majority of people who really need to know it. Knowledge of the law and understanding of the factors that motivate people would enable those who make up the educational leadership of the state to shape policy and to make decisions that would positively benefit students, parents, communities and school districts.

This study will be of service to those individuals or groups involved in the decision-making process for the creation, abolishment, reorganization, merger, or consolidation of their school districts and that it will provide information which will enable them to deal more intelligently with the problems which arise in connection with school district organization.

Definition of Terms

Specific terms used in this study were found in a number of documents throughout the review of the literature on school districts. The following list of terms and their definitions represent connotations with which the reader can evaluate the legal and historical ramifications expressed in

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[11] Green W. Campbell, "The Influence of Court Decisions in Shaping the Policies of School Administration" (Ph.D. Diss., University of Kentucky, 1937), 8.

the study.

Abolishment - the legal aspects of removing a school district from existence.

Administrative District - a territorial division of a county school administrative unit under the control of a county board of education which is established for administrative purposes and which consists of any combination of one or more local tax districts, nontax areas,or bond districts of the county school administration.[12]

Annexation - the process through which additional territory is joined or added to contiguous school districts.

Attendance Area - the area from which elementary and/or high school pupils attend a single school under one principal. It may comprise one or more buildings. It includes the geographic and population area served by a single elementary or high school or a combination elementary and high school. Attendance areas for elementary schools may or may not be coterminous with attendance areas for high schools.[13]

Common Law - law that is determined from the decisions of the courts; in North Carolina the common law may be

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[12] North Carolina Public School Law (1986), subchap. 3, art. 7, sec. 115C-69.

[13] Clyde A. Erwin, Study of Local School Units in North Carolina (Raleigh: State Department of Public Instruction, 1937), 10.

changed whenever the courts decide that their rulings have become out of date.[14]

Consolidation - the merging of two or more separate school districts to form one district with one or more schools to represent the entire district.

Coterminous - term used when school districts are contained within the same boundaries.[15]

Constitution Law - fundamental laws and principles that prescribe the nature, functions, and limits of a government or other institutions.[16] These laws are stated in a special document composed and written by the people for which it represents. North Carolina constitutional law can be amended only through special legislation placed in the General Assembly or through a constitutional convention called into being by the General Assembly.

Contiguous - term used when school districts share an edge or touch at any division line or boundary between them.[17]

County - a branch of state government; the unit of local government which administers the power and authority

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[14] Albert Coates, Talks to Students and Teachers (Chapel Hill: Creative Printers, Inc., 1971), 70.

[15] The American Heritage Dictionary, 2nd Edition, 1982, s.v. "Coterminous"

[16] The American Heritage Dictionary, 2nd College Edition, 1982, s.v. "Constitution".

[17] Coates, 316.

of the state; an administrative unit in the statewide public school system.[18]

Creation - something which is caused to exist or be brought into being.[19] In this study, the enactment of the legal principles which establish school districts with certain recognizable boundaries.

Dissolution - the complete abolishment of a school district, and legally, one of the first steps in school reorganization, since the original district must be completely dissolved before unification occurs.[20]

Division - legal process whereby two or more districts may be formed from one or more original districts; also the dissolution of any type of consolidation or enlarged district and its return to the former status of several small districts.[21]

Graded School District - a geographical area from which a graded school draws its students, and which is formed by grouping students for school purposes either by age or attained knowledge or by arranging the curriculum for

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[18] A. Craig Phillips, A Report of the State Superintendent on Schools and School Districts in North Carolina (Raleigh: North Carolina Department of Public Instruction, 1986), 34.

[19] The American Heritage Dictionary, 2nd College Edition, 1982, s.v. "Creation".

[20] Harold D. Alford, Procedures for School District Reorganization (New York: Teacher College-Columbia University, 1942), 4.

[21] Ibid., 4.

students in a progressive sequence from kindergarten through 12th grade.

Local School Administrative unit - a subdivision of the public school system which is governed by a local board of education, and may be either a city or a county or a city-county school administrative unit.[22]

Local Tax district - a territorial division of a local school administrative unit under the control of the county local board of education, having, in addition to state and county funds, a special local tax fund voted by the people for supplementing state and county funds.[23]

Merger - a union of two or more local administrative units into one corporate body.

Mandates - The wishes of a political electorate, expressed by election results to its representatives in government, and required to take place.[24]

Nontax district - a territorial division of a local school administrative unit under the control of the local board of education, having no special local tax fund voted by the people for supplementing state and county funds.[25]

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[22] North Carolina Public School Laws (1986), subchap.1, art. 1, sec. 115C-5.

[23] North Carolina Public School Laws (1986) subchap.3, art. 7, sec. 115C-69.

[24] The American heritage Dictionary, New College Edition, 1982, s.v. "Mandates."

[25] North Carolina Public School Laws (1986), subchap.3, art. 7, sec. 115C-69.

Nonoperating school system - a school system with a legal existence that either has pupils within its boundaries or sends its pupils to other districts on a tuition basis.[26]

Organization - the legal process by which an entirely new school district may be formed in organized or unorganized territory.[27]

Petition - written request for the governmental agency to ask for a vote on merger or consolidation.

Reorganization - refers to the consolidation or merger of one or more school districts into consolidated districts.

School - an institution consisting of teacher and pupils irrespective of age gathered for instruction in any branch of learning.[28]

School District - any convenient territorial division or subdivision of a county, created for the purpose of maintaining within its boundaries one or more public schools. It may include one or more incorporated towns or cities, or parts thereof, or one or more townships, or parts thereof, all of which territory is included in a common boundary.

The State Board of Education , upon the recommendation of the county board of education, shall create in any county

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[26] Phillips, 6.

[27] Alford, 4.

[28] Benvenue PTA v. Nash County Board, 167 S.E. 2d 538 (1969)

administrative unit a convenient number of school districts. Such district organization may be modified in the same manner in which it was created when necessary.[29]

Special Charter School District - a school district that has been given special permission by the state to operate as an administrative unit of state public schools. Most of the special charters became city administrative units under the School Machinery Act of 1933.

Statute Law - law enacted by the state legislature which can be changed or updated by a majority vote during any session of the General Assembly.[30]

Township - a subdivision of a county having the status of a unit of local government with varying governmental powers.[31] School law of 1898 mandated that the county be divided into as many school districts as there are townships in the county.

Union School District - the territory from which a Union school -- formed when an elementary school and a high school are placed in the same building or on the same campus -- draws its students.

Uniform - establishment of schools of like kind throughout all sections of the state and available to all of

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[29] North Carolina Public School Laws (1986), subchap.3, art. 7, sec. 115C-69.

[30] Coates, 70.

[31] Morris, Arval A., The Constitution and American Education (St. Paul, Minn.: West Publishing Co., 1980), 1282.

the school population of the territories contributing to their support.[32]

Research Questions

For this study, several research questions have been formed which focus upon the legal and historical aspects of the creation, abolishment, and reorganization of school districts in North Carolina. It is hoped that answers to these questions will clarify the various roles played by the districts and give an understanding of their organizational structure, their wide variety, their legal and historical background. These research questions follow:

1. How does the state Constitution relate to the power and control of school district organization?
2. What is the state's role in school district organization?
3. What are the important historical factors of school district creation, abolishment, and reorganization in North Carolina?
4. What significant provisions of past and present statutes govern school district creation, abolishment, and reorganization in North Carolina?
5. What are the legal principles of school district creation, abolishment, and reorganization that have

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[32] Board of Education v. Granville County Board of Commissioners, 174 S.E. 1001 (1917).

been established through case law?

6. What policies of the State Department of Public Instruction have been instrumental in dealing with school district organization in North Carolina?
7. What are some possible trends for the future of school district creation, abolishment, and reorganization in North Carolina?

Delimitations of the Study

This study is a historical analysis of the legal aspects found in constitutional law, in statutory law, and in case law which have been considered by educational authorities to be the most influential in determining the existing patterns of school district creation, abolishment, and reorganization in North Carolina. The time frame for the study begins with the establishment of the state Constitution in 1776 and runs through March 28, 1988. This period provides an appropriate span of time from which to gather the data necessary for the study.

The history of the development of the North Carolina's public school system with special reference to the development of the school district provides the chronology for the study. The various factors and characteristics from the past and present that relate to the topic are highlighted in the study. This involves a detailed look at the articles, amendments, and revised forms of the state Constitution, the general statutes of educational law in

North Carolina, and the certified court cases concerning the topic. These materials provide the parameters for this historical study.

The focus of the study is on the legal ramifications for the creation, abolishment, and reorganization of the school district. It is believed that these delimitations will provide the framework necessary to present a reasonably accurate picture of the development, structure and organization of the school districts in North Carolina's system of public schools since 1776.

Methods, Procedures, and Sources of Information

The basic approach utilized for this study was historical in nature. It involved a search of appropriate research centers for documents, books, statutes, and case law that pertain to the legal ramifications of school district creation, abolishment, and reorganization in North Carolina. The data collected by this search was separated into special topics and then examined, analyzed, and synthesized to find the relevant legal and historical facts concerning school district organization. The writer then made an effort to (1) reach a consensus about the importance and relevance of school district organization, (2) draw conclusions about the legal aspects of school district organization, and (3) make recommendations for future studies concerning school district creation, abolishment, and alteration in North Carolina.

To determine whether a need existed for this type of research, the writer examined Dissertation Abstracts for topics focusing on school district creation, abolishment, and reorganization. The search revealed that very few studies relating to the legal aspects of this topic had centered on North Carolina.

A computer search conducted through the Educational Resources Information Center,(ERIC) was completed but did not produce any materials relevant to the state of North Carolina. Journal articles on school district organization were researched through the use of the Educational Index, the Reader's Guide to Periodical Literature, the Index to Legal Periodicals, and Encyclopedia of Educational Research.

Books, documents, reports, statistics, and articles were researched at various institutions including the Law Libraries of Wake Forest University and the University of North Carolina at Chapel Hill. Other searches and investigations were undertaken at graduate libraries on the campuses of the University of North Carolina at Greensboro (UNCG) and at the University of North Carolina at Chapel Hill (UNC-CH), the North Carolina Collection at UNC-CH, the Institute of Government, and at the Divisions of Archives and History and State Library which are part of the North Carolina Department of Cultural Resources based in Raleigh.

North Carolina court cases from the earliest of times relating to the creation, abolishment, and reorganization of

school districts were located and researched through the Corpus Juris Secundum, American Digest System, North Carolina Digest, and the Public School Laws of North Carolina Chapter 115C. NOLPE's School Law Reporter and Yearbook of School Law were examined for listings and references made to the more recent cases pertaining to the topic in North Carolina. Relevant court cases with summaries and court opinions concerning North Carolina were located in appropriate sections of the North Carolina Report, South Eastern Reporter, and South Eastern Reporter 2nd series. These court cases were separated into the specifics of creation, abolishment, and reorganization of school districts. These cases were then read and analyzed, and their important facts and information were highlighted for easier summarizing in the review of the court decisions.

Important information was found also in the general statutes which have been documented in the Public School Laws of North Carolina since 1839 and in the original and revised forms of the Constitution of the State of North Carolina.

Organization of Study

The remainder of the study is divided into four major parts. Chapter II contains a review of the related literature and a chronological history of the events that helped shape the basic foundation on which school district organization in North Carolina is built.

Chapter III presents a chronology and enhanced analysis of constitutional and statutory law which provides the legal basis for the creation, abolishment, and reorganization of the state's school districts. It gives insight into the many legal procedures that are necessary to govern school district organization and determines which authorities are empowered with the responsibility to control and direct the organizational process.

Chapter IV is a historical narrative of selected cases which have been litigated in the state courts of North Carolina. The issues, contentions, court findings and significant aspects of each case relative to school district organization are interpreted and provided in general terms. Cases have been selected based upon their impact on the educational establishment and on their historical significance with regard to the legal aspects of school district organization.

Chapter V contains a summary of the findings about the historical implications, the constitutional mandates, the general statutes, and the court cases from which have evolved the operational procedures regarding school district organization. Conclusions concerning legalities of school district organization are drawn by the writer from this information and presented in itemized form. In the final part of the chapter the writer makes recommendations pertaining to the need for future studies and to the

direction that educational authorities should take with the creation, reorganization and abolishment of school districts in the state.

CHAPTER II

REVIEW OF THE LITERATURE

Overview

It is important for school officials, boards of education, politicians and laypersons to understand the facts relating to school district creation, abolishment, and reorganization. It is important because recent literature concerning the appropriate organization of local educational agencies throughout the state leads one to think that there will be a flurry of activity over the coming years to reorganize the state system in order to promote efficiency and effectiveness. Numerous newspaper articles and published records of meetings by state legislators and county commissioners seem to indicate a growing interest by these groups to merge the county and city administrative units. One desire of these influential groups is to develop the school district into a more economical and efficient governmental entity. This statewide interest in merger would certainly affect local school district patterns.

The patterns of development found in the school districts around the state have grown from the earliest establishment of common schools within walking distance of children's homes to the present consolidated arrangement

where just one or two elementary and high schools are possibly serving a whole county.

The use of the word "district" was not clearly defined until the creation of the first Public School Law in 1839. This law, entitled An Act to divide the Counties into School Districts and for other Purposes, was the first indication that the state recognized the importance of setting aside special geographical areas for educating the children of the state. Since that time the state's system of public schools has grown gradually and provided the rationale for the existence of the school districts. There is no single pattern of school district organization, and no single guide that would appear suitable for all conditions. A review of the literature shows that school districts are a multi-faceted arrangement of geographical areas marked to provide some semblance of constructive organization for the students of the state.

The issues and events most important in the development of the school district as a viable factor in the establishment and maintenance of schools are presented here in a historical perspective. The writer has traced the development of school districts through the state Constitution, state school law, litigated case law, and the state's educational history from 1600 to March 28, 1988.

Historical Perspective

This perspective will be divided into seven time periods which reflect major changes regarding school district organization in North Carolina. The combination of political and social characteristics which were prevalent during each time period seem to have produced the most influential changes and important occurrences in school and school district legislation.

Prior to 1776

As early as 1695 there was an effort to foster education and the development of school districts. In that year, when William Pead, an orphan, was bound to the governor to serve him until he was 21 years old, a requirement was made by the general court that he be taught to read.[1] This requirement by the court represents the first written mandate to establish some form of educational process in the state.

Perhaps the first professional teacher in North Carolina was Charles Griffin, who came from some part of the West Indies about 1705 and settled in Pasquotank County. He was appointed reader by the vestry of the established church and opened a school. He had great success with the school for three years and attracted students from all sects of the population who wanted to learn.

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[1] Stephen B. Weeks, The Beginnings of the Common School System in the South (Washington: United States Bureau of Education, 1898), 1381.

For the most part, however, the early development of education in North Carolina was very slow, due mainly to the slow growth of the population.[2] Bad government, neglect by the proprietors, hostility on the part of the crown and merchants towards the proprietary government, difficulties in accessing areas of the state, lack of mills and other manufacturing plants are some other reasons for this lack of development in the educational foundations of the state. Furthermore, the English ideas about education during the seventeenth century was that the great body of the people were to obey and not to govern, and that the social status of unborn generations was already fixed.[3] During this growth period the need for education was not generally felt by the people. Education was not a top priority. Working hard to produce a living or just to survive the harshness of the environment seemed to be the most important object for the early settlers of North Carolina.

One notable effort to encourage popular education during the 18th century was made by Edward Moseley in 1723. In 1720 he had proposed a system of buying religious books which were to be loaned to the parishioners of Chowan County. In 1723 he sent a "catalogue" of such books as he had purchased, desiring the society for the Propagation of the Gospel to accept them toward a provincial library for

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[2] Ibid., 1380.

[3] Ibid., 1381.

the government of North Carolina, to be kept at Edenton.[4]

The establishment of church libraries was also prevalent during the early part of the 18th century. These libraries became the forerunners of the present school system and the focal point of educational progress. One of the most important was established at Bath. A law passed in 1715 for the protection of this library is one of the earliest specimens of library legislation within the limits of the present United States.[5]

The above represents the majority of information available regarding schools and libraries under the Lord Proprietors. Research did not reveal a large body of material about this early stage. Education was shamefully neglected by the early leaders of the Proprietary government.[6]

There was little change in matters of education during the first twenty years of Royal rule. In his address to the legislature in 1736 Governor Johnston urged the establishment of schools. The legislature listened to his request but failed to take any action that would lead to any form of educational progress.[7] This refusal to act indicates there was simply no interest in the educational

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[4] Ibid., 1382.

[5] Ibid.

[6] Ibid.

[7] Ibid.

process during the early days of the colony.

The first state law relating to schools was enacted on April 15, 1745, when a bill was brought forth "to empower the Commissioners for the town of Edenton to keep and repair the town fence, and to erect and build a Pound Bridge Public Wharf and to erect and build a school house in the said town and other purposes"[8] Building this purposed school was the most important feature of this early bill, but there is no evidence that the building of the school got any further than the statute book.

The question of free schools was constantly raised in the assembly during the middle 1700's but always met with the usual fate of being turned down or forgotten. During these early years educational leaders had difficulty developing an interest in schools among the influential leaders of the assembly.

Another example of the desire on the part of a few educational advocates to establish some type of school was the introduction of a bill for education in 1749. That year a bill for "an act for founding, erecting, governing, ordering, and visiting a free school at _____ for all inhabitants of this province," was reported to the assembly, but it failed to pass.[9]

In 1754 an act was passed making funds available from

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[8] Ibid., 1382.

[9] Ibid., 1383.

the legislature for an endowment or appropriation for public schools for the province. About the same time a wealthy merchant named George Vaughan died leaving a will which proposed to donate to the state "one thousand pounds yearly forever" for the propagation of the Gospel among the Indians in North Carolina. The combination of the provisions of this will and the enactment making state funds available for public schools set up the machinery to extend religion and education to all His Majesty's subjects.[10]

The school created by this combination of funds never did grow or sustain itself because the funds that were set aside for it by the legislature were confiscated for other purposes. During these early years the members of the assembly had some difficulty in meeting their financial responsibilities. When they had a problem or a financial emergency they always turned to the school account to borrow the funds necessary to bail them out of their predicament. This action kept the school in debt and prevented it from making any real progress toward its goal.

From 1759 until 1764 Governor Dobbs frequently recommended to the legislature that something needed to be done about education. He looked for ways to gather the support and funding for that purpose but seemed to run into some sort of conflict each time he attempted to establish positive educational environments.

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[10] Ibid., 1383.

The first academy was established in 1760 by the Reverend James Tate at Wilmington. Academies grew and prospered until the middle of the 1800's and then they began to decline. These academies became the forerunners of the first common schools developed under the leadership of the first state superintendent, Calvin Wiley.

Even with the persistent lack of interest in education, discussion of and agitation for the establishment of schools continued. In December 1762, Rev. James Reed of New Bern preached before the assembly a sermon "recommending the establishing of public schools for the education of youth." This sermon was printed at public expense, and this was, perhaps, the first actual appropriation for education.[11]

In 1766 an act "for establishing a schoolhouse in the town of New Bern" was passed. This act gave full control to "the Incorporated Society for promoting and establishing a Public School in New Bern," with powers "to receive donations for the school, to hold title to the school property, to make rules and regulations and ordinances for the management and control of the school, to employ and dismiss teachers, (teachers to be members of the established church) and to collect tax of one penny a gallon on all rum and spirituous liquors brought into the Neuse River for

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[11] Ibid., 1384.

seven years to educate ten poor children annually".[12] This act is considered to be practically the first law passed in the province for the encouragement of public education.[13] New Bern's school was also the first to receive aid in the form of gifts of public land and annual public taxes.[14]

A similar arrangement was also attempted to establish a school in Edenton in 1771 where an act was passed "for vesting the schoolhouse in Edenton in trustees."[15] This schoolhouse was built with the aid received by voluntary subscription, the gift of a lot, and public money and fines under the direction of seven trustees. This school is considered to be the first in the state to be aided by state funds.

From the preceding information it is seen that some of the earliest forms of education outside the home were sponsored by religious groups who keenly felt the need for teaching the three R's in addition to principles of right and wrong. There were old-field schools, subscription schools, and boarding schools of various kinds. These were mostly for boys, although there were a few for girls as

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[12] Clyde A. Erwin, The Public School a State Builder (Raleigh: State Department of Public Instruction, 1932), 17.

[13] Weeks, 1385.

[14] North Carolina State Department of Public Instruction, Through the Years: A History of Public Schools in North Carolina (Raleigh: State Department of Public Instruction, 1981), 1.

[15] Weeks, 1385.

well as some coeducational schools. Schools for more advanced subjects were known as academies and were private institutions with no public or state support.[16] All these schools grew and were popular at various times during the history of North Carolina education, but most of them eventually gave way to the modern public school system that evolved after the establishment of constitutional mandates in 1776 and 1868.

1776 to 1839

New impetus was given to education in North Carolina with the ratification of the state Constitution of 1776. This Constitution, adopted by the delegates assembled at Halifax on December 18, 1776, indicates in its forty-first article:

> 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.[17]

This constitutional provision mandated the establishment of schools for the children of the state for the first time. Many historians have realized that the chief aim of this early statement was to open schools and educate those who had the means and the inclination; it was not a

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[16] Retired Tar Heel Teachers, So Proudly We Taught (Raleigh: North Carolina Assoc. of Educators, 1976), 1.

[17] Weeks, 1389.

recommendation for a total universal state education for all students rich and poor. More than sixty years elapsed before this 1776 constitutional mandate for public education began to take form.

In 1803 Governor James Turner advocated state aid for education to perpetuate the republican form of government--a basis of liberty and equal political rights. He called attention to the ineffectiveness of the private schools in reaching the children of all the people.[18]

One of the first persons to envision the democratic goal of providing universal education for children of the state was a Hillsboro lawyer and a member of the state senate, Archibald D. Murphey.

Murphey introduced a bill into the state legislature in 1817 and later in 1825 outlining a plan for public schools. Although this bill failed to pass in the assembly many of his early proposals later became a basis for our present system of public schools.

In his role as chairman of a special committee of the General Assembly to study the problem of public education, Murphey provided the General Assembly with numerous reports containing educational recommendations. In a report issued in 1816 Murphey indicated that one of the greatest difficulties in the plan was in organizing primary schools. The condition of the country and its population, was such

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[18] The Public School a State Builder, 17.

that it was impossible to divide the state into small sections of territory, each containing an adequate population for the support of a school. Any attempt to divide the territory of the state into such small sections with a view of locating a school in each, would prove unavailing; however desirable it may be that a school should be established convenient to every family, the time had not arrived when it could be done.[19] Murphey suggested that the counties of the state should be divided into two or more townships and that one or more primary schools be established in each township, provided a plot of land not less than four acres and a sufficient house erected thereon, would be provided and vested in the board of public education.[20] This board then would have the power to create school districts. This is one of the first suggestions to divide the counties into districts for the purpose of schools. The township became one of the first organizational patterns for the school district.

Murphey's plan contained some of the same aspects of the common school district system that grew out of the early Massachusetts law of 1647 requiring towns to establish and support schools. The common school district system resulted when people moved away from the towns and formed a new school district wherever another school was needed. This

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[19] Weeks, 1407.

[20] Ibid., 1408.

form of district arrangement was the first established in North Carolina.

One of the first attempts to establish and regulate schools by the county form of districting was made in 1818 when William Martin of Pasquotank introduced a bill calling for the counties to control the school through a board of county directors. The directors would be empowered to employ a teacher and "designate such poor children in their neighborhood as they shall think ought to be taught free of charge" and "receive free books and stationery".[e1]

In 1825 the state legislature established the State Literary Fund as its first permanent public endowment for educational purposes. The funds came from state stocks in the banks of New Bern and Cape Fear not hitherto assigned to internal improvements; from dividends arising from stock owned by the state in the Cape Fear Navigation Company, the Roanoke Navigation Company, and the Clubfoot and Harlow Creek Canal company; from tax on licenses for retailers of spirituous liquors, the balance of the Agricultural Fund, all moneys paid the state for the entries of vacant lands, and the sum of $21,090 from the United States, and all vacant and unappropriated swamp lands of the state "together with such sums of money as the legislature may hereafter find it convenient to appropriate from time to time."[ee]

[e1] The Public School a State Builder, 19.

[ee] Ibid., 18.

These funds were placed in various accounts where they could draw interest and this interest was used to enhance the development of schools in the state.

Even though the state legislature created the state "Literary Fund" for establishing common schools in 1825, it failed to take additional specific action to implement this educational program.[23]

One of the first times that the county was divided for school purposes occurred in 1829 when Governor Owen submitted a plan providing for primary schools through the division of each county into tax districts. He felt that these divisions and the tax fund would be able to support a four months' school for the children of the specified counties.

In 1835 The Constitution of North Carolina was revised through a constitutional convention. The Constitution that came out of this convention set up the machinery for the first popular election for governor of the state. The need to establish educational opportunities in the state was a political issue in this first election. Both of the candidates running for governor professed their interest in establishing an educational system but their views about how to provide the necessary support differed. Edward B. Dudley won the election and during his term of office the school

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[23] Hugh T. Lefler and Albert R. Newsome, North Carolina, The History of a Southern State (Chapel Hill: The University of North Carolina Press, 1954), 315.

system of the state was established and supported on the basis of public taxation. The supporting funds were to come from a combination of the State Literary Fund established in 1825 and from a tax for schools levied by each county.

Provisions for the legislative establishment of schools and a state university which had been confirmed in the Constitution of 1776 were contained in this new revised Constitution. This revision and the election of Governor Dudley clearly established the state's position concerning the importance of education for all young people of the state.

Another bill to establish a public school system failed to pass the legislature in 1837, but the legislators did direct the president and directors of the State Literary Fund to study the educational needs of the state and suggest a plan for common schools which could adapt to the resources and conditions of the state and then to report back at the next session of the General Assembly.

Governor Dudley, along with other educational leaders in the state, worked hard to harness the support they needed to establish a state system of public schools. In 1838 they persuaded the legislature to pass the first public school law of North Carolina, ordering these activities:

1. to ascertain by election whether or not the people wished to have a public school by taxation
2. to elect five to ten persons as "superintendents of common schools"
3. to cause districting of counties by these "superintendents"

4. to appoint district school committeemen
5. to levy a district tax of $20 to be paid to the committeemen
6. to provide $40 from the Literary Fund for each district levying $20
7. to report financial collections and disbursements to the Governor by counties [84]

1839 to 1868

On January 5, 1839, the General Assembly passed a bill providing that the state should be divided into districts containing not more than six miles square.[85] This was the forerunner of the enactment of a bill which gave major consideration to sharply and clearly defining the school district. This enactment representing the first North Carolina School Law was finally agreed upon three days later.

This first Common School Law was passed January 8, 1839. Drawn up by William W. Cherry and entitled An Act to divide the Counties into School Districts and for other purposes, this law set forth certain principles which have been fundamental in the operation of the public schools throughout their entire history.[86] It provided for a vote of the people to determine whether they would support a tax on a two-to-one-basis to match the Literary Fund's $60 for

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[84] The Public School a State Builder, 19.

[85] Clyde A. Erwin, Study of Local School Units in North Carolina (Raleigh: State Department of Public Instruction, 1937), 9.

[86] The Public School a State Builder, 19.

each district, and it provided for a committee to govern the district policy and administration. This compromise bill left the size of a school district at six miles square, with the provision "that no greater number of school districts shall be laid off in any county than shall be equal to one for six miles square of inhabited territory in said county".[87]

In the beginning the Literary Fund had been used by the state as a direct method for stimulating the school district's leadership to establish a tax for their schools. If a district had not levied a school tax then it could not share in the Literary Fund from the state. Later this requirement was changed, because the levy for school taxes was made mandatory and the literary funds were distributed on the basis of the district population.

Through the ensuing years the procedures and requirements for distribution of this fund were altered a number of times. Methods of distribution were based either on a balance of district funds or on the number of white children in a district or on decisions of district superintendents. All of this changed with the restructuring of the Constitution in 1868.

This first Common School Law provided that not less than five and not more than ten persons were to be elected as county superintendents. One major responsibility of

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[87] Study of Local School Units in North Carolina, 9.

these superintendents was to plan and lay off an appropriate arrangement of school districts within the county. These positions were closely related to or eventually became the membership of the county boards of education.

The General Assembly proposed a formula to determine how many school districts there should be in the state. This formula required officials to divide the number of square miles of territory in the state by six square miles, which represents the area in one school district as determined by the General Assembly. This calculation declared that the state should be divided into 1250 districts and that schoolhouses should be erected "sufficient to accommodate fifty scholars."[ee] Keep in mind that this declaration for the requirement for school districts took place before the state had mandated the requirement for the education of the Negro race or the separate but equal requirement which was prevalent up until 1955.

Thus, with this law of 1839 as its basis, Rockingham County laid out appropriate districts and created the first public school in North Carolina, opening its doors in January of 1840. District committees were appointed to organize and administer the district school organization.

The history of the early public schools established in North Carolina under this first school law presents a

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[ee] Ibid., 10.

typical picture of cheap buildings, with one poorly prepared teacher giving instruction only in the fundamentals, within walking distance of the children of the district.[29]

During this time the public schools of North Carolina were almost without direction except for the Literary Board that disbursed funds to the counties. The lack of supervision was one of the major faults of the district system. Knight stated that the system was left to the "direction of local officials, who, though interested, were not fitted by training or experience to guide the work wisely.[30] Since there was little, if any, state direction, the counties and districts began to develop different systems.

During the middle of the 1800's, public schools generally passed under the direction of the state and away from ecclesiastical control; academies became public schools. Colleges became largely non-sectarian and the state university was established to provide higher education to students in the state. The state Constitution was revised to provide more liberally for public education and the continued establishment of school districts. Other important developments included the establishment of the first normal school, the creation of first State Board of

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[29] Ibid., 11.

[30] Edgar W. Knight, Public School Education in North Carolina (Boston: Houghton Mifflin Co., 1916), 148.

Education, and the creation of the office of Superintendent of Common Schools. During this period of growth in education, the exercise of local initiative and the spread of sentiment for democratic living were very evident.[31]

Concerning funding, the law of 1839 also provided that the counties of the state should contribute toward the support of their schools. Taxes from the school district and county and state supplementation, though meager, were the solid foundation upon which the North Carolina school system rested until 1933.[32] Many of the principles contained in the first school law are still in existence today.

Under the provisions of an act passed by the legislature in 1841, the boards of superintendents of the common schools of the counties were designated as a body corporate with certain prescribed duties and required "to lay off their counties into school districts, and number the same, of such form and size as they think most conducive to the convenience of the inhabitants of said county". They were also empowered to alter the boundaries of school districts.[33] This represents the first opportunity for the General Assembly to delegate to the local leadership the power to alter district lines within the county.

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[31] The Public School a State Builder, 19.

[32] Study of Local School Units in North Carolina, 10.

[33] Ibid., 13.

In 1852 Governor Reid endorsed the creation of common schools which provided more nearly equal school terms for the poor and privileged.

The office of the State Superintendent of Common Schools was established in 1852. The first superintendent was Calvin Wiley, a great leader in the development of North Carolina's common schools. Common schools were primary and secondary schools organized and supported for the first time by the state. Wiley served as the first and only state superintendent of common schools before the Civil War.[34] The history of public education in North Carolina from 1853 to 1866 was in a large measure the result of the efforts put forth under Wiley's leadership.

The absence of any effective supervision between 1840 and 1852, much misinformation concerning public education, and many misconceptions of the work which he was trying to promote, made it extremely difficult for Wiley to accomplish the goals he had set for himself. Nevertheless, Wiley persevered and out of apparent chaos built the foundation of the present educational system in North Carolina.[35]

Some of his accomplishments were collecting accurate information concerning conditions and operation of the schools of each county, enforcing school laws, making annual reports, and delivering educational addresses around the

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[34] Weeks, 1381.

[35] Knight, 163.

state to elicit support for the state educational system.

For thirteen years Wiley served as a wise and resourceful leader of education in North Carolina. It was due to him that at the outbreak of the Civil War in 1861, North Carolina had one of the most outstanding public school systems of the South and one that compared favorably with any in the nation.[36] During Wiley's tenure North Carolina experienced considerable progress in public education. The number of common school districts in the state had risen to about 3,500 by 1860.

In 1859 the state legislature provided for special districts to be created for as many as 40 children within the state's industrial areas.[37] This piece of legislation was intended to help urban children in areas where low wages deprived them of the advantages of the more affluent.

The district system prevailed with only slight modifications until the close of the 19th century. The progress of the schools, as accepted by the public to a certain extent, was measured by the number of new districts established. By 1860 the number of districts reported for eighty counties was 3,484. This represented an average of forty three and a half to the county.[38]

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[36] Study of Local School Units in North Carolina, 11.

[37] The Public School a State Builder, 20.

[38] Study of Local School Units in North Carolina, 11.

In 1860 Governor Ellis claimed "that the common schools had been mainly instrumental in awakening an education spirit among the people"[39] The enthusiasm that had been developed under Wiley's leadership was spilling out onto other influential people of the state.

The loosely formed district system established in the state would have improved had there not been a calamitous interruption, caused by war.[40] The Civil War brought the progress of public education to a halt.

During the Civil War the state school system that Wiley and others had worked so hard to establish was virtually destroyed. Wiley's last report as the superintendent of the common schools in 1866 closed with the following statement:

> To the lasting honor of North Carolina her public schools survived the terrible shock of cruel war, and the State of the South which furnished most material and the greatest number and the bravest troops to the war did more than all the other for the cause of popular education. The common schools lived and discharged their useful mission throughout all the gloom and trials of conflict, and when the last gun was fired, and veteran armies once hostile were meeting and embracing in peace upon our soil, the doors were still open and they numbered their pupils by the scores of thousands... The feeling universal among the people is that the schools must not go down.[41]

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[39] Ibid., 20.

[40] Ibid., 12.

[41] Ibid.

Four years after the war, there were 1,398 schools in seventy-four counties with an enrollment of 49,999 students, nearly one-half of which was Negro. These enrollment figures represented only one-fifth to one-seventh of the school age population and were far short of the school enrollment before the war in 1860. The hardships of war and its aftermath had long-lasting effects. The recovery of the public school system was slow during Reconstruction and for the remainder of the nineteenth century.[48]

The task of rebuilding the school system was as difficult as it had been in the beginning because of factors such as poverty, inexperience, ignorance, prejudice and the fear of mixed schools. Despite the many barriers to renewed progress, the state finally began to show some life directed at the support of education. This was done through local legislation, private aid and continued efforts of those interested in the growth and purposes of public education.

From 1839 to 1868 the development of schools was, in summary, characterized by the recognition of the state's obligation to foster public education by grants from the Literary Fund. In addition the several counties and districts of the state provided locally stipulated amounts for the establishment and support of schools and a loosely formed county organization with school control about equally

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[48] Lefler and Newsome, 314.

divided between county officials and district committees.[43]

1868 to 1900

A new state Constitution was ratified in 1868 which continued to provide for a "general and uniform" system of public education for the citizens of North Carolina. Like the previous Constitution, it provided for the establishment and reorganization of school districts.

This new revised Constitution emphasized the same principles that had been set forth in the 1839 act to "divide the counties into school districts." "Section 3 of the new Constitution indicated..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 requirements of this section, they shall be liable to indictment."[44] This section of the Constitution became the benchmark for all efforts directed at creating, reorganizing and abolishing school districts in the state.

The Constitution authorized the office of State Superintendent of Public Instruction to replace the earlier abolished office of Superintendent of Common Schools, and created a State Board of Education.

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[43] Study of Local School Units in North Carolina, 24.

[44] Ibid., 10.

The clause which called for a "general and uniform" system of public schools has been a part of the Constitution since its inception, but the legislature has never really made provisions for such a requirement. Throughout the state there have been and continue to be school districts that have inequities in funding. The School Machinery Act in 1933 would be recognized as one of the closest approaches to this requirement.

In the same time, the "Irreducible Fund" was created to replace the Literary Fund and provide funds for the continuation of schools. Funds came from: (1) the proceeds of all lands granted by the United States to the states, (2) all moneys, stocks, bonds, and other property now belonging to any fund for purposes of education, (3) net proceeds accruing from sales of stray animals, (4) fines, penalties, forfeitures, (5) proceeds from sale of swamp lands belonging to the state, (6) moneys paid for exemption from military duty, (7) grants, gifts, or devises made to the state not otherwise appropriated, and (8) ordinary revenue of the state as may be necessary.[45]

The legislative acts passed in 1841 which made provisions for the superintendents to lay off their counties into school districts prevailed until 1868. At that time a law was enacted establishing townships in the counties. With the creation of townships the policy about school district

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[45] The Public School a State Builder, 20.

organization was altered so that the people of each township were required to elect a school committee of three persons who were given the power to "establish and maintain for at least four months in every year a sufficient number of schools at convenient locations, which shall be for the education of all children between the ages of six and twenty-one years residing therein."[46] One of the important items in the legislative action of 1873 prescribed the dividing of townships into convenient school districts as one of the duties of the township committee.[47]

In 1869 the "general school tax" was established by the state legislature along with a prescribed four-month school term and mandatory education for blacks. This increased state and local responsibility for creating schools to meet the constitutional mandates.[48] The general school tax was taken out of the hands of the local school districts and given to the county commissioners who became the tax-levying authority for schools. The county commissioners were required to levy taxes when the township failed "to provide for schools to be taught for four months".[49] The

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[46] Study of Local School Units in North Carolina, 13.

[47] Ibid.

[48] Through the Years: A History of Public Schools in North Carolina, 5.

[49] "Education in North Carolina Today and Tomorrow", The Report of the North Carolina State Education Commission (Raleigh: The United Forces For Education, 1948), 385.

Constitution of 1868 also created the county boards of education and directed them to administer the school systems.

The ratified Constitution of 1868 and subsequent laws passed during the Reconstruction Era established the pattern and control for school organization which was to serve for many years with only slight modifications.[50]

However, even with all the plans developed by the educational leaders of the state to provide money and organizational patterns for school districts, inequalities existed between districts because of inadequate tax bases and population apathy.

In 1869 the legislature enacted laws that specified that each township in each county was to elect a school committee which would be responsible for establishing and maintaining schools in each township. This requirement became one of the first methods used to establish standards for district organization.

Alexander McIver became the Superintendent of Public Instruction in 1870. One of his first acts was to try to lead the state in a positive direction away from the problems created by the war. He had to work against great odds generated by factors such as the strong indifference of people toward schools and the fear that they would possibly have to endure racially mixed schools. He also had the

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[50] M.C. S.Noble, "A History of the Public Schools in North Carolina (Chapel Hill: University of North Carolina Press, 1930), 383.

arduous task of trying to undo the disastrous work of his predecessor S.S. Ashley, who had made numerous mistakes and supported inappropriate bills in the assembly during his time in office. McIver was able to get most of the inadequate legislation that passed in 1869 under Ashley repealed and made recommendations for the support of education by the General Assembly. More support and a better educational program containing better organization, training of teachers, special taxes, and supplements were also initiated by McIver. However, he failed to recognize the school district as the fundamental unit of the whole system.

During this time when educational leadership was trying to establish the state as a leader in education, a number of factors hindered the growth of schools and school districts. A growing number of people argued that education was not a function of the state and that it was impossible to hope for universal education even if it were desirable. The most often cited factor considered to hinder educational growth was the inequity of taxation. People who were able to educate their own children resented being taxed to pay for the education of children belonging to families that had no property and paid no taxes. It was noted that among the white population there was a wide spread feeling that it was too much to ask that the Negroes be educated at white expense.[51]

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[51] J.G. Hamilton, History of North Carolina (Chicago: The Lewis Publishing Co., 1919), 362.

Public education in North Carolina was severely handicapped by poverty and low income, scattered population, bad roads, a large school population in comparison with the number of taxpayers, and the necessity of maintaining a dual system of schools. The state's sterile political leadership and the colossal public indifference to education were also responsible for the educational backwardness in North Carolina.[52]

An incident in 1870 damaged the credibility and establishment of the public school system. In Lane v. Staley, the state Supreme Court held that schools were not a necessary expense for townships, because if townships were permitted to levy school taxes, the uniform system of schools and education prescribed by the Constitution would be interfered with.[53] This case grew out of the state's giving authority to the township to levy taxes. A taxpayer filed suit, holding that the legislation was unconstitutional because it was providing opportunities for the officials of school districts or townships to create inequities in funding between competing districts. This is an example of the determination that people possessed in their fight not to be taxed for what they viewed as excessive funds to run the schools.

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[52] Retired Teachers of North Carolina, 20.

[53] Charles L. Coon, School Support and our North Carolina Courts (Raleigh: Edwards and Broughton Company, 1926), 35.

The development of the city school systems had its beginnings in the granting of charters to city governing boards which desired to improve their school facilities. The granting of charters was the first step in breaking up the county as the specified unit of school administration. It was due mainly to the economic and social growth of towns and cities and their concentration of taxable property and to people within these areas wanting to improve the educational environment of their children.

The first act of incorporation for any city system of schools was passed by the General Assembly on March 28, 1870. This charter provided that the area within the city limits of Greensboro could become a school district. It gave the local officials all the authority and responsibility to levy tax supplements to aid the state fund, and to administer and maintain a system of public schools with a plan in conformity with state guidelines.

Charters issued to other cities after 1870 were patterned largely after that of Greensboro.[54]

The charters of various cities were altered or amended through the years in order to regulate such things as school committees, location and building of schools, duties of boards of education, district boundaries, and other such items as necessary for the successful conduct of the schools of the district.

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[54] Study of Local School Units in North Carolina, 21.

The terms found in the majority of the charters issued by the state usually conferred upon the city districts all the powers, rights and privileges in the conduct of its system of schools as was conferred by law upon the county.[55] The acts setting up these independent units followed no definite pattern except that of "independency" in administration. By the end of the school year 1932-1933 there were 93 such units, with from one to four in a county in more than half of the 100 counties. At one time there were 99 such units.[56] As of early 1988, however, these special charters have been reduced to 40.

In 1870 the first graded school was established in the city of Greensboro aided by money from the city's treasury.[57] Greensboro is considered to have been the first city school district; its charter is the first established for a system of public schools to be operated and controlled exclusively by a city.

During the constitutional convention of 1876 the leaders of the state recognized the need to reorganize or rebuild the school system in the state in order to regain the excellence in education that had been achieved prior to the war. During the convention a new version of the Constitution was adopted

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[55] Ibid., 21.

[56] "Education in North Carolina Today and Tomorrow", 386.

[57] J. Henry Highsmith, "History of Education", The Uplift (July 1936), 12.

which contained a strong article on education. Article IX, reads in part as follows:

> Section 2. General Assembly shall provide for schools; separation of race. 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. And the children of the white race and the children of the colored race shall be taught in separate schools; but there shall be no discrimination in favor of, or to the prejudice of, either race.
>
> Section 3. Counties to be divided into districts. 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 six months in every year; and if the commissioners of any county shall fail to comply with the aforesaid requirements of this section, they shall be liable to indictment.[58]

These sections indicate that state government was willing to accept the responsibility for providing an education for the youth of the state through a general and uniform system of schools. The terms general and uniform represent the basis of a plan that would offer all of the children of the state an equal educational opportunity. These sections, also, determined that the individual counties would be the agency assigned to implement this plan. The county authorities working in conjunction with a number of school district committees would be given the

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[58] A.T. Allen, Paul V. Betters, Charles M. Johnson, Fred W. Morrison and Charles Ross, State Centralization in North Carolina (Washington: The Brookings Institution, 1932), 18.

authority to administer and maintain the school districts sectioned out in each county.

These new sections of the Constitution of 1875 made provisions for whites and blacks to be educated in separate but equal schools. This provision was important to the growth of the state because after the Civil War there was a movement by the reconstruction leaders to implement an integrated school system in the state. That particular movement was resisted and unsupported by the white population. This particular section become one of the most important in the expansion of the state's school system. It cleared the way for support of the white population and, thereby, the increased improvement and progress of public school development into the next century.

The Constitution of 1876, as revised, also recognized the county as the local unit of school administration. In the past, tradition has favored a county school system because it keeps local control with a tax base large enough to support school development. In a fully developed county system a central board controls and supervises through its agents all the schools of the county, except those of large cities. All property in each county is taxed for the support of all the schools in that county; thus, all the children of the county may enjoy similar educational

opportunities.[59]

In 1877 the state legislature gave the county boards of education the authority to divide the counties into "convenient" school districts.[60] This enactment gave the power or creation, abolishment, and reorganization of the school districts to the boards. It removed the power and authority from the local superintendents who had been granted that authority by preceding legislative action.

In 1877 an act giving authority to the majority of the qualified voters in certain size townships to levy taxes for public graded schools was passed by the legislature.[61] The intent of this special taxing action was to provide needed educational funds which would allow the counties to bring the school term up to the four-months provision found in the Constitution. This piece of legislation was not successful in providing any positive enhancements to the public school system.

