1958

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Alfred John Dolwig

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SUPREME COURT DECISIONS AFFECTING SCHOOL LAW
IN NORTH DAKOTA

by

ALFRED J. DOLWIG

B. A. University of Southern California, 1935

Presented in partial fulfillment
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Approved by:

Chairman, Board of Examiners

Dean, Graduate School

MAY 2 7 1958

Date
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CHAPTER 1

INTRODUCTION

Statement of problem. The purpose of this study was to present under one cover briefs of the Supreme Court decisions affecting school law in the State of North Dakota, and to point out the principles and trends underlying these decisions.

Importance of study. As a result of this study, school administrators, teachers, school boards, and other interested persons may become acquainted with litigation pursuant to the organization, administration, and conduct of schools and school districts in this state.

By statements of general and specific principles, and quotations from illustrative statutes and court decisions, this presentation may also be used as source material in a North Dakota school law and school history course.

Limitations of the study. Because they set the precedents which form one of the foundations of school law, only cases that were appealed to North Dakota Supreme Court were considered. These cases include litigation arising from territorial years, 1879, through 1953.

Method of presentation and sources. The cases are briefed in the language of the law court; but where legal
terms might have confused the layman, their employment has been circumvented; wherever possible, by translating them into common terminology. Also the cases were abstracted with appropriate citations directing the reader to further investigation of the entire case. The citation consists of the names of the litigants, the volume and page number of the source, and the date of the Supreme Court's decision. Following the citation are the essential facts of the case, then the rule of law or holding and opinion of the court.

In every case, the authority of the court was recognized as the final adjudicator. The abstract from each case was prepared without any interpolation or personal views to alter or change the facts and the rule established by the law court.

It is not possible, nor is it expedient, in a project of this kind, wherein abstracts are presented, to set forth all the facts peculiar to each of the reported cases; but the core fact or facts that led to the action at law are stated. Some of the abstracts are considerably long, while others are markedly brief. The length of abstracts depended upon a variety of factors: volume of facts and evidence, narrowness or breadth of application to school law, significance of action, and number of rules and/or holdings in each litigation.

The cases comprising this thesis appear in the North
**Dakota Reports** and the **Northwestern Reporter** (see bibliography). Each of these sources is cited by volume and page number after the name-identification of the appropriate case.

**North Dakota Reports** contains the cases tried before the Supreme Court of North Dakota; the **Northwestern Reporter** contains all cases tried before Supreme Courts in seven states, North Dakota included.

The **Northwestern Reporter** series employs the **Key** system reporting device originated by the West Publishing Company. The system facilitates reference to similar cases in other states because the identical **Key** number, pointing to specific topical headings in all points of law, is used by regional reporters throughout the United States. For example, **Key 13**, under the general topic of Schools and School Districts, treats of separate schools for colored pupils. No actions relative to this problem have been taken into North Dakota courts, but cases in point may be discovered in other states under the **Key 13** number.

Because of the universality of the **Key** system of reporting cases at law, that method of organization and reference was used in this thesis. State reports are not based upon the **Key** system, but all regional reporters are; however, the cases in both series reporters, state and regional, are presented with only minor changes in editing; no revisions are made in the facts and rules involved.
In order to be consistent with the broad organization of this thesis, the key system is employed at the outset to formulate the Table of Contents. General headings are followed by key topics, which in turn have the pertinent cases listed under them.

The cases are presented under a system of cross-referencing which, where more than one ruling prevails in a given case, recites the case in another appropriate key area, with a statement of the rule pertaining to that particular key topic. This procedure creates the following advantages: (1) It facilitates content research, (2) it places the rules, laws, and holdings into their appropriate school law areas, and (3) it eliminates unwieldiness and confusion in the employment of the thesis.

The thesis is divided into eleven chapters.

Chapter I. Introduction.

Chapter II. Private Schools and Academies.

Chapter III. Establishment, School Lands, Funds, and Regulations in General.

Chapter IV. Creation, Alteration, Existence, and Dissolution of Districts.

Chapter V. Government, Officers, and District Meetings.

Chapter VI. District Property, Contracts and Liabilities.
Chapter VII. District Debts; Securities and Taxation.

Chapter VIII. Claims Against Districts, and Actions.

Chapter IX. Teachers.

Chapter X. Pupils and Conduct and Discipline of Schools.

Chapter XI. Summary and Conclusions.

Bibliography.

The phrase, "No cases in North Dakota," which appears at times in the table of contents and within the body of the thesis, means that no cases within a given area of school litigation have been reviewed by the North Dakota Supreme Court.
CHAPTER II

PRIVATE SCHOOLS AND ACADEMIES

Key 1. Establishment and status in general.

No cases in North Dakota.

Key 2. Incorporation and organization.

(a) Gerhardt v. Heid. (1936) 267 N. W. 127 (66 N. D. 444)

This is an action by the plaintiffs, as electors and taxpayers of a school district, against the directors and other officers of the school district, and four teachers in the schools in the district.

FACTS: During the term opening in September, 1935, six teachers were employed in the Gladstone consolidated school (Stark County); four of these teachers were nuns, members of the Sisterhood of St. Benedict. There was no claim and no evidence that any religious instruction or religious exercises were conducted.

The evidence is to the effect that the four teachers in question wore the habit of the Sisterhood and that they turned part of their earnings over to the Sisterhood of St. Benedict.

The object of this action was to restrain the teachers from wearing what is denominated "a religious garb or dress" while engaged in teaching a public school.
QUESTION: Whether the fact that the teachers contribute to the Sisterhood a large part of their earnings and wear their particular garb during school hours constitutes a violation of the Constitution and laws of North Dakota and infringes the rights of the plaintiffs so as to entitle them to injunctive relief.

HOLDING: The laws of the state do not prescribe the fashion of dress of the teachers in our schools.

The fact that the teachers contributed a share of their earnings to the religious order of which they are members is not violative of the Constitution. A person in the employ of the state or any of its subdivisions is not inhibited from contributing money, which he or she has earned by service so performed, for the support of some religious body of which he or she is a member. To deny the right to make such contribution constitutes a denial of that right of religious liberty which the Constitution guarantees.

DECISION: Judgment for the defendants.

Public school held not made "sectarian school" merely because teachers wear habit of religious order while engaged in teaching and contribute portion of their earnings to Sisterhood or order.

Key 3-7. No cases in North Dakota.

Key 8. Pupils, tuition, and discipline.

(a) Rule v. Connealy. (1931) 237 N. W. 197
(61 N. D. 57)

(This case is not pertinent to a study of schools and school districts, having to do primarily with principles pertaining to notes, contracts, performance, involved in a privately solicited correspondence course.)
CHAPTER III

ESTABLISHMENT, SCHOOL LANDS AND FUNDS,
AND REGULATIONS IN GENERAL

Key 9. Power to establish and maintain in general.
No cases in North Dakota.

Key 10. Constitutional and statutory provisions.
(a) State ex rel Sathre v. Board of University and School Lands of North Dakota. (1935) 262 N. W. 60 (65 N. D. 687)

Action by the State, on the relation of P. O. Sathre, Attorney General, against the Board of University and School Lands of North Dakota, and another, to enjoin defendants from exercising certain authority conferred on the board by Senate Bill No. 26, Laws 1935. From an order sustaining a general demurrer to the complaint, plaintiff appeals. Order confirmed.

FACTS: It was alleged in the complaint that applications were presented to the Board of University and School Lands asking it to reduce and scale down accrued and delinquent interest on certain real estate mortgages, and that said board was about to and would "accept from debtors of mortgages securing the payments of investments of permanent school funds in this state less than the interest in full accrued thereon."
QUESTION: Bill No. 26, Laws 1935 (chapter 255) is entitled: "An act to provide for the scaling down and discounting of past due interest on loans made by the Board of University and School Lands."

The sole question is concerned only with whether the Board of University and School Lands in any case may exercise the power which said Senate Bill No. 26 purports to confer upon said board. Is Senate Bill No. 26 constitutional?

RULE: The members of the court agreed that the decision falls within and is controlled by section 89 of the State Constitution, as amended, which provides "that in no case shall any legislative enactment or law of the State of North Dakota be declared unconstitutional unless at least four of the judges (of the Supreme Court) shall so decide"; and that, consequently, it is the duty of this court to hold that the statute does not contravene any of the provisions of the State Constitution invoked by the plaintiff.

DECISION: Court of judges holds that Senate Bill No. 26, Laws 1935, is not vulnerable to any of the attacks made against it in this action; and that consequently the trial court was correct in sustaining the demurrer. The order appealed from is affirmed.

Key 11. School system, and establishment or discontinuance of schools and local educational institutions in general.
(a) **State v. Valley City Special School District** (1919) 173 N. W. 750, 42 N. D. 464.

Action brought by the State of North Dakota against what is termed the Valley City special school district, to recover $2,794, with interest, and the cost of this action.

**FACTS:** There is located at Valley City a State Normal School, known as the Valley City Normal School; in connection therewith and as a part thereof is operated a model high, grade, and elementary school, wherein instruction is given to the pupils who attend by the faculty and student body of the State Normal School. The State Normal School is located in the Valley City special school district of Valley City. The pupils who attend the model school reside within the Valley City special school district.

The state seeks to recover the amount mentioned in the complaint for the attendance of the number of pupils for the time stated as set forth in the complaint.

The defendant claims that the Normal Schools of the state are not part of the public school system.