The number of school districts in the state continued to grow as more people became interested in their children's welfare and as more money became available. The total number of school districts recorded in the 1879 Annual Report of the Superintendent of Public Instruction was

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[59] "Public Education in North Carolina" A Report of the State Educational Commission of North Carolina (New York: General Education Board, 1921), 92.

[60] Study of Local School Units in North Carolina, 13.

[61] The Public School a State Builder, 21.

5,944. There were 4,163 white districts and 1,781 colored districts in the state at that time.[62]

In 1883 Governor Jarvis made pleas to the people of the state to come forth and support the schools with more financial support. He made the following comment in a plea for education:

> We had as well look the question squarely in the face and meet the issue like men. It is more money for the schools or poor schools with all the evil results which follow. Which shall it be? In my inaugural address, on assuming the duties of governor, I declared it to be my purpose to work for North Carolina, the development of her resources and the education of her children. I have traveled around the state and addressed many groups about the importance of education. If North Carolina does not occupy a higher position in the scale of education in the next census report than she does in the last, it shall be not fault of mine. But after all the chief responsibility for education is with the General Assembly".[63]

In 1885 the county commissioners ceased to be the board of education. The justices of the peace and the county commissioners were ordered to elect a county board of education to consist of three residents of the county who were to be men of good moral character, qualified by education and experience and interest to especially further

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[62] John C. Scarborough, Annual Report of the Superintendent of Public Instruction of North Carolina (Raleigh: Office of Superintendent of Public Instruction, 1879), 7.

[63] The Public School a State Builder, 22.

public education and the interests of the county.[44] These three persons then were mandated to elect a county superintendent.

The General Assembly attempted in the middle 1880's to correct the financial problems experienced by many of the school districts. It passed legislation that gave the county commissioners the authority and direction to levy a special school tax to operate the county's schools. This particular enactment by the General Assembly indicated that it believed the county to be the agency primarily responsible for the support and operation of schools.

One of the philosophies which seemed to dominate legislative thinking during this period was the belief that the Constitution placed the primary responsibility for the operation of the constitutional school term on the county commissioners.[45] This meant that the county commissioners were to provide administrative action and financial support for the constitutional term of four or more months of school. This particular philosophy prevailed in the state until the 1931 session of the General Assembly. During that session laws were passed which established full state control and support of the public school system.

In 1885 a special court case was litigated pertaining to the funding and taxation for public schools. In

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[44] Study of School Units in North Carolina, 17.

[45] Allen et al., 21.

Barksdale v. Commissioners of Sampson County (1885), the State Supreme Court held that a special tax in support of a school term longer than the constitutional four months school term could not be levied.[66] The Supreme Court held that the special tax which had been authorized by the General Assembly was in violation of the Constitution because it would force the establishment of a school term longer than that called for by the provisions of the Constitution. The decision by the court suggested that any taxing for school purposes beyond the standard four months term was not required by the Constitution and it would be void if it were attempted by any branch of the state government.[67] The failure of this action to pass left the school districts of the state with an even tax rate, but with unequal lengths in their school terms. This case is a classic example of the reluctance of taxpayers to pay additional taxes imposed on them to remedy the inequalities of financial strength and length of the school term from district to district. Most taxpayers did not see the need or the importance of education in their everyday lives and certainly did not want to part with their hard-earned money for such a foolhardy adventure.

An important principle concerning school district size was enacted by the General Assembly in 1885. It enacted a

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[66] The Public School a State Builder, 22.

[67] Barksdale v.Commissioners, 93 N.C. 447 (1885).

bill that forbade boards of education to constitute a school district that would contain less than sixty-five children of school age except for "extraordinary geographical reasons."[68] This bill also contained a provision which prevented any school district from receiving state support unless it met the specifications outlined above.

Sections 2549 and 2550 of the school laws of 1890 pertained to the creation of school districts in each county. These laws were written with the constitutional mandates in mind. Sections 2549 and 2550 were written as follows:

> The county board of education shall lay off their respective counties into convenient school districts, consulting as far as practicable the convenience of the neighborhood. They shall designate the districts by number, as school district number one, school district number two, in the county of_____.[69]
>
> The county board of education shall consult the convenience of the white residents in settling the boundaries of the districts for the white schools, and the colored residents in setting the boundaries of the colored schools. The schools of the two races shall be separate; the districts the same in territorial limit or not, according to the convenience of the parties concerned.[70]

These statutes direct the school board to establish separate school districts for the white and black races and

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[68] Study of Local School Units in North Carolina, 13.

[69] North Carolina Public School Law (1890), sec. 2549, 13.

[70] North Carolina Public School Law (1890), sec. 2550, 14.

to establish the boundaries of such districts with input from the residents so as to eliminate any hardships on the students. The school to which students are assigned must be located so that they will be able to walk to school without discomfort.

The state law of 1893 relating to education is embodied in Chapter 15 of the School Code as amended by the laws of 1885, 1889, 1891, and 1893. Section 28 of this chapter contains the proper steps for authorities to take in the creation of a new school district. Section 28 of the code states the following:

> No change of districts shall be made until full information is laid before the county board of education, showing the shape, size, boundaries and school population of all the districts affected by the change. Unless for extraordinary geographical reasons, no change of district lines shall be made that will constitute any district with less than sixty-five children of school age; and the county board shall provide, as far as practical, that no district shall contain less than the number of children of school age. The county board shall furnish plans and require the committees to construct comfortable facilities, with a view to permanency and enlargement as the increasing population may demand. The county board shall, in all matters , obey the requirements of the state board of education and the state superintendent.[71]

Section 29 of the same sequence deals with the location of school buildings within the district. It creates the specifications for district boundaries. This section is stated in part as follows:

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[71] North Carolina Public School Law (1893), Chap.15-41.

> No new school shall be established in any township within less than three miles by the nearest traveled route of some school already established in said township.[72]

These laws were written to encourage school boards to create school districts larger than the six square miles specified by an earlier statute. The desire of the General Assembly and the purpose of the law were to promote efficiency in education through the consolidation of the many small, ineffective school districts in the state. Many parents resisted this requirement because it forced many children to walk up to three-miles one way to school. A three mile walk to school was considered reasonable by state legislators, leaving parents little recourse in the matter.

In 1895 the legislature revised many of the laws pertaining to school and school district organization which had been established in 1885. It abolished the county boards of education and the county superintendents as the controlling school authorities. As a result of this reorganization, the county commissioners became the boards of education. It also recreated the office of county examiner to control and supervise the administrative matters pertaining to education.

The Superintendent of Public Instruction in 1896 advised the counties of the state to hold onto the

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[72] J.Y. Joyner, Biennial Report of the State Superintendent of Public Instruction (Raleigh: State Department of Public Instruction, 1901), 368.

"township" system because the importance of the township was going to be emphasized more in state government. The township committee had the responsibility for the administration and organization of schools. He indicated that the most important reason for them to hold to the township system was that local taxation could be a viable alternative in the support of the public schools in the district, and the collection of such a tax should be done by the township.[73]

In 1897 the legislature had its turn at revision of school law. It did away with many of the school laws that had been enacted in 1895. The legislature also abolished the office of county examiner and created the office of county supervisor. The office of county supervisor was created to provide closer supervision of instructional procedures by school personnel. A final enactment during this session was the reestablishment of the county board of education as the central authority for education at the county level.

School districts continued to be created by local township committees and at the end of the 1888 school year the total number of districts in the state had increased from 5,944 in 1879 to 6,794 of which 4,763 were for white

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[73] C. H. Mebane, Biennial Report of the Superintendent of Public Instruction (Raleigh: Guy Barnes, Printer to Council of State, 1898), 13.

children and 3,031 were for colored children.[74]

An important change in the procedures necessary for school district organization occurred in 1897. This change applied a number of restrictions on the policies that boards of education had been using to organize school districts. A law was passed by the General Assembly which directed all boards of education to divide their respective counties into as many school districts as there were townships. School committees in each township were required by this law to locate schools within the township so that each school would have an average of not fewer than sixty-five pupils.[75] This law did not require the township lines and the school district lines to be the same, but it did require that there should be the same number of districts as there are townships. This law was another attempt by the General Assembly to make the school system more efficient by reducing the number of school districts in the state.

This law also insisted that the committee of each township should fix and publicize the dividing lines between the various schools in their township so as to designate the specific school that children in each locality would attend. The school lines could remain as they had been, they could be changed, or altered by the committee to better

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[74] Mebane, Biennial Report, (1889), p. xxiii.

[75] Study of Local School Units in North Carolina, 13.

accommodate the children of the district.[76] Most of these boundary lines were established to ensure that each child would be within walking distance of their school. Township committees tried to consolidate as many of the schools in their district as possible but only if the distance from the school to the students' homes could be kept at a minimum.

School districts in the state were constantly in need of money to support their programs. In 1897 an act permitting local school districts to match state funds through local taxation was enacted by the General Assembly. This act was repealed in 1899 when the Democrats regained control of state government. Their legislative agenda included the first state appropriation of $100,000 to be apportioned to the counties for the support of schools. This appropriation marked the beginning of state support for public education. It was an attempt by the state to provide the necessary resources to ensure that an equal education would be provided for all students regardless of their economic or social status. This support was calculated and distributed to each county on the basis of its school population.[77]

The General Assembly also intended for this appropriation to increase the supporting ability of each

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[76] Mebane, Biennial Report (1898), 242.

[77] The Public School a State Builder, 22.

county and in that way lengthen the school term.[78] This first effort to provide financial support by the state generated an enthusiastic response from the state's educational leadership, but it did not solve the financial problems plaguing local school districts. The districts continued to have problems because the appropriation to each district was not sufficient to produce the results that the legislative body desired.

Despite all the attention given to school districts by the General Assembly, no appreciable improvement was made between the Civil War and the turn of the century. There were no progressive developments in school district organization except for a rather aimless and indifferent increase in their number. By 1900 the number of school districts had reached a total of 7,910. Of this number 5,422 were for white children and 2,488 were for colored children.[79]

The postwar years from 1868 to 1900 were significant in that there was an increasing appreciation and recognition of the state's public school system by the general population and elected officials. However, in the rural parts of the state the utter poverty of the people was reflected in the meager amounts spent for school support. School districts were small, school terms were short, curriculum offerings

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[78] Allen et al., 23.

[79] Mebane, Biennial Report (1900), 163.

were inadequate, and school plant facilities were poor.[80] There was an increase in the number of schools and school districts in the state, but they were small and inadequate and failed to provide the appropriate educational opportunities to the children of the state.

Educational progress was made during this period but it occurred more often in larger cities and towns, which were able to establish and support numerous graded schools and special charter school districts. They could provide more financial support, better facilities, and longer school terms for their students because they contained a larger concentration of the population and tax wealth.

1900 to 1933

Governor Charles B. Aycock who became known as the "Education Governor" and State Superintendent Joyner led a campaign in 1901 to increase the educational opportunities in the state and to build public support for education. Governor Aycock's educational campaign called for local taxation, consolidation of small school districts, building and equipping schoolhouses to replace the meager one-room schools, longer school terms, more money for teachers, and a public relations campaign to encourage improvement of public schools. The consolidation process initiated under Governor Aycock abolished more than 300 school districts and built more than 676 new schoolhouses in the first year of its

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[80] Study of Local School Units in North Carolina, 24.

implementation.[81]

In 1902 Dr. Edgar W. Knight described the inadequate educational foundation upon which Governor Aycock had to build a school system:

> Only thirty districts in the State, all urban, considered education of sufficient importance to levy a local tax for the support of schools. The average salary paid to county superintendents annually was less than one dollar a day, to public school teachers, $91.25 for the term. This meant, of course, that the office of county superintendent was either a "political job", usually given to some struggling young attorney for local party service, or a public charity used to help support the growing family of some needy but deserving preacher; and, further, that there were not professional teachers in the public schools. Practically no interest was manifested in the building or equipment of schoolhouses. The children of more than 950 public school districts were altogether without school houses, while those in 1,132 districts sat on rough pine boards in log houses chinked with clay. Perhaps under all these circumstances it was well enough that the schools were kept open only seventy-three days in the year, and that less than one third of the children of school age attended them. To complicate a situation already sufficiently difficult, the race issue injected its poison into the very vitals of the problem.[82]

This was the state of the public schools at the turn of the century. Then came the ground swell which echoed through the state in the early 1900's. The battle cry became, "What we want this state to become must first be taught in school. No state can become great with a large

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[81] Knight, 165.

[82] Hamilton, 368.

percentage of illiterate citizens. If we can only educate one - just one - generation! We can! We must!"[83] During this period the educational leaders and lay persons of the state began to earnestly work toward the positive development of a state system of public schools.

At the turn of the century there were 7,910 school districts in North Carolina in which there were 7,391 schools.[84] Many of these school districts in the poorer sections of the state had no school facility available for their students.

The law of 1901 provided for special tax districts to be established in the county systems. These districts were allowed to vote an additional special tax, beyond the state and county school tax, for supplementary support of their schools. As a result of the campaign for increased support for schools initiated by Governor Aycock and Dr. Joyner, the number of tax districts increased from 56 to 182. At the height of the enthusiasm for the special tax district, they were found in almost every county of the state. Guilford with 25, Dare with 18, Mecklenburg with 15, and Alamance with 9, led the state in local taxation. These special tax districts continued to be the most productive method for providing school district funding throughout the first thirty years of the century. This taxing process provided

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[83] Retired Tar Heel Teachers, 4.

[84] Mebane, Biennial Report (1900), 163.

the means for districts to maintain a viable, efficient working public school system. In 1903 the number of these local tax districts had grown to 228.[85] In 1910 there were 995, and in 1912 there were 1,439. All the counties of the state, except three, in 1909 had from one to forty-seven local-tax districts each, levying special taxes therein to supplement their apportionments from the state and county funds for longer terms, better buildings and equipment, and better teachers paid better salaries.[86] The number of tax districts continued to grow; by 1922 2,035 special tax districts had been established, and just before the passage of the School Machinery Act in 1933 there were more than 3,000. However, this number of special tax districts declined when consolidation efforts began to take root in the state. As the state began to play a greater financial role in each school district, it became apparent that the special tax districts were no longer needed; eventually, the state abolished them with the School Machinery Act in 1933.

People interested in education had hoped that by increasing the number of special tax districts over the years, it would be possible to provide an appropriate school in every school district of the state. Initially these special tax districts proved to be a great success but problems did arise that eventually led to their demise. The

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[85] Joyner, Biennial Report (1904), 7.

[86] Joyner, Biennial Report (1908), 9.

General Assembly removed all limits on the parameters that a board of education might set for a special tax district; as a result, the school districts in most counties had been gerrymandering wildly. Their boundary lines had been extended far up and down railroads and rich river valleys, anywhere to enclose taxable property, particularly of corporations, that might accrue to the benefit of the particular district.[87] Accordingly, about one forth of the districts of the state possessed the bulk of the taxable wealth of the state. This imbalance in tax wealth in the majority of districts hampered a district's ability to provide the equitable educational conditions for its students, and was one of the most objectionable features of the district system. The inequities generated by the special school tax eventually prompted the General Assembly to repeal the legislation that had created it. The Equalizing Fund was created by the General Assembly to take care of the disparities between districts.

Even though the county had been considered the chief local unit of administration since the constitution of 1876, it had never assumed full responsibility for providing all schools with suitable buildings and equipment. The importance of the county as the central administrative unit of the state public school system was diminished with the establishment of the special tax districts. The formation

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[87] "Public Education in North Carolina", 99.

of new school districts on the basis of property values caused the county system, for the time being, to be of little value in bringing about equal educational opportunities for all the children of the state.[88]

The township or school district had always shared in this responsibility. Since districts were not permitted to tax themselves for school purposes prior to 1901 the needed funds for school buildings were usually raised by private subscription.[89] When this method failed, either the school terms were shortened or districts were abolished.

Even when school districts had the opportunity to sanction taxes for school purposes, the majority, for various reasons, decided not to do so. In 1909 only 995 out of 5,373 school districts had adopted local taxation. This indicated that there were some problems with the system and that it did not provide the districts with a totally reliable method of support for their educational needs.

One of the first factors to generate enthusiasm toward creating a state system of schools was the establishment of the first "Equalizing Fund". This fund was appropriated by the General Assembly so that children from the poorer school districts around the state could potentially buy the necessary services to receive the same education as those in

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[88] George D. Strayer, Centralizing Tendencies in the Administration of Public Education (New York: Columbia University, 1934), 20.

[89] "Public Education in North Carolina", 93.

the more affluent districts.

The Equalizing Fund was to be distributed to the school districts based on an inverse ratio of a county's financial ability to support its school programs. It was to be used to lengthen the school term in every district to the constitutional minimum of four months in length or as near to it as the increased funds would permit.

While the fund helped, it was not sufficient to bring the schools up to the requirement of the Constitution. The General Assembly provided another fund in 1899 called the First Hundred Thousand that was to be added to the growing support from the state. These two appropriations, the First Hundred Thousand and the Equalizing Fund, represented, however, the first admission on the part of the state, that it was financially responsible for the operation of the schools.[90]

A requirement established by the state to govern the transfer of these equalizing funds dictated that no school with a student population below sixty-five could be given any state funding. This requirement was established by the state to discourage the establishment or continuation of the small school districts in the state. The state wanted to form an environment that would be conducive to the consolidation of all the small districts. The multiplicity of small districts was considered by many of the state's

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[90] Allen et al., 23.

educational leaders to be one of the leading factors in producing ineffective and inefficient schools.

This requirement did in fact cause a reduction in the number of school districts. Within a two-year period the number of districts decreased by 179.[71] As the small and inoperative districts were abolished or reorganized the county and the county superintendent quickly became the strongest focal point in the state's educational plan.

In 1901 a different kind of special charter district was developed and conferred. The best example of this type of special charter was the Guilford County Graded School, which was organized under a charter granted by an act of the General Assembly. This special district was purely rural, yet under its charter it was granted all the rights and privileges that had accrued in the city charters. It could choose its own board, elect its superintendent, and levy a special tax; in fact, it was given all rights and powers, so far as its own school was concerned, that were enjoyed under the law by Guilford county in which it was located.[72]

At the close of the school year in 1902 the number of school districts had increased to 8,115. Although there had been certain fluctuations in the number of districts the tendency had been downward rather than upward except in the

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[71] William H. Plemmons, "The Development of State Administration of Public Education in North Carolina" (Ph.D Diss., University of North Carolina at Chapel Hill, 1943), 5.

[72] Study of Local School Units in North Carolina, 22.

case of the colored districts.[93] During this time the consolidation movement began to take hold and many districts were abolished when the state started the reorganization of the various districts.

Consolidation of small districts into larger attendance areas had its real beginning in North Carolina when Dr. J.Y. Joyner became state superintendent in 1902. He very quickly began to argue for the "necessity and advantages of consolidation of school districts," and suggested "some means of securing larger districts."[94]

In Dr. Joyner's 1903 Biennial Report to the state he pointed out these necessities and advantages and gave statistical arguments to support his thinking. Of the districts which were applying for aid from the first 100,000 dollars appropriated by the legislature, there were 1,340 of the white districts and 522 of the colored districts whose enrollment was less than the 65 students required by the law. He said, "This makes it very clear that one chief cause of the weakness of school districts in North Carolina, and of their consequent inability to have a four months term without aid from the State Treasury is to be found in the smallness of the districts".[95]

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[93] Ibid., 12.

[94] Ibid., 13.

[95] Joyner, Biennial Report (1902), 365.

Dr. Joyner further pointed out that there were 5,500 white school districts with about an average of 80 students to the district which just exceeded the state mandate. Dr. Joyner felt that there was a need to do something about the small district. He said, "I am satisfied of the necessity of the reduction of this needless multiplicity of small districts by a reasonable consolidation of many of them into larger and stronger districts".[96]

A number of factors have influenced the need for larger school districts. Such things as the industrial revolution and the trend toward urbanization, the appearance of the more convenient forms of transportation, improved roads which broke the bonds of rural isolation, and the effects of scientific agriculture which decreased the farm population have played a part in consolidation efforts.[97]

The following facts and conditions were offered by Dr. Joyner as some of the benefits to be derived from the decrease of the number of school districts and the increase in the size of the newly established districts:

1. an increase of funds for the district
2. an increase of the number of children attending each school
3. a bringing together of several school teachers in one school house
4. an enlargement and improvement of schoolhouses

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[96] Ibid., 365.

[97] C. O. Fitzwater, School District Reorganization Policies and Procedures (Washington: Government Printing Office, 1957), 4.

5. an increase of funds by reducing the number of houses and the number of teachers
6. a more favorable condition for the adoption of local taxes [98]

This program outlined by Dr. Joyner was endorsed by all individuals and groups involved with schools. The sentiment for consolidation grew all over the state and wherever it had been tried it resulted in better school-houses, better teachers, longer terms, increased attendance, increased pride in the school on the part of patrons, and a finer school spirit on the part of the children.[99] Dr. Joyner and other people involved with education continued to recognize the necessity for the state to rid itself of the ridiculous number of small school districts in order for progress to take place and effective institutions of education to be built. He was keenly aware of the problems created by the presence of the smaller districts and made the following statement:

> If these little districts are allowed to continue and to have at the expense of the state as long a school term as the larger districts, I see little hope of getting rid of many of them."[100]

The fight was on for larger districts, longer terms, better school houses, trained teachers, higher salaries and,

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[98] Study of Local School Units in North Carolina, 14.

[99] Joyner, Biennial Report (1904), 34.

[100] Joyner, Biennial Report (1904), 37.

in fact, for all the things that make toward better schools. The pace continued for almost thirty years without a let up.[101] During the 1920's the consolidation of 2 or 3 small districts into one larger district provided for the abolishment of thousands of small, ineffective school districts. This process continued until the School Machinery Act of 1933 abolished all districts in order to totally reorganize the state's public school system. In the Biennial Report of the State Superintendent of 1922 it was reported that 327 school districts had been abolished because of consolidation, and every year after there was a continual increase in the number of districts that vanished due to this process.

In the early part of the century North Carolina was sparsely settled. This small population scattered over a large area necessitated a large number of school districts and schools. The state was so large, in fact, that it was difficult to divide the geographical areas into school districts to meet specific recommendations by committees or state leaders. As the population of the state increased then communities were able to support and maintain a larger district.

The problem that many counties faced with their school districts during this period is highlighted by the following example of a county in North Carolina in 1905. Of sixty

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[101] Study of Local School Units in North Carolina, 14.

schools in the county that year, fifty-three were one-teacher, seven were two teacher; none had more than two teachers.[102] This indicates that within that one county there were 60 separate school districts each with its own organization pattern for support and administration. This situation is typical of the complex school conditions that existed within the state at the turn of the century.

Even with this early movement toward consolidation and the reduction of small school districts there was still in 1904 about 2,427 white districts that had less than sixty-five children of school age enrolled in the district.[103] The Biennial Report of the state superintendent published during this year indicated there were still 5,336 white school districts and 2,317 colored school districts in operation in the state.

One of the more important aspects dealing with school district reorganization, according to Dr. Joyner, was that the work of enlarging the school districts by the consolidation of unnecessary small districts or by redistricting townships and counties must, of course, be carried on with wisdom, discretion, and justice. Every child has a right to be within reasonable walking distance of some school, but any healthy child can better afford to walk two or three miles to get to a good school than to attend a

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[102] Retired Tar Heel Teachers, 20.

[103] Joyner, Biennial Report (1904), 29.

poor one at his gate.[104]

In 1903 an act directing that all funds derived from sources mentioned in the State Constitution (Article 9, section 4) "and all funds hereafter so derived, together with the interest on such funds, be set apart as a separate and distinct school fund to be know as the state Literary Fund to be used exclusively as a means of building and improving public school houses under rules and regulations to be adopted by the State Board of Education ".[105],

This fund grew over the years to such magnitude that its existence provided ample opportunities for the state to use it to entice the school districts to reorganize their district operation. The specifications governing the procedures for receiving a loan from this fund became forces that encouraged the consolidation of schools and school districts around the state. These specifications required the applying districts to prove that the loan money would be spent in accordance with an adopted plan of district reorganization under a new consolidated county-wide system of schools which would comply with the 1923 state mandate to reduce school costs.

The inequities in the length of the school term continued to plague the school districts around the state. The General Assembly decided to remedy this disparity by

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[104] J.Y. Joyner, Biennial Report (1907), 26.

[105] The Public School a State Builder, 22.

empowering the county commissioners to levy an additional school tax that would allow the school authorities to bring the school term up to constitutional four months in each district.

As a result of this legislation the state was taken to court again because the people found displeasure in being taxed further for something that they had no use for and did not support. Tax rates, which varied from county to county depending on the wealth of each, resulted in tremendous displeasure of the citizenry. In Collie v. Commissioners of Franklin County, the court reversed itself on the Barksdale case by holding that a special tax sufficient to bring the term to four months in each of the several districts of the state must be levied by the county commissioners.[106] This enhanced the meaning of Article IX of the Constitution by making it the law of the land and sustained the need to establish and secure a system of free popular education.[107] Justice Brown, with the whole court concurring, said in part:

> 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, is so plainly manifest in Article IX of the Constitution that we can not think it possible that they even intended to thwart their clearly expressed purpose by so limiting taxation as to make it impossible to give

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[106] The Public School a State Builder, 23.

[107] Allen et al., 23.

> effect to this direction. The reasons which induced the people to adopt Article IX are set forth in its first section, and they are so exalted and forcible in their nature that we must assume that there is no article in our organic law which the people regarded as more important to their welfare and prosperity.[108]

The court found that this act by the legislature placed a special obligation on the county commissioners and was therefore constitutional. The general and uniform school term described and mandated in the Constitution was born out of this decision.

Continued consolidation efforts were enhanced in 1911 when the legislature gave the power to consolidate schools to the county boards of education. During this effort the legislature also gave the boards the authority to develop plans for transportation so that all the students who lived at a distance which prevented them from walking to school could be transported by the most convenient method available. This greatly enlarged the area for which one school could provide services for students. The consolidation of school districts became a positive force in the continued fight for the survival for the state's public schools.

The General Assembly in 1918 enacted a uniform six months school law in an attempt to equalize educational opportunity in North Carolina. To help in this process the

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[108] Ibid., 24.

Fund that was being shared by the administrative units to enhance their educational efforts. As this fund grew over the years a need developed for an organization to control the process and to administer the funds to the administrative units. A board known as the State Board of Equalization was created to perform this task.

While in session during 1917 the General Assembly created a commission to study the problems in public education. It passed an act which authorized this commission to complete a thorough study of the school laws of the state at that time, of the educational conditions, and to compare North Carolina's school system with that of other states. Two of the most significant ideas to come from this study, which eventually led to improvements in the system were (1) that the county should be the central administrative focus in the state, and (2) that there was an overwhelming necessity for the counties of the state to plan, organize, and implement a program for the consolidation of their small districts.

In 1921 the commission reported its findings to the General Assembly with the following summary and recommendations:

> To summarize, we have a so-called county school system, but we are far from realizing its financial and educational possibilities. This is due to constitutional and statutory limitations, to the development of an unusual number of small city and special tax districts, and to a lack of supporting public sentiment. A constitutional

> amendment increasing the compulsory school year to eight or nine months would eliminate most of the hindrances to the full development of a county system. If such an amendment is not practical, then appropriate legislation should stop the formation of special tax districts, reduce the number of specially charted districts, provide a single unified code for large cities, and throw a larger proportion of the burden of a six months school term on the counties and cities. The county school also assume a larger responsibility especially for school buildings, and an effort should be concentrated on developing sentiment for county-wide additional special taxes and bond issues. The people should obtain a more direct voice in the control of their schools, and school management should be freed from partisan politics. Finally, the state should co-operate more generously in providing boards of education with adequate and appropriately trained administrative and supervisory staffs.[109]

The law of 1917 authorized and empowered county boards of education to redistrict the county or any part of the county and to consolidate school districts wherever and whenever in its judgment such action would better serve the educational interests of the county or any part of it.[110]

These recommendations from the commission were taken to heart and were very influential in the development of the county-wide system of education that was established by the special laws of 1923.

The number of school districts increased in 1917 when the General Assembly enacted a bill that declared the high school to be part of the public school system. This

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[109] "Public Education in North Carolina", 103.

[110] Study of Local School Units in North Carolina, 14.

development spurred the consolidation movement and the county-wide system of schools with more vigor.

In 1918 despite many factors such as opposition to taxes, indifference, vested interests, and class prejudice, the public elementary school had slowly but surely won its way with the people. To this deepening appreciation the 5,422 rural schoolhouses for white children and the 2,316 for colored children, exclusive of the schools of the 136 specially charted districts, are irrefutable witnesses.[111] The school districts of the state continued to grow as high schools and elementary schools continued to be organized to meet the ever increasing demand for education of the young.

This was a special period in the life of the state because it was at the end of the First World War. The results of intelligence testing completed on the recruits during basic training revealed the need to provide better educational opportunities for the children of the state. The academic problems that were noted by the U.S. Government through its testing led to increased interest in public education and consequently an increase in financial support on which to build a strong public school system. Since that time development in the public school system of North Carolina has been rapid.

There were some problems with specifications of special charters through the years. Most of the charters differed

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[111] "Public Education in North Carolina", 5.

from one another in important details and generated a large volume of special school legislation that was hard to decipher. Special charter districts were not required to make reports until 1901 and then many of them did not. They continued to operate without regard to the general school laws or rulings of the State Board of Education. Written by different men at different times and under different circumstances, the specific provisions of these city charters varied enormously and without reason.[112]

These problems became some of the overriding factors in the decision by the state to abolish all charters and then update them so that a new and better understanding might develop between the state and cities as well as consistency in charter requirements. A large number of special charters were done away with because they did not meet the specifications of the legislative enactments concerning school district organization.

So many small, special districts reacted unfavorably on the county unit, reducing the resources of the county, lowering its dignity and prestige, and eliminating a most active and progressive influence for better schools.[113]

The State Commission's report in 1921 concerning the needs of the public schools of the state prompted the state legislature to enact some new and special policies directed

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[112] Ibid., 97.

[113] Ibid.

at the fundamental governing agencies of the state system. The legislature of 1921 granted to the county boards of education plenary powers in the matter of establishing public high schools. It was provided that the county board could consolidate two or more districts into high school districts, if in its judgement the educational interests of the county, township, or district would be benefited. It was not considered necessary that a hearing be held in which all parties concerned in the redistricting were to participate, but it was decided that the board could follow its own judgement in the matter.

The county has been important to the administration of the school systems since the end of the Civil War and has retained its responsibility of being the principle unit of school taxation. Because of this taxation principle the counties were considered to be very important, as a unit, for the administration of public schools.

In 1919 the General Assembly passed a law which expressly stated that no new school districts should be created in such a way as to increase the total number of school districts in a given county. One of the sole purposes of the law was to generate a movement toward the consolidation of the many small districts and one room school house around the state. This law was to become the forerunner to the county-wide system of organization that was legislated later in 1923.

This significant measure created the counties as the basic units of local school administration and abolished the existing local district system that had been in existence since 1839. Each county board of education was authorized to make such changes as it deemed wise in the organization of school districts within its jurisdiction. Although, these districts were modifications of the original districts established by the law of 1839, they were no longer separate administrative units but rather subunits constituting the county unit. This local district, however, had the right to vote additional taxes to supplement the county-wide levy.[114]

The legislature of 1923 continued the county board of education's power to establish districts, but made the provision that not more than one school district should be established in any one township. The state also required the establishment of a standard high school in each county as a basic part of its county-wide plan of consolidation. By the year 1925 each county in the state had at least one standard high school.

The County-Wide plan became very popular with the state's educational leaders, who made recommendations for solving many of the organizational problems in the struggling school districts.

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[114] Henry F. Alves, Archibald W. Anderson and John Guy Fowlkes, Local School Unit Organization in Ten States (Washington: U.S. Government Printing office, 1939), 113.

This County-Wide organizational plan made provisions directing school districts to complete the following items:

1. That the county board of education should prepare maps showing the location of the roads, the streams and other natural barriers, and the number of children in every district and the size and location of each school building in each district. With this as a basis, the county board of education was to prepare a plan for the reorganization of the school districts in the county. All of this was for the purpose of perfecting a better organization of the schools of the State.

2. That the county board of education should call for a consultation with the school committeemen of the districts and the boards of trustees of the special charter school systems, and consult with them about the proposed changes.

3. That the county board of education should be given authority to execute the changes agreed upon as a result of their own study and consultation with the school committeemen and trustees.

4. That preference be given to those districts in greatest need of funds for plant improvement.

5. That the county board of education be authorized to transfer children from one district to another, if in so doing the educational advantages of the children involved would be improved.[115]

After the passage of this important legislation, it was determined that the county boards of education were to have the authority to control the creation, abolishment, and reorganization or consolidation of schools and school districts within their respective counties. This act in conjunction with the Constitution comprises the means for the boards of education to determine and implement their

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[115] Study of Local School Units in North Carolina, 14.

district organizations in order to meet their needs and expectations. This legislation paved the way for the consolidation of the large number of one and two teacher schools that existed around the state.

Consolidation of schools or school districts had been attempted many times since the Civil War. There had been many obstacles to overcome. In the small districts and schools the people had developed pride in their neighborhood schools and did not want to give them up. There were pros and cons for the consolidation process. Each camp had convincing arguments with which to enhance its positions. The concerted movement for consolidation had been a slow and a tedious process since the very beginning. It has been and still is an emotional issue for all concerned and at times some individuals have let their emotions overrule their intelligence concerning the matter.

One of the biggest consolidation problems confronting educational leaders was the dual system of schools formed by separating whites and blacks into two distinct systems. This dual system had prevented growth in the education system since its creation in 1876. The state was never really able to deal effectively with it, and it was finally abolished in 1968. Consolidation problems were caused by differences of opinion by local patrons, the small school's fear of losing its identity, economic infeasibility, racial quotas, court-ordered reforms, and cross-town bussing.

The provisions found in the 1923 County-Wide plan of school district organization are still operative today for attendance areas, but, as stated above, only rudimentary vestiges of administrative authority are left with the districts. As a result of this law the county and city administrative units and the state government became the sole operators of the North Carolina's school system.[116]

The public school system of North Carolina was organized under this County-Wide plan. The county and city administrative units became the basic structure for the state system with small school districts as sub-level divisions of this basic unit. This county unit of school organization was able to function as an arm of the county's general government; the size of the school unit was generally determined by the political boundaries of the county.[117]

During the 1920's the consolidation of schools and school districts continued throughout the state. Consolidation became more effective with the advent of school transportation, because students could attend schools at greater distances from their homes. During this time many of the small, one-room schools around the state were being consolidated to form larger union schools which were

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[116] Ibid., 14.

[117] American Association of School Administrators, School District Organization-Report of the Commission on School District Organization (Washington: AASA, 1958), 97.

able to offer more educational opportunities. Individual school districts were also being consolidated but not as quickly as the schools. Counties continued to create many small elementary school districts, and these districts continued to exist even after the older students were sent to high schools in other districts . Districts of all kinds were overlapping each other in order to provide the appropriate services to students.

The depression of the 1930's caused tremendous problems for the school districts in the state, many of which were unable to carry on their school programs because of the financial restraints resulting from the loss of revenue. In 1929, however, the state provided the Tax Reduction Fund of $1,250,000, and this fund resulted in the ability of the districts to continue to operate adequately.

During the same legislative meeting the General Assembly repealed many of the city charters that had been granted up to that time, but it issued new charters to these special districts, containing updated specifications.

Problems such as inadequate taxation, district debt, and the high cost of providing the necessary items required to enhance the educational process continued to plague the operation of school districts of the state. The 1931 General Assembly recognized that something radical needed to be attempted to prevent the school districts of the state from going under financially. Therefore, it increased the

state appropriations to each school district and decreased the costs associated with the running of each district.

Cost reductions were made by placing limitations on the operating budget, by increasing the teaching load, by reducing the teachers' salary schedule, by eliminating the salary increment accruing on the basis of experience, by allotting fewer principals, by redirecting transportation routes, and by authorizing closer scrutiny over school costs of every kind.[118]

The constitution of 1868 had mandated the General Assembly to provide an equalized educational opportunity to all children of the state. It remained for a legislative body nearly seventy years later to obey this mandate, and then it was carried out in a rather meager fashion, largely because of inability to raise adequate revenue in the face of a wide-spread economic depression.[119]

The North Carolina General Assembly in 1931 made many fundamental changes in the public school laws. In the years prior to 1931 the county was considered the agency primarily responsible for the support and operations of the public schools. The laws enacted by the General Assembly at this time reversed this policy and empowered the state to support and maintain a six-month school term in every district of

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[118] Clyde A. Erwin, "State Supported School System", North Carolina Education 2 (Feb 1936): 234.

[119] A.M. Proctor, "The Equalization of School Support", North Carolina Education 2 (Feb. 1936): 285.

the state. The members of the legislature felt it was necessary for the state to begin setting up the machinery and to find the revenue that would provide for the total state support of education in order to protect the survival of the schools. The economic condition of the state in 1931 was at an all-time low. Many of the schools were having difficulty in keeping their doors open. To relieve the local financial situation, and to reduce ad valorem taxes, the legislature came up with a plan for a public school system backed by state support. The constitutional term requirement for a six month school term was part of this plan. To accomplish this, the General Assembly increased the state appropriations for schools, created a state-wide property tax, restricted operating expenses, and extended the term two months. The plan called for a joint effort between the state and local units to provide the necessary funds.

Although these legislative acts of 1931 did most certainly improve the financial situation of the public school system, there were still inequities among school districts and widespread dissatisfaction. The operation of the six-month school term on the basis of dual support had not been satisfactory, and the operation of the extended term had proven inequitable and difficult to achieve.[120]

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[120] Ben D. Quinn and Maylon E. McDonald, Public School Finance in North Carolina (Lexington,Mass.: Ginn Custom Publishing, 1981), 11.

This new legislation was written from a viewpoint that was opposite from that which had been established at the beginning of the common schools. It indicated that public education, under this new idea, is not only a state function over which the state will exercise some general control, but it is also a solemn state obligation which the state must discharge with all the resources at its command.[121]

When the 1931 legislation for the establishment of the dual system of support did not solve the ills found in the state school system, the General Assembly met again in 1933 and mapped out a plan it hoped would lead to a more equitable and plausible product.

In 1933 the School Machinery Act was passed. This was an act to promote efficiency in the organization and economy in the administration of the public schools, to provide for the operation of a uniform system of schools in the whole of the state, and for a school term of eight months without the levy of any ad valorem tax therefor.[122]

Section 4 of the School Machinery Act mandated a number of special requirements pertaining to school districts. It required that "all school districts, special tax, special charter or otherwise, as now constituted for school administration or for tax levying purposes, are hereby

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[121] Allen et al., 15.

[122] Stacey W. Wade, School Machinery Act (Raleigh: General Assembly of North Carolina, Session 1933), 3.

declared non-existent, and it shall be unlawful for any taxes to be levied in said districts for school operating purposes except as provided in this act." [123]

This section did away with all remnants of the common school district organization and its taxing structure and set up the state as the single controlling factor for the funding of public schools. It also required that:

> Each county would be classified as an administrative unit and shall with the advice of the county boards of education redistrict each county, thereby making provision for such convenient number of school districts as the commission may deem necessary for the economical administration and operation of the state school system. The board also shall determine whether there shall be operated in such district an elementary or union school. Provisions were not to be made for a high school unless it had an enrollment of more than 65 students or for an elementary school if it had less than 25 students on the roster. These provisions could be ignored only if there were some geographical or economical conditions making it impracticable to provide for them otherwise.[124]

This School Machinery Act did away with all local taxes and the state ad valorem tax. With the abolition of all local taxes the work, accomplished by the supporters of education for more than thirty years in voting local tax rates by districts and counties, was undone and any further local support for the operation of schools was prohibited

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[123] Wade, 4.

[124] Wade, 4.

without another vote of the people.[125] This abolition of taxing districts as a unit of school support meant that a child's education was no longer directly dependent on the wealth of the community itself but was now directed by the state authorities.

The abolition of taxes created certain conditions in and around the county districts that affected certain district consolidations which were impossible under the old pattern. Many of the small, inefficient schools were able to be consolidated with larger schools which could offer a broader curriculum and greater educational opportunities. Before this new law was enacted there were 3,602 school districts. After the state was redistricted under the new law there were only 1,449.[126] Also, the number of city units in the state were reduced from 93 to 67 as a result of this legislative enactment.

The School Machinery Act also established the State School Commission which originally had been the State Board of Equalization and this board was given complete control of the state appropriations for public schools provided to the county and city administrative units. The School Commission became the state's central financial body with absolute authority to allot the money appropriated by the state to

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[125] J. Henry Highsmith, "Secondary Education in North Carolina, North Carolina Education, 2 (Feb. 1936): 221.

[126] "State Supported School System", 264.

each county or special charter administrative units on the basis of standards set up by its own rulings.

The commission was given the authority to decide which schools were to be operated, to consolidate districts and transfer children from one unit to another , and to suspend or abolish any school or district after six months, whenever the average daily attendance did not justify its continuance.[127]

One of the commissions most important responsibilities pertained to school districts. It was given the authority to organize and consolidate schools and school districts around the state in order to operate the local school systems with more efficiency. The duties of this commission were later passed on to its successor, the present State Board of Education.

The School Machinery Act was considered the most conspicuous fact of recent educational history in North Carolina.[128] This action by the General Assembly made North Carolina the first state in the Union to guarantee a minimum educational opportunity of a 160 day term without having to resort to an ad valorem tax and largely from the general

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[127] Clyde A. Erwin, Biennial Report of the State Superintendent of Public Instruction (Raleigh: State Department of Public Instruction, 1936), 19.

[128] Edgar W. Knight, "One Hundred Years of Public Education in North Carolina", North Carolina Education, 2 (Feb. 1936), 284.

treasury of the state.[129]

When the School Machinery Act was enacted, its provision for abolishing the existing school district organization resulted in the creation of one single district for each high school in each county and by doing so reduced the number of school districts nearly 10 times, from just over 6,000 to only 790.[130] The elementary school districts of the state were retained and were unaffected by this act.

The basic organizing structure of school districts provided for in the School Machinery Act in 1933 are still in use today. This act also produced two types of administrative units basic to the operation of the public school system. The first type was the 100 county units and the second was the numerous city units organized by special charters granted by the legislature. Although there are "districts" within the county, such units are entirely under county control and not sufficiently autonomous to make the county an intermediate unit.[131] As a result of the School Machinery Act the location and boundaries of districts within the county were determined by the State School Commission. The Commission, working with the advice of the

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[129] A T. Allen, Biennial Report of the Superintendent of Public Instruction (Raleigh: State Department of Public Instruction, 1934), 13.

[130] Marion W. Benfield, Guidebook for School District Committeemen (Chapel Hill: Institute of Government, 1960), 2.

[131] Alves et al., 115.

respective county boards of education, had the authority to divide each of the counties into convenient districts.[132] This provision was later changed by the General Assembly when it gave the authority to organize or alter school districts to the county boards of education. The boards of education were directed to notify the State Board of Education of their intentions and request its approval of the district plan before proceeding.

The county administrative unit became firmly established in 1923 as the basic organizational unit of the state's school system and was strengthened with the enactment of the School Machinery Act of 1933. The county administrative unit now operates under the authority of the State Board of Education. The counties were granted the authority and responsibility to make any needed changes in their school districts. The authorization to develop the structure and organization of the school districts within the counties is now under the general control of the local board of education, which has the authority to make all of the decisions which affect the creation, the abolishment or the reorganization of specific school districts.

Another section in the act provided that city administrative units, located in a given county, may be merged with the county administrative unit by concurrent action of their boards of education. This provision has been

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[132] Ibid., 115.

written into chapter 115-C of the North Carolina general statutes. This type of action provided many opportunities for the districts of each county to be altered or abolished whenever mergers did occur.

With the exception of the merger of a city unit or units with a county unit, there are no ways by which the territory of administrative units may be increased. There is for example, no method for changing the boundaries of a county and, consequently, no way of modifying the boundaries of a county administrative unit.[133] Alterations of school administrative units can now be accomplished only through an annexation process passed by the General Assembly.

The period from 1900 to 1933 was marked by the creation and growth of the Equalizing Fund, by the adoption of the County-Wide plan of school organization, and by an increase in the consolidation of school districts brought about by an increase in transportation services. During this period the county working with the board of education was recognized as the governmental agency authorized to administer the state's public school system and the state finally assumed almost complete state support for the eight-month school term. Concurrently, the Literary Fund made available by the state for building purposes produced a building spree by the counties in which most of the inappropriate one-room schools were replaced by more modern up-to-date buildings.

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[133] Ibid., 126.