**QUESTION:** Was it within the power of the legislature to impose on the Valley City special school district a reasonable charge for the instruction and educational facilities afforded such pupils by the Normal School through its model high school? Is the Normal School a part of the free public school system of North Dakota?
RULE: Chapter 142 of the Session Laws of 1915 reads thus: "That all students attending any model high, graded, or elementary school which is operated, maintained or in any other manner connected with the State University, any Normal School, or any other publicly maintained educational institution of higher learning in this state in which model high, graded, or elementary school, members of the faculty or student body of such University, Normal School, or institution of higher learning, teach, there shall be paid by the school district in which said pupils reside to said institution as tuition for such attendance (amount per month stated)."

That the Normal School is part of the free public school system of North Dakota is set forth in section 148 of the State Constitution.

DECISION: Plaintiff's complaint states good cause of action.

(b) Batty v. Board of Education of City of Williston. (1936) 269 N. W. 49 (67 N. D. 6)

From an order sustaining a demurrer to the defendant's answer, the defendants appeal. Action for an injunction by J. H. Batty.

FACTS: The board of education of the city of Williston is a special school district...which in 1931 adopted a resolution providing that...all high school students who are residents of Williston Special School District No. 1 will be
required to pay $7.50 for each half unit of credit, after four full years of attendance of high school...(There are exceptions stated which are not material and pertinent in the instant case and therefore need not be stated.)

Plaintiff's son attended high school for a period of four full years, but did not complete the course of study requirements for graduation. Defendants in their answer allege that this failure was because of idleness and indolence on his part. Thereafter he sought to continue as a student in the high school, but the defendants, enforcing the regulation above set forth, refused him permission to do so unless and until the tuition charge should be paid. Thereupon the plaintiff began the action.

The defendants on this appeal insist that the regulation is in the interest of discipline, and that the board was clothed with the authority to make and enforce the regulation in question pursuant to section 1251, Comp. Laws 1913, which provides, among other things, that:

"Each board of education shall have the power and it shall be its duty: ....."

"11. To adopt, alter and repeal, whenever it may deem expedient, rules and regulations for the reception, organization, grading, government and instruction of pupils, their expulsion, suspension or transfer from one school to another..."
RULE: The public schools...shall be at all times equally free, open and accessible to pupils of school age residing within the district.

DECISION: Affirmed for plaintiff.

Key 12-13-14. No cases in North Dakota.

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

(a) State ex rel Board of University and School Lands v. McMillan. (1903) 96 N. W. 310 (12 N. D. 280)

This action evolved an extensively written opinion which may be briefed as follows: Under the authority of Chapter 49, P. 54, Laws 1903, bonds on the amount of $60,000 were issued, and the same were purchased by the board of university and school lands as an investment for the permanent fund belonging to the common schools.

RULE: It was held, on an application to compel the State Treasurer to pay a warrant for the purchase of said bonds, that they are void because of the invalidity of the act authorizing their issuance, and for the further reason that they are not certified to be within the debt limit, as required by section 187 of the Constitution, and that the State Treasurer, in refusing to pay said warrant, acted in accord with his legal duty as the custodian of the trust fund.
Key 16. School funds.

No cases listed for North Dakota.

Key 17. Creation and sources.

(a) State v. Stockwell.

For brief, see post Key 47, Case (a).

Further ruling in the case pertinent to this Key section:

Under Session Laws 1901, c. 85 (Rev. Codes 1905, sections 869-876), fund for clerical assistance to Superintendent of Public Instruction in reading teachers' answer papers, held a public fund, for the unexpended balance of which the superintendent is accountable to the state.

Key 18. Investment and administration.

(a) State v. McMillan.

For brief, and ruling, see ante Key 15, Case (a).

(b) State ex rel. Board of University and School Lands v. Hanson. (1934) 256 N. W. 201 (65 N. D. 1)

The ruling in this case, not the facts, is important:

RULE: The State Board of University and School Lands is authorized to invest permanent school fund of the state in first mortgages on farm lands in the state.

(c) State v. Divide County. (1939) 283 N. W. 184 (68 N. D. 708)

The ruling in this case, not the facts, is important.
RULE: A real estate mortgage executed to the state to secure loan made from the permanent fund conveys no title to land. It constitutes a mere pledge of land as security for the debt, and does not differ in nature from an ordinary real estate mortgage. (Laws 1893, c. 118, section 3; Comp. Laws 1913, section 288, as amended by Laws 1931, c. 234; Const. section 156.)

(d) Moses v. Baker. (1941) 299 N. W. 315 (71 N. D. 140)

The rule, not the facts, needs be considered here.

RULE: (Comp. Laws 1913, section 284; Const. section 156.) The Board of University and School Lands is vested with discretion in the performance of directing the investment of the moneys of the permanent school fund.

The board was entitled to invest a portion of the money in the permanent school fund in buying United States government bonds at a price greater than par, since the board may purchase securities for investment at a premium, if, in the exercise of its discretion, it is deemed proper to do so.

Key 19. Apportionment and disposition.

No cases in North Dakota.

Key 20. Regulation and supervision of schools and educational institutions in general.

(a) Todd v. Board of Education of City of Williston. (1926) 209 N. W. 369 (54 N. D. 235)
This is an appeal from judgment of the district court of Williams County denying injunctional relief against the defendant board of education of Williston.

FACTS: Plaintiff, who resided outside the limits of the Williston school district, refused to pay required tuition in addition to the statutory tuition charges (Ch. 107, S. L. 1921) in cases involving non-resident students. Plaintiff's two boys attended the Williston High School, but because father refused to pay required additional tuition, they were permitted to participate in school classes and some activities but were not officially enrolled. School required additional tuition charges because statutory tuition alone did not meet per pupil expenses. The district had no accommodations for outside students until a plan was adopted under which non-resident pupils attending the high school paid an additional tuition with which the Williston school district was able to expand facilities.

QUESTION: Whether or not the Board of Education of the Williston city was exercising discrimination in excluding the children of the plaintiff from the high school.

RULE: Non-resident students, pupils from districts not affording high school facilities must be admitted into high school when facilities for seating and instruction shall warrant...statutory provision as to the amount which may be charged non-resident pupil admitted into high school.
applies only where school already has facilities....where facilities for seating and instruction do not warrant ad-
mission of non-resident pupils, but provides for, and re-
ceives them as a favor, it may impose tuition charge suffi-
cient to meet additional expenses thereby entailed.

DECISION: It was held that there was no discrimina-
tion on the part of the defendants in excluding the children
of the plaintiff from the Williston High School. Original
judgment affirmed.

(b) Gerhardt v. Held. 267 N. W. 127
(66 N. D. 1114) (See Key 2)
CHAPTER IV

CREATION, ALTERATION, EXISTENCE, AND DISSOLUTION OF DISTRICTS

No cases in North Dakota.

Key 22. Constitutional and statutory provisions.
(a) School District No. 94 v. King, et al. (1910) 127 N. W. 515 (20 N. D. 614)
The judgment in this case was for the defendants, and plaintiff appealed.

FACTS: Alleged that the defendants as board of education made an order attaching to the village of Tower City for school purposes sections 4, 5, 6, 7, 8, and 9, township 140, range 55; that the order was based upon a petition which was fraudulently presented to the board, and that the order was void for the reason that the petition was not signed by a majority of the voters of the territory to be attached to the village for school purposes; that the annexed territory is more than three miles from the central school, and, therefore, requires a two-thirds vote of the school voters.

RULE: Section 949, Rev. Codes 1905, states: When any city, town, or village has been organized for school purposes, and provided with a board of education under any general law, or a special act, or under the provisions of
this article, territory outside the limits thereof but ad-
jacent thereto may be attached to said city, town or village
for school purposes, upon application in writing signed by a
majority of the voters of said adjacent territory; provided
that no territory shall be annexed which is at a greater
distance than three miles from the central school except
upon petition signed by two-thirds of the school voters re-
siding in the territory which is a greater distance than the
three miles from the central school....

**DECISION:** Judgment was affirmed for the defendants.
The record showed that every requirement of the law was
strictly complied with. The allegation of the complaint
that the petition was "falsely and fraudulently" presented
to the board of education was not followed by any proof to
substantiate that general allegation.

Laws enacted for the consolidation or division of
school districts are valid as resting solely on legislative
discretion or policy, unless they are contrary to some con-
stitutional provision.

(b) **Rosten v. Board of Education of Village of Wild Rose.** (1919) 173 N. W. 461 (43 N. D. 46)

This is an injunctonal action to restrain the de-
fendant school board from exercising jurisdiction or author-
ity over certain territory which the defendant sought to
annex to the Wild Rose special school district. Judgment
for defendants, and plaintiffs appeal.

**FACTS:** The board of education gave notice of the time and place of hearing a petition signed by a majority of the voters of the territory to be annexed. Between the time of filing the petition and the date of the hearing sufficient numbers of the signers of the petition had withdrawn, in writing, their names from the petition and filed such withdrawals with the clerk of the school district prior to the time of the hearing, so that the number of the names remaining on the petition in favor of it, if the withdrawal of the names was legal, would leave the petition with less than a majority of the qualified voters of the territory sought to be annexed.

**RULE:** Comp. Laws 1913, Ch. 1240 (Sess. Laws 1911, c. 266 section 133), is an amendment of Rev. Codes, Section 949, in respect to declaring of 14 days' notice of hearing before board of education can make an order annexing territory after five days from hearing on petition.

**DECISION:** Held, that such petitioners had the right to withdraw their names from the petition at any time before the board of education legally made an order annexing the territory (Section 1240, Comp. Laws 1913).

(c) **Loucks v. Phelps, County Superintendent of Schools, et al.** (1922)

This action is from a judgment in favor of the
relator (Loucks), the respondents appealed. The action arose out of an attempt to change the boundaries of an existing common school district by annexing thereto territory lying in adjacent school districts.