The number of townships and school districts during this period reached their peak. The number of townships reached its peak with around 1,100 in the early 1900's. The separate, individual school districts multiplied at a rapid rate in the 1880's and 1890's. The number of school districts reached their peak in the 1920's, and then went into a decline as counties began to absorb the special school districts into county-wide systems

Improving roads and the invention of the motor vehicle brought about the possibility of consolidating scattered schools and equalizing school opportunities for rural and urban children. This possibility turned into reality as the General Assembly authorized special school districts within townships to consolidate under one school committee, and special districts within scattered counties to consolidate in county school systems. It recognized the power of all county boards of education to consolidate school districts in their respective counties in 1911, specifically authorized them to consolidate in 1917, and encouraged them to consolidate in 1923. It then consolidated them out of the county systems in 1933 into a state system with less than two hundred county and city administrative units.[134]

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[134] Albert Coates, Teaching Notes on the Structure and Workings of Government in the Cities, The Counties and the State of North Carolina (Chapel Hill: Institute of Civic Education at UNC, 1965), 83.

1934 to 1960

In 1941 the state developed the twelve-year program of instruction, and in 1943 the state made provision for the school term to be nine months long which put North Carolina on a par with most other states in the matter of school terms. This development provided the means for the state to finalize the equalization of school terms regardless of the district wealth.

In 1947 the county administrative units reported a total of 777 school districts for whites and 547 districts for blacks. For the ninety-seven counties having such districts, the number of school districts per county ranged from one to twenty-one for whites and one to fourteen for blacks.[135]

In 1948 the statutes governing the establishment, abolishment, and reorganization of the states' school districts contained many legislative requirements which seemed to have been retained from a time in history when districts had greater educational significance. Most of the laws existing in 1948 were considered by many to be obsolete and in need of reform. Many leaders in education and legislators were proposing to revise the laws affecting the creation, abolishment, or reorganization of school districts

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[135] "Education in North Carolina Today and Tomorrow", The Report of the North Carolina State Educational Commission (Raleigh: The United Forces for Education, 1948), 388.

to make them easier to work with. Less complicated laws would enable the local politicians and school authorities to make efficient changes in school district organization where they were deemed necessary.

Litigation on school district issues and the General Assembly's mandate to consolidate the schools and school districts in North Carolina has probably produced the most highly consolidated system of schools to be found in any state in the nation. Even though there were great strides made in consolidation efforts there were still 839 one-teacher schools and 1325 school districts in North Carolina in 1948.[136] This figure represents a composite of the white and colored school districts at that time.

In 1953 the state passed a $50 million dollar bond issue for school construction. This bond money provided many of the state's administrative units the support necessary to continue its consolidation efforts. The effort and energy that school authorities applied toward the consolidation of schools and school districts began to increase.

In 1955 the Pearsall Plan was presented to the General Assembly. This plan provided for the transfer of complete authority over enrollment and assignment of the students in public schools, from the State Board of Education to the

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[136] "Your School District", The Report of the National Commission on School District Reorganization (Washington: Department of Rural Education, 1948), 250.

county and city boards of education.[137] This action provided local educational units with the control and direction to revamp any of their school districts without having to depend on the leadership of the state. Boards of education were given the authority to decide for themselves where they needed schools and school districts. Once this was determined they presented their plan to the State Board of Education for its approval. This authority sequence is still in effect in 1988.

1960 to Present 1988

In 1960 there was a hard push by the politicians and educational leaders to consolidate the many small schools within the state and thereby consolidate and alter districts. Each county of the state contained a wide assortment of school types and a fluctuating number of schools and school districts. In some counties there were as many as eight to ten schools with different arrangements of grades. Most of the schools were of the union school type in that they were composed of grades one through twelve or separate elementary schools composed of grades one through eight and high schools composed of grades nine through twelve on the same campus or in the same facility. This hard push for consolidation is still on today in every district of the state. Districts are constantly being

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[137] "Through the Years", A Report on the History of Public Schools in North Carolina (Raleigh: State Department of Public Instruction, 1981), 7.

changed or altered to meet the ever-changing needs of students, communities, and society as a whole.

Support from all facets of community life has to be generated in order for any consolidation efforts to be implemented in counties which have shown a desire to effect school redistricting plans. Leaders in the various county administrative units desiring to consolidate numerous small high schools into two or more larger high schools and leave a number of separate feeder elementary schools for each new consolidated high school district have had to work very hard pressing the communities for support. Over the years this process certainly has resulted in a reduction in the number of districts. It has also produced some overlapping of high school and elementary school districts or districts in which there are elementary schools only. The number of individual consolidation efforts occurring during the 50's, 60's and 70's did not produce as rapid a decline in the number of school districts as that experienced at the beginning of the century.

The legal aspects of the consolidation process are very simple. Laws have been passed over the years that dictate the orderly process required to consolidate schools or school districts. In order to effect school or district consolidation in North Carolina, the State Board of Education with the advice of the county board of education

has the authority to consolidate two or more districts.[138] It also has the right to alter or abolish districts in the same fashion whenever it is deemed necessary. A summary and explanation of the legal aspects of creation, abolishment, and reorganization of school districts will appear in a later chapter.

In 1963 another school bond issue for school construction passed the General Assembly. This time it was for $100 million dollars which generated a tremendous interest in building consolidated high schools in a majority of the county school systems. New schools were planned in many counties so that their geographical location would place them in a centralized area among the smaller existing schools. This provided authorities the opportunity to consolidate the smaller schools into one or more larger schools and school districts.

The full and complete merger of the white and black school districts in the state took effect in 1968. All of the black school districts were abolished and the integration of schools and school systems took place. This process reduced the number of districts in the state by approximately 400. This historical event was instrumental in the consolidation efforts of North Carolina's public schools.

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[138] Harold D. Alford, Procedures for School District Reorganization (New York: Columbia University Press, 1942). 48.

During the 60's and 70's counties worked with vigor to consolidate their schools. Many of the counties developed and then implemented consolidation plans to reduce the number of facilities and to enlarge the resulting consolidated schools. During this process the administrative units also reduced the number of their school districts. An example of such a consolidation effort can be found in the school system of Harnett county. In 1973, before putting its plan into effect, the unit consisted of ten small high schools. The county unit administered a plan which consolidated the ten small high schools into three larger high schools: Western Harnett, Central Harnett, and Triton High Schools. Each of these schools represented a separate geographical region of the county. The separate and existing elementary schools along with the original high school buildings were transformed into separate elementary school districts which represented the feeder program for the new high schools. The new districting pattern held from three to six elementary schools for each of the high schools.

There was considerable opposition to the plan in the beginning because of the potential costs involved and the intense pride and enthusiasm that the people had in their local schools. Even in the face of this opposition the local board of education decided to proceed with its consolidation plan. After the plan was implemented and the

new consolidated schools were built, the people were able to see the consolidation in action, and they gave their support to the new schools. Harnett County's administrative unit continues to be an effective and efficient public school administrative unit and produces a quality educational environment.

Another school system serves as a reminder of how North Carolina and its counties struggled to develop an efficient system of public schools. A survey of Alamance county in 1960 showed that of the 75 or schools existing in 1924, consolidation had reduced the number to 17. In 1975 there were two senior high schools for the entire county; five junior high schools; and 15 elementary schools for a grand total of 22. Contrast this figure with the 1881 total, white and black, 95 schools.[139]

These are but two examples of the success of the consolidation process in the state over the years. Many county administrative units have been able to maximize their potential by developing and implementing a plan of consolidation much like these two counties.

In 1973 a $300 million bond issue for school construction passed in the state. Many of the county and city administrative units used this money to build the necessary school buildings that enabled the unit to complete their planned objectives of school and school district

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[139] Retired Tar Heel Teachers, 51.

consolidations. School plants that were old and inadequate were replaced by new, large complex structures which provided many new educational opportunities for the students.

On March 28, 1988 140 administrative units were in existence in North Carolina. Most of these units are of adequate size since the county administrative unit includes all territory in the county except city administrative units. There are a number of special charter units that have questionable enrollments according to a report of the State Superintendent on Schools and School Districts in North Carolina in 1986. The problem in this state, therefore, is primarily one of establishing satisfactory attendance areas.[140]

The creation, abolishment, and reorganization of these attendance areas or subunit school districts is a never ending process for the counties. Ever-changing population patterns require the central administrative unit to be constantly in the planning and implementing stages of school district organization.

The literature suggests that the next most important consolidation or reorganization procedure to interest the state will be merging the county and city administrative units. Proponents see this as a way of generating additional resources for services, supplies and

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[140] Alves et al., 127.

instructional curricula in the established schools.

The number of school districts grew from humble beginnings in 1850 to well above 8,000 in the early part of the century and finally peaked at well over 10,000. Early school districts were closely associated with local vested interests and were supported by the local patrons. After the School Machinery Act in 1933 abolished and reorganized all existing school and tax districts, the number of districts was reduced to about 1400, and has been holding steady since that time. The number of school districts in the state is based on the number of elementary or primary schools found within an administrative unit.

Prior to the School Machinery Act of 1933, a county could contain a hodge-podge of district arrangements: elementary districts, racial districts, union school districts or consolidated high school districts superimposed over several elementary districts.[141] A similar hodge-podge still exists today. Some counties have defined separate districts for the elementary and secondary schools, others define districts organized on the union school pattern with grades one through twelve housed in the same facility or on the same campus while, some counties use a combination of characteristics in establishing district organization. Some are organized to serve elementary schools only and others

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[141] W.O.Fields, A Handbook for North Carolina School Board Members (Chapel Hill: The North Carolina State School Boards Association, 1962), 73.

have separate districts for consolidated secondary schools.

School districts are determined by the local boards of education with effectiveness and efficiency being the key aims of school district organization in the modern era. Administrative units continue to plan, organize and implement different patterns of school district organization and school consolidations to ensure that elementary school districts continue to be positioned to supply one or more junior high or middle schools and high schools with the students that live within their districts.

Political and geographical factors have affected the organizational patterns of school districts over the years. Some educational leaders, thinking that the organization patterns could be uniform throughout the counties made every effort to see that counties were divided into convenient townships or districts that were geometrically viable with the existing geography. A map of the state with the townships outlined gives a definitive picture of this particular direction, as many counties are divided into near perfect squares.

Another factor has been the distribution of the school population. Agencies responsible for developing and implementing the organizational patterns of the school district had to be aware of where the children lived in order to provide appropriately located schools to meet their needs. Before mass transportation systems the school

districts were laid off so that the children could walk to school. Later, of course as students were able to go by bus to schools farther from their home. Thus, transportation provided the impetus for consolidation of small districts into larger ones. While educational leadership always seemed to be aware of the needs of the elementary children, much less attention was paid to the needs of the older students until the early part of the twentieth century when high schools were established.

Prominent geographical features such as mountains, hills, and rivers, combined with the lack of roads, bridges and means of transportation made it difficult to establish school district boundaries, as the existing geographical boundaries had to be worked around.

Race was a factor in school district organization until the late 1960's when the segregated dual system of state schools was abolished under federal mandates. Maintaining one school system for the white children and one for the black children almost doubled the number of schools districts. The number of districts was drastically reduced when integration was achieved. All the overlapping segregated districts in the state were abolished and merged with each other to form a more appropriate school district arrangement for the students of the state. In order to accomplish this task of reorganization many communities and counties had to resort to cross-town bussing, altering of

district boundary lines, and to the closing of neighborhood schools all of which resulted in much dissatisfaction and court litigation.

School district creation, abolishment, and reorganization in the state is a never-ending process. Educational leaders and tax-levying agencies are under constant pressure to produce more effective and efficient schools. Changing or, altering school districts is one means of keeping abreast of changing population patterns.

Individuals or groups responsible for organizing school districts have used different methods, expressed varying opinions on the size, number and authority of school districts and the legal mandates that govern school district organization.

Rather than examine the opinions of individuals or groups on the subject this study will proceed to examine the purely legal aspects of school district development from the mandates of the state Constitution, the general statutes and the numerous court cases that have been litigated during the past century.

CHAPTER III

LEGAL ASPECTS OF SCHOOL DISTRICT CREATION, ABOLISHMENT AND REORGANIZATION

Introduction

The legal specifications for the creation, reorganization, and abolishment of the school districts in North Carolina have undergone a number of changes throughout the 150-year life of the public school system. This chapter examines these legal aspects by presenting a chronology and a enhanced analysis of the mandates of the North Carolina Constitution, the sections of Chapter 115C of the General Statutes of North Carolina and pertinent litigation that have involved school district creation, reorganization, and abolishment.

Since the first educational act was created by the General Assembly in 1839,--dividing the counties into school districts--the school district has been a integral part of the North Carolina public school system. The state Constitution has mandated the creation of school districts. The state public school laws have been enacted, revised, or amended over the years to ensure the existence of school districts and their administrative functions. Many court cases have been litigated in the state regarding school

district organization.

Under the Constitution of the United States, "the powers not delegated to the United States by the Constitution or prohibited by it to the states, are reserved to the states respectively, or the people.[1] The power to establish and maintain public school systems, and to govern, control, and regulate them when established, is a power not delegated to the federal government nor prohibited by the Constitution to the states. It, therefore, follows that the complete control of education is within the scope of the individual states, except as this control may be restricted by the guarantees of personal liberty included in the Constitution of the United States.[2]

Since 1776 it has been understood by legal authorities that the federal government does not possess any inherent power. Such powers as it possesses are enumerated and have been delegated to it by the Constitution of the United States. The Congress and other agencies of the federal government must find in some clause or combination of clauses in the Constitution expressed or implied power to do all they undertake to do.

The process is different with the state legislatures. The Tenth Amendment of the U.S. Constitution provides that,

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[1] United States Constitution , amend. X

[2] Green W. Campbell, The Influence of Court Decisions in Shaping the Policies of School Administration in Kentucky (Ed.D. dissertation, University of Kentucky, 1937), 12.

"The powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states respectively , or to the people". It follows that the state legislature does not have to look to the federal Constitution for any grant of power. Their powers are plenary unless the power in question has been delegated to the central government or has been denied to the states by some provision of the federal Constitution, or is denied by the state Constitution.[3]

Education has long been accepted by the people of North Carolina as a responsibility and function of the state. This acceptance was difficult to come by because of the aversion that the state's forefathers had for taxes. They wanted schools for their children but were unable in the beginning to allow themselves the luxury of education. After concerted efforts by the state's educational leadership to convince the people of the importance of education to a progressive society they began to think more positively concerning education. They finally began to understand the overwhelming necessity for educating the youth of the state and, therefore, joined with other individuals and groups to establish various forms of positive educational endeavor in the state.

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[3] Lee O. Garber and Newton Edwards, The Public School in Our Governmental Structure (Danville, Ill., The Interstate Printers and Publishers, 1970), 3.

The principle of state responsibility is now well established. Each of the states, within the sphere of its jurisdiction, is vested with plenary control over educational policy. In the majority of cases the courts have uniformly held that education is essentially and intrinsically a state function; the maintenance of public schools is, in legal theory, a matter of state and not local concern. The courts have held that the power to maintain a system of public schools is an attribute of government comparable with the power to tax, to maintain a system of courts, to keep a military establishment, or to exercise the police power. They have also held that the state undertakes the establishment of schools for the protection, safety, and welfare of its citizens, to the end that good government may result; in other words, the state finds its right to tax to maintain a system of public schools in its obligation to nurture intelligent citizens and to promote social order and peace of society.[4]

The state of North Carolina is able to express its educational policy through the mandates written into the state Constitution, the statutory law found in Chapter 115C of the North Carolina general statutes, special legal acts enacted by and through the General Assembly, and through the decisions handed down by the state courts. The powers of the General Assembly are plenary with respect to educational

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[4] Garber and Edwards, 9.

policy. However, when the assembly develops or establishes educational law, it may have certain restrictions placed upon it by either the federal or state Constitution.

The General Assembly of North Carolina can determine the ends to be achieved and the means to be employed to reach its final goals when it deals with education. It may determine things such as the types of schools to be established, the location and arrangement of school districts, the means for their support, the content of their curriculum, and the qualifications of their teachers. All of these things it may do without the consent of the local patrons, for the education of the children is the responsibility of the state unit and there are no local rights except those safeguarded by the state and federal Constitutions.[5]

Since education is intrinsically a function of the state, the state legislature may establish, except where restrained by some constitutional limitation, with or without the consent of the localities, any pattern of school district organization it deems wise. It may employ as school districts counties, townships, towns or cities, or it may ignore all existing corporate territories and establish school districts in such a manner as policy may dictate. The legislature may itself create school districts, or it may, under proper restrictions, delegate its authority to

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[5] Ibid., 10.

establish districts to some administrative board or officials. The legislature is equally free to change existing patterns of district organization and to prescribe formulas for distribution of pre-existing assets and liabilities when boundaries are changed.[6]

In North Carolina the school district, whatever type it may be, is a quasi-corporation, or a quasi-municipal corporation, as distinguished from a municipal corporation proper. A quasi-corporation is an agency of the state, created for the purpose of carrying into effect policies of state-wide concern. Its territory may be identical with that of a municipal corporation proper, but its functions are never essentially local. The quasi-corporation is concerned with the execution of state and not local policy. On the other hand, municipal corporations proper, such as towns and cities, are not primary instruments of state policy; they are created to enable local communities to regulate and administer their own peculiar local concerns.[7]

School districts come under this public corporation policy. They are merely subdivisions of the state, created and used as subordinate instrumentalities to aid in the civil and political administration of the state government.

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[6] Ibid., 10.

[7] Lee Garber and Newton Edwards, The Law Relating to the Creation, Alteration and Dissolution of School Districts (Danville, Ill., The Interstate Printers and Publishers, Inc., 1962), 3.

They are incorporated merely that they may better perform the duties imposed upon them. They are in no sense private corporations with which the state government enters contractual relations. They cannot be constituted true agencies with delegated powers and capacities. They have no independence of action, no individuality or personality, at least none separate and differentiated from the state of which they are integral parts.[8]

The state is unrestricted in its choice of methods for establishing school districts. It may establish them by direct legislative enactment, it may delegate its authority to establish districts to some administrative board or official, or it may make the creation of a district contingent upon the consent of the inhabitants affected. Since education is essentially a matter of state concern, school districts may be created with or without the consent of those who live in them.[9]

The state of North Carolina has determined the county and the administrative units of the county or city to be the extension agencies of state authority. These administrative units of the state along with their boards of education have been chosen to handle the educational affairs of the state.

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[8] J.F. Webb, The Public Schools and The Constitution (Oxford: Press of Oxford Orphanage, 1942), 5.

[9] Garber and Edwards, The Law Relating to the Creation, Alteration and Dissolution of School Districts, 3.

The Supreme Court of North Carolina stated the position of the state relative to the division of the state into counties in this way:

> For the better government and management of the whole, the Sovereign chooses to divide the state into counties in the same way that a farmer divides his plantation off into fields and makes cross fences where he chooses. The Sovereign has the same right to change the limitations of counties and make them smaller or larger by putting two into one, or one into two, as the farmer has to change his fields.[10]

These counties came into being as administrative units of the state to carry out state wide policies laid down by the General Assembly, rather than as units of local self-government originating policies of their own, independent of the state.[11] Policies of a state nature were given to the leadership and county authorities to convey these policies to the local population and fit these policies to their needs. This was the way in which the state chose to make its laws and policies and powers felt throughout its territory--through one hundred centers of local government.[12]

The counties found it necessary to divide themselves into special subdivisions in order to bring the workings of the state and local county government to the people. Two of

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[10] Albert Coates, Talks to Students and Teachers (Chapel Hill: Creative Press, 1971), 49.

[11] Ibid., 53.

[12] Ibid., 53.

those subdivisions have played important roles in the development of the creation, reorganization, and abolishment of schools and school districts in the state. The first was the school district itself. Initiated by the law of 1839 the counties were divided into small independent school districts which brought the people the first vestiges of school organization.

In 1868 the counties divided their territory into convenient districts called "townships", directed by a board of trustees under the supervision of the county commissioners with corresponding township school committees. The law of 1898 required the county board of education on the first Monday in July to divide the county into as many school districts as there were townships in each county. The law did not require the township lines and the school district lines to be the same, but it did require that there should be the same number of districts as there were townships.[13] In 1876 the county commissioners were required to divide their counties into a "convenient number of districts" for school purposes, irrespective of township lines.

The county was subdivided into special districts, then into townships, and back into special districts with "public authorities" added, as a matter of convenience and necessity

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[13] C.H. Mebane, Biennial Report of the Superintendent of Public Instruction (Raleigh: Barnes Printing Co., 1898), 236.

in order to bring the services of government closer to the people as the population thickened in the counties.[14]

The county unit of administration has a distinct advantage over the district system. It makes it possible for the county board of education to locate buildings advantageously and economically. High schools may be established according to the needs of the whole county, and the per capita cost of instructing high school pupils may be reduced by proper organization. Large school units will bind small districts together and encourage cooperation, thereby breaking up clannishness. Large community schools create a more wholesome social life among the young people and have a tendency to raise the culture level of all the people.[15]

Between 1910 and 1930 the decisions of the state courts and certain legislative acts had a tendency to make the county the central administrative unit and bring all the small local tax or special charter districts under county control. This gave the county boards of education very broad powers, as a codification of all the school laws will show.[16]

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[14] Coates, 55.

[15] E.C. Brooks, A State System of Public Schools (Raleigh: State Dept. of Public Instruction, 1922), 13.

[16] Ibid., 14.

When the state makes use of these administrative units in the establishment of school districts, care must be taken not to confer upon such boards of education legislative authority. The legislature may delegate administrative authority but it may not delegate legislative authority, which must be exercised by the legislature itself. The legislature of North Carolina restricts the discretion of the administrative agency by requiring it to act within the limits of designated policies or standards. The authority exercised by the agency is administrative and will be sustained by the courts as long as it conforms to existing law. In this connection it should be noted that with the creation of such districts, the courts will have no concern; and they will not review an administrative agency's action in creating a district, unless it can be shown that the agency acted in a fraudulent, arbitrary, or unreasonable manner.[17]

Since school districts are but parts of the machinery employed in carrying out the educational policies of the state, the legislature, in addition to creating school districts, may abolish them, or alter their boundaries as public policy may dictate. When district boundaries are changed, the legislature may dispose of property and other pre-existing assets and liabilities in such manner as may be

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[17] Garber and Edwards, The Law Relating to the Creation, Alteration and Dissolution of School Districts, 4.

deemed reasonable and just. School districts have no vested rights in school property because school property is state property merely held in trust for the state by the local authorities. The transfer of property from one district to another is not a violation of contractual rights because no contractual relation exists between the state and its school districts.[18]

What is the difference between common law, statute law, and constitutional law? One difference is in where they originate: the common law comes from the courts, the statutes come from the legislature, and the constitutional law comes from the people.[19]

They also have differences in the manner in which they are changed. Courts change common law when they decide that their rulings have been "absurd or unjust".[20] The legislature may change statute law at any session whenever it changes its collective mind; constitutional law can be changed only by introducing a bill for amendment into the General Assembly or by constitutional convention.[21] Whenever there is a conflict between statutory and constitutional law, the Constitution and its provisions will win out over the other competition.

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[18] Ibid., 5.

[19] Coates, 70.

[20] Ibid., 71.

[21] Ibid.

Constitutional Aspects

The first state Constitution, written and approved in 1776, called for the state legislature to establish schools for the education of the youth. It is evident that the people of North Carolina cared about and were interested in education of their children from the beginning.

Section 41 of the 1776 Constitution indicated the following mandate for schools:

> 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 many enable them to instruct at low prices; and all useful learning shall be dully encouraged and promoted in one or more universities.[ee]

As we can see this section the Constitution of 1776 established schools for the youth of the state and indicated that the cost of this was to be paid by the public. This public did not refer to money from state sources but rather from local taxation by the people that the school would serve. There was no mention of "school districts" made by this first Constitution.

Although the Constitution of 1776 indicated that schools should "be established by the legislature," little or nothing was done about this for many years. The people of the state knew that the establishment of schools meant establishing taxes. They, therefore, took the line of less

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[ee] North Carolina, Constitution (1776), sec. XLI

resistance and did practically nothing to carry out the constitutional mandate.[63]

Not until the first legislative act in 1839 did the people of the state begin to meet the mandate of this first Constitution. That first act established the ground work for the common schools of the state and created independent schools and school districts. From this act the people of the state began to build a school system considered by many to be one of the most outstanding in the nation.

The Civil War destroyed most of the educational accomplishments which had been developed prior to the war; then, 1868 the educational leadership of the state began a long and arduous process of putting the system back together.

After the war a combination of forces from the South and North rewrote and ratified the state Constitution. These forces encompassed many positive philosophical statements.

The framers and adopters of the state Constitution in 1868 were concerned with the longevity of education in the state. In writing Article 9, section 1 they spoke of encouraging education forever within the state. This desire to provide the means to build a great state prevented them from allowing the responsibility for establishing and

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[63] Jule B. Warren, "The Constitution and the Schools" We the People, 1 (September 1942): 24.

maintaining a system of education to rest totally with the General Assembly. The writers realized that the General Assembly represented an ever-changing body of different philosophies and whims, and they wanted to have some sort of continuity about the state's involvement in education.

It was decided, therefore, to include in the Constitution certain definite directions and specifications expressed in mandatory terms. With this in mind, and with the purpose to prevent too many fluctuations and variations in the standards from year to year, the following requirements were prescribed by this fundamental law. It indicated the system must be general, uniform, and free of tuition; that there must be separate schools for white and colored children and no discrimination between races; that counties must be divided into convenient districts with one or more schools taught in each district; that the school term must be at least four [now nine] months; and that certain funds must be used exclusively for schools.[84]

The Constitution of 1868 formed the foundation for the public school system of today. Education was made an integral part of the constitutional background found in government. Indeed, education is listed in Section 17 of the first article, which is the Bill of Rights, as one the inherent rights of the people. This section indicates that "The people have the right to the privileges of education,

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[84] Webb, 3.

and it is the duty of the state to guard and maintain that right."[25]

The main requirements for education are found in the first three sections of Article 9 of the Constitution of 1868. These sections on education, which have been amended since their creation are the most important to this research.

In their original form, sections of the 1868 Constitution provide the following mandated considerations for education:

ARTICLE IX.

> Sec. 1. Religion, morality, and knowledge being necessary to good government and happiness of mankind, schools, and the means of education, shall forever be encouraged.
>
> Sec. 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.
>
> Sec. 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.[26]

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[25] Warren, 24.

[26] John L. Sanders, A General and Uniform System of Public Schools (Chapel Hill: Institute of Government at UNC, 1959), 2.

The implications of these sections for state and county responsibility are clearly stated by Chief Justice Hoke in the case of Lacy v. Fidelity Bank of Durham in 1922. He said in his case argument:

> A proper consideration of the articles will clearly disclose that its provisions are mandatory, imposing on the legislature the duty of providing "by taxation and otherwise for a general and uniform system of public education, free of charge, to all the children of the state from six to twenty-one years," that the school term in the various districts shall continue for at least six months in each and every year, and that the counties of the state are recognized and designated as the governmental agencies through which the legislature may act in the performance of this duty and in making its measures effective. In view of the prominent placing of the subject in our constitutional law, the large powers of regulation and control conferred upon our State Board of Education, extending at times even to legislation of the subject, it is manifest that those constitutional provisions were intended to establish a system of public education adequate to the needs of a great and progressive people, affording school facilities of recognized and ever increasing merit to, and to the full extent that our means could afford and intelligent direction accomplish.[87]

Justice Hoke seemed to understand that the Constitution of the state placed the obligation for public education squarely upon the shoulders of the General Assembly. He argued that the state had the obligation of determining the means and providing the supervision to see that educational programs were initiated in each county of the state but the

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[87] A.T. Allen, Biennial Report of the Superintendent of Public Instruction (Raleigh: State Department of Public Instruction, 1924), 13.

state did not have the responsibility for the local financial obligations. In 1922 the Constitution placed the obligation for financial support of education upon the county commissioners rather than upon the state. After the passage of the 1933 School Machinery Act the state assumed a leading role in the funding for school purposes. From that point the system of public education began to grow and be productive throughout the state.

Section 3 of Article 9 affirmed the legislative intent of the first school act passed in 1839. It provided the constitutional mandate that required the counties of the state to be divided into convenient school districts in order that the process of education could be brought nearer to the people. This provision became the basis for the extensive division of the counties into school districts that occurred between 1868 and 1933. The statistics from the Biennial Reports of the State Superintendent indicate that there were approximately 10,000 of these districts before the School Machinery Act. This act abolished all existing districts and started to reorganize the public school system under the control and power of state government.

Who has the responsibility for setting up the methods by which counties are to be divided into districts? In 1930 this question was answered in the case of Wilkinson v. Board of Education of Johnson County. This case dealt with the

classification of teacher allotments but provided an interesting outcome relative to the creation of school districts. The State Court of Appeals ruled on the ramifications regarding the allotments. The court affirmed that one of the major responsibilities of the legislature was to provide the means, either financially or physically, to meet the mandated requirements of Article 9, Section 3 that each county shall be divided into a convenient number of districts in which one or more public schools shall be maintained at least six months in every year. In Elliott v. Garner (1932) it was determined that under the existing law the power to create, divide, or abolish school districts was vested in the county board of education, which must exercise the power in accordance with the county-wide plan found in C.S Supp. 1924 section 5489 as amended by the Public laws 1924 c.121, sec. 2, and sec. 5483.[ee]

It had been determined by an earlier ruling that the county had been established as an extended arm of the state and, therefore, it worked under the direct rulings and regulations that are established by the state legislature. Another ruling that came out of Elliott v. Garner (1932) was that the part of Article 9, Section 3 which dealt with the number of schools in each district did not apply to high schools but only to elementary or primary schools. This ruling determined that it was not required by the

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[ee] Elliott v. Gardner, 166 S.E. 918 (1932).

Constitution to have a high school in every school district of the state. High schools and high school districts were provided for, but two things were certain. First, it was within the discretion of the county board of education to arrange for their survival. Second, it was manifest that the public school law did not contemplate the creation of a high school in every school district of the state.[89]

Another constitutional issue dealing with Article 9, section 3, grew out of the court case of Moore v. Board of Education of Iredell County in 1937. This was after the School Machinery Act of 1933 which abolished all existing school, special charter, and taxing districts of the state in order to reorganize under an expressed plan of the state. This was a very confusing time because people were losing their sense of local control of their schools. The decision of the court in Moore v. Board of Education of Iredell County held that the statute (School Machinery Act) which abolished all school districts--special tax, special charter, or otherwise--as constituted, and provided for redistricting the territory of the several counties for school purposes, irrespective of the boundaries of such districts, was not unconstitutional as usurping the alleged constitutional duty of the boards of county commissioners to

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[89] Ibid., 919.

divide the counties into convenient school districts.[30]

The same case also affirmed the most important legal aspect of school district creation, reorganization or abolishment. All present-day school districts in the state operate under parameters that were determined by this case. It indicated that the legislature alone may directly or indirectly create or abolish counties, townships, school districts, road districts, and the like, as an aid in the administration of government, and may in its discretion enlarge or diminish their boundaries or increase, modify, or abrogate their powers.[31] The specifics of this important case will be outlined in Chapter Four of this study.

Section 3 of Article 9 of the Constitution has also been determined to be a mandated requirement on the part of the agencies of the state. In Mebane Graded School District v. Alamance County (1937) the court determined that the constitutional duty of the local authorities to encourage education by dividing their counties into school districts and to maintain public schools in each of these districts for at least six months out of each year was mandatory on these authorities .[32]

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[30] Moore v. Board of Education of Iredell County, 193 S.E. 732 (1937).

[31] Ibid., 732.

[32] Mebane Graded School District v. Alamance County, 189 S.E. 873 (1937).

During the early part of the state's history, state government performed this duty by proxy, maintaining the schools through the agency of the counties. Article 9, Section 3 also provides that the failure of the commissioners to comply with the requirement that the schools be maintained at least six months in every year will be considered as a criminal offense and the commissioners will be prosecuted.[33]

In Bridges v. City of Charlotte (1942) the court's decision stipulated that the various administrative 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. Instead, they express the immediate power of the state as its agencies for performance of mandatory duty resting upon it under the Article 9, section 3 of the state Constitution.[34] This implies that school systems are given the opportunity to establish, reorganize and abolish their school districts as they deem it necessary to enhance the educational opportunities for the students of their unit.

This important provision of the Constitution (art. 9 sec. 3), directing the authorities to divide the counties into convenient school districts and specifying an appropriate school term in each district, has been amended a

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[33] North Carolina, Constitution (1943) art IX., sec. 3.

[34] Bridges v. City of Charlotte, 20 S.E. 2d 825 (1942)

number of times through the years. In 1918 the authorities amended the constitutional requirement for the length of the school term from four to six months and later to eight and finally in the 1960's to nine months. No articles which dealt with the establishment of school districts were revised.

The philosophy behind the Constitution has remained intact for the most part since its inception. Frequently, special amendments have been passed in the General Assembly. Also, constitutional conventions have been called to make necessary changes for the state to ensure the rights of its citizens. A Constitutional Commission was ordered to meet prior to December 13, 1958 to recommend the deletion of the whole of Article 9, Section 3, from the Constitution including the provision that:

> 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 six months in every year...."[35]

During the revision process the provision above was deleted from the state Constitution and replaced with Article 9, Section 2, subsection 2 which deals with local responsibility for public education. This section states the following:

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[35] Sanders, 3.

> 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 for public education may use local revenues to add to or supplement any public school or post-secondary school program."[36]

As a result, Article 9 of the state Constitution no longer spoke directly to the establishment, reorganization, or abolishment of school districts. The only part of the Constitution that still referred to school districts in any way was still to be found in Article II, Section 24 (formerly section 29). This article and section of the Constitution has been around since 1868 with very few revisions except an addition in 1916 and an amendment in 1962. The section about school districts was added in 1916 because of the onslaught of school district consolidation that took place in the early part of the century. It sets the limits on the type and manner of legislation which the General Assembly can specifically enact toward a number of areas. Article II, Section 24 (formerly section 29) prohibits the creation of or the enforcement of certain aspects of school district organization. The most important part of this section which deals with school districts states in part:

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[36] North Carolina, Constitution, art. IX, sec. 2, subsec. 2.

> (1) Prohibited subjects. The General Assembly shall not enact any local, private, or special act or resolution which would provide for the:
>
> (h) Erecting new townships, or changing township lines, or establishing or changing the lines of school districts."[37]

This section of the Constitution recognizes that the state legislature must maintain its distance from the local decision-making process concerning school districts. In other words, the state legislature must enact laws that will determine the mode and prescription for creating, reorganizing, and abolishing school districts that pertain to the whole state and not to any single county or unit. It further points out that the state legislature working through the Constitution no longer has the direct authority to deal with establishing school districts in the counties. This article indicates that the responsibility of creating, reorganizing and abolishing school districts has now been delegated to two bodies. The State Board of Education and the local boards of education are directed to work in cooperation with one another to organize and create school districts through a series of recommendations and approvals. Even though the State Board of Education and the local boards of educatin have the responsibility to make decisions about school districts the decisions by these two groups are still controlled indirectly by the state legislature. This

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[37] North Carolina, Constitution (1984), art. II, sec 24:148.

indirect control comes about because the decisions they make about school district organization must conform to the General Statutes of North Carolina which are enacted by the legislature.

A number of cases have been litigated since 1868 that have firmly established the validity of this section of the Constitution. In Galloway v. Board of Education (1922) it was determined that the enforcement of this section causes all of the special acts, enacted by the legislature or local authorities, establishing or changing the lines of school districts to be prohibited and that any proceedings under them are considered to be null and void.[38] In Hobbs v. County of Moore (1966) a part of the court decision specified the proper definitions for school district and administrative unit. The term "school district" in Article II, Section 29 (now section 24) of the Constitution as ratified at that time, means a district provided for in Article 9, Section 3. That is, a school district is an area within a county in which one or more public schools must be maintained. [39] An "administrative unit" is not a school district within the meaning of Article II, Section 29 (now section 24). It is defined either as a county or city administrative unit under the supervision and control of the

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[38] North Carolina, Constitution (1984), art. II. sec.24.

[39] Hobbs v. County of Moore, 149 S.E. 2d 1 (1966).

county or city boards of education which have boundaries coinciding with the boundaries of the county or city and therefore containing all the individual school districts that have been classified therein.[40]

In 1921 the Private Laws session enacted chapter 251 in order to set up a high school district in Brunswick County. This was entitled "An act to establish high school district and issue bonds with which to build and equip high school buildings, and to provide for the payment of said bonds and the maintenance and government of said school." The enforcement of this act produced adverse reactions from many of the taxpayers in the county. In Robinson v. Board of Commissioners of Brunswick County (1921) the court found the act to be objectionable and invalid, because it seemed to be aimed at establishing a school district. Being a local or special act, it was prohibited from taking action under the express provisions of Art. II, Sec. 29, of the Constitution.[41] In making their recommendation, the court considered this act to be one of the very last to be passed at the end of the General Assembly's session for that year. Therefore, the aversive factors directed at the development of the high school district was caused by two separate incidents. First, this section of the Constitution had just

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[40] North Carolina Public School Law (1986), subchap. 3, art. 7, sec. 115C-66.

[41] Robinson v. Board of Commissioners of Brunswick County, 182 N.C. 590 (1921).

been amended a couple of years before and was not very well understood by authorities. Second, when the act was enacted, it probably did not receive the attention to detail that it should have by the legislators.

A number of court cases that have come under Article 2, section 24 deal with issuance of bonds, levying of taxes and other important financial matters or methods of paying for schools and school districts. This article was written prior to the School Machinery Act of 1933. It was a time in which the people were experiencing the beginnings of district consolidations and when many local tax school districts still existed in order to generate the necessary funding for their school. Whenever a school district was being created or reorganized there was always the need to establish the means and methods that were to be used to pay for the construction and the maintenance of those schools.

Court cases that were litigated under actions taken concerning this article were, Board of Trustees v. Mutual Loan and Trust Company (1921), Sechrist v. Board of Commissioners (1921) and Woosley v. Commissioners of Davidson County (1921). The court decisions in these cases disallowed the plaintiffs the opportunity to develop a bond issue or to levy taxes because the specific action taken in each case was the outgrowth of a local act which attempted to establish new school districts. The courts considered these procedures to be in direct violation of Article 2,

Section 29 (now section 24) of the Constitution which designates specific subjects that are off limits to the General Assembly. In other cases, such as Burney v. Commissioners of Bladen County (1922) and Roebuck v. Board of Trustees (1922), the defendants were more successful in their attempts to submit questions for bonds or to levy taxes because their school district had been created years before and the action contemplated by these boards did not come under the section being discussed here.

In Fletcher v. Collins (1940) the courts held that Article 2, Section 29 (now section 24), which prohibited the General Assembly from passing any local, private, or special act or resolution establishing or changing the lines of school districts, was against any direct action on the part of the General Assembly, but that it was not against the establishment of the machinery required for the accomplishment of such ends.[4e] In the opinion of the court the section also did not affect the participation of the state legislature in setting up the machinery to organize the means and methods for an administrative unit to establish school districts or special bond tax units in order to meet the financial requirements for their school unit. The act in this case, Chapter 279 of Local and Private Laws of 1937, dealt with the action of "self-help" on the part of the counties. The counties were looking for

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[4e] Fletcher v. Collins, 9 S.E. 2d. 606 (1940).

a way to raise the money needed to eliminate the financial distress which the School Machinery Act of 1933 had caused for many school districts due to its abolishment of all existing tax districts and its establishment of the machinery to reorganize the school districts around the state.

In Fletcher v. Collins (1940) the court took into consideration that the act had been applied to a whole county rather than to separate parts of such and it realized the possibility that numerous school districts could be created because of this reorganization process. The court held that the act could not be classified as private or special and, therefore, determined that the constitutional provision cited did not prevent or forbid the creation of school districts by the method set out in the Act applicable to any district which may be created in any county.[43]

In Peacock v County of Scotland (1964) the court decided that a statute enabling the consolidation of a county and a city school administrative units and the levy of certain taxes for the construction and operation of the schools necessary for the consolidated unit did not violate Article 2, Section 29 (now section 24), since it does not, in itself, undertake to establish or change the lines of a school district, but merely provides machinery for action by local units under the general law. This fact can not be

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[43] Ibid.

altered by any further provisions of the statute requiring that the merger and the levy of the taxes be approved by a vote of the people.[44]

In Hailey v. City of Winston-Salem (1928) the court held that the extension of the limits of a city or town in which schools are to be maintained was not in violation of this section also. It said, "While the boundaries of a district may be coterminous with those of a city or town, it does not follow that an act extending the limits of a city or town in which public schools may be maintained is necessarily a special act establishing or changing the lines of school districts in violation of the Constitution".[45] If a city extends it corporate lines under the general provisions found in the law then it automatically extends the right of its special charter to have the boundaries of its school unit extended in accordance with and maintain within the same coterminous position between the two entities.

Another case similar to Hailey is Duffy v. City of Greensboro (1923). In 1923 the city of Greensboro wanted to extend its municipal limits under the existing general law in order to enhance its taxable worth. Even though the city's special charter called for the two districts to be coterminous, the city fathers did not want to extend the

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[44] North Carolina, Constitution (1984), art. II, sec. 29.

[45] Hailey v. City of Winston-Salem, 144 S.E. 377 (1928)

boundaries of the school district with those of the new city limits. They requested the legislature to permit the school district boundary to remain as previously established rather than to extend it to the new city limit boundary. The court decided that this request was not contrary to the provisions of Article 2, Section 29 (now section 24) and allowed the city of Greensboro to proceed with their plans.

State Statutes

The first public school law regarding school districts passed in North Carolina was in 1839. This Law entitled, "An Act to Divide the Counties into School Districts and for other purposes", contained many of the basic principles which have been fundamental to the operation of the public schools since that time. It required an advertisement of notice for an election to ascertain the voice of the people on the matter of education; for the election of superintendents for schools; for dividing the counties into school districts with certain geographical and size limitations; established the designation of school boundaries; set up school committeemen to oversee the administration of the schools and school district; established the authority of the districts to levy taxes for support of schools; ascertained the need of a census of county residents; demanded accurate accounting, record keeping and reporting to the state; established the

responsibility for erecting and maintaining school facilities, and established the state's responsibility to provide a just and equal system of public schools throughout the state.

The law of 1839 and its revisions, in spite of the weaknesses of the system thus provided for, made creditable provisions for educational enterprise. Using this law as an educational foundation the state, county, and local district authorities formed organizations and developed a plan of school support based on a combination of local taxation and income from the literary fund which proved to be popular, efficient and well suited to the conditions of the time.[46]

Section three of this act provided a detailed outline of the procedures that were to be used to establish school districts in the state at that time. It stated:

> Be it further enacted, that said superintendents or a majority of them, shall meet within a reasonable time thereafter, and shall have power to choose one of their numbers as chairman, and shall proceed to divide their respective counties into school districts, for the purpose of establishing common schools, containing not more than six miles square, but having regard to the number of white children in each, so far as they can ascertain the same: Provided, nevertheless, that no greater number of school districts shall be laid off in any county than shall be equal to one for every six miles square of inhabited territory in said county.[47]

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[46] Edgar W. Knight, Public School education in North Carolina (Boston: Houghton Mifflin Company, 1916), 186.

[47] Knight, 141.

The majority of the school districts that were created under this act were small independent school districts which were saddled with the responsibility of providing their own financial support. These districts usually had one teacher working in a one-room facility built within the walking distance of the majority of its students. Around the turn of the century there were approximately 10,000 of these small districts throughout the state. With the development of various forms of school transportation between 1900 and 1930 most of these small, independent districts were consolidated into larger districts supported by local and state government.

The common school law of 1853 contained provisions for the creation, reorganization and abolishment of school districts. The following paragraph provides a synopsis of the acts which were passed at that time. Part 5 of the law said:

> The Board of Superintendents shall have power to lay off in their counties school districts, and number the same, of such form and size as they may think most conducive to the convenience of the inhabitants of said county; and also to alter the boundaries of the same, causing said boundaries and such alterations to be recorded by their clerk in the book in which the record of their proceedings is kept".[48]

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[48] Calvin H. Wiley, Acts of Assembly, Establishing and Regulating Common Schools in North Carolina (Raleigh: William W. Holden, Company, 1853), 6.

This law was, for all intents and purposes, practically a copy of the law of 1839 and its subsequent revisions. Also, the Reconstruction system created in 1869 was, in its essential features, manifestly an adaptation of the system in operation in the state before the Civil War.[49]

A decision handed down by the state Supreme Court in 1870 had a retarding influence on the productivity of education in the state. The court held that schools were not a necessary expense.[50] In Lane v. Stanly the state Supreme Court held that the law of 1869, so far as it provided for local taxes for education, and the Constitution of 1868, being in conflict with each other, and made the collection of taxes for support of schools unconstitutional. It held that the constitutional limitation on the amount of tax that could be assessed in any particular county could not be exceeded except for necessary expenses. The court, in this case, did not consider the establishment of schools and the maintenance of a school term of four months to be a necessary expense to be born by the people.