**RULE:** Chapter 197, Laws 1919, does not authorize the creation of a new common school district from an entire existing common school district and portions of adjacent common school districts. In other words, the statute may not be used for the purpose of annexing territory to an existing common school district.

**DECISION:** Judgment affirmed.

(d) *Jones et al v. Brightwood Independent School District No. 1 et al.* (1933) 247 N. W. 884 (63 N. D. 275)

In action plaintiffs appealed from a judgment for defendants.

Certain warrants were issued for fuel purchased for school use. Plaintiffs sought to enjoin the defendants from levying taxes to pay those and other warrants and bonds issued by Brightwood School District on the grounds that increased levies then went beyond limits authorized by law.

**RULE:** Warrants issued in anticipation of tax levies already made do not augment existing "indebtedness" of school district within meaning of the Constitution limiting school district indebtedness (Const. Section 83, as amended in 1920).
Presumption: That the acts of school officers, done in the performance of their duty, are legal, and bonds and warrants authorized by them are valid, the burden of proof is upon him who asserts to the contrary.

DECISION: Judgment affirmed for defendants.

Key 23. Creation and organization.

No cases in North Dakota.

Key 24 (1). In general.

No cases in North Dakota.

Key 24 (2). Attacking legality of organization.

(a) Weiderholt v. Lisbon Special School District No. 19. (1918) 169 N. W. 809 (41 N.D. 146)

FACTS: This action was brought to enjoin the defendants from asserting any jurisdiction over certain territory that had been annexed to the defendant school district, or from levying upon or carrying forward upon the books of defendant school district any taxes for the benefit of the district or certifying the same to the county auditor. Judgment was also asked against the school district for an amount paid in taxes during the year preceding the bringing of the action. Plaintiffs contend that the annexation proceedings were void for the reasons, chiefly: (a) that the application therefor was not signed by the requisite number of qualified petitioners; (b) that the application was signed by some who were not residents or voters of the
territory sought to be annexed; (c) that proper notice of the hearing of the application was not given; (d) that, after the application was signed by all the petitioners except two, it was altered by one of the individual defendants, a member of the defendant school board, by the addition of descriptions embracing additional territory....

RULE: A complaint which alleges nonexistence of facts required to give the school board authority to enlarge the district states a cause of action.

DECISION: Judgment reversed in favor of plaintiffs.

(b) Billings School District v. Loma Special School Dist. (1928) 219 N. W. 336 (56 N. D. 751)

FACTS: The controversy involved in this appeal by plaintiffs and intervener (Storlie School District) grew out of the organization of Loma Special School District in Cavalier County. Certain territory within the boundaries of the plaintiff Billings School District was included within the boundaries of the Loma district, and the Billings district institutes this action to enjoin the defendant school district and all connected officials from levying or assessing taxes or exercising any control over, or carrying on any functions whatsoever in said territory, or in any manner treating the same as a part of the defendant Loma Special School District. There was also included in the Loma
district certain territory formerly within Storlie School District, and the latter asked for and was given leave to intervene in the action.

RULE: (1) In school district's suit to enjoin levy­ing or assessing taxes in territory detached to form special school district, attack on incorporation of village organized as special school district is collateral and not avail­able to plaintiff (Comp. Laws 1913, section 1243).

(2) The legality of proceedings of a school board in re­forming a district by adding territory thereto, which could have been tested at the common law, may be tested in this state by a civil action in the district court under section 7969 of the Compiled Laws of 1913.

DECISION: Judgment affirmed for defendants.

Key 25. Independent and other districts in incor­porated cities, towns, and villages.

(a) Billings School District v. Loma Special School Dist.

For brief, see case immediately preceding.

Further ruling in the case, pertinent to this Key section, as follows:

Incorporated village constituting part of three com­mon school districts may be organized as special school district (Comp. Laws 1913, section 1243).

Key 26. Rural independent districts and other
special organizations.

No cases in North Dakota.

**Key 27.** Proceedings for organization.

No cases in North Dakota.

**Key 28.** De facto districts.

*State v. Ferguson.* (1912) 134 N. W. 872 (23 N. D. 153)

Case not pertinent. Application narrow.

**Key 29.** Unorganized territory.

No cases in North Dakota.

**Key 30.** Territorial extent and boundaries.

(a) *Weeks v. Hetland et al.* (1925) (City of Fargo et al Interveners) 202 N. W. 807 (52 N. D. 351)

In this action the plaintiffs sought to restrain the defendants, purporting to act as officers of school district No. 96 of Cass County, from entering and carrying out certain contracts and generally from functioning as officers of that district.

**FACTS:** Under the provisions of the legislative act creating the Fargo school district, providing that the title to all property of the Fargo school district shall be in the city of Fargo for the use and benefit of such district, and vesting in the board of education thereof authority to administer the affairs of the district and control over the property and funds of such district, it is held that both
the city of Fargo and the board of education have sufficient
interest in a legal controversy begun as a taxpayer's suit
and involving funds to which the district makes a claim, to
warrant intervention as parties therein.