One of the arguments in this case hinged on the fact that one clause in the Constitution required the county commissioners to maintain schools in every township for four months in every year, while another clause creating a constitutional limitation on state and county taxation made

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[49] Knight, 236.

[50] Knight, 316.

it impossible to do so under the existing laws. With popular opinion against levying taxes for educational purposes, the existing school law was practically ineffective and the continuance of schools seemed doubtful unless provision could be made for them by correcting this defective legislation.[51]

In 1871 the legislature revised the 1869 school law but the new standards still contained many of the same defects that were present in the first bill. The right of local taxation was given to the counties but it was withheld from the school districts and, therefore, it still prevented the school districts from gaining the funding required to stay in business.

Legislation that had been in force since 1839 was changed in 1868 with the enactment of a law which established townships. These new local governing bodies were directed to elect a school committee who would be given the power to establish and maintain a sufficient number of schools at convenient locations in their township. The division of each township into appropriate school districts was the responsibility of the site superintendents. In 1873 the legislature changed the responsibility by making the division of townships into convenient school districts as one of the duties of the township committee. After 1877 this responsibility was passed from the committees to the

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[51] Knight, 249.

county boards of education.[52]

After the ratification of the Constitution of 1868 the state legislature worked to establish a school law that would provide the best possible educational alternatives for the citizens of the state. After much discord it approved a thorough and definite school law, and with feference to school support, more mandatory and less discretionary than previous acts on the subject.[53] Some of the more important aspects of this law that affected school district organization were the establishment of: (1) a state board of education, (2) a public school fund, (3) an ordering of the assessment and collection of taxes in counties for school purposes, (4) an arrangement for counties to be divided into townships and for school committees directed to establish schools and school districts, and (5) a program for the education of freedmen.

The constitutional convention of 1875 amended section 2 of Article 9 of the state Constitution. A part of this amendment required the state to mandate the separation of the white and black races into separate but equal schools throughout the state. This amendment provided the momentum which led to progressive developments in public education. As indicated in the review of literature, the public school

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[52] North Carolina State Department of Public Instruction, Study of Local School Units in North Carolina (Raleigh: State Department of Public Instruction, 1937), 13.

[53] Knight, 234.

system did not increase in popularity until this particular section was amended. A number of positive incidents occurred in education as a result of this revision. It caused an increase in the funding for schools through taxation, an increase in the interest in education and an increase in the freedom to make decisions without worrying about unwelcome influences from other sectors of the nation.

In 1877 the state legislature passed a bill that allowed each township, each city and each incorporated town in the state to tax itself for school purposes if approved by a majority vote of the voters of the district. It allowed for each school district to collect a property tax and a capitation tax for the purpose of schools.

In McCormac v. Commissioners of Robeson (1884) is found one of the most important aspects relating to the creation, reorganization and abolishment of school districts. The opinion expressed by Judge Merrimon in that case has been set forth in the majority of cases that have been litigated concerning school district creation. The decision of this court became basic to the standards written into the state statutes dealing with school district creation, reorganization and abolishment. Judge Merrimon's judgement in this case is so encompassing that it is stated in part for clarification:

> That it is within the power and is the province of the legislature to subdivide the territory of the state and invest the inhabitants of such

> subdivisions with corporate functions, for the purposes of government. That such power is inherent in the legislative branch of the government, limited and regulated only by the Constitution. The Constitution of the state was formed in view of this and like fundamental principles.
>
> It is in the exercise of such power that the legislature alone can create, directly or indirectly, counties, townships, school districts road districts, and the like subdivisions, and invest them and agencies in them, with powers corporate or otherwise in their nature, to effectuate the purposes of government, whether these be local or general, or both. Such organizations are intended instrumentalities and agencies employed to aid in the administration of government, and are always under the control of the power that created them, unless the same shall be restricted by some constitutional limitation. Hence, the legislature may, from time to time, in its discretion abolish them, or enlarge or diminish their boundaries, or increase, modify or abrogate their powers. Such power of the legislature is general and comprehensive, and may be exercised in a great variety of ways to accomplish the ends of the government.
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> The powers conferred upon such political agencies are either expressed or implied. The expressed powers are such as are conferred in terms by statute; the implied powers are such as are necessary to carry into effect those expressly conferred, and are therefore presumed to be granted.[54]

Through the years this opinion has formed the basis for the technical procedures which provide county commissioners, boards of education, township committees, superintendents, and other governmental agencies the necessary fundamentals with which to create, to reorganize or to abolish school

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[54] E.L. McCormac v. Commissioners of Robeson County, 90 N.C. 441 (1884).

districts according to existing legal statutes. It provides the legislature, working through these agencies, the controlling power to accomplish any school district organizational plan that it deems necessary to the survival of the public school system.

In 1890 public school law regarding school districts came under two separate sections. Section 2549 of the school law said, "The county board of education shall lay off their respective counties into convenient school districts , consulting as far as practicable the convenience of the neighborhood. They shall designate the districts by number, as school district number one, school district number two, ...in the county of _____."[55] This early statute authorized the board to gather input from the neighborhood before dividing the counties into school districts. This indicates that the early school districts were usually small and within easy convenient walking distance from the students homes. Many counties during this time had as many as 100 school districts organized for the convenience of the neighborhoods. Establishment of so many school districts in a county meant that there would be a school built every mile or so.

Section 2550 of the school code of 1890 concerned the convenience of the residents and to the separation of schools for the two races. It indicated that, "The county

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[55] North Carolina Public School Law (1890), sec. 2549.

board of education shall consult the convenience of the white residents in setting the boundaries of districts for white schools, and of colored residents in setting boundaries for colored schools. The schools of the two races shall be separate; the districts the same in territorial limit or not, according to the convenience of the parties concerned."[56]

The separation of the races in the state school system produced many thousands of extra school districts. At one time, before the consolidation of districts began, there were as many as 4,000 or more school districts for the colored race. This separation of school districts by race continued into the middle of the 20th century when it was completely abolished by integration.

Section 2551 of the public school code in 1890 placed the responsibility for dividing a township's educational fund upon the local board of education, whose responsibility it was to see that each district, whether black or white, received an equal share of the local school fund based on a "per capita" distribution. The local boards were advised not to depart significantly from this "per capita" distribution. The philosophy behind such advisement was based on the funding and leadership committee's desire to avoid any unnecessary division of school districts. This was due in part because of the financial commitment made to

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[56] North Carolina Public School Law (1890), sec. 2550.

those districts which were weak and unable to take care of themselves. It was considered more appropriate to adhere strictly to per capita apportionment than to abuse the privilege allowing the local boards to help financially weak districts.

In 1895 the school law codes were found in Chapter 174 of the General Statutes. Section 28 of the school codes dealt with the changing or reorganizing of school districts. This particular law is interesting in that it was one of the first attempts by the state to set some specific limitations on the powers of the local boards of education. This section states in part that:

> No change of districts shall be made until full information is laid before the county board of education, showing the shape, size, boundaries and school population of all the districts affected by the change. Unless for extra ordinary geographical reasons, no change of district lines shall be made that will constitute any district with less than sixty-five children of school age; and the county board of education shall provide, as far as practical, that no district shall contain less that number of children of school age...[57]

The above indicates one of the earliest attempts by the state to establish requirements for the reorganization of school districts. The law required the local district administration to provide the county boards with surveys, planning guides, maps and documentation of the existing

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[57] John C. Scarborough, Biennial Report of the State Superintendent (Raleigh: Edwards and Broughton, 1895), 41.

legal boundaries of the established school districts. Each district was also directed to implement appropriate restrictions on the number of student memberships and on the geographical size of districts. Large areas of sparsely populated territory, dangerous rivers, impassable mountains, poorly maintained roads, and other hazards are examples of the extraordinary geographical problems that local boards of education were permitted to consider in their decisions about school district organization.

In 1886, after the Civil War and in the face of adversity, two acts of educational importance were passed by the legislature. The first of these authorized towns and cities to establish public school systems which were "to be supported by the taxes collected or authorized to be collected for corporation purposes."[58] This act was directed mainly toward the maintenance of the primary school but it did also offer the same educational privileges to the students of higher grades. This act granted cities the authority to establish administrative boards, to provide for the funding necessary for education and to levy and collect a poll tax to help in the support of schools.

A second act, passed on the same day, required each city or town to appoint a superintendent who would serve under the same rules and regulations of education which had existed before the Civil War. The superintendent was

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[58] Knight, 224.

expected to be of service in organizing the counties into districts and establishing schools.

The school laws of 1897 contained one of the most advanced educational laws enacted at that time. The law had a short life and proved to be ineffective in producing educational growth. The legislature intended for the law to encourage local taxation for public schools and to provide for an election to be held on the question in every school district. The law contained a provision that directed every school district, which failed to vote for the tax in 1897, to order an election every two years until the tax was properly voted. The act was very unsatisfactory and was repealed by the legislature in 1899. After the legislature repealed the law it turned around and established a fund containing $100,000 to be apportioned equally to each county for the financial support of their schools.[59]

In 1901 the legislature passed a bill that allowed for the establishment or reestablishment of special local tax districts for education. These local tax districts were very effective in providing the money necessary to support the ever-expanding system of public schools. By 1933 there were thousands of these tax districts in the state. They had a tremendous impact on the growth of the state's educational program. The growth of tax districts matched the growth of the state's special school districts. These

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[59] Edgar W. Knight, p. 325.

districts provided the financial means to establish schools and school districts and increased the expenditures made by the people of the state for education.

The first public high school law was passed in 1907. The establishment and implementation of this law created many new school district arrangements in each county. This act entitled, "An Act to stimulate high school instruction in the public schools of the state and teacher training", stipulated a number of conditions under which high school districts were to operate. In section one of the law it states:

> With the consent of the State Board of Education, the County Board of Education in any county may, in its discretion, establish and maintain, for a term of not less than five school months in each school year, one or more public high schools for the county at such place or places as shall be most convenient for the pupils entitled to attend and most conducive to the purpose of said school or schools.[60]

The establishment of the high school offered the local boards of education an opportunity to practice their skills at district organization. High schools were not prescribed for each of the individual districts in the county but rather were to be offered for the convenience of the whole county. The law requested at least one for the county but there could have been more than one. If there was only one high school in an entire county then the county was

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[60] Knight, 330.

considered as the high school district. If more than one high school was established per county then the county would have to be reorganized into two or more high school districts so that the location of the school would meet the convenience of the population.

In 1916 the state educational law cited a number of important directives. It indicated that the county board of education had the responsibility to fix the boundaries of school districts. It prescribed that no new school could be established within three miles of a school already existing and that no school district could have less than sixty-five children of school age, unless such district contained 12 square miles or was separated by dangerous natural barriers from a school facility. The law made provision that allowed for the parts of two or more contiguous counties to be united by the boards of education of the counties affected if they considered it in the best interest of the students involved. Finally the law gave the county board of education the authority to change the boundaries of local tax districts and to consolidate the small, ineffective schools found around the state.[61]

By requiring the minimum number of sixty-five students in a district the law clearly intends to encourage the formation of districts larger than this and the

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[61] William R. Hood, Stephen B. Weeks and Sidney Ford, Digest of State Laws Relating to Public Education (Washington: Government Printing Office, 1916), 78.

consolidation of the many thousands of small school districts. Dr. J.Y. Joyner, State Superintendent of Public Instruction, said in 1903, "We must find some way to get rid of the multiplicity of little school districts before any great progress can be made toward better classification and more thorough and comprehensive instruction in the public schools." [62] Dr. Joyner considered the multiple number of small districts to be the single most important factor in holding back the essential education progress in the state. Section 6 of chapter 543 of the public laws of 1901 indicated, "No school with a school census under sixty-five in number shall receive any benefit from the appropriation made in section three (literary fund) of this act."[63] This is a clear recommendation for the consolidation of the small districts by tying money to district organization.

In 1902 Dr. Joyner commented about children walking to school: "I think this is a clear declaration on the part of lawmakers that, in the formation of school districts, it is not unreasonable to expect any healthy child, who frequently works on the farm from sunrise to sunset, to walk as far as two or three miles to school, if necessary. I am sure that

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[62] J.Y. Joyner, Biennial Report of the State Superintendent of Public Instruction (Raleigh: E.M. Uzzell and Co., 1904), 30.

[63] J.Y. Joyner, Biennial Report of the Superintendent of Public Instruction (Raleigh: Edwards and Broughton, 1902), 368.

this is not an unreasonable requirement."[64] This particular philosophy would not gain public acceptance today.

The possibility of being able to simplify school organization began when the General Assembly, in the opening part of this century, authorized special school districts within a township to consolidate under one school committee and directed the many special school districts scattered within the counties to consolidate into organized county school systems. The General Assembly recognized the power of county boards of education to consolidate school districts in their respective counties in 1911; specifically authorized them to consolidate in 1917; encouraged them to consolidate in 1923; and, finally, consolidated them in 1933 into a state-wide system with less than two hundred city and county administrative units.[65]

The machinery to enlarge the many graded school districts found in cities and towns passed through the legislature in 1917 with "An act to provide for the enlargement of graded school districts in incorporated towns". This act was the forerunner of the present statute 115C-73. Section 1 of this act stipulated that city districts could annex any contiguous territory which belonged to the county. Section 2 required a written petition from the landowners requesting the annexation, a

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[64] Ibid.

[65] Coates, 139.

description of the district boundaries and an endorsement by the boards of education involved.

In 1923 the General Assembly passed a school law that was entitled, "The County-Wide plan of Administration and Consolidation of Districts". This law became one of the most important pieces of legislation regarding school district organization to be passed in the twentieth century. It expressly encouraged that no new school districts should be created in such a way as to increase the total number of school districts in a given county. Superintendents were urged to organize their schools with reference to a county-wide plan by dividing the county into subdistricts as it might deem proper; they were required to draw up a five-year plan for the consolidation of schools and to hold public hearings on the plan proposed. Thereafter, consolidations were to be made at the discretion of the county board.[66] As a result of this law the schools and the school districts of the majority of the counties of the state reduced the number of one- and two- teacher school districts and improved their effectiveness with larger consolidated facilities.

In the early part of school district development, emphasis was placed upon the accessibility of the school to the child's home, rather than upon the advantages to the child to attend an efficient school though some distance

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[66] Howard A. Dawson, Your School District, (Washington: Department of Rural Education, 1948), p. 249.

away. "Never will the children get an appropriate education until parents cease from making this mistake. The most vital question is not how near is the school located to our own door, but how efficient is the school".[67] This opinion has been shared down through the years by the majority of the leaders in the field of education who have been trying to organize the counties into viable, effective and efficient school systems in order to meet the needs of the people.

School district consolidation in the early part of the century was less than effective. During this early period the effects of consolidation were hardly noticeable in a school with fewer than four well trained and experienced teachers. Therefore, the state realized more and more that it should strive for the six-teacher school as the smallest type of school that would guarantee positive efficient instruction.[68] One of the chief obstacles to the formation of larger consolidated schools was the hit-and-miss method of consolidation and the failure of the educational administration of each county to work out a county-wide plan based upon a careful survey and study of the educational

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[67] L.C. Brogden, Consolidation of Schools and the Transportation of Pupils (Raleigh: Department of Public Instruction, 1911), 34.

[68] E.C. Brooks, Biennial Report of the Superintendent of Public Instruction (Raleigh: Edwards and Broughton, 1921), 12.

needs of all the children of the county as a whole.[69]

The consolidation of school districts emphasizes the relationship between the amount of the community's taxable wealth and the size of the school district; if the school district size increases, the total community's wealth increases. Likewise, if the boundaries of a school district are increased, there is a corresponding increase in the size and stability of the community's population. Furthermore, an increase in district size also increases the value of the community's cooperative effort in the building of a school system that will more adequately meet the needs of the children.[70]

The North Carolina General Assembly of 1931 made many fundamental changes in the public school law. Before this session the counties of the state and the county commissioners, acting as the administrative agencies of the state, had been considered primarily responsible for the operation of schools. The most important educational principle to come from this session was that the state itself was to be primarily responsible for the support and maintenance of the six-month school term in every district. This principle was based on the idea that public education was to be a state function over which it would exercise some general control, but it was also determined to be a solemn

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[69] Ibid., 35.

[70] Ibid., 9.

state obligation which the state must discharge with all the resources at its command.[71]

To succeed the 1927 State Board of Equalization the General Assembly set up the State School Commission to equalize values in the several counties as a basis of distributing the equalizing fund provided for schools. This commission decided what schools were to be operated, had the power to consolidate districts and transfer children from one unit to another and could suspend any school operation when attendance did not meet specifications outlined in the School Machinery Act of 1933. The commission determined the number of teachers to be paid from state funds and made provisions for the operating standards for the eight month school. The commission was also authorized to supervise school transportation, to develop rules and regulations governing financial management for administrative units and to audit school funds.[72] The State School Commission was later combined with a number of other agencies into the State Board of Education. This board is still in existence.

The 1933 School Machinery Act contained many new and exciting educational provisions. It provided for the

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[71] A.T. Allen, Paul V. Betters, Charles M. Johnson, Fred W. Morrison and Charles Ross, State Centralization in North Carolina (Washington: The Brookings Institution, 1932), 15.

[72] Clyde A. Erwin, Biennial Report of the Superintendent of Public Instruction (Raleigh: State Department of Public Instruction, 1936), 19.

organization and initial stages of financial support for public education from the state level. It abolished all of the various school, tax and special charter districts in the state and authorized the State School Commission, with the advice of the county boards of education, to redistrict each county so there would be a convenient number of school districts as deemed necessary for the economical administration and operation of the state system of public schools. This action resulted in the reduction of the number of school districts from 3606 to 1449. School districts, as they had been known in North Carolina since 1839 and the enactment of the first school law lost their meaning.[73]

The School Machinery Act of 1933 accomplished a number of positive changes for the public school system. This act passed by the General Assembly made North Carolina the first state in the Union to guarantee a minimum educational opportunity of a 160-day school term without having to resort to ad valorem taxes. It was also the first state to support the public school system largely from funds appropriated from the general treasury of the state.[74] In other words, it divorced the distribution of state aid from the value of taxable property. This new method of school

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[73] A Study of Local School Units in North Carolina (Raleigh: State Department of Public Instruction, 1937), 10.

[74] Erwin, 13.

support provided that certain local taxes and fines in each county would be used to pay for physical plants and maintenance, while the funds coming from the state treasury would be used for general control, instructional services, operation of the physical plant, and other auxiliary services. State support was distributed according to the needs of the school unit when measured uniformly by state standards.

By abolishing the district as a unit of school support, a child's education was no longer directly dependent on the wealth of the community itself. Now under the new act, each child in the state, no matter whether he lived in the richest community, or in the poorest, remotest area of the state, was provided with an opportunity to attend school for eight months in the year.[75]

The abolition of all local tax and school districts by the School Machinery Act made it possible to effect certain consolidations which were impossible under the old independent school district organization patterns. Many of the small inefficient schools were able to be consolidated with larger schools which offered broader curricula and greater opportunities. The number of school districts continued to decline through the years and in 1953 there

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[75] Clyde A. Erwin, Biennial Report of the Superintendent of Public Instruction (Raleigh: State Department of Public Instruction, 1940), 10.

were 1,207 districts in the state.[76] This reduction in school districts did not produce a corresponding decrease in the number of schools. The reduction simply meant that school children were assigned to convenient schools in new and larger districts. It also produced sensible consolidations which resulted in the abandonment of small school buildings without friction and with the greatest ease.[77]

Another important aspect of the School Machinery Act concerns its relationship to the County-Wide Plan of school organization which was established in 1923. Even though the School Machinery Act abolished all school districts in the state, it still left the County-Wide Plan of organization operative for attendance areas. As a result, only rudimentary vestiges of administrative authority were left with the districts themselves. The counties were divided into convenient "school districts" and those districts with a scholastic population of fewer than 1,000 pupils constituted the county administrative unit. Each of these districts was given the authority to elect a committee to direct and control the administration of the district with the approval of the county board of education. "The School Machinery Act provided the policy which allowed North

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[76] Clyde A. Erwin, Biennial Report of the Superintendent of Public Instruction (Raleigh: State Department of Public Instruction, 1953), 45.

[77] Ibid., 11.

Carolina's public school system to be operated by a cooperative, coordinated effort between state government and the administrative units of the counties and cities".[78]

In 1939 the General Assembly enacted another measure that held some implications for the organization of school districts. This law allowed the local attendance districts in county administrative units to vote on taxes to supplement the state-supported educational program. The provisions of this law enabled each school district to vote for taxes to add a ninth month to the school term, to add a twelfth grade, or to make additions or changes in curriculum but only if the district had more than 1,000 students. This legislative requirement was just another device established for the express purpose of directing or mandating the county administrative units to consolidate more of their small school districts.

The responsibility for altering school districts in North Carolina belongs to the county boards of education. Any alterations made by the boards are subject to existing statutory provisions and to the approval of the state regulating authorities. "The authority to create, alter, divided or merge school districts is vested in the local board of education".[79]

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[78] North Carolina Department of Public Instruction, Local School Units, 14.

[79] John D. Messick, "The Discretionary Powers of School Boards" (Durham: Duke University Press, 1949), 15.

There are a number of opinions about the negative influences that district consolidations or abolishments may have on the population. One of the most important negative opinions was expressed by Morphet, who said, "The complete reorganization of school districts and the loss of local control may have the unfortunate effect of making a school lose its significance, shirk responsibility and look too much to the central office for guidance and support".[80]

The Chapter 115C of the general statutes of North Carolina is another key to the basic procedures for the creation, reorganization, and abolishment of school districts. These laws have evolved over the years and an have gone through litigation in the courts concerning their constitutional or legislative propriety. They have been amended, recodified, and abolished by the state legislature so as to provide appropriate guidelines for the people of the state.

Each of the present laws found in the publication, Public School Laws of North Carolina that deals with school district creation, reorganization, or abolishment in any way, is examined below, to determine and itemize the statutes from chapter 115C of the general statutes that apply to the topic. These laws and cases that have been litigated relative to these laws are discussed and a written

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[80] Edgar L. Morphet, R. L. Johns, and T. L Reller, Educational Administration, (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1959), p. 231.

narrative of the law or parts therein that affect the topic is presented.

North Carolina Statutes 1988

115C-1. General and Uniform System of Schools

> A general and uniform system of free public schools shall be provided throughout the State, wherein equal opportunities shall be provided for all students, in accordance with the provisions of Article IX of The Constitution of North Carolina. Tuition shall be free of charge to all children of the State, and to every person 18 years of age, or over, who has not completed a standard high school course of study. There shall be operated in every local school administrative unit a uniform school term of nine months, without the levy of a State ad valorem tax therefore.[81]

In mandating a general and uniform system of public schools throughout the state, the section provides the opportunity for school districts to be created in the counties by whatever method is expressed or organized by the state legislature.

115C-12. Powers and Duties of Board Generally

> The general supervision and administration of the free public school system shall be vested in the State Board of Education. The powers and duties of the State Board of Education affecting school districts are defined as follows:
>
> (2) Power to divide the administrative units into districts - The board shall power to create in any county administrative units a convenient number of school districts,

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[81] North Carolina Public School Law (1986), Subchap. I, art. 1, sec. 115C-1.

> upon the recommendation of the county board of education. Such a school district may be entirely in one county or may consist of contiguous parts of two or more counties. The board may modify the district organization in any administrative unit when it is deemed necessary for the economical and efficient administration and operation of the state school system, when requested to do so by the appropriate local board of education.
>
> (7) Power to alter the boundaries of city school administrative units and to approve agreements for the consolidation and merger of school administrative units located in the same county. - The Board shall have authority, in its discretion, to alter the boundaries of city school administrative units and to approve agreements submitted by county and city boards of education requesting the merger of two or more contiguous city school administrative units and the merger of city school administrative units with county school administrative units and the consolidation of all the public schools in the respective units under the administration of one board of education: Provided, that such merger of units and reorganization of school units shall not have the effect of abolishing any special taxes that may have been voted in any such units.[ee]

These powers assigned to the school board come expressly from the General Assembly. According to the court decision held in Guthrie v. Taylor, there are no constitutional questions about the validity of the delegation of authority to the State Board of Education. The State Board of Education has full constitutional power

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[ee] North Carolina Public School Law (1986), Subchap. II, art. 2, sec. 115C-12.

to control the development and alteration of school districts. Guthrie v. Taylor also indicated that the State Board of Education derives its powers from both the Constitution and from acts of the General Assembly, contained in Chapter 115C of general statutes of North Carolina.[83] The state legislature has delegated the authority to create, reorganize, or abolish school districts to the State Board of Education working in conjunction with the local county board of education. The local board is directed to follow a number of simple procedures in establishing a county-wide plan for school district establishment and then seek approval of the plan from the State Board of Education. This principle is affirmed in McCormac v. Robeson County Commissioners (1984). The decision of the court contained the following statements:

> That it is within the power and is the province of the legislature to subdivide the territory of the state and invest the inhabitants of such subdivisions with corporate functions, for the purposes of government.
>
> It is in the exercise of such power that the legislature alone can create, directly or indirectly, counties, townships, school districts road districts, and the like subdivisions, and invest them, and agencies in them, with powers corporate or otherwise in their nature, to effectuate the purposes of government, whether these be local or general, or both."[84]

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[83] North Carolina Public School Law (1986), Subchap. II, art. 2, sec. 115C-12.

[84] McCormac v. Commissioners of Robeson, 90 N.C. 441 (1884).

115C-40. Board a Body Corporate.

> The board of education of each county in the state shall be a body corporate by the name and style of "The.....County Board of Education"....and local boards of education, subject to any paramount powers vested by law in the State Board of Education or any other authorized agency shall have general control and supervision of all matters pertaining to the public schools in their respective local school administrative units.[85]

This law grants the local board of education the authority to represent the state in the various business transactions that are handled on an everyday basis in the local administrative unit. The local board of education becomes a subdivision, established by the force of law, of the state legislature and is vested with certain powers and responsibilities that pertain to school district organization. Local boards of education are required to discharge these prescribed duties in an appropriate manner and to fulfill their obligations to the state of North Carolina. This law makes provisions for the local boards of education to be given the indirect authority to create, reorganize and abolish schools districts as they deem necessary to carry out the established functions of the state.

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[85] North Carolina Public School Law (1986), Subchap. II, art. 5, sec. 115C-40.

115C-47. Powers and duties of Local Boards Generally.

> In addition to the powers and duties designated in General Statute 115C-36, local boards of education shall have the following powers or duties:
>
> (1) To provide an adequate school system.- It shall be the duty of local boards of education to provide adequate school systems within their respective local school administrative units, as directed by law.
>
> (3) To divide local school administrative units into attendance areas. - Local boards of education shall have the authority to divide their various units into attendance areas without regard to district lines.[86]

In Clark v. McQueen (1928) the court affirmed C.S. section 5428 establishing the fact that a county board of education is required by statute to divide the county into school districts and to locate schools therein so that both elementary and high school instruction may be available for all the children of the county. The court indicated:

> In the absence of statutory specifications or limitations upon the power to perform this duty, discretion is vested in the board of education to locate, discontinue, transfer, or establish schools and school districts in their county. In the absence of abuse, this discretion cannot be set aside or controlled by the courts.[87]

The following statement from the court decision rendered in McInnish v. Board of Education (1924) provides

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[86] North Carolina Public School Law (1986), Subchap. II, art. 5, sec. 115C-47.

[87] Clark v. McQueen, 143 S.E. 528 (1928).

an appropriate summary of the discretion principle which is used by the school district authorities when making decisions that affect the general welfare of the district.

> In numerous and repeated decisions by the court the principle of discretion has been announced and sustained. It confirms that the courts may not interfere with the discretionary powers conferred on local administrative boards for the public welfare unless the actions of these boards is so clearly unreasonable as to amount to an oppressive and manifest abuse of discretion"[ee]

In Key v. Board of Education (1915) the courts affirmed the courts' power to compel a county board of education to act accordingly with the discretionary powers conferred on them by the legislature, but they cannot tell them how they must act. This principle allows the local boards of education to make decisions on any subject based on the collection and evaluation of the best available information. It also provides for the boards to be instructed to use their own best judgement as to what is best for their school district.

Even though the following section of the law does not directly pertain to school districts it is important to note that it does exist. This division represents the extension of the services of the State Department of Public Instruction into all areas of the state.

[ee] McInnish v. Board of Education of Hoke County, 122 S.E. 182 (1924).

115C-65. State Divided Into Districts

> The state of North Carolina shall be divided into eight educational districts embracing the counties herein set forth:[89]

This statute divides the state into eight separate regions containing a specified number of counties within its boundaries. Each of these regions contains a centralized regional office that brings the workings, support, supervision, and services of the State Board of Education and the State Department of Public Instruction closer to the individual county and city administrative units. These districts can be changed at any time by the State Board of Education.

115C-69. Types of Districts Defined.

> The term "district" used here is defined to mean any convenient territorial division or subdivision of a county, created for the purpose of maintaining within its boundaries one or more public schools. It may include one or more incorporated towns or cities, or parts thereof, or one or more townships, or parts thereof, all of which territory is included in a common boundary.
>
> (1) The "nontax district"...no special local tax fund voted by the people for supplementing state and county funds.
>
> (2) The "local tax district"....a special local tax voted by the people for supplementing state and county funds.
>
> (3) The "administrative district" ...territorial division of county administrative unit under the control of the

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[89] North Carolina Public School Law (1986), Subchap. III, art. 7, sec. 115C-65.

> county board of education established for administrative purposes which consist of a combination of one or more local tax districts, nontax areas or bond districts of the county administrative unit.[90]

During the short period of edcational history other definitions for school districts have been adhered to. At one point the school district was considered to be the same as or had the same fixed boundaries as the township. The township was that governmental organization that each county had been divided into for the purpose of bringing the state and county governments closer to the people.

In Hobbs v County of Moore (1966) the courts decision carried with it a concern as to the comparison of the definitions of "school district" and "administrative unit". It also contained questions about what important constitutional and statutory ramifications these definitions held. The courts held in part that:

> The term "school district" in Article II, Section 29 of the Constitution, means a "district" provided for in Article IX, Section 3 of the Constitution. That is a "school district" is an area within a county in which one or more public schools must be maintained....An "administrative unit" is not a "school district" within the meaning of Article II, Section 29. Therefore, the merger of two or more administrative units is not a changing of school district lines and is not prevented by nor violates Article II, Section 29 of the Constitution of North Carolina.[91]

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[90] North Carolina Public School Law (1986), Subchap.II, art. 7, sec. 115C-69.

[91] Hobbs v. County of Moore, 149 S.E. 2d. 1 (1966).

115C-70. Creation and Modification of School Districts by the State Board of Education.

> (a) The State Board of Education, upon the recommendation of the county board of education, shall create in any county school administrative unit a convenient number of school districts. Such district organization may be modified in the same manner in which it was created when it is deemed necessary: provided, that when changes in district lines are made between and among school districts, that they have voted upon themselves the same rate of supplemental tax. Such changes in district lines shall not have the effect of abolishing any of such districts or of abolishing any supplemental taxes that may have been voted in any of such districts.... that nothing in this paragraph shall affect the rights of special tax or charter districts of having their indebtedness taken over by the county...
>
> The General Assembly shall not enact any local, private, or special act or resolution establishing or changing the lines of school districts.[92]

This statute gives all the power and authority of creating, reorganizing, and abolishing school districts in the various sections of the state to the State Board of Education, working in close harmony with the local county boards of education. The state is required to establish the form and procedures for school district organization and it delegates certain operational responsibilities to the counties to perform the necessary functions to complete this organization.

This statute also recognizes that the schools and school districts that the local boards of education are allowed to

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[92] North Carolina Public School Laws (1986), Subchapt. II, art. 7, sec. 115C-70.

create cannot be reproduced in many of the counties in North Carolina simply because of geographical limitations and the sparseness of population.[93]

There are numerous ways to enlarge or reorganize school districts aside from redrawing all school district boundaries. The following represent the methods that boards of education use most often to reorganize school districts for more efficiency and effectiveness:

1. merge one or more elementary school districts with one or more secondary school districts

2. divide up one or more districts and giving parts to existing districts

3. merge a city school district with some or all of its suburban or county districts

4. merge city school district(s) with surrounding county districts to form one school district for all or nearly all the area of the county

5. consolidate separate county districts into larger districts

6. form regional high school districts serving secondary students in several towns or townships [94]

This statute was legally supported by a court case in 1924, which dealt with the constitutional issue formed from

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[93] A. Craig Phillips, Report of the State Superintendent on Schools and School Districts in North Carolina (Raleigh: North Carolina Department of Public Instruction, 1986), 41.

[94] "Summary of Research on Size of Schools and School Districts", Educational Research, 1974, 36.

Article II, section 29 (now section 24) of the state Constitution. The case dealt with the constitutionality of a local educational act which imposed a school tax on a school district without the consent of the people. In Sparkman v. Board of Commissioners of Gates County (1924) the court rendered a decision concerning this issue and its relationship to 115C-70. The court decision stated:

> The Constitution recognizes the existence of counties, townships, cities and towns as governmental agencies. It also realizes that they are all legislative creations and are subject to be changed whenever the legislative branch determines they have outlived their usefulness. They are but public quasi corporations, created by the legislature for the exercise of governmental functions in designated portions of the state's territory and are subject to almost unlimited legislative control. The legislature, therefore, having the full power, provides for the creation of new districts .. and when approved by the voters of the district then the proposed tax levy can have no objection because the people have voted on the issue and have determined the question."[95]

In Kreeger v Drummond (1952) the courts held that the two methods of school district reorganization allowed by the general statutes in 1952 were constitutional. The statute in essence said:

> The State Board of Education may modify a district organization when it is deemed necessary for the economical administration and operation of the state school system...and the county board of education is authorized and empowered to consolidate schools located in the same district. Also, with the approval of the State Board of

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[95] Sparkman v. Board of Commissioners of Gates County, 121 S.E. 531 (1924).

> Education, any county may consolidate school districts whenever and wherever in its judgement the consolidation will serve the educational interests of the county or any part of it.[96]

Another important aspect about the legal implications for the creation, reorganization and abolishment of school districts came from Kreeger v. Drummond. The court opinion stipulated that, "unless the school authorities act contrary to law, or there is a manifest abuse of discretion on their part, the courts will not interfere with their action in creating or consolidating school districts..."[97] This allows the county boards of education to follow the exact letter of the law while making decisions dealing with school district organization. Using its best judgement in organizing respective administrative units to meet the perceived needs of the county is one of the most important issues facing the decision-making authority of the local boards of education. The courts will not even entertain a grievance pertaining to the creation, reorganization and abolishment of school districts unless a petition filled by a complaining party can establish some fact that indicates the board of education is not following prescribed procedures of law. In Davenport v. Board of Education (1922) the court rendered a decision which made provisions

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[96] Kreeger v. Drummond, 68 S.E. 2d 800 (1952).

[97] North Carolina Public School Law (1986), Subchap.II, art. 7, sec. 115C-70.

for the local board of education to be granted the support of the court in the absence of any abuse in the boards discretionary decision making procedures. This allows the local boards of education to perform their duties concerning the formation and consolidation of school districts within the given specifications of their statutory discretion.

In the case of Hickory v. Catawba County (1934) the court rendered a decision which affected the validity of this statute. This case dealt with the abolishment and indebtedness of special charter school districts and the county's responsibility to assume this service whenever such an abolishment of a district occurs. The court's decision mandated that the release of a city unit's special charter rights or the abolishment of a special school district is not a necessary condition precedent to the county's assumption of debt. The assumption of debt established by the city unit must be attempted in order to provide the buildings and equipment necessary to ensure the children of the district those educational mandates of the state Constitution.[98] As a result the county board of education is constitutionally and statutorily responsible for providing school facilities and equipment for all school districts, including special charter districts, within their county.

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[98] City of Hickory v. Catawba County, 173 S.E. 56 (1934)

115C-71. Districts formed from portions of Contiguous Counties.

> School Districts may be formed out of contiguous counties by agreement of the county boards of education of the respective counties subject to the approval of the State Board of Education....[99]

This statute allows those counties which have areas that are hard to serve because of geographical locations obstructed by natural boundaries or some other physical or financial obstacle the opportunity to solve their problem. County administrative units are allowed to work out satisfactory arrangements, for sharing students and territory, with adjacent counties which may be closer to the affected problem area. The adjacent county may be able to serve the children in the affected area without risk or impairment to its own administrative unit.

115C-72. Consolidation of Districts and and Discontinuance of Schools.

> (a) Local boards of education shall have the power and authority to close or consolidate schools located in the same district, and with the approval of the State Board of Education, to consolidate school districts or other school areas over which the board has full control, whenever and wherever in its judgement the closing or consolidation will better serve the educational interests of the local school administrative unit or any part of it.

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[99] North Carolina Public School Law (1986), subchap. II, art. 7, sec. 115C-71.

> In determining whether two or more public schools shall be consolidated...local boards of education shall observe and be bound by the following rule:
>
> > (1) The local board of education shall...cause a thorough study of the schools to be made...provide for a public hearing on the consolidation and allow the public to express their views...Upon the basis of the study made and the public hearing approve the closing or consolidation of schools and the reorganizing of school district lines...[100]

This statute gives the local board of education the authority to consolidate the public schools in their unit after performing certain functions. It must make a thorough study of the schools characteristics that may affect the outcome of the proposed consolidation. Important items that must be considered before a board of education can pass a resolution calling for a consolidation are the general welfare of students, the existing geographic conditions, the hardships that may be created or placed on students, and the costs involved in the proposed consolidation.

In 1968 the Governor's Study Commission Report stated that, "The size of school administrative units or school districts should not be confined by political boundaries or limited to local tradition if these two factors no longer serve as reasons for maintaining schools."[101] This seems to

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[100] North Carolina Public School Law, Subchapter II, Article 7, Section 115C-72, 1984.

[101] Phillips, 43.

indicate an interest by the state to promote and enact legislation that would enhance the organizational characteristics which make schools more effective and efficient.

The major purpose of school district consolidation or reorganization is to establish the framework which will provide a quality educational program and, as far as possible, an equal opportunity for every child in the state to receive an education geared to his ability, interests and needs. School districts should be organized in such a manner that all available resources for education can be used wisely and efficiently. School district reorganization patterns should develop strong school districts, strengthen the state and local relationships, and encourage effective local and state participation in consolidation efforts.

During recent studies, conducted by the state legislature, many committee members have shown a concern about the organization of the public school system in North Carolina. These members have voiced concerns about the size of school districts and administrative units and the ability of these governing bodies to meet the expectations involved in serving the student population with the most effective and economical education that can be devised.

The 1968 Governor's Study Commission study recommended that the administrative units of the state should be reduced to 100 by merging the city units with the counties. This

proposal is still receiving attention in the media and particularly in counties having more than one city administrative unit.

In 1976 a study by the Division of School Planning made the following specific recommendation concerning school consolidations and reorganization of school districts:

> If it is a state goal to provide conditions within which there may be equality of educational opportunity for students, regardless of where they live, and if it is felt important that students in every administrative unit have a level of service which is considered adequate, then the state should promote the consolidation of small administrative units.[102]

All of these recommendations for merger and consolidation of administrative units will in many ways affect the number, size and organization of the individual school districts found in the counties of the state.

In 1986 Craig Phillips, North Carolina State Superintendent, said:

> The sum and substance of questions and recommendations for school size and school district size appear to be that while the offering of adequate program opportunity in schools of sufficient size and in school systems of appropriate efficiency represents a laudable objective for North Carolina, a proper step in that direction demands the reorganization of school districts so that, as a beginning, there be no more than one school system per county."[103]

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[102] Ibid., 44.

[103] Ibid., 49.

A conclusion reached by the Department of Public Instruction and reported in the 1986 Report of the State Superintendent indicated that, "the size of schools and school districts clearly are critical factors in determining the most effective organizational patterns for schools and school districts."[104]

As already mentioned the State Board of Education is required to approve any decisions made by local boards of education which relate to the creation, reorganization or abolishment of school districts. When an administrative unit consolidates two or more schools it is an accepted fact that it will change or alter some districts in the unit. In Dilday v. Beaufort County Board of Education (1966) the court emphasized this necessity for the state board's approval and the cooperative action between the county boards of education and the State Board of Education when consolidating schools and school districts.

General statute 115C-72 was used as an argument by the defense in a case involving a plaintiff's request for the permanent enjoining of the closing, consolidation, and merger of two new high schools in Gaston County. In Lutz v. Gaston County Board of Education (1972) the court's decision indicated that the statute specified only that a public hearing should be provided but it did not specify any

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[104] Ibid., 75.

particular form, location, or notice for such hearing.[105] Evidence presented in this case supported the findings by the court. In the opinion of the court the board of education had carried out an appropriate study of the consolidation proposal, had complied with all statutes involved, and had not acted arbitrarily or unreasonably so as to constitute a manifest abuse of its discretion. The court further held that the public hearing was advertised in three different papers for four consecutive weeks, and the hearing itself was held in a logical place conformed to expectations. Therefore, the hearing was held in proper accordance with the state statutes requiring that the hearing take place before the order of consolidation.

In Painter v. Wake County Board of Education (1975) the court determined that the local board of education is granted the authority to determine whether new school buildings are needed in a consolidation proposal and, if so, where they should be located. These and other such decisions concerning school district organization are vested in the sound discretion of the board.[106] The decision in Painter provides any board of education the latitude to make good, sound judgments regarding the educational needs of its districts without having all the controversy surrounding

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[105] North Carolina Public School Law (1986), Subchap.II, art. 7, sec. 115C-72.

[106] Painter v. Wake County Board of Education, 217 S.E. 2d 650 (1975).

school closings and altering of school district lines.

School districts within a city administrative unit can be changed, altered, or enlarged according to General Statute 115C-73. This action can be completed by cooperative action between the county boards of education and the residents of the contiguous territory that wishes to become a part of the city unit.

> 115C-73. Enlarging Tax districts and City Units By permanently attaching Contiguous Property.
>
> The county boards of education with the approval of the State Board of Education may transfer from nontax territory and attach permanently to local tax districts or to city school administrative units, real property contiguous to said local tax district or city school administrative unit, upon the written petition of the owners thereof and taxpayers of the territory....and there shall be a tax levied upon said property equal to that within the city unit....Provided that the transfer shall be subject to the approval of the city board of education or the committee of such tax district....The petition must be signed by a majority of the taxpayers of the families living on such real property....That the action shall have no defense nor shall the validity of the transfer be questioned in any court until 60 days after approval by the State Board of Education....That any qualified voter in area can vote for the membership on the board of education of the city unit.[107]

In some counties of the state there are local tax districts that either coincide with the boundaries of the

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[107] North Carolina Public School Law (1986), Subchap. II, art. 7, sec. 115C-73.

existing public school districts or are superimposed over parts of school districts. This statute gives the people of nontax districts the opportunity to have their property moved from one school district to another if that district is a local tax district. The statute sets up the machinery for this process to be accomplished. It provides for a written petition from the majority of the owners requesting the transfer to the city unit and for the approval of the affected boards of education or committees.

With the exception of merging a city unit or units with a county unit, there are no procedures by which the territory of an administrative unit may be enlarged. There is, for example, no method for changing the boundaries of a county and, consequently, no way of modifying the boundaries of a county administrative unit. In situations where an attendance area lies in more than one county, joint schools, known as county-line-schools, may be established in order to provide the most appropriate educational opportunity for the students. This process, of course, does not change county boundary lines.[108]

115C-482. Continuance of District until Bonds are Paid.

> Notwithstanding the provisions of any law which affect the continued existence of a school district or the levy of taxes therein for the

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[108] Henry F.Alves, Archibald W. Anderson, and John Guy Fowlkes, Local School Unit Organization in Ten States (Washington: Government Printing Office, 1939), 127.

> payment of its bonds, such school districts shall continue in existence with its boundaries unchanged from those established ....until all of its outstanding bonds, together with the interest thereon, shall be paid.[109]

This statute prevents any administrative unit in the state from abolishing or reorganizing any of its school districts until the indebtedness incurred with all creditors and repayment of all bonds has been cleared. According to section 115C-481 of the general statutes the definition of the "school districts" referred to in this statute are those special school-taxing districts, local tax districts, special charter districts, city administrative units or other political subdivisions of a county. If any board of education wishes to consolidate or abolish certain school districts in its administrative unit then it must undertake to secure the means with which to make a payoff on any school bonds issued by the unit. Only when all financial obligations are met will the administrative unit be legally allowed to complete any proposed consolidations or abolishments of school districts.

115C-501. Purposes for which Elections may be called.

> (c) To enlarge city administrative units- elections may be called in any district or other school areas, of a county administrative unit to ascertain the will of the voters in such district

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[109] North Carolina Public School Laws (1986), Subchap. VII, art. 34, sec. 115C-482.