RULE: School district composed of incorporated city
alone is considered enlarged to include contiguous territory
annexed to the city.

DECISION: Judgment affirmed for plaintiffs.

Key 31. Alteration and creation of new districts.
Constitutional and statutory provisions, see ante
Key 22.

Key 32. Change of boundaries.

(a) School District No. 94 v. Thompson.
(1914) 146 N. W. 727 (27 N. D. 459)

FACTS: Plaintiff seeks to enjoin defendants, as
officers of a special school district, from annexing cer­
tain adjacent territory to such district for school purposes,
under section 133, c. 266, Laws 1911, alleging as grounds
for such relief that the school district had unlawfully in­
curred an indebtedness exceeding the constitutional debt
limit; also that the petition for such annexation was not
signed by qualified school voters in such adjacent territory.

RULE: That a special school district had unlawfully
incurred a debt exceeding the constitutional limit held
immaterial and not ground for enjoining the officers of a

special school district from annexing certain adjacent territory under Laws 1911, c. 266, section 133.

**DECISION:** Plaintiff's petition denied.

(b) **Weiderholt v. Lisbon Special School Dist. No. 19.**

For brief see ante Key 24 (2), Case (a).

Further ruling in this case, pertinent to this Key section, as follows:

Where a school board entered an order of annexation under Comp. Laws 1913, section 1240, all parties acquiescing for nine months, and thereafter a signer of the petition and another sued to set aside the order and recover taxes paid, and asserted that plaintiffs, without sufficient excuse, delayed the prosecution so that a demurrer was not disposed of for more than a year and a half, and a trial was not had for more than three years, and in the meantime the assets and liabilities between the school districts had been settled, plaintiffs held to have been guilty of such laches as to preclude them from asserting the invalidity of the annexation proceedings.

(c) **Loucks v. Phelps.**

For brief, see ante Key 22, Case (a).

Further ruling in this case, pertinent to this Key section, as follows:

In view of Laws 1917, c. 213, amending Comp. Laws
1913, section 1146, held that Laws 1919, c. 197, does not authorize the creation of a new common school district from an entire existing common school district and portions of adjacent common school districts.

Key 33. Consolidation, and union districts.
Proceedings for consolidation, see post Key 37.
Review of proceedings, see post Key 39.

Key 34. Division.

(a) Plummer et al v. Borsheim, County Superintendent. (1899) 80 N. W. 690 (8 N. D. 565)

FACTS: In this action the residents outside in the township outside the city of Hillsboro, population more than 800, undertook to organize a separate school township. A petition was presented to the county superintendent of schools, and he was about to call an election, when this action was brought, setting forth the facts, and claiming that the procedure was unconstitutional, and praying that the defendant, county superintendent, be perpetually enjoined from calling such election.

RULE: The word "city," as used in Laws 1899, c. 143, section 1, providing that in any school township containing a city of 800 inhabitants or more, and which is not organized as an independent school district, the residents in said school township outside the city limits may separate themselves from the city, and organize a distinct school
towanship, does not include incorporated towns or villages. (Hillsboro was not organized as an independent school district.)

**DECISION:** Judgment reversed in favor of plaintiffs.

(b) *Tailmadge v. Walker.* (1916) 159 N. W. 71 (34 N. D. 590)

**FACTS:** This is an action to inquire into the validity of certain proceedings whereby an alleged new school district was organized out of a portion of an old district, and to inquire into the right of certain of the defendants to exercise the rights, duties, etc., pertaining to such offices. The holding in this case is important.

**RULE:** Under Comp. Laws 1913, section 1147, authorizing the organization of new school districts, a special board composed of the board of county commissioners and county superintendent may organize new school districts from a portion of an old one or more.

**Key 35.** Change of organization to or from independent district.

(a) *State ex rel. Laird v. Gang.* (1901) 87 N. W. 5 (10 N. D. 331)

**FACTS:** The record of facts presents a great mass of objections, exceptions, and so-called "assignments of error." Briefly, the plaintiffs took this action to compel the defendant, county superintendent of schools, to call an
election in Greenfield township for the purpose of electing school officers on the premiss that the township was a civil township, although it had never been allegedly legally organized into a civil township, nor had it become a distinct school corporation. Further, Greenfield civil township had never been segregated from the school township which was known as "New City Township."

RULE: Upon the organization into a civil township of a portion of the territory comprising a school township corporation, held construing sections 658, 659, Rev. Codes, that such a civil township continues for school purposes as a part of such school township corporation until segregated therefrom by the commissioners and county superintendent of schools, upon petition of voters.

DECISION: Reversed in favor of defendant.

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

(a) Bloomington School District No. 17 v. Larson. (1926) 207 N. W. 650 (53 N. D. 594)

FACTS: In this action a petition for the organization of a proposed school district came on to be heard before the board of county commissioners and the county superintendent of schools, pursuant to notice duly given, on July 15, 1925. A number of persons residing within the Bloomfield and St. Anna school districts filed protests against the granting of the petition. Portions of those districts
were to have been included in the organization of a common school district from portions of three then existing common school districts. After a full hearing, an order was entered granting the petition for the organization of the new proposed district. This action was then brought by the plaintiffs.

**RULE:** Power of commissioners and superintendent to organize new school district from another, or from portions of one already organized on petition of voters in proposed district is to be exercised conformably and is subject only to act 1917, relating to changing common school district boundaries (Laws 1919, c. 197; Comp. Laws 1913, section 1148; Laws 1917, c. 213).

**Key 37.** Proceedings in general.

No cases in North Dakota.

**Key 37 (2).** Meetings and mode of action in general.

(a) *McDonald v. Hanson.* (1917) 164 N. W. 8 (37 N. D. 324)

**FACTS:** Plaintiffs brought this action to restrain defendants from organizing a new school district out of a certain township. Plaintiffs are residents and taxpayers of the original school district Caledonia, which embraced the civil township of Hershberg. The petition for the organization of the new school district was filed with the county superintendent on May 6, 1916, was in legal form,
and contained more than three-fourths of all the legal school voters then residing in the territory which the petitioners wished to have created into a new school district. Notice of the hearing of such petition was given by the county superintendent; and the notice stated that a hearing would be held in the courthouse on Wednesday, July 19, A.D. 1916, at 2 o'clock p.m. The plaintiffs contend that there was no legal notice of said hearing published, and that the July meeting of the board of county commissioners was on the third day of July. Additional contentions are pertinent to the holding in the case.

**RULE:** Chapter 135 of the Session Laws of 1915 held to provide two methods of organizing new common school districts:

(a) The first method is by presenting to the board of county commissioners and county superintendent a petition containing proper and legal requirements as to assessed valuation and extent of the territory to be contained in the new district to be organized, signed by a majority of the school voters in the districts whose boundaries will be affected by the organization of the new school district, and by at least three-fourths of the residents of the territory to be included in the new school district. Such petition must be heard upon 30 days' notice, as provided by section 1148, Comp. Laws 1913, and only at the July meeting of the
board of county commissioners, as provided by section 1147, Comp. Laws 1913.

(b) The second method of organizing a new common school district is by petition signed by three-fourths of the school voters residing in the territory to be organized into the new school district, such petition to comply with the requirements of law as to assessed valuation and extent of territory in both the old and the new districts. The notice required by section 1148 of the Compiled Laws of 1913 shall also be given, but such petition may be acted upon at the July meeting or any other meeting of the board of county commissioners conjointly with the county superintendent of schools.

In this case, the court ruled that Comp. Laws 1913, section 1147, as to time of hearing on petition for organization of new school districts, applies only to the first method of organization prescribed by Laws 1915, c. 135.

DECISION: Judgment was affirmed for defendants.

(b) Anderson v. Peterson. (1952) 54 N. W. 2d 542 (78 N. D. 541)

FACTS: This is a suit brought by the plaintiffs as property owners, electors, school patrons, and taxpayers of a certain school district. They allege many irregularities in the reorganization of another school district, particularly the inclusion of their own district. They also
contend that the "Act to provide for the reorganization of school districts," Chapter 15-53, 1949 Supplement, NDRC 1943 is unconstitutional, and to have declared null and void proceedings leading up to school district reorganization. The record of facts presents a great mass of objections, exceptions, and so-called "assignments of error."

**RULE:** (1) Provision of school district reorganization act that each county committee shall conduct such public hearings and hold such public meetings at such specified places throughout county as it may deem necessary to explain and acquaint people with provisions of act, manifests intent that only such hearings or meetings shall be held as the committee deems necessary to furnish to people with information regarding the law, and word "shall" must be construed as permissive when considered with balance of provision. (NDRC 1949, Supp. 15-5310)

(2) In suit by school patrons to have school district reorganization proceedings declared null and void, wherein it was contended that county committee had abused its discretion in failing to call meetings in manner provided by statute for purpose of acquainting people with provisions of reorganization act, record established that meetings which were held were sufficient to acquaint people with act and that committee was justified in proceeding to call meeting for hearing on proposal for reorganization without
holding further hearings for purpose of discussion of law. 
(NDRC 1949, Supp. 15-5301, 15-5310, 15-5313)

(3) County committee on school district's reorgani-
zation which attempted to ascertain wishes of patrons of re-
spective districts by appointment of committee for each dis-
trict to ascertain sentiment, and by holding of meeting to 
enable members of districts to decide whether they wished to 
be part of new district, did not act arbitrarily, discrimina-
torily, or in violation of the law when particular school 
district was included after failure of any of patrons from 
such district to register vote against participation.

**DECISION:** Judgment reversed in favor of defendants. 

**Key 37 (3). Petition or consent.**

(a) School District No. 91 v. Thompson.