> or other school areas, as to whether an adjoining city administrative unit shall be enlarged by consolidating such districts, or other school areas, with such city administrative unit....and whether after this enlargement there shall be levied the same school taxes as in the city administrative unit.
>
> (h) To annex or consolidate areas or districts from contiguous counties and to provide a supplemental school tax in such annexed areas or consolidated districts. - An election may be called in any districts or other school areas, from contiguous counties, as to whether the districts in one county shall be enlarged by annexing or consolidating therewith any adjoining districts, or other school area or areas from and adjoining county....and if a supplemental tax should be levied in the districts of the county to which the territory is to be annexed or consolidated....election held prior to August 1....with the annexation or consolidation and tax taking effect beginning with the fiscal year commencing July 1 next preceding such elections.[110]

The intent of this statute is to give the local authorities the opportunity to call for a tax levy for the support of schools in the county and city administrative units. In 1910 the state superintendent considered the principle of local taxation to be right and wise. He said, "It involves the principle of self-help, self-interest, self-protection, community help, community interest and community protection. [111] A local districts inability to

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[110] North Carolina Public School Law (1986), Subchap. VIII, art. 36, sec. 115C-501.

[111] J.Y. Joyner, Biennial Report of the Superintendent of Public Instruction (Raleigh: E.M. Uzzell and Company, 1910), 50.

help, restricts the opportunities available for the students therein.

The important part of this statute for school district creation, reorganization, and abolishment is that it mandates an election to ascertain the will of the people about making consolidations or alterations. In section (c) above a provision is made for an election to be called to gain approval from the voters to enlarge a city administrative unit by adding contiguous property onto the unit which actually belongs, legally, to the county. This process would alter the existing school districts in both units. Section (h) permits an election to determine if the people will allow or permit the annexation of property from one county to another for school purposes. This comes under the same type of provisions as discussed previously. In some counties there may be some type of geographical hazard or problem preventing the district from providing the appropriate services to the constituents or some other problem that enhances the proposal for annexation or consolidation to the other county. The will of the people to accept a tax levy resulting from a consolidation or annexation of some kind demonstrates the final acceptance and approval of this type of proposal.

115C-503. <u>Who may Petition for Election.</u>

Local boards of education may petition the board of county commissioners for an election in

> their respective local school administrative units or for any school area therein to ascertain the will of the people on school issues.
>
> In county administrative units, for any of the purposes enumerated in G.S. 115C-501, the school committee of a district, or a majority of the committees in an area....and which area is adjacent to a city unit or a district to which it is desired to be annexed and which can be included in a common boundary with said unit or district....may petition the county board of education for an election.
>
> The school committee of a district, or the majority of the committees in an area....which area is adjacent to district or districts in a contiguous county to which is desired to be annexed or consolidated....with the approval of the county board of the area wishing to be annexed to....may petition their county board for an election on the subject.[112]

115C-503 allows the people of any school district to petition their county or city boards of education to perform various functions that relate to the creation, reorganization, or abolishment of their school districts. State law contains a number of specifications that must be met before such reorganization of school districts can be accomplished, such as requiring at least one common border between the districts and a petition signed by a majority of the voters. The petition must also be accepted and approved by the affected boards of education. Once this occurs, the county commissioners are directed to call and give notice of the impending election. Sometime the public hearing, which

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[112] North Carolina Public School Law (1986), Subchap. VIII, art. 36, sec. 115C-503.

was discussed in an earlier statute, is called for in this type of annexation or consolidation proceedings.

115C-505. Boards of Education must consider Petitions.

> The board of education to whom the petition requesting an election is addressed shall receive the petition and give it due consideration....If at the boards discretion the petition is approved, it shall be endorsed and made into the minutes of the board....and petitions to enlarge city administrative units by annexation must be approved by both county and city boards of education affected...[113]

Even though the petition may not be positive in nature to the members of the board they are required by mandate to study and consider all aspects of the petition. The board of education may not set the petition aside and forget it. In dealing with and studying the presented petitions the boards have vested authority to use their discretion in determining whether or not they will approve the request. The board's discretion has been litigated in the past in such cases as Lutz v. Board of Education (1972). In each case the courts have decided that the discretion of the board can not be restrained or altered if there has been no violation of the provisions of law or a manifest abuse of the discretion used in the decision-making process. If in the board's judgement it deems an educational item necessary for the financial survival of its administrative unit or for

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[113] North Carolina Public School Law (1986), Subchap. VIII, art. 36, sec. 115C-505.

creating an efficient and effective school district, the majority of boards usually approve the petition and pass it along to the county commissioners to call for a vote on the issue.

In the case of Board of Education v. Board of County Commissioners (1925) the courts held that the duty of the county commissioners in dealing with requests from the city or county boards of education to call for an election on some educational issue petitioned from a segment of the county voters is ministerial. The county commissioners have no legal authority to stop, alter, or ignore such requests. A ministerial function simply means that the commissioners must call for an election, give notice, and help the county or municipal board of elections to complete the voting procedures.

> **115C-507. Rules Governing Elections.**
>
> All elections under the Chapter 115 shall be held and conducted by the appropriate county or municipal board of elections.
>
> If the purpose of the election is to enlarge a city administrative unit, the notice of the election shall include the following:...statement of purpose...description of the area to be added...statement of the expectation that if the election is carried then a tax levy will be approved for the repayment of bonds at the same rate as in the city unit.
>
> The ballot shall contain FOR enlargement at same tax rate...or AGAINST enlargement at same tax rate.[114]

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[114] North Carolina Public School Law (1986), Subchap. VII, art. 36, sec. 115C-507.

Notice is legally required to be published in the local newspapers or other forms of media found in the community at least four weeks in advance of the election. The notice should also be placed in these and other appropriate places at least three different times during the four weeks period. In Miller v. Duke (1922) the courts decided that it is not necessary that the newspaper in which a notice of election is given be published in the district; it is sufficient to meet the intentions of the law if the paper is circulated in the district where the election is to take place.[115] In Younts v. Commissioners of Union County (1913) the court dealt with the election notice issue. The court implied that the notice was not considered to be one of the most important aspects of the election procedures when it said, "failure to give notice of election is immaterial when such failure does not affect the result of the election".[116]

115C-510. Elections in Districts created from portions of Contiguous Counties.

> Districts already created and those that may be created from portions of two or more contiguous counties may hold elections under this article to be incorporated or to vote a special tax...
>
> Election for either purpose must be initiated by petitions from the portion of each county included in the district or the purposed district....and a majority of committeemen must sign the petition if the district is already

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[115] Ibid.

[116] Ibid., 183.

> created....in the purposed district 15% of registered voters must sign petition to be valid and the....petitions must be approved by both boards of education and....then presented to both respective boards of county commissioners.
>
> Boards of county commissioners...shall call upon the board of elections to hold an election in the portion of the purposed district under consideration.
>
> If a majority of the voters who vote thereon in each of the counties shall vote in favor of the tax, or for the incorporation the election shall be determined to have carried the whole district.
>
> If the proposition submitted to the voters is a question of incorporating the district, the ballots for this election shall have printed thereon the words "For Incorporation" and "Against Incorporation." If the election carries then the district shall possess all the authority of incorporated districts.
>
> If the election carries the boards of education in the affected districts will pass a formal order consolidating the territory into one joint local tax district which shall be and become a body corporate by the name and style of ".....the boards of education will select the location for the school house.
>
> The county board of education in which the school is located shall have as full and ample control over the joint school and the district as it has in the case of other local tax districts, subject only to the limitations of this section.[117]

This statute makes provision for the people in the affected areas to have a voice in whether or not their school district will be consolidated or annexed to other districts in other counties. When people in a specific district wish to join another district, they are required to petition the respective boards requesting such a change.

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[117] North Carolina Public School Law (1986), Subchap. VIII, art. 36, sec. 115C-510.

After the boards of education approve the petition, they present the petition to the county commissioners to call for an election to ascertain the will of the people. The statute calls for the respective county boards to pass a formal order for the consolidation of their respective territories with one another into one joint tax or corporate body. It also provides the machinery that must be used to develop and implement a plan of action for the location of the joint school and the administrative team that will form and decide the duties of the joint school committee.

Conclusion

The legal aspects for the creation, reorganization, and abolishment of school districts are found in the state Constitution, in the general statutes, and in the common law formed from court decisions. The combination of these factors has led the state's public school system to be one of the most outstanding in the nation.

From 1868 until 1962 the state Constitution required the authorities to divide each county into a "convenient number of school districts" and to maintain a school in each district.[118] This requirement came from the 1839 school act which directed the General Assembly to divide the counties into school districts and it was placed in the state Constitution when it was revised in 1868. A number of

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[118] North Carolina, Constitution (1960), art. IX, sec.3.

factors caused this particular requirement to be dropped from the Constitution after 1962. First, the educational leadership in the state finally realized that the combination of the 1923 County-Wide Plan, making the county the basic unit for the administration of all school districts, and the state control over public education, established in 1933 by the School Machinery Act, provided more than enough administrative control to ensure the continued existence of school districts.

The School Machinery Act had abolished all the small independent school districts which had been developed since 1839 and basically placed the responsibility of district organization back in the hands of the state legislature. These factors prompted action on the part of state officials that led to the abolishment of the constitutional requirement concerning the division of counties into school districts. This action left one section in the Constitution to deal with school district organization. The remaining section is Article II, Section 28 (now section 24) which states, "The General Assembly shall not enact any local, private, or special act or resolution establishing or changing the lines of school districts."[119] In other words the subject has been taken out of the hands of the General Assembly and placed into the hands of the State Board of

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[119] North Carolina, Constitution (1984), art. II, sec.28.

Education. Based on this constitutional mandate it is evident that the control and the direction for school district organization has become more immersed in state public school law.

The methods used and the groups responsible for adhering to the constitutional mandate to divide the county into appropriate school districts changed through the years. The responsibility for the division of counties was first given to the state legislature in 1839. Through the years the legislature delegated its administrative authority at one time or another to a collection of county superintendents, county commissioners, township school committees, county boards of education, school district committees, and finally to the State School Commission in 1933. After the passage of the School Machinery Act in 1933 the counties were redistricted by the state and the new school districts became attendance areas with no power to govern such as they held during the formative years of education. This responsibility to redistrict or reorganize was later passed to the State Board of Education and it has been responsible for school districts in the county administrative units since.

The present statutes assign the primary responsibility for creating, reorganizing, and abolishing school districts to the State Board of Education. The State Board of Education in turn delegates the administrative authority to

perform these tasks to the county boards of education so long as they have the approval from the State Board of Education on any reorganization proposal they entertain.

A number of statutory provisions are available to appropriate authorities with which to implement the constitutional requirement respecting the division of counties into convenient school districts. The more important policies regarding school districts are found in Chapter 115C, Subchapter III, Article 7 of the General Statutes of North Carolina. G.S. 115C-70 provides that the "State Board of Education, upon the recommendation of the county board of education, shall create in any county administrative unit a convenient number of school districts."[180] It further indicates that a district's organizational pattern can be modified or abolished whenever necessary in the same manner.

G.S. 115C-71 allows for the authorities to create school districts from territory found in two different contiguous counties. Using appropriate methods and procedures boards of education can work with each other to meet the needs of their students. This method of creation of districts is also required to have the approval of the State Board of Education.

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[180] North Carolina Public School Law (1086), Subchap. III, art. 7, sec. 115C-70.

G.S. 115C-72 gives the local board, "with the approval of the State Board of Education, the authority to consolidate school districts or other school areas over which the board has full control, whenever and wherever in its judgment the consolidation will better serve the educational interests of the county or any part of it."[1e1] It requires that the board of education undertake a study to examine the educational characteristics of the schools and communities where the purposed consolidation will take place, and it provides for a public hearing to be held so the public may express their views.

Most of the court cases that have affected school district organization took place in the early part of this century, mainly in the ten-year span between the enactment of the County-Wide Plan in 1923 and the School Machinery Act in 1933. During this period a concerted effort was being made by the legislature to establish state control over all school districts.

The facts presented in the majority of the recorded cases did not relate to the specifics of boundaries of or the organization of school districts but rather involved problems regarding taxation and financial support. Whenever there was an effort made by the authorities to consolidate the many small independent school districts that existed in

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[1e1] Marion W. Benfield, Guidebook for School District Committeemen (Chapel Hill: Institute of Government-UNC, 1960), 3.

each county, the people were usually assessed some sort of additional tax to support such consolidation. Because of their general aversion to taxes the people filed suit to force the courts not to allow such educational taxes to be assigned or collected. Most of the common law regarding school district creation, reorganization, and abolishment was a by-product of the decisions handed down by the courts in cases dealing with taxation for school support. A summary of the most important of these cases follows in Chapter IV.

The creation, reorganization, and abolishment of school districts in North Carolina is a part of the governmental process established over the past two hundred years. Educational accomplishments in that time have given North Carolina a reputation as one of the nation's leading examples in the development of school law regarding school district organization.

The most important legal aspect to emerge from this research so far comes from the case of Moore v. Iredell County Board of Education (1937). The decision handed down by this court established the present foundation for all school district organization in North Carolina. The State Supreme Court stated its conviction at that time by declaring, "The legislature alone may directly or indirectly create or abolish counties, townships, school districts, road districts, and the like, as an aid in the

administration of government, and may in its discretion enlarge or diminish their boundaries or increase, modify, or abrogate their powers.[188] This authority has now been delegated to the State Board of Education and it has granted the local boards of education the right to develop its own school district plan.

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[188] Moore v. Board of Education of Iredell County, 193 S.E. 732 (1937).

CHAPTER IV

REVIEW OF COURT DECISIONS

Introduction

This chapter presents a review of selected court cases handled by the North Carolina State Supreme Court which have affected the creation, reorganization, and abolishment of school districts in North Carolina.

The cases are divided into the three fundamental areas that constitute this research, having been selected for their importance to developing and organizing administrative units. The case structure is not set forth in total; only the section or sections that deal directly with school district creation, reorganization, or abolishment are presented.

The majority of the cases reviewed have dealt with the creation, alteration, and abolishment of special school tax districts rather than the ordinary school districts per se. The development of the public school system had its beginnings in the local independent school districts where money for the support of the school came through local funding. Schools and school districts that were established between 1839 and 1900 were usually small and financed locally based on a specified constitutional limitation. In

1901 the limitations about school taxes were lifted, and school districts were allowed to tax at levels above constitutional limitations. The varying levels of tax wealth found in each district created unequal educational advantages for children across the state, leading to litigation of a great number of court cases. In 1933 the local tax districts were abolished by the School Machinery Act. During this time the most often cited reasons for litigation about school districts had to do with taxation.

The most important case in North Carolina, addressing three aspects of school district creation, reorganization, and abolishment, was Moore v. Board of Education of Iredell County (1937). The decision handed down in this case forms the basis for the majority of the procedures that regulate school district organization. This case will be reviewed below.

Court cases regarding the organization of school districts contain a number of issues such as constitutional mandates, statutory provisions, responsibility and authority of the legislature, county commissioners, and boards of education, levy of taxes, issuance of bonds, election procedures, petitions, and public notices and hearings.

Plaintiffs in these cases were usually taxpayers and defendants were usually county commissioners or boards of education.

Creation Cases

Moran v. Board of Commissioners of Chowan County

84 S.E. 402 (1915)

The plaintiff, James E. Moran, disliked the methods and procedures used to establish a farm-life school in Chowan County. Chapter 479 of the Public Local Laws in 1913 provided for the creation of such a school in the Edenton graded school district. An election was held to determine the will of the voters to issue bonds, not to exceed $25,000, which were to be used for constructing and equipping the school. The election conformed with the procedures specified by existing election laws.

However, Moran attacked the validity of the bonds, contending in the first place, that the Constitution prohibits any county to levy any tax, "except for expenses considered necessary," unless it is approved by the voters of the district. Since the act called for taxes to support the maintenance of the school, and since other court cases had affirmed that the maintenance of schools was not a necessary expense, the act was unconstitutional. Second, the section of the act which authorized the use of appropriations from the State treasury was unconstitutional because it violated Article 5, section 4, prohibiting such appropriations without a direct vote of the people. The third contention of the appeal was that many sections of the

act were also unconstitutional because they violated Article. IX, section 2 by admitting students from other parts of the state and by collecting tuition from all students between the ages of 6 and 21, and that it was not a public school as defined by the Constitution.

In a review of the case, Justice Clark failed to see anything in the act which showed it to be dependent upon an appropriation for maintaining the school by the county commissioners. Justice Clark confirmed that even if the school was not dependent on the act, the funds for maintaining the school could still be procured by letting the General Assembly authorize an election by the county or school district for such specific maintenance. He found no fault with the appropriations for the maintenance and considered the bond issue valid. He further stated that, "there was no need to address the validity of the school as to its specific constitutional definition." His decision affirmed the lower court's position that:

> The Public Local laws of 1913, c. 479, providing for the erection of a school in a county to be known as a county farm life school, which provides for a "public school" in the constitutional sense, though children from other parts of the state may attend the school on the payment of tuition, and though children between the ages of 6 and 21 must pay tuition.[1]

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[1] Moran v. Board of Commissioners of Chowan County, 84 S.E. 402 (1915).

The farm-life school had a short life in North Carolina. It was distinctive in that it could enroll out-of-district students and charge them tuition to attend. It was not considered a private school but rather a public school authorized by existing law to charge tuition for their services.

Moore v. Board of Education of Iredell County

193 S.E. 732 (1937)

A group of parents in the Oak Ridge-Linwood school district desired a new school within their area. The Board of Education of Iredell County had reorganized the school districts in the county in accordance with the 1933 School Machinery Act calling for the abolishment and then the redistricting of school districts. It decided to build a new school within the old school district, then later changed its mind and decided to construct the new school nearer the center of the newly formed district. The parents made application for writ of mandamus to compel the board of education to construct the new school within the boundaries of the old district. The writ was denied by the lower court and the plaintiffs appealed to the State Supreme Court.

The contentions of the plaintiffs on appeal revolved around a number of issues including the following:

1. The General Assembly have does not have constitutional authority to pass an act to abolish "all school districts, special tax, special charter

or otherwise" as then constituted, and to provide for redistricting the territory of the several counties for school purposes, irrespective of the boundaries of such districts.

2. The duty of dividing the counties into school districts is given to the Boards of County Commissioners by the Constitution and therefore, the School Machinery Act is unconstitutional.

3. The School Act of 1933 is in conflict with art. 2, sec. 29 of the Constitution which forbids the General Assembly to pass any local, private, or special act that deals with the establishing or changing boundaries of school district.[e]

Justice Winborne handed down the following decisions relating to these appeal contentions. In response to the first contention, he indicated that the General Assembly certainly had the constitutional authority to call for the redistricting of the county into more efficient and economical patterns and that it was within the discretionary power of the board of education to select the site of the new school.

Answering the second contention relative to the authority of the board of county commissioners, Justice Winborne referred to McCormac v. Commissioners (1884) in which the courts denied the county commissioners the authority to add additional territory to school districts by inferring:

That it is within the power and is the province of the legislature to subdivide the territory of the

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[e] Moore v. Board of Education of Iredell County, 193 S.E. 733 (1937).

> state and invest the inhabitants of such subdivisions with corporate functions for the purpose of government.[3]

After continuing to review the evidence in the case he went on further to say:

> It is in the exercise of such power that the legislature alone can create, directly or indirectly, counties, townships, school districts, and the like subdivisions, and invest them, and agencies in them, with powers corporate or otherwise in their nature, to effectuate the purpose of the government"[4]

It was also determined that the General Assembly may, from time to time, in its discretion, abolish school districts, enlarge or diminish their boundaries, or increase, modify or abrogate their powers.[5] Therefore, by enacting the School Machinery Act, the state legislature altered the powers of the county commissioners so that they no longer have the power to establish or reorganize school districts. The justice made reference to Evans v. Mecklenburg County (1933) which confirmed that all the powers and duties directed in the new act had been given to the State School Commission, and they were now responsible for classifying and redistricting each county with the advice of the county boards of education.

As to the third contention--the conflict between the act and Article 2, Section 29, of the Constitution--Justice

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[3] Ibid.

[4] Ibid., 734.

[5] Ibid.

Winborne called attention to the last sentence of that part of the Constitution: "The General Assembly shall have power to pass general laws regulating matters set out in this section". The Justice considered that this act referred to all school districts in the state and, therefore, that it was a general law. He confirmed that the General Assembly does in fact have the power to regulate matters such as these. The Justice affirmed the lower court's decision not to issue a writ which would compel the board to construct the school in a particular district.

A number of important decisions by this court have played a significant role in school district organization. When dealing with issues pertaining to school district organization, courts frequently refer to these significant statements:

> The Legislature has the inherent power to subdivide the territory of the state and invest the inhabitants of such subdivisions with corporate functions more or less extensive and varied in their character, for the purposes of government, subject only to the limitations imposed by the organic law.[6]
>
> The Legislature alone may directly or indirectly create or abolish counties, townships, school districts, road districts, and the like, as an aid in the administration of government, and may in its discretion enlarge or diminish their boundaries or increase , modify, or abrogate their powers.[7]

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[6] Ibid., 732.

[7] Ibid.

This writer considers this to be the most important case regarding school district creation, alteration, and abolishment. The statement above provides the basis for all the creation, reorganization and abolishment of school districts that occur in North Carolina. It is by far the most important legal statement found in this research relative to the subject of this study.

Moore v. Board also upheld the constitutionality of the School Machinery Act passed in 1933 which abolished all school districts and provided for the redistricting of the counties for school purposes.

Bridges v. City of Charlotte
20 S.E. 2d 825 (1942)

Bridges v. City of Charlotte came to the State Supreme Court on appeal from Superior Court in Mecklenburg County. The original case was brought against the City of Charlotte in order to get the city administration to stop levying and collecting taxes that were being used as a part of the city's contribution to the State Retirement Fund. This fund grew out of the Teachers' and State Employees' Retirement Act of 1941 which provided for half of the funds to be raised out of public funds and the other half to come from teacher salaries. The local administrative units were required to contribute their share which the taxing authorities of the city were responsible for providing.

One of the plaintiffs' contentions in their appeal was that the expenditure required under the act comes within the purview of Article VII, Section 7, of the Constitution which prohibits taxation by a municipality, except for a necessary expense, unless the question is submitted to a popular vote, therefore, the act was unconstitutional.[8]

In his review of the case Justice Seawell addressed this contention in the following way. First, since the enactment of the School Machinery Act of 1933 the original school charter for the City of Charlotte had been abolished and no longer acted as a municipality. The school unit was now a part of a state system of public schools and was therefore an agency of the state. This specific reference became the cornerstone for the final decision handed down in this case. Second, the question of prohibition by the Constitution for the levy and collection of taxes for school purposes without submission to a popular vote was considered. The issue, which outlined the opinion that school was not a necessary expense, was settled in Collie v. Franklin County Commissioners. It was decided that Article VII, Section 7 placed no limits on the taxing power of county officials when they were working under the constitutional guidelines of Article IX, Sections 2 and 3, in order to maintain their school system. Therefore, any school unit in question is unaffected by the "unnecessary

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[8] Bridges v. City of Charlotte, 20 S.E. 2d 825 (1941).

expense" provision contained in the municipal section of the Constitution.[9] The Supreme Court, headed by Justice Seawell, went on to affirm the decision, of the lower court in this case--not to prevent the levying and collecting of taxes for the purpose stated above.

An important legal aspect coming from this case that affects school district organization is found in part of Justice Seawell's decision concerning the relationship of the school unit and the state. He made the following statement:

> The State is not a municipality within the meaning of the Constitution and the public school system is under the exclusive control of the State, organized and used as its instrumentality in discharging the duties of the state. 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.[10]

In general terms this means the state is mandated to meet the requirements of the Constitution and as agencies of the state, the city or county boards of education and school districts are given or delegated with the same constitutional powers from Article IX, section 3, to control

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[9] Ibid., 829.

[10] Ibid., 830.

the creation, reorganization, and abolishment of school districts within its territory. This decision is of great importance to the administrative units of the state, because it allows them immediate direction and control to develop and organize their school units to suit their own particular educational needs.

Gates School Dist. Committee v. Bd.of Ed. of Gates County

72 S.E. 2d 429 (1952)

The Gates County Board of Education issued an order to discontinue an elementary school in a particular nonspecial tax district and consolidate it with a union school in a special tax district within the county. This consolidation order was mainly given so that the county administrative unit could provide a more acceptable administrative and attendance section for the territory. The school committee of the discontinued school brought suit against the board of education to prevent the board from placing such an order in effect.

An injunction to prevent the consolidation was granted, but under appeal by the defendants, the State Supreme Court ruled it to be in error and remanded the case back to the Superior Court. The court decided that the plaintiffs had not presented enough evidence to establish a case and Judge Williams dismissed the case. The plaintiff school committee then appealed to the State Supreme Court for its action on

the discontinuance and consolidation of the elementary school.

The appeal to the State Supreme Court was based on two legal standards. First, the plaintiffs felt that the original order was without the backing of statute law. Second, they contended that the officials of the school board had violated statute law which forbids abuse of their discretion in making decisions concerning the abolishment and consolidation of school districts.

Before rendering a decision the court made notice of two important legal points: (1) that the Superior Court can prevent school officials from creating or consolidating school districts when their action is without authority of law, and (2) that even if the law confers discretionary authority upon the school officials to create or consolidate school districts, the Superior Court can prevent such action when it can show that the discretionary authority used by the board amounts to oppression or out-and-out abuse.[11]

The appeal court reviewed the material and came to the following conclusions in response to the plaintiffs' contentions. Their first contention concerning the authority of the law was rejected. Justice Ervin spoke to this point by referring to G.S. 115-99 which confers upon a county board of education, which acts in such respect with

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[11] Gates School District Committee v. Board of Education of Gates County, 72 S.E.2d 429 (1952).

the approval of the State Board of Education, discretionary legal authority to consolidate a nonspecial tax district, either in whole or part, for administrative and attendance purposes only with a special tax district having no supplementary tax without the consent of the voters in the portion of the nonspecial tax district being added to the special tax district.[12] This law, therefore, provides the local board discretionary legal authority to perform certain tasks relative to school district organization without a vote of the people. The order that was being implemented was thus considered to have the authority of the state law.

In response to the second contention of the plaintiffs, regarding the board's abuse of its discretionary authority, the court felt the board in dealing with the problem was confronted by two appealing solutions: the reason for discontinuance of the school was sentimental, and the reason for consolidating the schools and school districts was practical. Therefore, the board's choice for practical reasons was not sufficient to show that it had abused its discretion. For these reasons the State Supreme Court affirmed the lower court's contention that there was not enough evidence to bring legal action against the defendant Board of Education.

Significant aspects for educational leadership are found in this case. First, when boards of education dissolve

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[12] Ibid.

or consolidate schools or school districts for practical administrative reasons they are on solid legal ground. Second, the case reminds the researcher that all independent school districts were abolished in 1933 and the general statutes never again allowed those types of districts to exist. Thus it should be understood that school districts created by county boards of education, under state statutes and subject to the approval of the State Board of Education, exist for administrative and attendance purposes only. School districts are no longer defined as they were prior to the School Machinery Act of 1933.

Smith v. Board of Trustees of Robersonville Graded School

53 S.E. 524 (1906)

A.E. Smith brought suit against the Board of Trustees of the Robersonville Graded School to prevent them from issuing bonds, levying a tax or having an election in regarding the issue of establishing a graded school district. This action was in response to the act (Private Act 1905, p. 581, c. 204) that allowed the creation of a graded school district to be formed from a combination of white and colored school districts in Pitt County and the corporate territory of the town of Robersonville. The trustees of the school district took action and called for an election to be held on the issue: they followed all the necessary legal procedures and appointed all the required

personnel to conduct the election but they did not call for a new registration of the voters of the district.

In Superior Court, Judge Cook found for the plaintiffs in this case and stopped the trustees from following up on their plans. In his opinion their not calling for a new registration made the election void, and their levying of taxes and the act authorizing such action was in violation of the state Constitution. The defendant board appealed to the State Supreme Court for a decision because of its disapproval of the lower court's ruling. The plaintiff's contentions were: (1) that the election was invalid because no new registration was ordered, and (2) that the entire act was unconstitutional because it delegated legislative power to the defendant board.

As to the first contention, Justice Hoke said:

> The present laws governing elections in cities and towns (Chapter 514, p. 692, Laws 1899) provide that a new registration may be held but that unless it is required then the registrars simply update and cross match the voter books of the affected districts and leave open the opportunity for any new voter to register if they wish. In this case no new registration was required by the legislative act, therefore, the trustees have complied with the law and the election is not void.[13]

Justice Hoke addressed the contention that the act is unconstitutional, because the power of taxation is a legislative power that cannot be delegated except to

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[13] Smith v. Board of Trustees of Robersonville Graded School, 53 S.E. 524 (1906).

municipal corporations, by attacking the word "municipal". In his discussion he affirmed the power of taxation to be a legislative power which can be delegated to municipal corporations. He addressed the definition of a school district by relating it to a newly accepted constitutional definition as stated here:

> Public quasi-corporations defined as subdivisions of the state's territory, such as school districts, and the like, which are created by the Legislature for public purposes and without regard to the wishes of the inhabitants, are to be included in the class known as Public quasi-corporations"[14]

As public quasi-corporations, school districts should be allowed to receive and exercise delegated powers of taxation from the state legislature. It has been decided by the court that the state has the power to tax and to delegate such power to subordinate political divisions. Justice Hoke rendered the following decision concerning the second contention:

> The Legislature, as it has done in this instance, can create a special school district within the precincts of a county, incorporate its controlling authorities, confer upon them certain governmental powers, and when accepted and sanctioned by a vote of the qualified electors within the prescribed territory, as required by our Constitution, Art. 7, sec. 7, may delegate to such authorities power to levy a tax and issue bonds in furtherance of the corporate purpose.[15]

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[14] Ibid., 527.

[15] Ibid.

To support his decision, Justice Hoke referred to McCormac v.Commissioners of Robeson County (1884) which rendered the following decision:

> It is within the power and the province of the Legislature to subdivide the territory of the state and invest the inhabitants of such divisions with corporate functions. It is in the exercise of this power that the Legislature alone can create, directly or indirectly, counties, townships, school districts, and the like subdivisions and invest them, and agencies in them, with powers corporate or otherwise in their nature, to effectuate the purpose of government, whether these be local or general or both. Hence the Legislature may, from time to time, in its discretion, abolish them, or enlarge or diminish their boundaries, or increase, modify, or abrogate their powers.[16]

Based on these conclusions, Justice Hoke reversed the decision of the lower court citing errors in judgment. He deemed the act that created the Special Graded School District of Robersonville and the election which was held to ascertain the will of the people to be a valid exercise of legislative authority.

This decision is of particular importance to the foundations of school district organization.

Reeves v. Board of Education of Buncombe County

167 S.E. 454 (1933)

When the Asheville special chartered school district gave up its charter to Buncombe County it became a part of and under the control of the Buncombe County Board of

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[16] Ibid., 528.

Education. The board of education and the county commissioners attempted to handle the debts which had been obligated by the Asheville district by including it in their budget under obligations to the debt service fund. M.B. Reeves and other taxpayers of the county held that such action would reduce the tax funds in which they had a personal interest. They requested a permanent injunction to prevent the county commissioners from assuming the bonded debt of the Asheville district. Judge Clement in the Superior Court denied the permanent injunction based on the facts presented to him.

The plaintiffs appealed to the State Supreme Court with three questions concerning statute or constitutional law:

1. Can the county of Buncombe assume the payment of bonds issued in a special school district as a county-wide obligation, instead of levying a tax upon the district where the bonds were voted?

2. Can the county assume the payment of bonds issued by the city of Asheville when it was a special charter school district?

3. Was Chapter 180 of the Public laws of 1925, being an act to raise revenue and not having been passed as a roll call bill, the same as the amendment in chapter 239 of P.L. 1927? [17]

Justice Clarkson addressed each of these questions referring to a number of constitutional provisions. The first provision was that part of Article IX, section 3, of

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[17] Reeves v. Board of Education of Buncombe County, 167 S.E. 455 (1933).

the state Constitution that requires the county commissioners to maintain a public school in each district created in the county. Second, it is the duty of the commissioners to react to budgets and other proper requests for equipment and buildings presented by the boards of education each year. Third, the responsibility of the commissioners to provide the funds is considered to be a county-wide charge rather than single district.

From the mandates of the Constitution and a consideration of the existing law, Justice Clarkson decided that the maintenance of schools was a vital part of the Constitution. Thus the county board of education and the county commissioners are responsible for assuming the debts of any school district within the unit by and through the mandates of the Constitution. This aspect was supported by Chapter 239, sections 4 and 5, of the Public laws of 1927, which directed the boards to assume the debts lawfully incurred by all of the districts in the county including special charter districts in building and equipping school buildings.[18] Justice Clarkson made reference to Julian v. Ward (1930) which ruled that the Constitution was mandatory on government officials and affirmed the state's responsibility to provide to the general population all the requirements listed in Article IX, sections 1,2,and 3. He

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[18] Reeves v. Board of Education of Buncombe County, 167 S.E. 454 (1933).

went on to say that school was a necessary expense and that a vote of the people was not required to make these mandates effective.

The ruling of the lower court was thus affirmed. First, the amendment requiring the county commissioners to fund the indebtedness of all districts including special charter districts and levying taxes for payment of these debts is considered to bé legal. Second, the articles of the Constitution mandate that counties are to provide various services in all districts on a county-wide basis.

The results of this case present a significant fact on which the public school system can establish its standards. This decision indicates that the Constitution and all its legal ramifications is mandatory in all respects to schools and school districts. This suggest that a careful consideration of the educational articles found in the Constitution should be a prerequisite for anyone attempting to bring suit against school organizations.

Floyd v. Lumberton City Board of Education

324 S.E. 2d 18 (1984)

This case involved the de-annexation of an area (Clybourn Pines) from the Lumberton City administrative unit and the transfer of the area to the Robeson County administrative unit. The children of the area had been going to school in the Lumberton unit for a number of years

even though they were a part of the county. The area had been adhering to all the requirements to be a part of the Lumberton unit by paying special school taxes and following other unit rules. In 1969 the area was annexed into the city. In 1982 the U.S. Department of Justice directed the Lumberton city schools to reorganize their school district to adhere to some civil rights regulations. As a result a 1981 session law, chapter 1248 was invoked, and the Clybourn Pines area was placed back into the Robeson county administrative unit. The residents of the area applied for an injunction to prevent the de-annexation process. The Superior Court denied the request and the residents appealed to the State Supreme Court.

The plaintiffs, residents of Clybourn Pines, thought the court had erred by failing to declare Chapter 1248, the de-annexation law, to be unconstitutional. The residents considered the law to be a local act in violation of the Constitution, article II, section 24 in that it changes the boundary lines of a school district. Furthermore, the implementation of the act was also considered to be unconstitutional and illegal because it did not follow specific general statutes dealing with mergers or establishing school districts.

Justice Eagles addressed both of these contentions. He determined that Chapter 1248 was indeed a local act prohibited by the Constitution but that it spoke to the

alteration of administrative units rather than school districts and, therefore, did not violate the Constitution. It neither created nor changed boundary lines of school districts, but rather focused on providing mechanisms by which de-annexation could be accomplished. As such, the act was considered to be enabling legislation permitting certain procedures to be followed in order to accomplish certain legal tasks. Thus, Chapter 1248 was not in violation of the Constitution, Article II, Section 24, and the de-annexation procedures were affirmed to be constitutional under the law.

Another important point was made by Justice Eagles concerning the constitutionality of the act when he declared:

> If we were to accept plaintiff's proposition that the de-annexation was unconstitutional then so, too, was the annexation, since it was accomplished in the same manner. If the original annexation was achieved unconstitutionally, then all Chapter 1248 does is restore the 'status quo', in which Clybourn Pines was part of the county administrative unit. Put another way, the plaintiffs' position leads us ultimately to the same result we have reached here: that Clybourn Pines is lawfully a part of the Robeson County administrative unit."[19]

In discussing the legality of the implementation of the de-annexation procedure and the statutes that were used by plaintiffs as supporting evidence contained a number of important aspects, Justice Eagles indicated that G.S. 115C-67 did not apply to this act because Chapter 1248 did not

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[19] Floyd v. Lumberton City Board of Education, 324 S.E. 2d 18 (1984).

deal with merger of administrative units. He also indicated that G.S. 115C-70 which gives the State Board of Education the responsibility for creating or modifying school districts was not violated either because Chapter 1248 did not establish or alter school district lines.

Finding no legal basis for the contentions presented by the plaintiffs of Clybourn Pines Justice Eagles affirmed the lower court's decision that Chapter 1248 and its implementation were not unlawful.

A number of Justice Eagles' findings are significant to the educational community in dealing with annexation and de-annexation of territory within or without administrative units of the state. The following represents the most important issues from this case:

> 1. Procedures set forth in the act provided the means by which an area can be annexed or de-annexed and transferred to the county or city administrative unit by joint action of the county board of education and the city board of education. These procedures include a public notice, a public hearing and a resolution by the city and county boards respectively which are considered to be constitutionally sufficient.
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> 2. If de-annexation and the transfer of an area pursuant to procedures set forth are unconstitutional then the original annexation must be unconstitutional, because they were both accomplished in the same manner.
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> 3. The annexation or de-annexation act does not establish or change district boundaries; therefore, it does not create or modify school district lines and is not in conflict with the powers of the State Board of Education.[80]

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[80] Ibid., 19.

Mebane Graded School District v. Alamance County

189 S.E. 873 (1937)

The Mebane Graded School District, geographically located in both Alamance and Orange Counties, filed suit against the boards of education and county commissioners of both counties. The suit requested that the boards of education assume the bonded indebtedness of the Mebane Graded School District for school buildings and equipment to meet the constitutional requirements for the necessary operation of a public school for six months of the year. The county government in each county had assumed the indebtedness of all the school districts in its county except Mebane. However, the qualified voters in the Mebane district felt it was the constitutional duty of each county to assume Mebane's indebtedness as well.

The Superior Court in Alamance County found for the plaintiffs, Mebane Graded School district, and directed the counties of Alamance and Orange to assume and pay the bonded indebtedness of the Mebane Graded School District without further delay. The county boards of education and county commissioners appealed the court's decision to the State Supreme Court and requested a dismissal of the case. They further denied the material allegations of the complaint and cited errors on the part of the court.

Justice Clarkson rendered an opinion in this case. He cited a number of constitutional and statutory provisions as

well as other court decisions to support his position. Many of these points have been found to be of importance to school district organization. The first contention he addressed dealt with importance of Article IX of the Constitution to education. He referred to Julian v. Ward (1930) for support. Julian v. Ward had determined that Sections 1,2 and 3 of Article IX were mandatory provisions on the state and county commissioners. Section 3 was most important to this case in that it directed the commissioners of each county to divide their county into a convenient number of school districts and to maintain one or more schools in each of these districts and if they failed to comply they would be liable to indictment.[81] Maintaining a school in each district means to provide in accordance with the state the funding either by appropriations the selling of bonds or taxation or a combination thereof. Education, schools and school districts were considered by the court to be a necessary expense. If it is mandatory for the commissioners to assume these responsibilities then it is the duty of the county commissioners to see that all provisions of the Constitution are fulfilled in each district.

It was noted in the lower court that the commissioners of Alamance county had assumed the debts of all the school districts in Alamance county except three special charter

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[81] Julian v. Ward 152 S.E. 401 (1930).

school districts. Concerning this issue, Justice Clarkson said, "Having assumed some of the districts debts, the court feels that it is mandatory on the County Commissioners to assume all district debts. If the Mebane district building, site, and equipment are necessary for implementation of the constitutional school term then its debts should be assumed."[22] He quoted Reeves v. Board of Education (1933) which said:

> The maintenance and construction of school buildings for the six months public school term is a constitutional mandate and a county wide charge and it is proper for the county or the county commissioners to assume this obligation which has heretofore been attempted by the districts."[23]

Justice also said, "The defendants in the case are public agencies charged with the performance of duties imposed by the Constitution and the statutes and upon their failure or refusal to discharge the required duties resort may be had to the courts to compel performance.[24]

All the evidence in the case indicated that the schools and equipment in the Mebane Graded School district were still necessary to complete the required constitutional school term. It indicated that the commissioners had in fact assumed the debts of almost all of the school districts

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[22] Mebane Graded School District v. Alamance County, 189 S.E. 873 (1937).

[23] Ibid., 880.

[24] Ibid.

in the county except the Mebane district. In his final statement Justice Clarkson said, "Under the facts in this case and the findings of the jury, it would be inequitable and unconscionable for the defendant commissioners and school boards to assume part and not all of the indebtedness of the school districts of Alamance and not assume the plaintiffs' indebtedness and give them the relief demanded."[83] The court found no problems or errors with the lower court's decision.

The most important issue for school district creation, reorganization and abolishment handed down in this case is the importance of the constitutional mandates on schools and school districts. The court placed great emphasis on Article IX, Section 3 of the state Constitution which indicates in part that:

> The constitutional duty to encourage education by dividing counties into districts and maintaining public schools in each district at least six months out of each year is mandatory on the county authorities.[84]

Story v.Board of Commissioners of Alamance County
114 S.E. 493 (1922)

A taxpayer of Burlington thought the request by the Burlington City Board of Education to the Alamance County Commissioners to hold a special election on the question of issuing bonds was improper and unwarranted.

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[83] Ibid., 882.

[84] Ibid., 873.

The board of education of Burlington City Schools had petitioned the county commissioners for a special election to answer the question concerning issuance of bonds for enlarging, altering and equipping school buildings and acquiring sites for future schools. The board of education contended that chapter 87 of the Public Laws of North Carolina Executive Session 1920 made provisions for the machinery to petition and to hold an election for schools, and to levy taxes to cover paying interest on all bonds issued.

W.E. Story filed suit in Superior Court to prevent this election from occurring based on the contentions that: (1) the city of Burlington is not a school district, (2) the election can be ordered only in pursuance of section 5523 of the Consolidated Statutes, and (3) an election had just been held on the issue and that another election could not be held in the district for the same purpose within a period of two years.[87]

The Superior Court denied Story's application for an injunction to prevent the election. He appealed to the State Supreme Court for relief in the matter and presented the same three contentions concerning the propriety of the election presented in the lower court.

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[87] Story v. Board of Commissioners of Alamance Co., 114 S.E. 493 (1922)

Justice Adams took issue with the plaintiff's contentions, indicating that the Private Laws of 1901, chapter 187 constituted the city of Burlington to be comprised of one district for the white population and one for the black population. In his opinion the reference to the term "school district" for each race was intended to define the boundaries of the district in which there are schools for both races, and to make the boundaries of the district coterminous with those in the municipality, thereby making the territory within the corporate limits of Burlington a school district.[ee]

The second contention stated that chapter 87 of the Public Laws Ex. Sess. of 1920 was not appropriate when applied to the election process. Justice Adams indicated the public law stated above provided the machinery for any school district of the state, whether it had or did not have a part of a municipal territory within its boundaries, to circulate a petition for election on the issue of bonds provided one third of the qualified voters supported the effort. He then said, "In our opinion this act and section 5523 are not in conflict. The powers conferred by the later statute are in addition to and not in substitution to the older statute. One provides for levying a tax ; the other provides for issuing bonds and therefore, the act is

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[ee] Ibid., 495.

valid."[89] The third contention concerning the second election or vote within a two-year time frame was also rejected by Justice Adams. He cited Weesner v. Davidson County which contained the two-year mandate forbidding holding elections on the same subject but he considered the facts in this case to be different. In his opinion the city authorities and the board of education were two entirely different governing bodies each possessing different legislative authority and powers. The school board was empowered to issue bonds for school purposes and direct the city to raise or appropriate money to pay for the same educational purposes. Based on the fact that an appropriate exercise of city governmental power should not deprive the trustees of the school district the authority that chapter 87, Public Law, executive session of 1920 had vested in them, a school board should work hard in the political arena.

For these reasons Justice Adams affirmed the lower court ruling and rejected the application for the injunction to prevent the school board from calling the special election or issuing bonds for school purposes.

Justice Adams' opinion and the case facts present important information relative to school districts prior to the passage of the School Machinery Act of 1933. This case occurred during a time when the educational process was

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[89] Ibid., 496.

still based on the 1875 Constitution which mandated that white and black children were to be educated in separate but equal schools and school districts. The court concluded in this case that even though a city district contained two separate school districts for the separation of races, it would still be considered to have only one school district within the confines of the boundaries of its city limits.

Fletcher v. Collins

9 S.E. 2d 606 (1940)

In 1937 the legislature enacted a section under chapter 279 of the Local and Private Laws of that year, which provided methods and opportunities for concerned citizens to support their educational needs. The act provided:

> That upon a petition of not less than ten per cent of the qualified voters of the territory affected such territory shall be created into a school district and that bonds or notes shall be issued under the provisions of the Act, payable exclusively out of the taxes levied in the district, for the purpose of erecting a school building therein.[30]

Accordingly the Buncombe County Board of Education, having created a special consolidated school district petitioned the county commissioners to provide for the issuance of bonds and the levying of taxes in the district to erect, enlarge and equip school buildings. W.J. Fletcher, a taxpayer and resident of the affected school

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[30] Fletcher v. Collins 9 S.E. 2d (1940).

district, requested the court to restrain the commissioners from issuing the bonds contending that the Act was in conflict with Article II, Section 29 of the state Constitution which prohibited the General Assembly from passing any "local, private, or special act or resolution which would establish or change the lines of school districts."[31]

The Superior Court determined that chapter 279, Local and Private laws of 1937 did in fact violate constitutional provisions prohibiting such legislation. The board of commissioners then appealed this decision to the North Carolina Supreme Court in hope of a more favorable ruling.

The legitimacy of the Act, allowing for taxing districts to be created to ensure financial support for conducting school, was the focus of the court decision. The court considered the Act to be "self-help" legislation which would enable concerned citizens to provide facilities for conducting schools in their districts. The fundamental financial procedures had been taken away by the School Machinery Act of 1933 and had left the county with the responsibility for providing for schools. Many of the counties were not able to handle this chore.

The court understood that the act created school districts but it did not consider the Act to be in violation of the Constitution. The court considered the law to apply

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[31] North Carolina, Constitution (1940), art. II, sec. 29.

to the creation of many school districts in one county as a whole and not to the attempted creation of one special district. And it was not to be considered as direct action by the General Assembly. The Court indicated:

> It is our opinion that the constitutional provision cited does not prevent or forbid the creation of school districts by the methods set out in the Act applicable to any district which may be so created in the county. The act in question prescribes a method whereby school districts or special bond tax units may be uniformly established throughout the county. The act deals only with the mechanics of establishing or changing the lines of the school district, and does not, undertake to establish or to change any such lines. The constitutional prohibition discussed is against direct action by the General Assembly and not against the establishment of machinery for the accomplishment of these ends.[ae]

The court further found no evidence to support the contention that the School Machinery Act or any other statute of educational law prevents or attempts to prevent this special act from accomplishing the objectives intended by the legislature. The court considered this special act to be legitimate and declared that it could not be overruled by general law but rather it could be considered as an exception to the rule. Therefore, in the opinion of the court it was considered that the legislature was acting within its constitutional limitations in enacting the law under consideration and that it was not invalidated or

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[ae] Ibid., 609.

repealed by any general law.[33]

The most significant facts to come from this case relative to school district were: (1) that methods for issuance of bonds and levying of taxes to support school facilities by local initiative were determined, (2) that school districts created as taxing districts by popular vote were not in violation of the Constitution, and (3) that the constitutional provision in Article II, Section 29 prohibits the General Assembly from creating school districts but not from the establishing the machinery for the local governments to do so.

Flake v. Board of Commissioners of Anson County

135 S.E. 467 (1926)

This case contains important elements regarding the procedures for elections and notices that encompass the legal workings used by the respective boards of education in the creation of school districts.

The Anson County Board of Education had tried to incorporate the county-wide plan of consolidation which had been initiated by the state in 1923. Under the C.S. 5481, Public School Law, section 73a the board developed a plan that called for the consolidation of a regular school district and the special charter district of Wadesboro but had to change the original plan when Wadesboro officials

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[33] Ibid., 610.

would not agree to the consolidation effort. After another school district in the county was chosen to implement the altered plan, the patrons of the affected areas met to discuss the changes and implications that consolidation had brought about. The board of education then created a new consolidated district from the affected areas. It filed a petition and gave notice for an election to ascertain the will of the voters to levy a local tax for school purposes. The issue was approved and the county assessed the voters of the county an annual school tax to support the mandated school term.

Taxpayers in the new consolidated school district filed for a restraining order to prevent the county commissioners from collecting this tax. They based their case on three facts: (1) the election notice requirements were not met because they were published only twice rather than three times; (2) the election notice indicated the election would be held under a particular statute but the election was really held under another; and (3) that the area affected was not really consolidated into one school district.

The Superior Court of Anson County ruled that the school district had been created in a lawful manner and that the levy of a special school tax to support the unit had also been levied in an appropriate manner.

The case was appealed to the State Supreme Court which delivered the following opinions about the three contentions

filed by the plaintiffs:

> 1. Notice - The Court said, "the technical failure to give notice for the full-prescribed time should not be allowed to effect the result or to defeat what is clearly an expression of the popular will."[34] The court clearly states that the notice was proper in all respects.
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> 2. Election held under different statute from that which was advertised - In the opinion of the court the fact that chapter 135 was on the election notice was merely considered to be a typographical error in printing and, therefore, did not make the election invalid or incorrect.
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> 3. Consolidated school district being lawfully consolidated as one school district under state statute was void because there was absence of proper notice of the meetings - The court ruled that the consolidation of the two districts had not been proper under the county wide plan of organization but that impropriety did not cancel the validity of the process. The court went on further to say, "we see no sufficient reason to reverse or modify this conclusion, even if there was an irregularity in the publication of the notice. [35]

The State Supreme Court affirmed the ruling of the lower court and affirmed that the court continue to dissolve the restraining order preventing the collection of the special school tax in the school district. It is well to remember that school districts during 1926 were still considered districts with their own boards, committeemen and school officials independent from all other districts; and that special school tax districts were very popular methods

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[34] Flake v. Board of Commissioners of Anson County 135 S.E. 467 (1926).

[35] Ibid. p. 469.

of financing local school support because of the absence of state help.

Two important legal considerations for school district organization were derived from this case. The first dealt with the requirement that a notice be published for all educational proceedings. The court held that small irregularities in the publication of public notices about elections and meetings are not adequate to invalidate the proceedings that are in progress. Second, school districts may be created outside the specifications of an established county-wide plan as long as the officials engage in appropriate efforts in notifying the patrons of the affected district, about the meetings and the plans.

Other Creation Cases

In Hicks v. Board of Education of Wayne County (1922) the board of education was attempting to create a new school district through the consolidation of a number of smaller districts under Public Law of 1921, chapter 179, section 1. This law allowed the board of education not only to create the district but also to fix the tax rate for the new district not higher than any consistent rate of the original districts The court decided that this law did not conflict with the statute C.S. 5530, which allowed for the enlargement of special tax districts, and permitted the outside territory to vote separately on the proposed tax.

This decision gave the voters some voice in the abolishment or creation of school districts.

In Lacy v. Fidelity Bank of Durham (1922) the court upheld the requirements of the Constitution, Article 9, section 1-3 and considered them to be mandatory on state government. These provisions of the Constitution called for:

> Education to be forever encouraged, that the General Assembly shall provide by taxation and otherwise for a general and unifrom system of public schools, and that each county shall be divided into a convenient number of districts, in each of which public schools shall be maintained at least six monts in every year, are mandatory and imperative.[34]

The case of Coble v. Board of Commissioners of Guilford County(1922) involved the creation of special taxing districts in and around Guilford county. A local law allowed for the board of education to call for an election on the question of a special tax to support this new district. An important provision in the law permitted the board of education to assume all of the indebtedness of the original special tax districts if the voters approved the special tax which would be used by the board to pay off the indebtedness. The law gave the voters a voice to create or not create the new district. The State Supreme Court examined the facts in the case and rendered a decision considering the public law to be constitutional and

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[34] Lacy v. Fidelity Bank of Durham, 111 S.E. 612 (1922).

therefore, permissible to be used in the creation of new school districts.

In Tate v. Board of Education of McDowell County (1926) the court recognized the importance of the county as an agency of the state. It was considered to be the local department in which an administrative unit was compelled to control the educational programs of state government. The final statement of the court in this case said:

> The counties of the state, organized primarily for local government, are recognized in the Constitution as administrative units of a statewide public school system, and may be used by the General Assembly as agencies of the state in providing a public school system.[37]

In 1931, the case of Wilkinson v. Board of Education of Johnson County (1931) provided the differentiation between responsibilities of a governmental and legislative functions. The actual division of school districts was a governmental function performed by state agencies and the development of the means by which to perform such action was a legislative function. The decision stated in part reads:

> The formation of the means of meeting the constitutional requirement that counties be divided into school districts is considered to be a legislative function. The actual formation of school districts is a governmental function carried out by governmental agencies i.e. board of education.[38]

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[37] Tate v. Board of Education of McDowell County, 135 S.E. 336 (1926).

[38] Wilkinson v. Board of Education of Johnson County, 155 S.E. 562 (1931).

Alteration of Districts

Howard v. County Board of Education of Catawba County

127 S.E. 704 (1925)

A group of citizens worked to prevent the board of education and other groups from holding an election for a special school tax within Catawba County. An important by-product of this case involves the changing of the boundaries of school districts. The County-Wide plan in 1923 prohibited the boards of eduction in any county from future creation of new districts or the dividing or abolishing of older ones unless the procedures were in accordance with a plan of school district consolidation or reorganization which had been adopted by the board of education.

In Catawba County there were two school districts, Ball's Creek and Catawba, each with an appropriate school tax. They were separated by an area that was neither a tax district nor a part of a school district. A group in the Ball's Creek school district requested the officials of the Catawba school district to annex the area of Ball's Creek in which they lived and the unattached area between the two mentioned districts. The group also petitioned the board of education to hold elections on the question of a special school tax to support the new and larger school district.

The board of education did not engage in or promote either of the requests from the group but rather enacted an

order which ran an irregular district line through the middle of the Ball's Creek school district separating a large number of voters and valuable taxable property from the district. Then when the board of education wished to hold an election on school taxes in the remaining part of the district, voters that were inhabitants of the area and some that were outside in the unattached area brought suit against the board of education to restrain them from holding the election. The Superior Court concurred in the request and provided a restraining order preventing the election until the final hearing on the matter.

The board of education appealed the ruling to the State Supreme Court looking for a favorable decision regarding the election and annexation matters. The board contended that the placement of the irregular line in Ball's Creek school district was a part of a county-wide plan of consolidation or reorganization of the school districts in the county under the C.S. Section 5481 and public laws 1923, c. 136, section 73a. Without sufficient evidence to indicate the county had adopted a county-wide plan of reorganization, the Supreme Court did not agree with the apparent creation of school districts. The court considered the placement of the irregular boundary line down the middle of the Ball's Creek district as an action to reduce the size of the district, and therefore, considered it invalid and in violation of the 1923 act prohibiting district creation,

division, or abolishment without approval and in accordance with the county-wide plan of school district organization.

The court's decision is stated in part in the following statement by Justice Varser:

> Since the order was entered by the board of education not in accordance with the county-wide plan of organization, and since it is not proved that the county-wide plan of organization has been adopted, and in the light of the positive prohibition contained in C.S. sec. 5481, such order is void and of no effect, and the county board of education may proceed as it may be advised in reference to the adoption of the county-wide plan of organization and it may proceed in accordance therewith to form such districts as it may determine are just and proper, provided, however, that no rights of any creditors are illegally affected.[39]

Thus it can be seen that the board of education can still work to reorganize and change the boundaries of the existing school districts in the county, but it must follow the county-wide plan of organization set forth in chapter 136 of Public Laws 1923 which requires certain petitions, notices, elections and discussions in order to create, divide, or abolish school districts. The court held that the restraining order assessed by the lower court was correct and therefore should be continued until the final hearing on the matter before the proper officials.

The most important aspect of this case dealt with the implied necessity that the board of education is required to

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[39] Howard v. County Board of Education of Catawba County, 127 S.E. 704 (1925).

follow proper, established guidelines in the reorganization of school districts. The county-wide plan of organization which allowed these types of reorganizations was set out in chapter 136 of the Public Laws of 1923, section 73a. If boards of education do not adopt a county-wide plan in accordance with the state statute, then any creation or reorganization that they attempt will be considered void and illegal.

Kreeger v. Drummond

68 S.E. 2d 800 (1952)

Kreeger v. Drummond involved the backlash of problems that occur whenever a school is closed on a permanent basis. In 1950 the Forsyth County Board of Education was having trouble providing an appropriate curriculum, staff and other services to one of its small high schools. The board decided that it would close this small high school and transfer the students to two other larger high schools where the students could be served more efficiently and economically.

The patrons of the small high school community appealed a number of times to the county and state boards of education not to close the school but the appeals were denied.

The patrons then filed suit and obtained a temporary restraining order to prevent the boards from closing the

school or interfering with the school's operation in any way. The appropriate boards of education were directed to appear in court and show cause why the restraining order should not be permanent.

The Superior Court of Forsyth county decided that the board had not abused its discretionary powers, that it had acted in good faith in all of its decisions, and that the order to close the school had been properly given following the procedures of law.

The patrons appealed this decision to the State Supreme Court based on two contentions. Their first contention was that the transfer of the students could only be accomplished by the State Board of Education under G.S. 115-352 and not by the local board of education. Their second contention inferred that the procedures used by the school officials or board of education had not been lawful or within their jurisdiction.

The basic question facing the State Supreme Court concerned the authority of a county board of education to close a school and transfer the students to other schools in the region. To answer this question the court cited a number of statutes and court cases which provided a basis for its conclusions and the basis of much of the legal material for school district organization. The most important aspects discussed were the following:

1. Using for its basis Clark v. McQueen(1928) and G.S. 115-54 the court decided that the board of

education had the power to use its discretion to discontinue a high school in a specific district of the county and transfer the high school itself to an adjoining district.

2. Referring to the School Machinery Act of 1933 the court placed emphasis on that part of the act which gave the State School Commission the authority to receive advice from the county boards of eduction and to redistrict each county in order to provide for an appropriate number of school districts as deemed necessary for the economical administration and operation of the State School System.

3. The court also emphasized the school law of 1939 and G.S. 115-347 which directed the State Board of Education to classify schools and make through studies of the school district organization in each county. Other provisions of the law stipulated that: the State Board of Education may modify such district organization when it is deemed necessary for the economical administration and operation of the state school system, and it shall determine whether there shall be operated in such district an elementary or union school. School children shall attend school within the district in which they reside unless assigned elsewhere by the State Board of Education.[40]

4. G.S. 115-56 provided: The county board of education shall have general control and supervision of all matters pertaining to the public schools in their respective counties and shall execute the state school laws there. The court looked further at G.S. 115-99 which authorized: The county board of education is hereby authorized and empowered to consolidate schools located in the same district and to consolidate school districts whenever and wherever in the judgement the consolidation will better serve the educational interest of the county or any part of it.[41]

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[40] Kreeger v. Drummond, 68 S.E. 2d 800 (1952).

[41] Ibid., 803.

5. In citing Moore v. Board of Education(1937) the courts acknowledged that the courts would not and could not interfere with the consolidating actions of school boards unless it can be determined that the boards have or are misusing their discretionary powers in their decision making processes.

6. In regard to the transfer of the students the court cited G.S. 115-352 and Elliott v. Board of Equalization(1932). The patrons had cited G.S. 115-352 as a basis for their contention about the transfer because it considered the statute providing for the transfer of students on a one year schedule. Therefore, the transfer of the students was a permanent transfer. Elliott v. Board of Equalization had ruled that the constitutional mandate for schools to be provided in every district did not apply to high schools but rather to elementary schools. This, therefore, meant that it was not necessary for the board to maintain the small high school in the district. The board in this case was complying with the constitutional mandate because it was planning for the elementary schools to remain in the district.[4e]

The court's final decision held that the board of education in Forsyth County had acted in good faith and had the authority to close high schools in its county school districts. The court placed an additional requirement on the board of education before it would completely dissolve the restraining order. The court additionally required the board of education to redistrict or modify the existing high school districts plots so as to make the territory of the closed school a part of the other existing school districts. The court further decided that if the board did not complete

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[4e] Ibid.

this requirement then it would not be allowed to close the small high school.

The discussion and decisions in this case present a number of important facts relative to school district organization and provide a point of reference for various legal aspects considered necessary to implement school district reorganization plans. The court held and supported the following principle regarding the duties of boards of education:

> Unless school authorities act contrary to law, or there is manifest abuse of discretion on their parts, courts will not interfere with their action in creating or consolidating school districts, or in the discharge on any other discretionary duty conferred upon them by law.[43]

This statement implies that if school officials are working diligently and making a good faith effort under existing law to organize schools and school districts into the most effective and efficient educational institutions, then the courts will not step in and overrule any of their decisions.

The Constitution mandates that there be at least one school in each district but it does not stipulate which type. The courts have made a decision that it should be an elementary or primary school and that high school districts can be larger with their composition being a combination of

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[43] Ibid., 800.

one or more of the smaller elementary school districts. This principle stated in part stipulates:

> The constitutional provision requiring that counties maintain one or more public schools in each school district for at least six months in every year does not apply to high schools.[44]

Another important principle stipulates who has been delegated the authority to modify school districts or to consolidate schools. This principle is stated in the following manner:

> Under school law, the transfer of an entire high school where the student body is to be divided between two other high schools requires a modification of high school districts by the State Board of Education or a consolidation of the area in which a union school or high school is no longer to be maintained with some other district, and such consolidation may be made by the county board of education with the approval of the State Board of Education.[45]

This statutory requirement simply means that if schools or school districts are to be closed or consolidated, their affected district territory should be reorganized in the most effective manner, and that the board of education has the authority to determine the procedures and the outcomes of these actions. This statement and its direction are still in force within the state school system.

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[44] Ibid., 801.

[45] Ibid.

Dilday v. Beaufort County Board of Education

148 S.E. 2d (1966)

This case involved the procedures in the attempted consolidation of the high schools in Beaufort County. In 1962 the Beaufort County Board of Education requested and received a survey from the State Department of Public Instruction, which recommended that the county schools should build a consolidated high school to replace the five small high schools in the county. Having followed the appropriate steps to accomplish this task, the board of education presented the county commissioners its proposed budget and requested that the bond issue be voted upon. The commissioners held a public hearing on the bond issue which revealed that the proposal seemed to be creating a large consolidated white school in the northern part of the county and leaving the black high schools in the same geographical position. In the election the people voted for the bonds and the consolidated school.

Before the vote on the bond issue had been taken, the Federal Civil Rights Act of 1964 was passed. This act was a follow-up to the Brown v. Board of Education (1954) which invalidated the separation of race in the public schools of the nation. It was the tool to bring an end to segregated schools everywhere. Its stipulations prevented any of the nation's school districts from receiving federal money if they, in any way, discriminated against any person's race,

color, or national origin.

In order to comply with the Civil Rights Act the board of education of Beaufort County adopted a new plan to consolidate all the county high schools (black and white) into one central high school, and to move the budget allocation, originally directed to the black high schools, to the new central consolidated school. The school board secured the approval of the State Board of Education and conducted a public hearing on the proposal to consolidate the five high schools, and then asked the county commissioners to approve the changes and transfer the funds from the original black schools to the proposed new consolidated school. The commissioners refused to endorse the new plan and took no action.

The board of education nevertheless passed a resolution endorsing the consolidation of the five high schools in order to meet the requirements of the Civil Rights Act. A transfer of funds from certain appropriations in the original budget and an approval of the consolidation by the State Board were necessary for the plan to be successful. The school board decided to proceed with the modified plans and begin the construction of the new school.

In the lower court the Judge found in favor of the board of education and county commissioners. He removed the injunction preventing the board and commissioners from working together to fulfill their decision to build the

school. Judge Mintz was of the opinion that the defendants had followed existing law and had met the prescribed regulations governing the consolidation of schools including surveys, resolutions, budgets, hearings, approval of state and plans.

The taxpayers of the county appealed the decision to the State Supreme Court. Their appeal was based on the following three contentions: (1) there has been no plan and no approval involving the State Board of Education for a valid order of consolidation, (2) the board of education did not have the authority to spend proceeds from the sale of bonds on the proposed consolidation of the five high schools, and (3) that no specific findings required by law, concerning the appropriations, had been completed and, therefore, the funds could not be legally transferred.

The first contention was considered moot by the court because it found that the State Board of Education had in fact approved of the consolidation of the five schools through a backdated resolution. The second and third contentions of the plaintiffs required the court to examine the duties of the boards as they relate to schools.

The court indicated that the school board had followed the appropriate guidelines set out in state law in order to effect the transfer of the allocations completed by the county commissioners. In examining the involvement of the county commissioners the court found that they had not

followed all of the legal requirements in dealing with the issue. They had failed to respond to a request by the board of education to reallocate the school funds and they had failed to study the facts or to reach a decision either to reject or approve the proposal.[46]

It was also the contention of the court that the voters of Beaufort County had approved of the bond issue because they thought it was going to produce a consolidated school for whites only. When the new proposal for the consolidation of <u>all</u> the high schools was presented, they realized the board of education was about to integrate all the schools in the county and they filed suit trying to prevent that action. The court's decision stated:

> Under the decisions of the Supreme Court of the United States and the Acts of the Congress, the Board of Education in Beaufort County can no longer legally impose segregation of the races in any school. Therefore, the real question to be resolved is whether it is in the best interest of the children of Beaufort County to have a single integrated high school or three integrated high schools. The board of education is now required to face realities, and to take the steps , which in their best judgement will serve the highest good of all the school children."[47]

The final holding of the State Supreme Court on this matter was expressed by Justice Sharp by the following statement:

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[46] Dilday v. Beaufort County Board of Education, 148 S.E. 2d 513.

[47] Ibid.

> Since the defendant board of county commissioners has not acted upon the defendant school boards request that it approve a reallocation of the funds from the school bond issue to build an enlarged consolidated unsegregated high school rather than a consolidated high school for white children only as originally proposed, the school board has no authority, acting alone, to make the allocation. Until the defendant commissioners approve the request, defendant school board may not proceed to construct the central consolidated school.[48]

Based on its findings the court reversed the decision of the lower court and reinstated the injunction preventing the board of education from enacting its plans until the county commissioners could act upon the request for reallocation either by approving or rejecting the proposal.

Significant points brought out in this case are of importance to the consolidation or reorganization of school districts. One point is that the State Board of Education and the county boards of education, under G.S. 115-76, have a responsibility to work together to approve or disallow all proposed school consolidations initiated after public hearings and administrative unit plans have been held. The next point concerned the maintenance of segregated school districts in the state. The court pointed to the rulings by the Supreme Court of the United States, the acts passed by Congress, and the invalidation of existing state statutes and constitutional requirements establishing separate school districts by race, which prevented any further separation of

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[48] Ibid. p. 523.

the races within the schools of the state. This action set the machinery in motion to reduce and consolidate the white and black school districts in the state in order to serve more effectively the educational interests of the state.

Hobbs v. County of Moore

149 S.E. 2d 1 (1966)

Voters of Moore County wished to determine whether the administrative units of the county should be merged into one unit and whether the board of commissioners should be able to levy a county-wide school supplement tax to support the impending merger. The General Assembly passed Chapter 1051 of the session laws of 1965 which contained the procedures to be used in order to merge the units of the county into one complete administrative unit.

Moore County was composed of one county administrative unit containing a number of attendance areas and two city administrative units. A number of the school districts had previously approved local supplemental school taxes for the support of schools in their districts. Three administrative units had been recipients of bond money from a county-wide bond referendum for the construction of new school buildings and for needed improvements to those in existence. The county unit had used most of its but the city units still had a large portion of this money left.

Before the election was held many of the taxpayers of

the two city school units brought suit in order to gain an understanding of the validity of the act itself and sought to prevent the commissioners from holding the impending election. They were turned down and the election was held in accordance with the stipulations of the act.

The voters of the county approved of the described merger but disapproved of the supplemental school tax. After the merger approval the board of education and the county commissioners implemented the plan by following the prescribed steps established by the act.

A final hearing on the matter, initiated by the voters of the two city school administrative units, produced results undesirable for those bringing suit. The court ruled that the act was constitutional, that all procedures had been followed according to law and that all board members were selected properly. Based on these findings the court denied the injunction which would have prevented the boards from continuing in their task to bring the school districts under one governing body.

The plaintiffs appealed the decision of the lower court to the State Supreme Court believing that the act was invalid and unconstitutional because: (1) the provisions for the election of board members were vague, (2) that the city school units were not afforded representation on the board, (3) that the act provided for the condemnation of land exceeding that established by law, (4) that the provisions

of the supplemental tax tended to cause unconstitutional tax liabilities on the voters of the districts, (5) that the act was a local act in violation of Article II, section 29 of the Constitution prohibiting establishing or changing school districts, (6) that the provisions for board membership constituted duel office holding which is unlawful, and (7) the new board did not have the funds with which to build consolidated schools and their plan to use the surplus funds, left over from the county bond issue, was considered to be unlawful.[49]

Justice Lake presented the views of the State Supreme Court on the appeal. To handle the contention that the act was vague and meaningless the court presented its interpretation of the meanings of all the sections outlined in the act. From these interpretations the court held that the act was not void on the grounds of vagueness and uncertainty.[50]

The court continued its proceedings and addressed the many contentions brought forth by the plaintiffs. It rendered the following decisions regarding those contentions:

> The act did not violate the equal protection clause of the 14th amendment. All members of the board were elected by the entire county and if the voters at large see fit to elect more than one

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[49] Hobbs v. County of Moore, 149 S.E. 2d (1966).

[50] Ibid.

member from the same district then it is considered constitutional.

The contention about dual office holding is without merit because when the member of the new board took the oath of office then his office as a member of the board of the administrative unit was automatically vacated.

That just because one part of an act is invalid does not constitute that all or the rest of the act is also invalid. They referred to Lowery v. Board of Graded School which indicated "the entire statute will not be declared void, because some one or more of the details prescribed or minor provisions incorporated are not in accordance with the Constitution".

The act does not require the condemnation of a 75 acre site but rather the school officials are directed that they may acquire a site, up to 75 acres, by gift, purchase or condemnation. Even if this aspect of the case is unlawful it does not take away the validity of the rest of the act.

Even if the act is declared unconstitutional the supplementary taxes that the plaintiffs are opposed to would still be in force. The act makes not changes in the established taxes for school support.

The use of the school bond funds for the construction of consolidated schools does not have importance because there is no indication in the act that they will be used by the new board."[51]

The State Supreme Court found no error in the decision of the lower court and, therefore, affirmed its decision on the constitutionality of the act in all respects.[52]

A number of significant constitutional points important resulted from this case. The first is that a "school

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[51] Ibid., 9.

[52] Ibid.

district" described in the Constitution, Article II, Section 29, is the same as the district provided for in the Constitution, Article IX, Section 3 which is defined as an "area within a county which one or more public schools must be maintained."[53] A second important item is that an "administrative unit" is not a school district as described in Constitution, Article II, section 29; therefore, the merging of administrative units is not defined as changing or altering school district lines which would be in violation of this section of the Constitution. A third fact is that an act cannot be considered unconstitutional or in violation of the Constitution, Article II, section 29 simply because it provides the machinery by which the voters can alter or change the boundaries of school districts.[54] A forth provision was initiated when the courts decided that the statute providing for an election on the issue of merging school administrative units was not considered unconstitutional because it gives all the people of the district equal access in the decision-making process.

Lutz v. Gaston County Board of Education

192 S.E. 2d 463 (1972)

A group of taxpayers and property owners requested the Gaston Superior Court to deny the Gaston County Board of

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[53] Ibid., 8.

[54] Ibid., 2.

Education the right to close or consolidate two existing high schools and to prevent the purchase of the land for the construction of this proposed school.

The suit was brought against the board of education because the plaintiffs considered the following actions to be in violation the laws of the state:

> 1. The board of education failed to provide a public hearing in regard to the proposed consolidation as required by G.S. 115-76.
>
> 2. The board of education failed to cause a thorough study to be made of the outcomes of such a consolidation.
>
> 3. Chapter 906 of the Session Laws of 1967 does not authorize the utilization of proceeds from bonds for the purchase of land for school construction.

In its review of the material presented in the case the Superior Court uncovered the following significant facts:

> The studies performed by the Public Administration Service of Chicago, the Division of School Planning and the various citizen committees provided ample information on which to base the board's recommendation for consolidation.
>
> A public hearing was conducted by the board of education on the issuance of bonds for school construction and supplemental school taxes.
>
> Chapter 906 of the 1967 Session Laws provided for a county wide vote in Gaston county on the merger of school systems and the issuance of bonds and an election was held in which the voters approved this proposed merger and bond issue.
>
> A public hearing was held by the board of education on the closing of Bessemer City Senior High School and Cherryville Senior High School. The meeting was appropriately advertised and all citizens were given the opportunity to express their views about the consolidation.

> After the hearing the board of education adopted a resolution to discontinue the two high schools and to consolidate the two schools into a new consolidated high school.[55]

The Superior court ruled that the public hearing held and the studies performed by the Gaston county board of education complied with all the requirements of established law and that the actions by the board did not constitute a manifest abuse of its discretion in the performance of its duties. The court further held that Chapter 906 of the 1967 Session Laws and the County Finance Act contained provisions for the purchase of land for school sites and thereby, ordered the restraining order to be dissolved and plaintiffs action to be dismissed.

The plaintiffs appealed the ruling of the Superior Court to the State Supreme Court for its consideration. Their appeal was based on the same three contentions that were raised during the case in the lower court.

Justice Moore provided the conclusions determined by the court based on the contentions presented for appeal. The court referred to G.S. 115-76 and Feezor v. Siceloff (1950) to help in its determination. These sources held that the county board of education has the authority:

> To consolidate schools located in the same district, and with the approval of the State Board of Education, to consolidate school districts,

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[55] Lutz v. Gaston County Board of Education, 192 S.E. 2d 463 (1972).

> whenever and wherever in its judgment the consolidation will better serve the educational interest of the county or any part of it".[56]

The court also pointed out that G.S. 115-76(1) contained a provision requiring the board of education to make sure that a thorough study of any proposed consolidation is completed. This study could be done by the board of education or any outside agency. Based on the testimony of numerous individuals involved in the surveys, which had been performed for Gaston County Board of Education, the court ruled that the board had, in fact, followed the appropriate legal procedures calling for this study.

As to the contention by the plaintiffs that the board of education had failed to provide a "public hearing" on the consolidation issue prior to its resolution to consolidate the schools the court determined:

> That a public hearing was held by the board of education afterwhich it adopted a formal resolution for the consolidation of the two schools. This resolution was adopted in strict compliance with established law requiring it to be made after a public hearing.[57]

This compliance was determined by the court to be all that was required by the law to satisfy the public hearing

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[56] Ibid.

[57] Lutz v. Gaston County Board of Education, 192 S.E. 2d 463 (1972).

requirement. The statute required only that a notice be provided before the public hearing; it did not specify any particular form or location of such notice prior to such a hearing. The court confirmed the lower court ruling that the board had held the public hearing in accordance with the law.

The court realized that Chapter 906 of the 1967 session laws did not authorize the use of the bond proceeds to purchase the land required to build the school provided for in the act. However, in examining the bond notice and the County Finance Act it found a correlation in the provisions established by each.[58] Thus the court concluded that the statutes did in fact provide the necessary provisions to allow the Gaston County Board of Education to purchase the land for the proposed new consolidated school. Therefore, the court upheld all parts of the original decision made in the lower court.

This case supports the statutory provision requiring that appropriate studies regarding the effects of consolidation on the communities should be made prior to any form of resolution for such consolidation. These studies can be completed by independent agencies, divisions of the state department of public instruction or the local administrative unit. It also enhances the statutory requirement that a public hearing must be held prior to adoption of

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[58] Ibid., 471.

consolidation resolutions.

A final element important to school district alteration dealt with the "notice" required for a public hearing. The court realized that the statute did not provide any procedure or format for such a notice. The court declared that the hearing should be advertised by a published notice well in advance of the impending election and that the board should use all available media agencies to present this notice to the voters of the district.

E.L. McCormac v. Commissioners of Robeson County

90 N.C. 441 (1884)

This was an early case concerning the authority of the county commissioners to alter or change the boundary lines of school districts. It involved the consolidation of two school districts by the county commissioners in order for one of the districts to reap the benefits of an act establishing a graded school in the other district.

In 1883 an act was passed in the General Assembly which authorized the county commissioners of Robeson County, who were also the board of education, to ascertain the willingness of the voters of school districts one and two, to be taxed in order to provide for the support for a graded school in the two districts. This act contained provisions which established school district characteristics different from those already in existence. It provided for a board of

trustees to administer the graded school, for enrollment of students outside of the district on payment of a tuition, and for the funds raised by taxation to be used exclusively for the graded school.

School district number three was not included in the act which had been described. The voters in district three requested that the county commissioners consolidate their district with district one. They believed a graded school would provide better educational opportunities for their children. The commissioners combined districts one and three and allowed the voters of each to vote together in the prescribed election for schools and taxation. The voters approved of the graded school and the commissioners placed the procedures for tax levies and collections into effect.

A number of taxpayers in the consolidated school districts one and three complained that the county commissioners had no authority to consolidate the two districts and therefore, the election, the vote and the taxes levied should be voided. They requested the Superior Court of Robeson County to take action to prevent the commissioners from collecting any taxes, from the school districts, for the purpose of the graded school. The Superior Court granted the request and the commissioners appealed the decision to the higher State Supreme Court.

In the State Supreme Court Justice Merrimon turned to a number of established provisions of government for the basis

of the court's holding. He first pointed out, "that it was within the power and province of the legislature to subdivide the territory of the state and invest in the inhabitants of such subdivisions with corporate functions for the purpose of government."[59] From this principle the court recalled the following provision inherent to the state legislature:

> That the legislature alone can create, directly or indirectly, counties, townships, school districts, road districts, and like subdivisions, and invest them, and agencies in them, with powers corporate, to effectuate the purposes of the government, whether these be local or general, or both. The agencies are to be under the control of the legislature and it may from time to time abolish, or enlarge or diminish the boundaries of any established district, or increase, modify or abrogate the powers of such agencies. [60]

The court referred to the powers conferred on the agencies of the state by the General Assembly and reaffirmed the policy affecting powers of agencies by stating:

> When particular powers are conferred and specific things are required to be done, and nothing is left to discretion, the power must be strictly observed, at least there must be a substantial compliance with the statutory direction. If there should be a material departure from the directions of the statute, in the exercise of a power not conferred, the act done would be void."[61]

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[59] E.L. McCormac v. Commissioners of Robeson County, 90 N.C. 441 (1884).

[60] Ibid., 445.

[61] Ibid., 446.

Using the above regulatory provisions, the court held that the county commissions had overstepped their authority by consolidating districts one and three. The court's decision supported the contention that the consolidation of these two districts was illegal and therefore, the election and the tax levy were void in the eyes of the law.

The county commissioners during this period were also the county boards of education. As such, the commissioners in 1883 had been authorized by the state Constitution and statutory law to "lay off their counties into school districts" and to handle all administrative concerns regarding school boundaries. Under these provisions the commissioners in Robeson County had established separate and distinct school districts. According to the latter policy, however, the legislature was the only agency which was granted the authority to consolidate school districts. This fact prevented any consolidation by the county commissioners under any existing statutes.

The act of 1883, Chapter 282 established a graded school only for districts one and two; district three was not included. The patrons of these two districts wanted to establish the graded school to complement existing public schools. It was the intent of the act to set up a graded school separate and distinct from the ordinary public schools, and outside of the general public school laws, and, therefore, not under the management of the county board of

education. The graded school provided for the definite area of districts number one and two and no power could change this boundary, except the legislature.[42]

In the election process, required by the act, the county commissioner's role was simply to determine the result of the vote on the question of graded schools and taxes and not to have the controlling influence on the graded school. That function was to be placed in the hands of a board of trustees and thereby outside the control of the county. One important fact regarding the statute is that it does not contain any provision for the consolidation of school districts one and three. Based on this fact the court was of the opinion that the consolidation was invalid.

These observations led the Superior Court to consider the consolidation of districts one and three by the county commissioners to be unlawful. In it decision the court said:

> The county commissioners, in their capacity as the county board of education, misapprehended the extent of their powers, and that they had not authority to consolidate the school districts number one and three, and that their action in that respect was, therefore, void and of no effect.[43]

The court considered the election to be illegal and void, because it did not follow the rules and regulations

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[42] Ibid., 448.

[43] Ibid., 450.

established by statute for such procedures.

Accordingly, the court granted an injunction preventing the collection of the assessed taxes in district three. This action by the court did not prevent the commissioners from completing the assessment and collection of taxes voted for in the original district one.

Both the plaintiffs and the defendants in this case appealed the Superior Court's decision to the State Supreme Court. The plaintiff's contention was based on the fact that the lower court's decision had not prevented the commissioners from collecting the taxes levied in district one.

The State Supreme Court review the material in the case and decided that the election held in district one, as consolidated with district three, was illegal and void and therefore, the tax assessments were improperly levied and could not be collected by the commissioners. The higher court also realized that the main purpose of the act in question was to determine the voters' decision about tax assessment for graded schools, and that it contained a set of complex provisions which allowed for the two districts, outlined in the act, to receive the same or differentiating tax values. In other words the tax could be assessed to both districts or it could be assessed only to one district based on the outcome of the election.

Justice Merrimon indicated that the court did not feel that the purpose of the act had been accomplished by the election and, in fact, the county commissioners had misapprehended the extent and nature of their power. The court stated in its decision:

> It is very clear that they had no authority to consolidate districts number one and three, and, however praiseworthy their motives may have been to extend the benefits of the graded school to district number three, their action was unauthorized and void, and the election held was likewise illegal and inoperative.[44]

The court also considered the election illegal and void and the assessments levied upon the districts to be unauthorized and illegal. The State Supreme Court, therefore, reversed the decision of the lower court and prevented the collection of the assessed taxes in district number one.

At least two significant features concerning school district organization are found in this case. First, the county commissioners do not have the authority to change or alter the boundaries of school districts once they have been established under the appropriate constitutional or statutory provisions. The second supports the power of the legislature to deal with school districts and is so stated:

> The state legislature contains the inherent power to create, alter or abolish school districts and invest them and agencies in them, with powers

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[44] Ibid., 452.

> corporate to effectuate the purposes of government. Hence, from time to time, in its discretion, it may abolish them, or enlarge or diminish their boundaries, or increase, modify or abrogate their powers.[65]

Blue v. Board of Trustees of Vass Graded School Dist.

122 S.E. 19 (1924)

In 1923 the board of trustees of the Vass graded school district decided to place the new county-wide consolidation plan into effect by adding portions of contiguous school districts to its territory. The trustees of the district initiated action for an election in which a majority of the voters of the proposed district approved the enlargement of the district and the proposed bond issue for school purposes.

John Blue and other taxpayers filed suit to prevent this reorganization of school districts and the issuance of bonds resulting from this election. They contended that the 1923 school law did not provide local authorities the power to divide existing districts and that, therefore, this action by the trustees was illegal and void. The decision rendered by the Superior Court ruled that the actions taken by the board of trustees and the procedures used in the enlargement of the school district had been legal and proper. Based on these arguments the court ruled in favor of the board of trustees. The plaintiffs disagreed with the

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[65] Ibid., 445.

lower court ruling and appealed to the State Supreme Court for relief.

The State Supreme Court rendered a decision based on an examination of the "County-wide plan of organization" which outlined the procedures that boards of education were to use in consolidating the school districts of its administrative unit.

The statute also placed restrictions on the powers of the board in complying with its provisions. No school district could be created or altered unless it was in accordance with the established plan or unless a hearing was held to determine the necessity of such an action. However, after the adoption of the plan the county board of education was authorized to establish new districts or to consolidate or enlarge existing districts and to provide for the levying of taxes and issuances of bonds based on the will of the voters through elections.

The court determined that section 226 of the 1923 school code provided that elections could be held to ascertain the will of the voters on school district reorganization and on the establishment of tax districts. This election could only take place in those districts which had established or recognized boundaries.

It also provided procedures that special charter school districts could add to their territory by attaching contiguous territory through an appropriate series of

election procedures: a written petition, a legal election, consistent tax rates, and voter approval of the questions on enlargement and tax assessment.[66]

The court ruled that all of the above stipulations had been met by the board of trustees in enlarging the Vass graded school district and therefore, affirmed the lower court ruling in the case. The court had found no valid objection to the proposed issues because the majority of the voters had favored the school district enlargement and the proposed bond issue.

As to the contention by the plaintiffs, that the local authorities were not empowered to divide or alter existing school districts, the court referred to section 6 of the County-Wide plan which provided county officials the authority to divide a district if it was deemed necessary to the educational welfare of the children in the district. Other important provisions about the plan, ensuring such authority for boards of education, provided that:

> School districts can be created or altered only in accordance with the adopted county-wide plan.
>
> Any act requiring abolishment or division of districts can be enacted only if it is in harmony with the adopted county-wide plan.
>
> There is nothing contractual about the existence and continued maintenance of school districts.

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[66] Blue v. Board of Trustees of Bass Graded School District, 122 S.E. 19 (1924).

> Continued maintenance of school districts is in the sound discretion of the school authorities. All alterations made in accordance with a county-wide plan should make sure that all children affected by the reorganization efforts are provided for.[67]

The court also mentioned section 226 of the existing statutes which made reference to the enlargement of any proposed new tax districts. This section required that if the proposed measure should be approved by the voters of the new district, and on such approval:

> The local tax rate specified in the petition and submitted to the qualified voters shall be a local tax of the same rate as that voted in the said district to which the territory is to be added. If a majority of the voters vote in favor of such a tax, the new territory shall become a part of the said district. In case a majority of the qualified voters at the election shall vote in favor of the tax, the district shall be deemed enlarged as so proposed.[68]

Based on the facts examined in the case and on the above legal policy the State Supreme Court determined that both the trustees of the Vass graded school and the county board of education had met all the prescribed requirements in enlarging the school district. It also determined that the officials had followed the requirements stated in existing statutes and, therefore, it found no error in the lower court ruling.

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[67] Ibid., 21.

[68] Ibid.

Blue v. Board of Trustees of the Vass Graded School District contains a number of significant legal provisions pertaining to the creation, alteration and abolishment of school districts. The final decision handed down by the court supported many laws and policies that are presently in effect within the public schools. Important elements of this case regarding school district organization are provided in the following statements:

> An election to enlarge a school district is considered valid where all the provisions of Public Laws 1923 c. 136 are complied with, and the proposed enlargement properly approved by the voters of the outside territory, and the proposed bond issue by the district as enlarged.
>
> Where county boards of education have adopted a county-wide plan of organization, they are empowered to establish new school districts or to consolidate or enlarge existing districts and to provide for levying of local taxes therein and to issue bonds when authorized by a valid election on the subject.
>
> Districts may be enlarged and taxing districts established on petition of the board of education and on taking a vote of the outside territory.
>
> Special charter school districts may be enlarged under section 226 of Public Laws of 1923,c. 136 through compliance with the established provisions of petition, election and majority vote of patrons in the affected territories.
>
> County boards of education have power to divide an existing district if the proposed consolidation is in harmony with an adopted "county-wide plan" and section 226. Providing that on petition the county board of education may ask for an election and on the approval of the voters of the territory to be added, the new territory shall become a part of the district.

> There is no requirement in the enlargement proceedings for the constituent parts of a new district to have approved of the proposed plan. It requires only that the majority of the voters in the entire district voice their approval.[69]

Riddle v. Cumberland County

104 S.E. 662 (1920)

One fourth of the voters in Grays Creek Township filed a petition with the Cumberland County Commissioners asking for a special school tax and the consolidation of the five school districts within the township. The petition was considered and an election on the issue was ordered to be held within the township irrespective of the school district lines. The required petition, the notice of the impending election and the procedures of the election were all completed under the existing statutes. The results of the election and a canvass by the election committee showed that a majority of the residents of the township voting for consolidated schools understood that they were also approving a special school tax to support consolidated schools in accordance with the petition for and notice of in the election.

A group of the residents of the township who opposed a special tax being levied against them brought suit to prevent the levy and collection of the special school tax. The courts granted a restraining order to prevent the levy

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[69] Ibid., 19.

but this order was dissolved by the Superior Court when it considered all the facts of the case to be legal and binding.

The residents appealed the case to the State Supreme Court citing numerous errors on the part of the lower court in handling the case. The plaintiffs indicated the court erred when it:

1. rendered the judgement and decree
2. dissolved the temporary restraining order
3. found fact that a majority of the voters knew and understood that their vote for consolidation carried with it a special tax for school purposes
4. rendered the election valid
5. directed that a special school tax could be levied on districts that did not vote for such a tax

The State Supreme Court referred to a number of established legal provisions in arriving at its decision. The first provision was a statute which granted the county board of education the authority to establish special tax school districts, without regards to township lines, if it follows certain conditions laid down in the law. These conditions referred to the machinery which established the procedures for by which the board could levy a special tax, approved by a majority of the voters, to support the schools in the district.

The court also reviewed the procedures for appropriate election ballots. It examined the characteristics of form

and content of the questions raised by the ballot. It concluded that only the form of the ballot affected the merits essential to the validity of an election. It also determined that:

> The validity of the ballots used in the election was based on whether or not the provisions of the act made certain aspects of the ballot mandatory, jurisdictional or if irregularities existed in the ballot. If a statute declares any act to be essential to a valid election, or that an act shall be performed in a given manner and in no other, then such provisions are mandatory and exclusive.[70]

Therefore, if part of the ballot was considered mandatory by statute then the election would be void if that part was left out. Based on this interpretation of ballots the court indicated:

> That an irregularity in the conduct of an election, which does not deprive a voter of his rights or admit a disqualified person to vote, which casts no uncertainty on the result, and which was not caused by the agency of one seeking to derive a benefit from the result of the election, will not be held invalid because of an irregularity not pertaining to its merits.[71]

The court held that the ballot used by the Grays Creek township and the circumstances surrounding the election showed clearly that the intention of the board was to ascertain the will of the people on special school taxes.

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[70] Riddle v. Cumberland County, 104 S.E. 662 (1920).

[71] Ibid., 665.

In this case, the court considered a vote for consolidation was in effect one for the levy of the tax, for one could not exist without the other. The court, therefore, upheld the lower court ruling.[72]

The court also concluded that there was no need to hold separate elections, on the issue, in the five individual school districts of the township. The election on the tax issue was held in the township as one entire school district, every voter having an equal right with the others to cast his vote, and thereby to express his will.[73] The election was declared to meet all the specifications required in the statute.

The State Supreme Court found no error in any of the rulings made in the lower court and, therefore, affirmed its ruling for the Cumberland County Board of Education.

A significant factor for reorganizing school districts found in this case is that one single election with the majority of the residents of two or more districts voting as one unit for the issue presented is sufficient to determine the desirability of consolidation. The court further recognized that appropriate election procedures require (1) a petition from the governing agency to the county commissioners, (2) an endorsement and election order from the commissioners, (3) an appropriate notice of an impending

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[72] Ibid., 666.

[73] Ibid.

election, (4) an appropriate ballot stating the intentions of the election, and (5) approval of a majority of the voters on the issue in question.

Board of Education of Buncombe County v. Bray Bros. Co.

115 S.E. 47 (1922)

In 1921 the board of education in Buncombe County had consolidated one special tax school district with three nonspecial tax school districts trying to promote a more efficient school organization. After the consolidation was confirmed the voters of the district petitioned for an election on the question of levying a special annual tax to supplement the public schools in the newly consolidated district.

The board of education presented the county commissioners the above petition from the district voters. It also presented its own petition requesting an election on the question of issuance of bonds for school purposes and the levy of a special tax to pay the principle and interest on the bonds.

The county commissioners gave attention to the two petitions and as a result ordered two elections to be held on the two separate issues. The elections were held and the voters of the consolidated district overwhelmingly supported both propositions.

The bonds were sold to the Bray Brothers Company which backed out before it could complete payment, citing irregularities in the election procedures and in the laws under which the election was carried out.

The Buncombe County Board of Education filed suit against the Bray Brothers Company for nonpayment of bonds in Superior Court. The court affirmed the validity of the bonds, the special tax, and the consolidation of the special and nonspecial districts. The Bray Brothers appealed the outcome to the State Supreme Court.

The contention that the consolidated district was not legally established because the nonspecial tax districts had not been allowed to vote separately on the consolidation issue was answered by the court in the following statement:

> This was not necessary under chapter 722, Public local Laws of 1915, a special statute applicable only to Buncombe county. Indeed, for the bare purpose of consolidation, no election is necessary under the general law. C.S. section 5473. The county board of education in any county may, however, in its discretion, ask for an election on the question of consolidation or the new formation of a district, and submit the question of a special tax or the issuance of bonds at the same time, but it is not required to do so.[74]

The court rendered a decision on the defendants second contention, that the voters in the nonspecial tax districts should have been able to vote on the issuance of bonds and

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[74] Board of Education of Buncombe County v. Bray Brothers Company, 115 S.E. 47 (1922).

the special tax in the two separate elections, by saying:

> Such a separate vote for the authorization of the bonds is not required by chapter 722 of the 1915 Public Laws. And after the consolidation of school districts, even under the general law (chapter 179 of the 1921 Public Laws), it is provided that they "shall have the authority to vote special tax rates for schools of the entire district in accordance with law." [75]

In the election held in the consolidated district the voters approved a poll tax and a property tax to cover special maintenance and the interest on the bonds. Justice Stacy did point out that the court considered the validity of the two taxes approved and held that the poll tax would be invalid because it was a county tax rather than a special district tax.

The State Supreme Court modified the tax aspect of this case but upheld the ruling on the other parts of the decision in the lower court. The court also affirmed the legality of the consolidation of the special and nonspecial tax districts.

The necessity or the omission of a vote by the people on consolidation is considered the most significant aspect of this case for school district organization. This significant element is measured by an examination of the State Supreme Court's ruling where it stated:

> A vote by the nonspecial tax districts on the question of consolidation with contiguous school district territory is not required to effect a

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[75] Ibid., 49.

> consolidation, under Public Laws 1921, c. 179, which authorizes the county board of education to consolidate school districts whenever in its judgment the educational interests of the township will be promoted thereby; but the board may in its discretion ask for an election on the question of consolidation and submit the question of a special tax or the issuance of bonds at the same time, but it is not required to do so under C.S. section 5526, but, if the authorities proceed under the statute, they must conform thereto. [76]

This common law stated in another way would read:

> A merely permissive statute authorizing the submission of the question about creation or alteration of districts to the popular vote does not prevent the creation or alteration of a district without submitting the matter to a vote. Districts can be created or altered without a popular vote in North Carolina.[77]

Jordan v. Board of Commissioners for Durham County

95 S.E. 884 (1957)

In 1955 a number of residents living in an area adjacent to the Durham City Schools presented a petition to the Durham City School Board requesting an election on the question of enlarging the Durham city school administrative unit. The people signing the petition wanted their neighborhood, which was a part of the Durham County school unit, to be annexed to the city unit so as to receive what they considered more appropriate educational opportunities.

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[76] Ibid. p. 47.

[77] Francis J. Ludes, Corpus Juris Secundum (New York: The American Law Book Company) 78 c.j.s., 41.

The petition, presented to the city board, complied with the general provisions of law that existed at that time under G.S. 115-116. During the proceedings there were no improprieties raised about the petition itself because it contained the following items required by the general statutes:

1. a statement of purpose
2. a description of the area to be annexed
3. a defined tax rate same as the city unit
4. a statement proposing that if the majority of the residents voted for a "local tax of the same rate" then the area should become a part of the Durham city schools.
5. an understanding that the proposed area is adjacent and has a common boundary with the city district
6. the petition signed by the majority of the qualified voters in the affected area

The Durham City Board of Education accepted the petition and gave it its full consideration and approval and then presented it to the Durham County Board of Education, which refused to endorse or approve of the request outlined in the petition. Even without the endorsement by the county board, the city board presented the request for an election to the county commissioners who called for a special election.

A restraining order was obtained by a number of the residents in the affected area to prevent the county commissioners from holding the required election. At the court hearing, in which the restraining order procedures were addressed, the commissioners were ordered to show cause

why the restraining order should not be continued until the final hearing. As a result the court continued the restraining order and the commissioners appealed that decision to the State Supreme Court.

The sole issue in the case was whether the Durham County commissioners had the authority to call an election in the affected area in spite of the fact that the petition had not been endorsed by the Durham County Board of Education.[78]

In deciding the case the court referred to a number of existing statutes which they considered held the answer to the question about the legalities of the commissioners calling for the election. G.S. 115-116 permitted a city administrative unit to be enlarged if certain procedures are followed. The first step is to determine by petition if the majority of the residents of any adjacent area wishes to be annexed to the city unit. The second step is to call for an election to ascertain the will of the people on the question of levying special taxes in their district, at the same rate as those in the city unit, to support the educational opportunities.

One of the most important elements found in this statute was the requirement that the enlargement issue had to be approved and endorsed by both boards of education in

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[78] Jordan v. Board of Commissioners for Durham County, 95 S.E. 2d 884, 1957.

order for an election to be called. In continuing the discussion about the matter the court found another statute that contained a stipulation that seemed allow officials the opportunity to bypass this requirement. G.S. 115-120 made the following provision:

> Petitions for an election to enlarge a city administrative unit shall be subject to the approval and endorsement of both county and city boards of education which are therein affected: Provided, that when such a petition is endorsed by the city board of education and signed by a majority of the voters of the affected area, the election shall be called.[79]

The court considered this statute overruled the specification that both boards had to approve of the annexation request before an election could be held. The court applied G.S. 115-120 to the case and said, "It is only necessary that the city board of education endorse the petition calling for the enlargement of the city administrative unit if the petition is signed by the majority of the voters of the affected district."[80]

The court held that under G.S. 115-121 the county commissioners had the authority and duty to call for an election in the area requesting such action through petition notwithstanding that the petition was not endorsed by the

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[79] Ibid., 886.

[80] Ibid.

county board of education.[81] It also considered the duty of the commissioners to call for elections to be purely ministerial in nature which does not allow them the opportunity or leeway to approve or disapprove of such requests.

From these findings the court determined that the lower court had erred when it granted a restraining order to the plaintiffs in this case. The State Supreme Court reversed the ruling of the lower court and allowed the county commissioners to call for and oversee the requested election.

The case contains a number of significant issues for school district organization. First, it sustained the existing statute authorizing the enlargement of city administrative units and this law is still in existence. It determined that in order to enlarge or change the boundary of a city district by adding contiguous territory from the county administrative unit the following were required: (1) a request by petition of the residents in a contiguous area which is less than a district to be annexed, (2) the city board of education's approval and endorsement of such action and requesting of an election on the issue, (3) the county commissioners' calling for the requested election and the voters giving approval to levy special taxes corresponding to the city schools. If these events occur then the area

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[81] Ibid.

will be considered to be annexed and become a part of the existing city administrative unit. Second, the court affirmed G.S. 115-120 which eliminated the requirement for both boards to approve of a petition for annexation. The court determined that it was only necessary for the city board of education to approve of the petition for annexation if the petition is signed by a majority of the residents of the area that wishes to be annexed. Third, the case reaffirmed past court decisions which specified that the duty of the county commissioners to call for special school elections was purely ministerial.

Howell v. Howell

66 S.E. 571 (1909)

This case involves the creation of a special tax school district by the Hayword County Board of Education and the resulting dissatisfaction from a number of the voters in the affected area. The plaintiffs brought this court action in an attempt to dissolve the district created and to prevent the collection of the taxes that were approved at the time of the election.

The plaintiffs held that the district was not laid off as compactly in form as was practicable and that the convenience and necessities of the patrons were not consulted. Furthermore, the plaintiffs felt that the lines of the created school district were established so as to

exclude groups that were opposed to the tax and to include others which were favorable to it.

In examining the facts regarding the procedures used by the board of education to establish the special tax district the Superior Court found and applied Section 4115 of the revised school codes of 1905. Section 4115 contained the steps that boards of education must take in creating special tax school districts without regard to township lines: petition, endorsement, notice, hearing, and election.[ee]

The lower court ruled that the board of education and the election process had followed the existing law regarding the action and, therefore, denied the plaintiffs' request to continue the restraining order and dissolved the injunction which had been granted at an earlier date. The plaintiffs appealed to the higher court for relief.

Their appeal centered around irregularities in the location of the boundary lines of this special tax district, pointing to the zealous individuals who were promoting the district creation for their own interests, rather than the county board of education.

In reviewing the facts of the case, Justice Manning, noted that the plaintiffs had had ample opportunity to complain and voice their dissatisfaction with the proposed district but chose rather to remain silent on the issue until the election and the tax levy had been completed.

[ee] Howell v. Howell, 66 S.E. 571 (1909).

Justice Manning also pointed out that the only contention that might have validity was the one that alleged that the district was not "as compact in form as practicable, and the convenience and necessities of the patrons were not consulted."[83] This element of the case was based on section 4129 of the revised school code of 1905 which states in part:

> The county board of education shall divide the townships into convenient school districts, as compact in form as practicable. It shall also consult the convenience and necessities of each race in setting the boundaries of the school district.[84]

The court held that this particular statute should override section 4115 which was written to set the provisions for establishing special tax school districts outlined above. The court held that section 4129 of the school code should hold for all districts, whether special tax or ordinary, and that the district should not be dissolved based on this action.

As to the contention by the plaintiffs that the district was not formed as compactly as practicable, the existing statutes placed that authority in the discretionary hands of the county board of education.[85]

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[83] Ibid., 572.

[84] Ibid., 571.

[85] Ibid., 573.

The court found no indication that the county board of education had abused its discretion when it laid the boundaries of the district and, therefore, confirmed that the court could not interfere with the results of the board's decision-making procedures.

There were some irregularities in the placement of the boundary lines established by the board. The lines, did in fact, gerrymander around the affected territory including some areas and omitting others. The court determined that if the board of education or the county commissioners had had a better map and had been better informed about the gerrymandering of the district they would not have sanctioned the district.

Thus, the State Supreme Court ruled that the lower court had made no error in its original holding and, therefore, affirmed its ruling.

This case had significant aspects which continue to be a part of the legal procedures for school district organization. First, if a board of education is presented with a petition requesting the creation of an ordinary school district or a special tax school district and it is contemplating such action, then the board should provide for a fair and impartial hearing for persons opposing such action to appear before the board and make their objections known. If those persons fail to respond then they may not complain that any action taken by the board was unwise and

unjust after the action has been implemented. But if these persons appear and are denied a fair and impartial hearing before the board, then relief could be sought based on charges of fraud or misconduct by the board of education. Second, the court determined that county boards of education have the authority to divide townships into "convenient school districts, as compact in form as practicable," and this applies not only to ordinary school districts, but also to special tax school districts provided for by section 4115.

The question of convenience and compactness is delegated to the county board of education and the board's action is not reviewable in the absence of any abuse of its discretion. The present-day boards of education continue to have the authority to form school districts and establish boundaries, but the organization is for assignment of students and attendance purposes only.

Burney v. Board of Commissioners of Bladen County

114 S.E. 298 (1922)

This case concerns the validity of the consolidation of four nonspecial tax districts and one special tax district into one township high school district in the Brown Marsh township of Bladen County. After the consolidation was completed, the authorities ordered that two elections be held to ascertain support for the consolidated district.

The first election called for the levying of a special annual tax on property and a poll for supplementing public school funds for the maintenance and instruction. The second election sought support for a bond issue in the amount of $25,000 dollars for the purpose of building and repairing and equipping school facilities.

The two elections were held at the same time; votes were counted separately in the original special and nonspecial tax districts and in the consolidated district as a whole. The results of the vote, either in the original separate districts or in the new consolidated district as a whole, approved both issues. The approved taxes were levied and bonds were issued and sold.

Alex Burney requested the Superior Court to restrain the county commissioners from levying and collecting the taxes contending that the elections were illegal. The Superior Court found no basis for the plaintiff's contention and denied his appeal for an injunction to prevent the county commissioners from following through with their approved proposals. The plaintiff then appealed his case to the State Supreme Court, contending that the elections were illegally held and that the consolidation of the districts was improper and unconstitutional.

The State Supreme Court considered the first contention to have no basis for invalidating the election; both issues

were approved overwhelmingly by all concerned.[86]

The court considered the consolidation to be valid based on the decisions found in the Hicks, Perry, and Riddle cases. The results of these cases were based on the fact that the election results were determined by counting the votes separately and as a whole.[87]

Finally, the court denied the allegation by the plaintiffs that the act under which the election was held violated Article II, section 29 of the state Constitution (which prohibits any local, private, or special legislation in regard to establishing or changing the lines of school districts). The court indicated that the act in question was not in violation of the Constitution and supported this contention by stating:

> The act we are now considering nowhere undertakes to establish a new school district nor to change the existing lines or boundaries of one already existing....This act provides ways and means for the general prosecution of educational work in the district already established.[88]

Thus, the State Supreme Court affirmed the lower court's ruling but with one modification. The poll tax that had been passed in the first election was nullified because a poll tax is considered a county tax and the election that

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[86] Burney v. Board of Commissioners of Bladen County, 114 S.E. 298 (1922).

[87] Ibid., 299.

[88] Ibid., 300.

was held called for a special school tax. The poll tax can not be classified as a special school tax and, therefore, was held to be invalid under the Constitution.

The significance of the ruling in this case lies in its determination that the consolidation of special and nonspecial districts will be affirmed if the voters in the separate districts and in the consolidated district as a whole approve of the measure. The court had ruled on the second contention regarding the validity of the consolidated district where it indicated:

> Where, after the consolidation of a special tax school district and a number of nonspecial tax districts by the county board of education, into a township high school district, the voters were given a free opportunity to pass on the questions of issuing bonds and levying a special tax, and the votes were counted separately, in each of the old districts, and then in the in the entire district as a whole, and resulted in favor of the bonds and tax in each of the old districts, and in the consolidated district as a whole, and the requirements of the statutes were substantially conformed to, and the bonds had been issued and sold to innocent purchasers, the consolidation will be upheld.[89]

Elliott v. Gardner

166 S.E. 918 (1932)

In 1932 the State Board of Equalization refused a request by the Chowan County Board of Education for an allotment of teachers to three of its special tax school

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[89] Ibid., 298.

districts or to include them in the budget to allow participation in state funds. The refusal was based on a thorough study of the Chowan County school system which indicated that the system could be operated more efficiently and economically if the three districts were to be consolidated with the Chowan High School district.

The Chowan County Board of Education refused to consolidate the smaller districts because they considered the proposed consolidation to be impractical and undesirable and, therefore, the State Board of Equalization did not provide financial support or services to the districts at all during the 1931 school year. The county then determined that if the three school districts were non-tax districts then they could not be consolidated with special tax school districts according to existing law. Based on this interpretation of the law the three districts held elections and revoked their special tax status.

In the following year the Chowan County Board of Education again requested teacher allotments and funding from the state for these three school districts and were again refused by the Board of Equalization. The Chowan County Board of Education filed suit to compel the Board of Equalization to provide general control, instructional service, operating of plant, and auxiliary agencies for a term of six months during the 1932-33 school year for the children in certain school districts of the county

The Superior Court found in favor of the Chowan County Board of Education and demanded the Board of Equalization to provide all the items requested. The defendants appealed to the State Supreme Court for relief in the matter.

The one question that had to be answered by the State Supreme Court in order to determine the validity in the matter was, "Did the statute,(P.L. 1931, c. 430, sec. 6) on which the state board of equalization based its decision, justify the order not allowing the allotment of teachers or funding for services to the county board of education?" The statute stated in part:

> The State Board of Equalization may refuse to include in the State budget all or a part of the teachers in any school or schools which may be operated in close proximity to another school or the same type and class, when in the opinion of the board such school could be operated more economically and efficiently if consolidated in whole or in part; but in all such cases the board shall designate the school or schools from which teachers are disallowed.[90]

The State Supreme Court referred to sections 2 and 3 of Article 9 of the state Constitution. Section 2 made provision for a general and uniform system of public school and section 3 mandated the division of the county into a convenient number of districts in which one or more public schools shall be maintained at least six months every year. It held that these provisions were intended to establish a

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[90] Elliott v. Gardner, 166 S.E. 918 (1932)

system of public education adequate to the needs of the people, affording school facilities to all the children and are mandatory.

County boards of education were authorized by the County-Wide plan of 1923 to consolidate the school districts within the counties in order to provide a more economical and efficient school system. The court indicated that under the existing law the power to create, divide, or abolish districts was vested in the county board of education, who must exercise the power in accordance with the county-wide plan.

The court confirmed that the Chowan County Board of Education had not consolidated the districts of its unit. This made these districts separate entities, in each of which, it is ordained by the Constitution that "one or more public schools shall be maintained within" for the education of the youth.[91] This provision mandated that the school districts should maintain a public school but the question then becomes, "What type of public school?" The court held that it was the duty of the county board of eduction to provide at least one high school in each township of its county, and that this high school would be located at the board's discretion and for the convenience of the elementary students which would attend it. Thus, the necessity of having a high school in each school district of the state is

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[91] Ibid. p. 921.

voided as supported by the decision in Clark v. McQueen which reads in part: "It is manifest that the public school law does not contemplate the creation of a high school in every school district of the state."[92]

A legal distinction was noted between an elementary and a high school in the Constitution. The mandate expressed by Article 9, section 3 calls for:

> A public school to be maintained in every district at least six months in every year one or more schools affording the advantages of the elementary grades.[93]

The court determined from this distinction that the three school districts in Chowan County should be afforded the teachers and the funding which would enable them to maintain elementary schools in their district. Upon graduation from elementary school, funds should be available to transport them to the most appropriate high school in the proximate area.

The original question about the authority of the Board of Equalization was answered in the following statement:

> We are led to the conclusion that the statute (P.L.1931, c. 430, sec. 6) did not confer upon the State Board of Equalization the power to discontinue the public schools in River View, Ryland, and Ward's districts and to require the children residing in these districts to be

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[92] Clark v. McQueen, 143 S.E.528 (1928).

[93] North Carolina, Constitution (1920), art. 9, sec. 3.

> transported to the Chowan High School for elementary instruction. We must therefore affirm the judgement of the lower court and direct the defendants to provide the general control, instructional service, operation of plant and auxiliary agencies for these districts in the manner provided by law.[94]

The most important item from this case concerning school districts was the determination that public school law "does not contemplate the creation of a high school in every school district of the state" and that the constitutional provision "requiring a public school in each district in each county does not extend to the high school." [95]

A second item affirmed that the Board of Equalization (now the State Board of Education) is not authorized to discontinue public schools in certain districts in a county and require the children residing therein to be transported to a high school in another district for elementary instruction.[96] The Board of Equalization, in this case, was trying to abolish the elementary schools in each district and this is what drew the criticism of the communities and the board of education. Present organizational patterns of elementary schools are still community or neighborhood oriented, but students are transported farther distances from their home than in 1932.

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[94] Elliott v. Gardner, 166 S.E. 918 (1932).

[95] Ibid., 919.

[96] Ibid.

Other Cases That Deal with Alteration of School Districts

In Paschal v. Johnson (1922) the Alamance County Board of Education created the Altamahaw-Ossipee consolidated school district by virtue of the Consolidated Statutes, section 5473, as amended by chapter 179 of the Public Laws of 1921.[97] This statute determined that the boards of education were expressly authorized to consolidate local tax and special chartered school districts and to levy a tax for the consolidated district no greater than either separately had experienced.

A suit was filed to prevent the district from issuing bonds and levying taxes to pay for the principle and interest on such bonds. The court decision in this case made provisions allowing the qualified voters of a nonspecial tax district the opportunity to vote on the question of the special tax to be validated in the consolidated district. If the voters approved of the tax the consolidated district would be confirmed but if they disapproved the distinct could not be consolidated. The court stated that:

> In order to combine a special tax district with a nonspecial tax district, the question should be considered and dealt with as an enlargement of districts under C.S. section 5530 permitting the outside territory to vote separately on the proposed tax.[98]

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[97] Paschal v. Johnson, 110 S.E. 841 (1922).

[98] Ibid., 841.

A county board of education can be compelled to consolidate one of its school districts with a school district in an adjoining county according to Davenport v. Board of Education of McDowell County (1922). The court determined that when geographical obstructions either prevent or hamper students from getting from their homes to the school, boards of education will be compelled to work out an appropriate arrangement with an adjoining county to consolidate the affected district with them.

In 1923 the state passed the County-Wide plan containing a list of specified procedures that boards of education were directed to follow in implementing the consolidation of the many small districts of their county. In Flake v. Board of Commissioners of Anson County (1926) a number of important decisions were made concerning the alteration of school districts.

First, when the consolidation plan was enacted, one special charter district refused to comply with the plan so the board had to modify the original plan and create another proposed school district. The plaintiffs in the case contended that the new district was not constituted under the appropriate plan and was therefore illegal. The court held that the fact that the creation of the new district did not take place under the original plan did not invalidate the consolidation. Second, there was some question about the notice given the communities regarding the election and the

creation of the new district. If the failure to provide proper notice does not alter the outcome of the called action, then the courts will usually not interfere with the results of an election. Here the court stated:

> Where a school district was represented by committeemen and a delegation therefrom at two meetings before the creation of the new district in which included the judge's finding that due notice of meeting to discuss the modification of county-wide reorganization plan was given, will not be reversed or modified, even if there was an irregularity in the publication of the notice.[99]

In 1928 the case of Howard v. Board of Education of Lenoir County dealt with two issues relative to school district organization. Howard had filed suit against the board of education contending that the county-wide plan of consolidation implemented by the board was invalid, and that the distances that the board was requiring the students to travel to school were excessive. The court ruled that the plan, even though the consolidation efforts had taken years to complete, was valid. It determined that the board of education had coordinated its survey with the state, had followed all legal procedures, had the authority to consolidate its territory, and had consolidated districts when money came available with which to provide facilities appropriate for efficient educational advantages.

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[99] Flake v. Board of Commissioners of Anson County, 135 S.E. 467 (1926).

As to the distance that the children had to travel to school, the court ruled that under existing law the board of education is given the authority to decide such matters based on their judgment and discretion. Based on other decisions the court confirmed that it would not interfere with any decision by the board based on discretion, unless it could be shown that the board abused its discretionary authority.

In Scroggs v. Board of Education (1925) the court validated the Clay County Board of Education's County-Wide Plan of consolidation even though it contained provisions for the consolidation of a number of nonlocal tax school districts. The county board of education had adopted a plan of consolidation under the P.L 1923, c. 136, section 73a which did not include nonlocal districts. The court ruled that if the nonlocal districts were willing to come into the consolidated district and approve of a special tax the same as in such district they should be allowed to do so, since, under section 75 of the county-wide plan statute, the board of education could consolidate them without a vote of the people in the consolidated district.[100] The court further ruled that a board of education must put together a written decision to create or alter a school district before it will be allowed to form a resolution or give an order requesting

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[100] Scroggs v. Board of Education, 126 S.E. 109 (1925)

the execution for such a creation or alteration to take place.

In the consolidation of school districts a number of statutes made provisions for the boards of education to combine the various types of districts around the state. When combining special tax school districts with other nontax territory in order to enlarge the special tax district in 1922, the boards were directed to use C.S. section 5530. The court in Hicks v. Board of Education of Wayne County (1922) considered this statute to be mandatory on boards of education. The court rendered the following decision about the statute:

> In combining special school tax districts with additional new territory (nontax), C.S. sec. 5530, providing for the enlargement of special tax school districts and permitting the outside territory to vote separately on the proposed tax, must be complied with by the boards.[101]

This statute made provisions for a election to be held in the nontax district to give the voters a voice in the combination of the specified districts. The court also confirmed that the items of this statute were consistent with section 5531, which, also provided for the voter's approval before the abolishment of a special tax district.

The statute C.S. section 5530 stated above was also at the center of the controversy in Vann v. Board of

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[101] Hicks v. Board of Education of Wayne County, 112 S.E. 6 (1922).

Commissioners of Sampson County (1923). Four school districts in Sampson County were allowed to vote as one district on the question of consolidation with or enlargement of another school district in the county. The four districts together as a unit voted in favor of the consolidation issue. Votes were tabulated by separate districts and in two of the districts the voters had disapproved of the consolidation.

The qualified voters of these two districts filed suit contending that the election and the impending consolidation to be unconstitutional.

The court held the election to be valid because the majority of the voters in the combined districts approved of the measure and because C.S. section 5530 permitted the vote in separate districts on the question of consolidation and taxes but did not require it.[102]

In Davenport v. Board of Education of McDowell County (1922) the court also addressed the issue of board discretion. It supported the following principle which so many courts have done:

> The discretion of the county board of education in the control and supervision of the school districts and their consolidation in given cases, given by C.S. section 5469-5479 and by the laws of 1921, c. 179, would not be interfered with by the courts unless it appears that the discretion has

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[102] Vann v. Board of Commissioners of Sampson County, 116 S.E. 421 (1923).

been illegally exercised or grossly abused.[103]

As long as the decisions made by boards of education are sincere, follow appropriate legal procedures, and seem to be working toward a more effective and efficient educational system, the courts will not interfere. If an abuse in the discretion used by the board of education can be found, then the courts will step in to correct the problems produced by such action.

In Perry v. Cox (1922) the board of education of Bladen County was attempting to consolidate a number of school districts. It was performing the mechanics of consolidation under Section 1, Chapter 179 of the Public Laws of 1921, which provides for the consolidation of school districts and the levying of tax rates between the affected districts. The statute made the following provisions:

> County boards of education may consolidate local tax districts, with other local tax districts having the same or different special tax rates, and also with nonlocal tax districts, but the rate on any consolidated district created from local tax districts having different local tax rates shall be made uniform by the county commissioners upon the recommendation of the county board of education. After consolidation efforts are complete and in the future the new district is authorized to vote special tax rates for schools on the entire district.[104]

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[103] Davenport v. Board of Education of McDowell County, 112 S.E. 246 (1922).

[104] Perry v. Cox, 112 S.E. 6 (1922).

This particular statute caused some problem for the court because the county commissioners were assigned the duty of making the tax rates uniform throughout the combined district. Section 1 of Chapter 79 of the Public Laws of 1921 made provision that a taxpayer in a new consolidated district could not be required to pay a tax rate higher than had been originally voted on in his district. If a special tax district were combined with a district that had no special tax levy, then, based on the above law, the commissioners would have to reduce the tax to nothing or would have no authority at all to levy these special uniform taxes throughout the entire district.

The court's decision in Hicks disallowed the board of education from using this statute to complete its consolidation effort, because it did not allow a vote of the people in the nontax territory on the question of taxes. The court said, "when combining local and nonlocal tax districts the board of education must allow the qualified voters in the new territory to vote separately on the tax issue before consolidation can take place."[105]

In Barnes v. Board of Commissioners of Davidson County (1922) the courts confirmed that, if a board of education received or implemented a petition calling for a special tax to be assessed on the qualified voters of a consolidated school district, it would have to seek the approval of the

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[105] Hicks v. Board of Education, 112 S.E. 1 (1922).

voters of the district before such taxes could be assessed. The board of education is directed to petition the county commissioners to call for an election on the question of levying of a special tax for school purposes and for the voters to approve of such a tax at an appropriate election.

In 1918 one of the requirements for a school district to remain in existence was that it contain at least 65 students and be formed of a compact 6 square miles of territory. If a district could not meet this requirement it would have to be disbanded or consolidated with an adjacent district. An exception to this rule developed in Williams v. Polk County Commissioners (1918), where the jury validated a school district that had fewer than 65 students because the district contained 12 square miles of territory which was double that required by statute law.

As to irregularities in election proceedings, the court found in Plott v. Board of Commissioners of Haywood County (1924) that if they affect the results of election then they will be considered strong enough to invalidate the election, but if the irregularities are caused by the election authorities and provide no effectual difference in the outcome of the election, then they will be overlooked.

An interesting case in 1921 dealt with the manner and methods that were used to establish high school districts. In Woosley v. Commissioners of Davidson County (1921) the courts had to determine whether a high school district which

had been created over a number of regular school districts violated any existing laws. The court rendered the following decision:

> Under the law there prevailing (C.S. section 5469 and 5473) authorizing the county board of education to divide the county or any part of into school districts, prior to Public Laws 1921, c. 179 the county boards of education were without authority to superimpose a high school district over existing districts which were not consolidated or abolished, but still functioning for other than high school purposes, and the said section referred to the establishment or change of districts in the sense of territorial divisions or geographical regions.[106]

Prior to 1921 high school districts were not allowed to contain or be superimposed over other types of school districts unless those districts had been part of a consolidation effort to be included in the high school district or unless the statutory validity of the district had been abolished. By 1924 and confirmed in Elliott v. Gardner, C.S. section 5437 had established that public school law did not contemplate the creation of a high school in every public school district. This statute allowed for a high school to be placed in each township and to receive its students from the elementary schools in each of the surrounding districts.

The petition is used in the governmental mechanics pertaining to school district reorganization in a number of

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[106] Woosley v. County Commissioners of Davidson County, 109 S.E. 368 (1921).

ways. Most of them were set out in statute in Chapter 3. In Chitty v. Parker (1916) the court determined that the signing of a petition by the requisite number of resident voters is a condition precedent and jurisdictional to the establishment of a district by popular vote. It also dealt with the petition process in this case. There were some improprieties in the petition because some additional names were placed on it after the original time period and they were challenged by Chitty. The court rendered the following decision concerning such improprieties:

> Additions to a petition after it has been signed do not vitiate it where they merely make more definite its statements or request but any material change renders it void.[107]

Abolishment Cases

Key v. Board of Education of Granville County

86 S.E. 1002 (1915)

In 1915 the voters of a special tax school district in Granville County presented a petition to the board of education requesting that they endorse the abolishment of their special tax school district. The petitioners wanted to rid themselves of the burden of the special tax for school purposes and they based their request on the amendment of the statute (P.L. Revised 1905, section 4115) which had

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[107] Chitty v. Parker, 90 S.E. 17 (1916).

established the special tax school districts). The amendment read:

> That on petition of two-thirds of the qualified voters residing in any special taxing district, "endorsed and approved by the county board of education," the board of county commissioners shall order an election in said district for submitting the question of revoking the tax and abolishing the tax district.[108]

The Granville County Board of Education declined to endorse the petition based on its privilege to make decisions in the best interest of the district by exercising sound and reasonable discretion. The board's failure to endorse the petition prevented the county commissioners from calling for an election; their ministerial duties require them to follow statute law. Therefore, in the absence of such a petition, the election could not be held.

The petitioners filed suit to compel the board of education to endorse the petition and in turn provide the necessary authority to the commissioners to call for the election. They based their request on three irregularities they considered pertinent to the case: (1) the board's refusal to endorse the petition was in direct violation of the statute which directed them to do so; (2) the county commissioners can not hold an election without the proper petition and endorsement from of the board of education

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[108] Key v. Board of Education of Granville County, 86 S.E. 1002 (1915).

and; (3) the defendant does not have the right to withhold its endorsement because there are no defects in the petition or a lack of numbers of qualified voters.

The decision of the Superior Court called for the board of education to endorse and approve the petition which had requested the abolishment of the special tax school district. The board of education then turned to the State Supreme court and placed the action on appeal to it.

The State Supreme Court considered whether the county board of education was compelled by mandamus to endorse and approve the petition.[109] In trying to reach a decision the court referred to the often litigated principles and concluded that it "will in no manner interfere with the exercise of such discretion or control or dictate the judgment or decision which shall be reached."[110]

The court considered the duties of the board of education to be discretionary rather than ministerial. This policy called for the board to exercise good judgment. The courts cannot tell the board how to act or what decision to come up with, only that it address the subject and make a decision one way or the other.

In referring to the provision in the statute which required the endorsement from the board of education, the court considered the issue and made the following statement:

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[109] Ibid.

[110] Ibid., 1003.

> In requiring is as a preliminary essential that the petition shall be "endorsed and approved" by the board, the statute conferred, and intended to confer, upon that body the power to give or withhold their approval as their judgment may dictate, have regard to the best interest of the community affected. When a taxing district has been formerly established then it should not be revoke unless the two groups (board and voters) with direct interest should concur in the movement to abolish the district.[111]

Based on these factors the court found cause for error in the ruling of the lower court, and therefore, reversed its decision and allowed the board of education to make the decisions regarding the abolishment of school districts.

On the final ruling in this case, two dissenting votes were cast based on two factors: first, that people had a right to abolish a provision that they had voted on themselves; second, that the existing statute required the board of education to determine whether the provisions of the petition had been lawfully met, and if so, the board could be compelled to give endorsement to the petition.

Significant aspects for school district organization and abolishment were produced as a result of this case. The importance of the board of education in the abolishment of special tax school districts was confirmed. The existing statute required the board of education to consider the action inferred and make a decision on whether to give an

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[111] Ibid., 1004.

endorsement or approval on the petition before an election could be called on the question of abolishment. Such a decision required discretion on the part of the board. This decision by the court underlines the importance of the board of education in making decisions about creation, alteration and abolishment of school districts.

The importance of the school board as the governing body of the county administrative unit was emplasized in the court decision as follows:

> Under Revisal, section 4115, as amended by Laws 1909, c. 525, and Laws 1911, c. 135, providing that on petition of two-thirds of the voters residing in any special school tax district, endorsed and approved by the county board of education, the board of county commissioners shall order an election in the district on the question of abolishing the district, the petition to render and election valid, must be properly preferred and endorsed and approved by the board of education. [112]

Perry v. Cox

112 S.E. 6 (1922)

In 1921 the Bladen County Board of Education consolidated three separate districts into one large consolidated school district. Council was a school district having a local special tax for schools and the other two, Carver's Creek and Boggy Branch, were nonlocal tax districts which never had voted a school tax of any kind. The board

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[112] Ibid., 1002.

petitioned the commissioners to call for an election in the newly consolidated district on the question of voting a special tax to supplement the public school fund, in which the majority of the voters in the entire new district voted for the requested tax. The election results indicated that the whole of the consolidated district voted for the tax but in examining the totals in the original nonlocal tax districts, the court found that the voters there had not approved of the requested tax.

When the results were announced the voters of the two nonlocal tax school districts decided to seek relief from the levying and collection of the tax, and subsequently filed suit in Superior Court of Bladen County to prevent the county commissioners from completing such action. The voters were disturbed that their nontax school districts had been taken into a consolidation effort and taxes imposed without their being able to have a separate vote on the issue.

The Superior Court rendered a decision in favor of the county commissioners and the voters appealed to the State Supreme Court. The voters contested the election because it did not give them an opportunity to vote for or against the tax in a separate election held only in their respective districts.

A number of statutes or acts existing at that time caused some confusion as to how the nontax and tax districts were to have been legally consolidated.

The Consolidated Statutes, Article 18, Chapter 95 dealt with the consolidation of existing nonlocal and local tax districts and indicated the following procedures:

> Where local tax districts are sought to be combined and joined with nonlocal tax districts, or nonspecial tax territory, the question should be considered and dealt with as an enlargement of districts already existing, under C.S. section 5530, whereby the outside territory is allowed to vote separately on the proposed tax.
>
> In case a majority of the qualified voters in such new territory shall vote at the election in favor of a special tax of the same rate as that voted and levied in the special tax district to which the territory is contiguous, then the new territory shall be added to and become a part of the special tax district. In case a majority of the voters at the election shall vote against the tax, the district shall not be enlarged.[113]

This statute allows the voters in each district that is to be annexed or consolidated to have a voice in the determination of their financial circumstances.

Similarly, C.S. section 5526 dealt with forming new districts by combining the territory of special tax districts and in the process gives the voters of each separate tax district the freedom to declare their wishes concerning taxation in the new district.

Another important statute (Section 1 of Chapter 179 of the Public Laws of 1921) provides another approach, with the following provisions:

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[113] Perry v. Cox, 112 S.E. 6 (1922).

> County boards of education may consolidate local tax districts, with other local tax districts having the same or different special tax rates, and also with nonlocal tax districts, but the rate on any consolidated district created from local tax districts having different local tax rates shall be made uniform by the county commissioners upon the recommendation of the county board of education. After consolidation efforts are complete and in the future the new district is authorized to vote special tax rates for schools on the entire district.[114]

While the county commissioners were assigned the duty of making the tax rates uniform throughout the combined district, this statute provided that a taxpayer in a newly consolidated district could not be required to pay a tax rate higher than had been originally voted on in his district. If a special tax district would be combined with a district that had no special tax levy, then, based on the latter statute, the commissioners would have to reduce the tax to nothing or would have no authority at all to levy these special uniform taxes throughout the entire district.

Implementing the statute C.S. section 5530 as the basis for its final decision on this particular case, the court recommended this enlargement of the school district procedures as the most appropriate method to be used in combining tax and nontax districts.

One other complication that impeded the courts from reaching a conclusion regarding the case was that the

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[114] Ibid., 8.

Council special tax district was in debt for some outstanding bonds which had been issued for building purposes. The defendants contended that the election which had been held should be approved and the taxes upheld based on Riddle v. Cumberland County. That case concerned the consolidation of five tax and nontax districts based on a petition for an election for the abolishment of the special tax districts and the levying of a tax consistent throughout the district. The election held in the whole of the consolidated district was approved by the voters and the special districts were abolished and all districts were left in the same debt-free condition. One distinguishing factor was that the special tax district in Perry v. Cox had been left in debt owing for some outstanding bonds.

Applying the statute C.S. section 5532, which provides that no special tax district shall be abolished when such district is in debt "in any sum whatever", to Perry v. Cox, the court was able to answer the question about the validity of the consolidation issue. The court recognized the fact that the old Council district was in debt for bonds which it had previously issued and, therefore, it could not be abolished until those bonds were paid. In other words, the existing consolidation of the three school districts was considered void because the Council district can not be abolished in order to be merged with the other two nontax districts.

The court found a number of errors in the lower court ruling. It rendered a decision in this case based on the above discussion and examination of the facts of the case. The first error occurred when the board consolidated the three districts. It had abolished a special tax district, which was in debt to certain creditors. This action was a violation of C.S. section 5532 prohibiting the abolishment of a special tax district while it was still in debt.

The second error was found in the election procedures used when the consolidated district voted on the tax question. The voters of the two nontax school districts were not allowed to vote in a separate election as prescribed in C.S. section 5530. This statute allows for the enlargement of school districts predicated by a vote of the individual districts on the issue of taxes, and this did not take place.

Based on these errors the State Supreme Court reversed the decision of the lower court and directed the board of education and the county commissioners to abolish the consolidated school district and to dismantle the tax levying procedures developed to levy and collect the tax which had been approved through the invalid election.

A number of important points can be gained from this case for school district organization. The following items represent significant concerns for school district organization:

> It is improper to combine a special tax district and a nonspecial tax district on a vote of the proposed district as a unit. This is based on the fact that such a vote means a reduction of the tax rate in one district and the imposition of an entirely new and special tax in the others wherein the people may be outvoted.
>
> An election to consolidate districts and let the county board of education fix a uniform tax rate not exceeding that previously fixed by any part of the district is held to be inappropriate and unauthorized. This procedure refers to future levies after consolidation and not to an election to consolidate and fix the rate.
>
> When combining local and nonlocal tax school districts all the new territory that is to be combined is entitled to vote separately on the consolidation and tax issues according to the enlargement of district statute.
>
> No school district can be abolished by any method until all district debts have been paid to the appropriate creditors.[115]

The county board of education has the authority to abolish school districts in their administrative unit but the last specification above must be met before such action can take place.

Other cases concerning Abolishment of SchoolDistricts

The case of Causey v. Guilford County (1926) involved the abolishment of the city school unit of Greensboro after the enactment of the County-Wide plan for consolidation passed in 1923. Several important elements have emerged

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[115] Ibid., 6.

from this case regarding the abolishment of a school district that are still in force today. The following represent important issues regarding special charters, notices, and approval of the board which came from the decision by the court:

> When abolishing a school district, no notice need be given, however, if the property of the district is to be dissolved and to be conveyed or transferred, under a statute providing therefor, the statute itself will be considered enough constructive notice.
>
> The dissolution or abolition of a school district or other local school organization is effective immediately on the completion of the statutory proceedings.
>
> Special charter districts do not come within the compulsory regulations of the public school authorities until they have surrendered their charters according to existing law.[116]

Summary

The case of Moore v. Board of Education of Iredell County (1937) is considered the most important common law regarding school district creation, reorganization, and abolishment. Since 1937 this case and G.S. 115C-70 through 115C-72 have been the basis of all school district organization in North Carolina.

This case contains several important principles developed by the courts and established by the legislature

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[116] Causey v. Guilford County, 135 S.E. 40 (1926).

which have long played a significant role in school district organization patterns. Since 1937 all courts have referred to this case when dealing with the issue of school district organization. The following statement gives the legislature the power to delegate the authority to divide the counties into appropriate school districts to the county boards of education:

> The Legislature has the inherent power to subdivide the territory of the state and invest the inhabitants of such subdivisions with corporate functions more or less extensive and varied in their character, for the purposes of government, subject only to the limitations imposed by the organic law.[117]

The legislature has the final decision on school district creation, alteration, and abolishment working through the State Board of Education as indicated by the following statement:

> The Legislature alone may directly or indirectly create or abolish counties, townships, school districts, road districts, and the like, as an aid in the administration of government, and may in its discretion enlarge or diminish their boundaries or increase, modify, or abrogate their powers.[118]

This authority has now been delegate to the State Board of Education with assistance from the local boards of

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[117] Ibid., 732.

[118] Ibid.

education.

In 1988 the county boards of education are the workhorses in the organization of local school districts. They plan, complete studies, hear the voice of their patrons and then seek the approval of the State Board of Education on school district organization patterns. They perform these functions in order to develop and maintain the most efficient and effective public school system as possible.

CHAPTER V

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

This study was intended to provide educators, politicians and laypersons with adequate information about the creation, reorganization and abolishment of school districts in North Carolina. There were two major purposes. One was to compare the historical and legal principles of school district organization produced by the Constitution, general statutes and case law over the years so as to assist these latter groups in making sound educational and legal decisions regarding the organization of school districts in their respective administrative units. The second purpose was to provide information that would enhance efforts to produce significant and equal educational opportunities for all the students of the state.

To accomplish these purposes data on school district organization, was collected, ordered and analyzed.

Summary

In Chapter I, the historical and present issues relative to school district organization were identified. These issues gave rise to several research questions regarding the legal responsibilities for school districts. Answers to these questions will help those individuals or

groups vested with the authority to control and direct school district organization.

In Chapter II a general review of historical literature was presented to gain an understanding of the events that helped shape school district organization in North Carolina. This review contained a historical examination of the legal policies relevant to school districts found in the state Constitution, the general statutes and the cases litigated in the past century.

Chapter III presented a chronology and an enhanced analysis of the constitutional and statutory law undergirding the creation, alteration and abolishment of school districts. The issues of responsibility and authority for such processes were also determined.

Chapter IV contains a historical narrative of selected cases on school district organization whose decisions were rendered or affirmed in the North Carolina State Supreme Court. The issues and significant aspects of each case were then set forth in layman terms.

The creation, alteration and abolishment of school districts in the state have been a never-ending process. Growing and shifting populations, growing interest in merging of school administrative units, enhanced educational requirements, and economic, social and political pressures continue to demand that educational leaders look for ways to produce more effective and efficient arrangements of school

districts for the children of the state.

This study was guided by several research questions to which school officials, politicians and laypersons can refer when called upon to make decisions relative to school district creation, alteration, and abolishment.

These questions were limited to those which focused upon the legal and historical aspects of the creation, alteration, and abolishment of the school districts in North Carolina. Answers to the questions can be found throughout the study. The effects of the Constitution and the general statutes on the establishment of the public school system are found in Chapters II and III. Case law and legal principles that affect policy are found in Chapter IV.

Each question will be stated separately and will be followed by the findings relevant to each.

How does the state Constitution relate to the power and control of school district organization?

The first state Constitution adopted in 1776 stated that schools would be established by the legislature and that all useful learning would be encouraged by the state.[1] This constitutional mandate was not consistently followed until the legislative session of 1839, when the legislature passed an act which established the structure of the common school and eventually led to the state system of public schools.

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[1] North Carolina, Constitution (1776) Sec. XLI

After the Civil War, the state Constitution was revised. The Reconstruction leadership wanted the document to contain adequate safeguards for the continued existence of the public schools. Therefore, several requirements in the Constitution provided the educational leadership with certain directions and specifications concerning schools and school districts.

The first three sections of the Constitution of 1868 formed the basis for the public school system that is still in operation today. Section 1 forever encouraged education in the state; Section 2 called for a general and uniform school system for all children throughout the state; and Section 3 affirmed the legislative intent of the first school act passed in 1839 by providing that the counties of the state were to be divided into convenient school districts so that education could be brought nearer to the people.[e]

The constitutionality of these sections were litigated in the state courts a number of times as seen in Chapter IV. In such cases as Board of Education of Alamance County v. County Commissioners (1919), Lacy v. Fidelity Bank of Durham (1922) and Julian v. Ward (1930) the courts held that the requirements of the Constitution were mandatory and imperative on each citizen and each governmental agency of

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[e] John L. Sanders, A General and Uniform System of Public Schools (Chapel Hill: Institute of Government at UNC, 1959), 2.

the state.

The latter provision placed in the Constitution of 1868, regarding school districts, remained in place until 1962 when a constitutional convention decided that it was no longer necessary and removed it. One reason for this is because the court in Gates School District Committee v. Board of Education (1952) held that the school districts that were being created by the boards of education in the various counties existed for administrative and attendance purposes only.

The only section of the present Constitution that still deals with the creation, alteration or abolishment of school districts is Art. II, sec. 28. This section prohibits the legislature from passing any local, private, or special acts that will have the effect of establishing or altering the lines of school districts. It prohibits direct action by the legislature but is not against the establishing of the mechanics for the accomplishment of such action.

What is the state's role in school district organization?

The state is represented by the General Assembly and other agencies of state government such as the county commissioners, the State Board of Education, and the county boards of education. Each of these bodies over the years has been delegated varying degrees of responsibility regarding school district organization.

General Assembly

The General Assembly is the most important agency in state government. Its actions determine the basic law under which the people of the state operate. When it deals with education the General Assembly can determine its goals and the means to reach them. Through the years the General Assembly has enacted legislation regarding school district organization on such topics as taxation, bonds, petitions, notices, elections, types of districts, responsibility and authority, special charter districts, discretion, and other procedures on which to divide or reorganize the counties into school districts for educational purposes.

Education is intrinsically a function of the state. The state legislature may establish, with or without the consent of the people, any pattern of school district organization that it deems wise for the community except where restrained by some constitutional limitation. It may form school districts from counties, townships, towns, or cities or it may ignore all existing corporate territories and establish separate school districts.

The state may choose any method for establishing school districts. It may use direct legislative enactment; it may delegate its authority to establish districts to some administrative board or official; or it may make the creation of a district contingent upon the consent of the

inhabitants which are affected.[3] All of these things the state may do without the consent of the people. The function of education is the responsibility of the state and there are no local rights except those safeguarded by the state and federal Constitutions.

The most important principle regarding school district organization is found in the following provision inherent to the state legislature:

> That the legislature alone can create, directly or indirectly, counties, townships, school districts, road districts, and like subdivisions, and invest in them, and agencies in them, with powers corporate, to effectuate the purposes of the government, whether these be local or general, or both. The agencies are to be under the control of the legislature and it may from time to time abolish, or enlarge or diminish the boundaries of any established district, or increase, modify or abrogate the powers of such agencies.[4]

At the present time the state legislature delegates its power to create, alter, or abolish school districts to a cooperative effort of the State Board of Education and each local county board of education.

Authority of the General Assembly

In working with the subordinate agencies of the state, the General Assembly may delegate its administrative but not

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[3] Lee O. Garber and Newton Edwards, The Law Relating to the Creation, Alteration and Dissolution of School Districts (Danville, Ill.: The Interstate Printers and Publishers, 1962), 3.

[4] E.L McCormac v. Commissioners of Robeson County, 90 N.C. 441 (1884).

its legislative authority. The Constitution has determined that legislative authority must be reserved and exercised only by the legislature itself. It has complete control of the state appropriations for education and the power to allot these appropriations to the counties based on certain ratios.

Until 1933 the legislature could directly create school districts, and could abolish them or alter their boundaries as public policy might dictate and in doing so could require that all subordinate agencies act within the limits of designated policies or standards. To accomplish this action the state legislature must enact laws determining the mode and prescription for creating, reorganizing, and abolishing school districts that pertain to the whole state and not to any single county or unit.

One of the most important factors to come from this research is that after the School Machinery Act of 1933 the legislature no longer had the direct authority to establish school districts in the counties of the state. It had placed this authority in the hands of the State Board of Education and in the local county boards of education.

State Board of Education

The State Board of Education derives its powers from the General Assembly's acts and statutes. The boards' duties require that it carry out the mandates of the Constitution and the General Assembly.

The State Board of Education and the local administrative units, working with the advice of the county boards of education, has the authority to create or consolidate two or more districts in order to promote the effectiveness and efficiency of an administrative unit. It may also alter or abolish districts in the same fashion.

The local board of education in reality does all the studying and planning for organizing school districts, and the State Board usually just grants its approval. The following statement represents and describes the present responsibilities of the State Board of Education regarding school districts set forth in G.S. 115C-70.

> The State Board of Education, upon the recommendation of the county board of education, shall create in any county school administrative unit a convenient number of school districts. Such district organization may be modified in the same manner in which it was created when it is deemed necessary: Provided, that when changes in district lines are made between and among school districts that they have voted upon themselves the same rate of supplemental tax, and such changes in district lines shall not have the effect of abolishing any of such districts or of abolishing any supplemental taxes that may have been voted in any of such districts... that nothing in this paragraph shall affect the rights of special tax or charter districts of having their indebtedness taken over by the county.....
>
> The General Assembly shall not enact any local private or special act or resolution establishing or changing the lines of school districts. (From Cont. Art. 2, sect. 28)... [5]

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[5] North Carolina Public School Laws (1986), Subchap.II, art. 7, sec. 115C-70.

County Commissioners

The counties came into being as administrative units of the state in order to carry out statewide policies laid down by the General Assembly, rather than as units of local self-government originating policies of their own, independent of the state.[4] Counties were created as a matter of convenience and necessity to bring the services of state government closer to the people as they spread across the state.

The county commissioners have developed through the years to become the central governing board of each county in the state. Their duties are to carry out the functions of the state and their actions carry the same power and force as that of the state. Their duties require them to control and supervise county government, to call elections when petitioned to do so by the public or the board of education, and to levy taxes for county and educational purposes. In the majority of the cases regarding school district organization, it was found that the county commissioners' duties are mostly ministerial; i.e. they follow the requirements of the statutes to the letter and they neither question nor alter petitions or requests for elections on education.

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[4] Albert Coates, Talks to Students and Teachers on the Structure and Workings of Government in the Cities, the Counties and the State of North Carolina (Chapel Hill: Creative Printers, Inc., 1971), 53.

In the early history of the state, the county commissioners were at the same time the county boards of education. In the dual role of county government and school board they were directed at times to create, alter, or abolish school districts. In 1839, the first important piece of legislation relative to school districts directed the county commissioners to divide their counties into school districts containing not more than six square miles of territory for the purpose of education. In 1868 they were directed by the legislature to divide the county into a convenient number of townships and elect township school committees and in 1876 they were again required to divide the counties into a convenient number of districts irrespective of township lines.

County Board of Education

The local board of education is a subdivision of the General Assembly established by the force of law and invested with certain powers and responsibilities. The statute definition is found in G.S. 115C-40 and it states:

> The .....County Board of Education.... and local boards of education, subject to any paramount powers vested by law in the State Board of Education or any other authorized agency shall have general control and supervision of all matters pertaining to public schools in their respective local school administrative units.[7]

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[7] North Carolina Public School Law (1986), subchap.I, art. 5, sec. 115C-40.

Boards of education were created in order to provide a group of competent laypersons to oversee the administration of the school districts and to bring the power and authority of the legislature closer to the people.

The responsibility for creating, altering, and abolishing school districts in the North Carolina county units belongs to the county boards of education subject to statutory provisions of the state and the approval of the state regulating authorities. The State Board of Education has the final vote on the approval of any such action by any board of education. School districts can be divided or merged by the boards of education.[8]

The authority of the local boards of education regarding the creation, alteration, and abolishment of school districts is basically found in two statutes, G.S. 115C-70 and G.S. 115C-47. This latter statute indicates that the school district is no longer described as an independent, self-supporting entity but rather an area used for administrative and attendance purposes only.[9]

The county administrative unit became firmly established in 1923 as the basic organizational unit of the state's school system and was strengthened with the enactment of the School Machinery Act of 1933. It now

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[8] John D. Messic, The Discretionary Powers of School Boards (Durham, N.C.: Duke University Press, 1949), 15.

[9] North Carolina Public School Law (1986), subchap. II, art. 5, sec. 115C-47.

operates under the authority of the State Board of Education. The authority to develop the structure and organization of the school districts within the counties is now under the general control of the local board of education, which has the authority to make all of the decisions affecting the creation, abolishment and reorganization of specific school districts in its unit or any needed changes they find necessary in their school districts.

In 1923 the General Assembly authorized special independent school districts within the townships of each county to consolidate under one school committee and these special districts within each county to consolidate their administrative power into one county board of education.

The General Assembly recognized the power of all county boards of education to consolidate school districts in their respective counties in 1911, specifically authorized them to consolidate in 1917, and encouraged them to consolidate in 1923. With the enactment of the School Machinery Act it then consolidated them out of the county systems in 1933 into a state system with less than two hundred county and city administrative units.[10] This act enhanced the statewide consolidation plan and insured a more uniform arrangement of school districts.

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[10] Albert Coates, 83.

What are the important historical factors of school district creation, abolishment , and reorganization in North Carolina?

Negative factors

Early scattered population. In the early part of the century North Carolina was sparsely settled. This small population scattered over a large area necessitated a large number of school districts and schools. The state was so large, in fact, that it was difficult to divide into efficient school districts containing an adequate population for the support of a school.

Lack of interest in education. The majority of the state population was more concerned with day-to-day survival than any long-range goals or plans. Education was viewed as something extraneous which could be done without.

Opposition to tax and cost of education. The acceptance of schools and school programs was difficult in the early stages of its development. The state population had an aversion to taxes. Many of the taxpayers did not understand the necessity for an education and therefore resisted paying for such services.

Philosophy of local control. Historically, the patrons of the local school districts have had a tendency to resist change, especially when administrative units have wanted to consolidate small school districts. A district with the schools close to the homes of the people and controlled locally was the most desirable educational organization.

Such a desire tended to encourage the tradition of lay control over the school districts. This jealous guarding of the small district may be interpreted as proof of the interest of the people in their schools, and as a demonstration of how they cherish the right to control the education of their children.[11] People saw consolidation as diminishing their community spirit.

Education an unnecessary expense. When the court held in Lane v. Stanley that school was not a necessary expense the public school movement was almost devastated. This ruling prevented the early school districts from taxing themselves according to their educational needs.

Civil War. During the Civil War the state common school system that Calvin Wiley and others had worked so hard to establish was virtually destroyed. The war brought the progress of education to a halt. The recovery of the public school system was slow during Reconstruction and for the remainder of the century. The task of rebuilding the schools was nearly as hard as it had been in the beginning because of factors such as poverty, inexperience, ignorance, prejudice, and the fear of racially mixed schools.

Varying tax wealth of districts. In the early decades of the twentieth century, education across North Carolina was unequal. Problems such as inadequate taxation, district

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[11] Calvin Greider, Public School Administration (New York: The Ronald Press, Co., 1954), 10.

indebtedness, and the high costs of providing the necessary facilities, teachers, materials, and supplies continued to plague the operation of school districts. Just keeping the doors open was a problem for the schools.

Depression Years. During the depression of the 1930's the school districts in the state were unable to carry on their school programs because of the financial restraints resulting from the loss of revenue. This situation became the catalyst for the development and implementation of the School Machinery Act which brought about state financial support for the school districts of the state in 1933.

Dual System of Public Schools: Segregation. In 1876 the Constitution sustained a revision (in Art. 9, sec. 2) which mandated that schools should be separate but equal.[12] This policy had both negative and positive results. It was negative because it effectually subordinated one section of the population in the education process. Through the years it failed to provide an appropriate equal education for black students. Their school facilities, equipment, and supplies were neither adequate nor appropriately governed.

The dual system was a positive factor for school district growth. The "separate but equal" section of the Constitution was most important to the expansion of the state school system. The white population was reluctant to be taxed in order to pay for educating children of families

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[12] North Carolina, Constitution (1876), art. 9, sec. 2.

that had no property and paid no taxes. Whites did not want the expense of educating the Negro children of the state. Nevertheless, the separation of the races by the Constitution cleared the way for white support of the public school system and thereby improved the progress of public school development into the twentieth century.

Hit-and-Miss Methods of Consolidation. One of the chief obstacles to progress in the formation of larger districts and consolidated schools was the hit-and-miss method of consolidation on the part of the county educational authorities. It was not until 1923 that the state worked out a County-Wide plan based on a careful study of the educational needs of the counties as a whole.[13]

Positive Factors

Urbanization, Industrialization. Several factors have influenced the need for larger school districts. Such things as the industrial revolution and the trend toward urbanization, the appearance of more convenient forms of transportation, improved roads which broke the bonds of rural isolation, and the effects of scientific agriculture which decreased the farm population have played a tremendous part in consolidation efforts around the state.[14]

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[13] E.C. Brooks, Biennial Report of the Superintendent of Public Instruction (Raleigh: Edwards and Broughton, 1921), 12.

[14] C.O. Fitzwater, School District Reorganization Policies and Procedures (Washington: Government Printing Office, 1957), 4.

Educational Leadership. Outstanding leaders helped to make North Carolina a leader in education.

Archibald D. Murphy introduced a bill into the state legislature in 1825 outlining a plan for public schools. Although his bill failed to pass in the assembly many of his early proposals later became the basis of the present system of public schools. He suggested that the counties be divided into two or more townships and that one or more primary schools should be established in each township on a suitable piece of land and that its administration be entrusted into the competent hands of a board of public education.

Calvin Wiley served as the first and only State Superintendent of Common Schools (1853 to 1866) before and during the Civil War. The strength of public education in North Carolina is, in large measure, the results of efforts put forth under Wiley's leadership. Wiley overcame many obstacles, persevered, and out of apparent chaos built the foundation of the present educational system in North Carolina.[15]

Governor Charles B. Aycock, who became known as the education governor and State Superintendent J.Y. Joyner led a campaign in 1901 to increase educational opportunities of the state and to build public support for education. Governor Aycock's educational campaign called for local

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[15] Edgar W. Knight, Public School Education in North Carolina (Boston: Houghton Mifflin Co., 1916), 163.

taxation, consolidation of small school districts, building and equipping schoolhouses to replace the meager one-room schools, longer school terms, more money for teachers, and a public relations campaign to encourage improvement of public schools.

World War I. When the young men of the state were drafted into the armed forces they were put through rigorous tests both physical and mental, with shocking results. Results of the testing indicated that the majority of the young men could not read, write, or cipher at the levels considered necessary to enjoy a productive life. Therefore, the state authorities began to increase their efforts to establish a more effective school system. They began to lobby for increased state aid, consolidation of schools, better teachers, and other elements considered necessary to fulfill the mandates of the Constitution.

State Constitution. The revised Constitution of 1868 included a section (Article 9) which contained the basis of the present educational system. Art. 9, sec. 3 contained the machinery to establish school districts by mandating that:

> 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 (now 10 months) in every year.[16]

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[16] John L. Sanders, A General and Uniform System of Public Schools (Chapel Hill: Institute of Government at UNC, 1959), 2.

This section of Art. 9 implemented the legislative intent of the first school act passed in 1839 but it was not until approximately 70 years latter that the School Machinery Act totally implemented the constitutional mandate of the full state support of education and district organization.

Legislation and State Support. In 1839 an Act to Divide the Counties into School Districts and for other Purposes was the first legislative enactment concerning school district organization. This act provided the starting point for the beginning of school districts. Section three of this act provided that superintendents were to divide their respective counties into school districts, for the purpose of establishing common schools, containing not more than six miles square.[17]

In the latter part of the 19th century state, county, and local district organizations were formed and a plan of school support, by a combination of local taxation and income from the Literary Fund was established. This plan was well suited to the conditions of the time, and proved popular and efficient.[18]

The 1923 County-Wide Plan of Consolidation said that no new school districts should be created in such a way as to

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[17] Edgar W. Knight, Public School Education in North Carolina (Boston: Houghton Mifflin Company, 1916), 141.

[18] Knight, 186.

increase the total number of school districts in a given county. School officials were urged to divide their county into subdistricts,to draw up a five-year plan for the consolidation of schools, and to hold public hearings on the plan proposed. Thereafter, consolidations were to be made at the discretion of the county boards of education.[19] As a result of this law the school districts in the majority of the counties reduced the numbers of their one- and two-teacher school districts and improved their effectiveness with larger consolidated facilities.

The 1933 School Machinery Act provided the initial stages of state support for public education. It abolished all of the school districts, special tax districts, and special charter school districts in the state and authorized the State School Commission to redistrict each county, "providing such a convenient number of school districts" as deemed necessary for the economical administration and operation of the State School System. This redistricting and consolidation reduced the number of districts in the state from approximately 4,000 to 1,449. Positive by products of this law were (1) complete state support for the basic educational program in all school districts of the state and (2) the combination of the county and the state governments into an administrative team which effected

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[19] Howard A. Dawson, Your School District (Washington: Department of Rural Education, 1948), 249.

control of the total educational system in North Carolina.

Education is a state concern. Education has long been accepted by the people as a responsibility and function of the state. This principle is now well established. In a great many cases the courts have uniformly held that education is essentially and intrinsically a state function; the maintenance of public schools is, in legal theory, a matter of state and not local concern.

Consolidation. School district organization within the state often changes to meet the specific needs of students, parents, and communities. The process of consolidation that began with the 1923 County-Wide Plan .is an ongoing process in the present administrative units of the state. School units are in a continual process of creation, alteration, and abolishment of school districts so as to create more economical and effective school organization. Shifting population, growth in some areas and decline in others, is also a causal factor in consolidation.

Integration. The full and complete merger of the dual school system in the state took effect in 1968. All of the black school districts were either abolished or consolidated with the white school districts, and the integration of schools and schools systems took place, reducing the number of school districts in the state by approximately 400. This historical event was instrumental in helping to consolidate North Carolina's public school system.

Desire to Merge Administrative Units. It is important to understand the issues concerning school districts in light of recent efforts by the General Assembly and county commissioners of North Carolina to establish one school system per county. This effort would remove many of the special charter districts and call for the total reorganization of the school districts found in each county. This is an emotional issue because it interferes with the neighborhood or community school concept that has been a part of the state for years.

What significant provisions of past and present statutes govern school district organization in North Carolina?

Most of the important statutes concerning school district organization were reproduced and discussed in Chapter III. Since 1776 the General Assembly has enacted a number of important statutes regarding school district organization, but three pieces of legislation are considered the most significant: (1) In 1839, An act to divide the counties into school districts and other purposes was the first legislative effort to bring education closer to the children of the state. It contained provisions for dividing the counties into school districts, elections and voting, a board of administration, and taxes for local support of education. These elements are still in use at the present time. (2) In 1923, the County-Wide Plan of Consolidation authorized the county to be the basic unit for the

administration of the state system of public schools and called for the consolidation of the small school districts of the state. (3) The School Machinery Act of 1933 abolished all of the existing school districts and ordered a complete reorganization of the school districts in the counties of the state. It also established the mechanics for total state support for the public school system.

The School Machinery Act was especially conspicuous in North Carolina's educational history.[80] It reduced the number of school districts in the state and established the basic structure for the school district organization still in use today. When all the special tax districts were abolished the local financial support for the public schools was replaced with funding from the state treasury. This meant that education no longer depended on the wealth of the individual communities; its administration and programs were now directed by state authorities.

This act was the first after 70 years that attempted to obey the constitutional mandate that the General Assembly was responsible for providing an equal educational opportunity for all the children of the state. This effort was the initial investment of state government into the field of education. Its effect on the public school system was meager in the early stages largely because of the

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[80] Edgar W.Knight, Public School Education in North Carolina (Boston: Houghton Mifflin Company, 1916), 284.

inability to raise adequate revenue in the face of a wide spread economic depression.[21]

Other statutes passed by the General Assembly were also important to the structure of school district and the growth of the public school system.

In 1917 the General Assembly established an educational commission to study the problems of the public schools. This commission saw a need for two important educational efforts: first, to make the county the focus for the administration of the state public school system; and second, to consolidate the many small school districts around the state.[22]

Based on the recommendations of this commission, the state legislature enacted the County-Wide Plan in 1923 under which school districts were no longer separate administrative units but rather subunits of the county. The plan also dictated that there would not be more than one school district in any township. This reorganization eventually led to the state administrative units and the state government combining to become the sole operators of the North Carolina public school system.[23]

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[21] A.M. Proctor, "The Equalization of School Support", North Carolina Education 2 (Feb. 1936): 285.

[22] North Carolina Public School Law (1883), chapt. 15, sec. 28.

[23] Clyde A. Erwin, Study of Local School Units in North Carolina (Raleigh: North Carolina Department of Public Instruction, 1937), 14.

The present General Statutes contain a number of provisions for school district organization. G.S. 115C-12 and 115C-70 describe the duties and powers of the State Board of Education. These may be summarized as the power to create or modify school districts upon the request or recommendation of the local board of education.[24] The local board of education knows its economic, political and social situation much better than the officials of state government and therefore is delegated to study, plan and implement, with the approval of the State Board of Education, the organizational mechanics for the school districts.[25]

Article 2, section 28 of the Constitution and again section 115C-70 of the state school law both prevent the General Assembly from enacting any type of legislation that would attempt to alter the lines of school districts. It indicates that the General Assembly can not enact any local, private, or special act or resolution establishing or changing the lines of school districts.[26]

This statute makes provision for the General Assembly and the State Board of Education to delegate their authority to create, alter, or abolish school districts to the local county board of education. This principle has

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[24] North Carolina Public School Law 1986 , Subchap. 2, art. 2, sec. 115C-12.

[25] North Carolina Public School Law (1986), Subchap. 3, art. 7, sec. 115C-70.

[26] Ibid.

been litigated a number of times and is stated in the following manner:

> That is within the power and is the province of the legislature to subdivide the territory of the state and invest the inhabitants of such subdivision with corporate functions, for the purpose of government.
>
> It is in the exercise of such power that the legislature alone can create, directly or indirectly, counties, townships, school districts road districts, and the like subdivisions, and invest them, and agencies in them, with powers corporate or otherwise in their nature, to effectuate the purpose of government, whether these be local or general or both.[87]

G.S. 115C-72 also contains provisions for the local board of education to consolidate school districts. An important feature is that it gives the boards full use of their judgment and discretion in making decisions concerning the matter of consolidation. If a board makes a decision to consolidate, when in its opinion it will serve the educational interests of the local school administrative unit, then its decision can not be prevented or altered by the courts.

The statute effecting the present school district organization pattern is G.S. 115C-47. This statute, outlining the general duties of the board of education, gives the board the power and duty to divide the local administrative unit into districts for administrative and

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[87] McCormac v. Commissioners of Robeson County, 90 N.C. 441 (1884).

attendance purposes.[28]

What legal principles of school district creation, abolishment, and reorganization have been established through case law?

Notwithstanding the written statute, the guidance of the State Department of Public Instruction, and the leadership of trained school administrators, it has often been necessary to call in the courts to settle disputes and to establish principles of procedure in district reorganization.

The majority of cases dealing with the schools and school district problems in North Carolina have occurred between 1900 and 1940. These cases have been concerned with conflicts and issues regarding state and local power, constitutional and statutory mandates, petitions, official discretion, hearings, notices, elections, voting, irregularities in elections and ballots, delegation of individual and group authority, consolidation and abolishment of school districts, and educational financing.

These issues have been attacked in the courts by those in opposition to the growth of education. Decisions handed down by the courts have been instrumental in shaping the educational policy of the state. Administrative planners may wish to utilize the following policy guidelines.

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[28] North Carolina Public School Law (1986), subchapter II, art. 5, sec. 115C-47.

Power of the state

The General Assembly, under the Constitution, has the primary responsibility to establish and maintain a general and uniform system of public schools in the state.

The courts have also confirmed that the state legislature has all authority to deal with school districts. It has full and exclusive power which it may exercise, by acting directly or indirectly, to create organize, establish, or lay off school districts or to divide, unite, enlarge or change their boundaries.

Constitutional and Statutory Provisions

The state Constitution is a document that has been written and revised a number of times based on the principle that all political power is vested in, and derived from, the people of the state. It is the all-empowering document that provides the basis of the public school system.

The power of the Constitution is so great that if it were ever in conflict with common law produced in the state courts or with statutes from the state legislature, the mandates of the Constitution would prevail.

The requirements of the state Constitution, that education shall be encouraged, that the General Assembly shall provide by taxation and otherwise for a general and uniform system of public schools, and that each county shall be divided into a convenient number of districts, in each of which public schools shall be maintained at least 6 months

(now 9 months) in every year, are mandatory on the agencies and individuals of the state.

The constitutional provision requiring maintenance of one or more public schools in each school district does not apply to high schools, only to the elementary or primary school.

The merger of two administrative units is not prohibitive because it does not change school district lines in violation of Article 2, section 28 of the state Constitution.

Petition

The submission of a petition, signed by a designated percentage of the qualified voters, to be used as a prerequisite to the calling of an election, or to the taking of action by an officer, board, or other subordinate agency charged with the power to organize, annex, consolidate, divide, and dissolve school districts, is an important tool in the decision making process. It can give the voters an opportunity to express their views.

Most petitions calling for school district organization procedures must be endorsed by the county board of education before any action can be taken by the board or the county commissioners.

Local boards of education may petition the county commissioners to call for an election in their respective administrative unit on any subject regarding effective

education.

Taxpayers living in a part of the county administrative unit that is contiguous to a city administrative unit, who wish to be annexed or become a part of the city unit, must petition the city unit requesting such action. In order for the election to take place it must be approved by both city and county boards of education unless the majority of the voters of the district sign the petition.

The board of education is mandated by statute to consider any petition that is placed before it. Approval of the request is not required but they must give it their attention under the laws of discretion.

Additional names added to a petition after it has been signed do not vitiate it where these names merely make its statements or request more definite, but any material change applied to the petition by additional names renders it void.

Discretion

The courts will not interfere with the exercise of discretion of designated officers or agencies in educational matters entrusted to them by statute, unless there is a clear abuse of the power and authority delegated to them. The presumption by the court is always in favor of the reasonableness and propriety of a rule or regulation duly made.[89] Only when a board of education acts upon insufficient information or acts arbitrarily, corruptly, or

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[89] Kreeger v. Drummond, 68 S.E. 2d 800 (1952)

capriciously, has it abused its powers, and then it is subject to a review by the courts.

Boards of education have the inherent power to use their discretion and good judgment in the selection of school sites, in the creation, alteration or abolishment of districts, in the construction or location of schools, and in control, supervision, and other discretionary duties.

The discretion of the board of education can not be restrained by the courts unless there has been a violation of some provision of the law or a manifest abuse of such discretion.

When discretionary powers are conferred on 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 the board to act on the premises, but cannot tell them how they must act.[30]

Public Hearing

Before a board of education can enter an order or make resolution on a specific educational issue, a public hearing must be held so that qualified voters have the opportunity to express their opinion on the issue.

All parties must make their approvals or objections known before the issue has been completed. If individuals or groups fail to make their objections known, then they may

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[30] Key v. Board of County Commissioners, 86 S.E. 1002 (1915).

not complain that the action of the board was unwise and unjust.

Notice

All issues requiring a discussion or an election require that a notice must be given to the public so as to inform them of impending actions.

Notices must be published or posted at least four weeks in advance on three different occasions and in a least three different locations. School officials are encouraged to utilize all forms of media available in the communities affected by the impending elections.

The failure of a board of education to give notice or an irregular publication of notice are considered immaterial unless the results of the election are affected. The courts have usually held that such irregularities would not invalidate elections.

The form of the notice is sufficient if all the qualified electors in the district to be affected have a sufficient understanding of the action to be taken and an opportunity to express their will.

Elections

Elections may be called to determine the will of the people on issues such as voting for or increasing supplemental taxes, enlarging city administrative units, abolishing special school taxes, voting for school bonds, and annexing or consolidating school districts.

Elections must be initiated by petitions from the voters of the affected school districts. A majority of the qualified voters must sign the petition or request for action. The petition must be presented to the board of education for their disposition. If the board of education approves the presented petition, then it will petition the county commissioners to call for an election on the issue presented. The county commissioners' position is purely ministerial; they must call for an election even though they might disagree with the proposals of the requested election. Elections are held under the supervision of the county commissioners and the board of election using appropriate proceedings. If the majority of the qualified voters approve of the issue presented then it will be initiated into law. If the majority disapprove then the election and issue will be considered void.

If school officials want to enlarge a city administrative unit they cam do so by calling for an election to determine whether a majority of the qualified voters living in any area contiguous to the city unit would be interested in becoming a part of the city administrative unit. Such an enlargement requires that the qualified voters approve of a special tax that would correspond to any special tax existing in the city unit, and that both of the boards of education affected by such action approve.

Consolidation efforts between tax and nontax school districts require that all qualified voters in the nontax school districts have the opportunity to vote on the issue of tax separately from the total consolidated districts. Their approval for a special corresponding tax is paramount to the approval to the consolidation issue.

Voting

The provisions for education found in the Constitution are considered to be mandatory and necessary expenses and do not require a vote of the people before they can be implemented.

When consolidating school districts that have different or nonexistent special taxes for schools, the voters of the separate nontax district must be allowed to vote separately on the consolidation of nontax with tax district. If taxes are approved, then the consolidation of the school districts is automatically approved.

School districts can be altered or created without popular vote. This is a discretionary right of the boards of education working indirectly with the state legislature.

Irregularities

Minor irregularities and indifference sometimes characterize the methods often used in changing school districts. These lax methods are to be noted and discouraged by those in charge of such activities. If there has been a substantial compliance with the law, however, the

courts will not let minor irregularities defeat the will of the majority of qualified voters. Slight inaccuracies in the descriptions or presentations in the notices or ballots are also considered insufficient to declare any election void.

Proceedings

The proceedings for school district organization or reorganization have been specified on numerous occasions by the courts. These proceedings consist of petitions, public hearings, public notices, resolutions by both boards of education; they are followed up by an election called by the county commissioners to ascertain the will of the people on the issue presented for approval.

Studies

When efforts are made to consolidate or change districts these efforts must be preceded by an appropriate and careful study of the conditions existing in the school districts or areas to be consolidated. The study should examine such elements as geographical conditions in the area, transportation problems, existing curricula, student characteristics, and the social, political and economic conditions that would be brought on by such consolidation efforts.

Authority and Power

The General Assembly, the State Board of Education, and the local boards of education of each administrative unit in

the state are either directly or indirectly responsible for the creation, alteration or abolishment of the school districts in the state of North Carolina. The General Assembly vested this power in itself and then delegated it to the state board with the help and convenience of each local board of education.

The General Assembly can create specific school districts within the precincts of a county, incorporate its controlling authorities, and confer on them certain governmental powers.

In 1937 the courts decided that the legislature alone may directly or indirectly create school districts. It alone may in its discretion enlarge or diminish boundaries of school districts within the limitations placed on it by Article 2, section 28 of the state Constitution.

The county has become the most important agency established to carry out the functions of state government. Counties of the state, organized primarily for local government, are recognized in the Constitution as the administrative units of the statewide public school system, and may be used by the General Assembly as agencies of the state in providing a system of public schools.

It has been held that the units of the public school system do not exercise derived powers such as are given to a municipality for local government, but express the immediate power of the state, as its agencies for performance of

mandatory duties resting upon it under the Constitution.

When particular powers are conferred and specific things are required to be done, and nothing is left to discretion, the power must be strictly observed; that is, there must be a substantial compliance with the statutory direction. If there should be a material departure from the directions of the statute, in the exercise of a power not conferred, the act done would be considered void.[31]

The county commissioners do not have powers conferred on them that allow them to perform the functions of school district creation, alteration or abolishment. Their duties are strictly ministerial in nature.

District Organization, Consolidation, and Abolishment

The legislature alone may directly or indirectly abolish school districts. It has been held that the school districts created by the local boards of education, subject to the approval of the State Board of Education, exist for administrative and attendance purposes only.

A special tax district can be enlarged or consolidated by adding a nontax district as long as the voters of the nontax district can vote on the proposed tax separately and in effect vote on the consolidation.

Notwithstanding the provisions of any law which affects the continued existence of a school district or the levy of

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[31] McCormac v. Commissioners of Robeson County, 90 N.C. 441 (1884).

taxes therein for the payment of its bonds, such school districts continue in existence with its boundaries unchanged from those established until all of its outstanding bonds, together with the interest thereon, are paid.

What policies of the State Department of Public Instruction have been instrumental in dealing with school district organization in North Carolina?

The State Department of Public Instruction provides a number of special services for the local boards of education regarding school district creation, alteration, and abolishment; this department acts independently performing surveys and studies for itself and the General Assembly.

It acts as a consulting firm by being able to provide important research data for decision making and insight into organizational methodology and gathers any information regarding school district organization requested by the school units.

The Division of School Planning, a division of the State Department of Public Instruction, is available on request from the local administrative units to perform merger studies and to present the feasibility for certain units to merge or consolidate. It also coordinates studies and planning sessions and other consulting activities on school district consolidation within the various administrative units. One of its primary functions is to

render services considered necessary, by local administrative units, for the educational organization to be able to perform in a more efficient and effective manner.

The Division of School Planning also offers data on enrollments and pupil projections for short- and long-range planning of school district specifications. These pupil projections and teacher allotments offer the boards of education the information to make good sound decisions concerning projected facility needs and district organization. This division also handles long-range planning projects for school districts that request such services. The data collected from each unit is analyzed by the division. Conclusions are drawn regarding the systems future needs and presented to the unit for their consideration.

The Department of Public Instruction provides supervision for the public school programs and its physical organization. It helps to maintain continuity throughout the state. It provides and communicates and interprets state school law regarding school district organization. It provides for the two-way flow of accurate information between the General Assembly, itself, the State Board of Education, and the local administrative units. It remains current on school legislation so as to be able to pass along and implement such legislation with the local units.

When local administrative units are involved in a serious consolidation efforts within their territory the

department is available to act the role of mediator. It provides the community the hard data that substantiate the position of the local administrative unit when making decisions about emotional events such as closing schools. It provides a meaningful way to coordinate the school and community relations so as to reduce the potential for court actions which sometimes come from consolidations or abolishment of schools and school districts.

The State Department of Public Instruction has initiated studies of its own regarding merger of the state administrative units and the consolidation of school districts. In recent years it has made forceful calls for just such action on the many small administrative units in the state. The department's policy development can be found in examples such as: (1) a 1977 study by the division of school planning calling for promoting the consolidation of the small administrative units in the state, (2) calling for the merger of administrative units in order to avoid duplication of the Basic Education Program being implemented in the school systems, and (3) the Report of the State Superintendent on Schools and School Districts in North Carolina 1986 which called for the mandatory merger of all special charter school districts with their adjoining county administrative units.

What are some possible trends for the future of school district creation,abolishment, and reorganization in North Carolina?

In the years ahead a number of changes can be expected in the school district organization. A whole new set of challenges await the leaders of tomorrow. Studies indicate that many of these challenges will deal with declining school enrollments, changes in curriculum requiring different patterns of grades, changing pupil population patterns, shifting and eroding tax bases, and optimal use of school facilities.

School district organization is an ever-changing process. A trend that has already begun and will continue is the merger of the existing city and county administrative units in the state. At present, the movement pertains to the merger and consolidation of existing administrative units in each county. Special charter or city administrative units are being abolished and merged with the joining county administrative unit.

It is possible that the merger of administrative units might even extend into the merger of some county administrative units. Organizing three or four counties into one administrative unit and making internal school districts even larger is a distinct reality.

The continuing increase in the state population will be of great concern for school officials. Population shifts may cause old schools to be closed and new ones to be built.

It is likely that school districts will continue to be abolished and reorganized because of the demands placed on the educational community by a maze of complex, political and societal factors.

Consolidation is seldom reversible, although such an occurrence is possible. Educational leaders around the state might find evidence disputing that "bigger is better." This might prompt the state to make concerted efforts to carry the state back, maybe, to the 10,000 small school districts that existed at the turn of the century. The public's desire to regain that personal touch and attention or local community pride might be factors that prompt such actions.

Conclusions

During the course of this study a number of important conclusions have been drawn regarding the creation, reorganization, and abolishment of school districts in North Carolina. These include the following:

(1) The legal elements for the creation, alteration or abolishment of school districts are found in the state Constitution, in the general statutes, and in the common law taken from court decisions.

(2) A school district is any convenient territorial division or subdivision of a county, created for the purpose of maintaining within its boundaries one or more public schools. In 1988 it is used for administrative and attendance purposes only. It has no independence of action, no individuality or personality, at least none separate and differentiated from the state of which it is an integral part.

(3) The foundation for the creation of school districts is the state Constitution of 1868. Article 9, section 3 called for the counties of the state to be divided into convenient school districts and this remained a part of the Constitution until the courts decided that school districts were to be used for administrative and attendance purposes only and considered the section outdated.

(4) The School Machinery Act of 1933 is considered the most important piece of legislation regarding school district organization. It brought organization from chaos by abolishing and redistricting each county into a more effective administrative unit. As a result of this act only rudimentary vestiges of administrative authority

were left with the districts themselves.

(5) During most of the 19th and 20th centuries the legal responsibility to create, alter or abolish school districts was with the state legislature. Hence the legislature was able to abolish them, or enlarge or diminish their boundaries, or increase, modify, or abrogate their powers.[32] However, the state legislature no longer has the direct authority to deal with the establishment of school districts.

(6) The state legislature has delegated the power to organize school districts to the State Board of Education. This authority to create, alter, divide or merge school districts has been indirectly vested in the local boards of education, but any action they take is subject to existing statutory provisions and to the approval of the State Board of Education.

(7) Local boards of education have the authority to divide their various units into attendance areas without regard to district lines. They also have the power and authority to consolidate school districts to better serve the

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[32] Smith V. Board of Robersonville, 53 S.E. 524 (1906).

educational interests of the local communities.

(8) Article 2, section 28 of the state Constitution requires that the present state legislature must maintain its distance from the decision-making process regarding school districts. The section determines that the state legislature shall not enact any local, private or special act or resolution which would provide for establishing or changing the lines of school districts.

(9) The General Assembly recognized the power of county boards of education to consolidate the school districts in their respective counties in 1911; specifically authorized them to consolidate in 1917; encouraged them to consolidate in 1923; and, finally, consolidated them in 1933 into a statewide system.[33]

(10) The counties of the state, organized primarily for local government, are recognized in the Constitution as administrative units of a statewide public school system, and may be used by the General Assembly as agencies of the state in

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[33] Coates, 139.

providing a public school system.[34]

(11) The courts will not interfere with the exercise of the discretion provided by statute to designated officials in matters pertaining to the creation, alteration or abolishment of school districts, unless there is a clear abuse of the power and authority delegated to them. Only when a board of education acts upon insufficient information or acts arbitrarily, corruptly, or capriciously, has it abused its powers and should be subject to a review by the courts.

(12) School districts can be created or altered without a popular vote of the patrons. Local boards of education may organize school districts with or without the approval of the people affected by such action.

(13) The courts have determined that school districts can not be abolished until all of their indebtedness has been removed by appropriate legal methods.

(14) The courts have held that the constitutional provisions for public schools and school districts are mandatory.

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[34] Tate v. Board of Education of McDowell County, 135 S.E. 336 (1926).

(15) School district creation, alteration or abolishment is a never-ending, complex task filled with emotion and uncertainty. Boards of education must continuously update or change their district arrangements due to population shifts and legal requirements.

(16) In 1988 politicians, school officials and laypersons are showing an interest in the subject of school district creation, alteration and abolishment. Merger of the 140 administrative units in the state is a top priority.

Recommendations

The stated purposes of this study were to compare the past and present status of school districts in North Carolina and to identify the legal principles concerning their creation, alteration, and abolishment so as to provide school administrators, boards of education, and laypersons with appropriate information regarding the history and legal aspects so that they might be able to make sound decisions regarding school district organization in their own area.

Reorganization in the form of consolidations and mergers is not a cure for problems found in the administrative units around the state, but it is a method by which boards of education may pursue the elusive educational

educational program obtainable for all people lie constitutional provisions, statutes, court decisions, and state educational policy. Effective school district organization depends on such things as basic organization procedures, solid understandable laws, the recognition and desire of people for better schools, and progressive educational leadership at all levels of the public school system.

Based on the results of this study, the following recommendations are presented for consideration: that politicians, school administrators, school board members and laypersons who contemplate any form of school district organization in the future should

(1) Become better informed and keep up to date on constitutional and statutorial issues and other legal developments regarding school district organization.

(2) Study their own educational organizational problems and prepare a system-wide plan based on accurate research data, for school district organizational patterns in the future.

(3) Study the state school laws regarding school district creation, alteration, and abolishment, and correlate them with future trends in educational organization.

(4) Determine whether the state school laws regarding school district creation, alteration and abolishment can be reorganized and written in simpler language, comprehensive enough to make the requirements clear, and arranged in a logical sequence.

(5) Take advantage of all of the available research from the Division of School Planning and other agencies that conduct research on school district organization.

(6) Interact with counterparts in adjacent counties in order to share information and solutions concerning common problems regarding school district organization.

(7) Examine successful school district organizational patterns and apply the best solutions to the continuing developmental and organizational problems.

(8) Establish a public information program to build intelligent public opinion on the school district issues, work to overcome resentment and aversion so that mergers and consolidation efforts or other alternatives for effective school district organization can take place.

(9) Conduct surveys to ascertain the will of the public relative to school district organization.

For Further Study School district organization is a complex and continuing process. In the coming years the social, economic and political characteristics of the public schools will force school administrators, boards of education and laypersons to make decisions regarding the effectiveness and efficiency of the patterns of school district organization. To that end, the following recommendations are made for further study:

(1) To determine the status of new statutes and new court decisions as the decade of the 90's approaches.

(2) To examine the results of the "bigger is better" principle to determine whether increased consolidation is the answer to productive effectiveness.

(3) To determine whether there are alternatives to the standard consolidations or mergers of school districts that might offer a more positive base on which to expand educational opportunities and enhance cost effectiveness.

(4) To examine the feasibility and potential results of merging two or three county administrative units.

(5) To determine the advantages and disadvantages of merging the administrative units within each of the eight regional educational districts.

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