For brief, see ante Key 32, Case (a).

Further ruling in the case, pertinent to this Key 
section, as follows:

(1) A petition for the annexation of territory ad-
jacent to a special school district, under Laws 1911, c. 266, 
section 133, need not set forth all the facts the existence 
of which are essential to authorize annexation.

(2) That petitioners for annexation of territory ad-
jacent to a special school district, were not owners of the 
real property sought to be annexed, and that they contem-
plated removal from such land, held not to disqualify them
from acting while voters in such territory. (Laws 1911, c. 266, section 133.)

(b) Tallmadge v. Weber.

For brief, see Key 34, Case (b).

Further ruling in the case, pertinent to this Key section, as follows:

Where under a petition for two new school districts, under Comp. Laws 1913, section 1147, the board of county commissioners and county superintendent, pursuant to notice, proceed to organize two distinct new districts, the proceedings were not a nullity, and were, at most, merely irregular, so that directors of the original school district could not complain.

(c) McDonald v. Hanson.

For brief, see ante Key 37 (2), Case (a).

Further ruling pertinent to this Key section, as follows:

Laws 1915, c. 135, held to provide method of organizing new school districts by petition to county commissioners signed by majority of voters in districts whose boundaries would be affected, and also by petition signed by three-fourths of voters in territory to be organized into new district, and both petitions must comply with Comp. Laws 1913, section 1148.
(d) Rosten v. Board of Education of Village of Wild Rose.

For brief, see ante Key 22, Case (b).

Further ruling pertinent to this Key section, as follows:

Where special school district sought to annex certain territory and petition signed by majority of voters of territory to be annexed was filed with district board of education, which gave notice of time and place of hearing, part of signers of petition then had a legal right to withdraw their names from the petition any time before board's legal order annexing such territory. (Comp. Laws 1913, sect. 1240.)

(e) State v. Stevens. (1921) 183 N. W. (48 N. D. 47)

This case is governed by the principle contained in Rosten v. Board of Education immediately preceding.

(f) State v. Laman. (1924) 204 N. W. 845 (52 N. D. 60)

QUESTION: Where the proposed new school district embraces territory wholly within a given county, but some of which is taken from a school district which lies within two counties, may the petition for such proposal be heard by the county commissioners and the county superintendent of the county within which the proposed new district would
lie, or must it be heard by the county commissioners and the
county superintendents of the two counties wherein one of
the original districts lies? The facts in this case gave
rise to that question.

RULE: Under Comp. Laws 1913, section 1147, as
amended by Sess. Laws 1919, c. 197, petition proposing or-
organization of new school district from territory previously
embraced within school district lying within two or more
adjoining counties, must be presented for concurrent action
to boards of county commissioners and county superintendents
of counties within which original district was embraced,
they being "affected" within meaning of statute, in view of
section 1327, and following provisions requiring representa-
tion by each district in adjusting assets and liabilities.

Key 37 (4). Notice.

(a) School District No. 94 v. Thompson.
For brief, see ante Key 32, Case (a).
Further ruling pertinent to this Key section follows:
Notice of hearing of petition for the annexation of
territory to a school district is sufficiently given when
published once in the nearest newspaper 14 days prior to
the hearing, and posted in the manner prescribed by such
section.

Key 37 (5). Records, orders, and reports.
No cases in North Dakota.
Key 38. Submission of question to popular vote.
   (a) Iverson v. Williams School District.

   For brief, see post Key 68, Case (c).

   Further ruling pertinent to this section follows:
   Comp. Laws 1913, sections 1184, 1185, and 1190, and
   Laws 1915, c. 127, authorize the question of consolidation
   of schools to be determined exclusively by the voters in the
   common school districts.

Key 39. Review of proceedings.

   The following cases were tried, but they are not sig­
   nificant, nor are they pertinent to this compilation.

   (a) State v. Thursby-Butte Special School
       Dist. No. 37 in McHenry County. (1920) 178 N. W. 787
       (45 N. D. 555)

   (b) State v. Strauss. (1922) 187 N. W. 964 (48 N. D. 927)

Key 40. Operation and effect.

   (a) State v. Gang.

   For brief, see ante Key 35, Case (a).

   Further ruling pertinent to this Key section follows:
   Rev. Codes, section 658, provides that each civil
   township in every county not organized for school purposes
   at the taking effect of the act shall constitute a district
   school corporation, and whenever a civil township is there­
   after organized it shall constitute a district school
corporation, except as otherwise provided; and section 659 provides that each school township in every county consisting of territory not organized into a civil township shall remain a district corporation, and that, whenever such school township shall be organized into or annexed to a civil township, such civil township shall constitute a district school corporation, but that the act shall not be construed to alter the boundary lines of any school township previously organized, except on petition as thereinafter provided. Held that, on the organization into a civil township of a portion of the territory comprising a school township corporation, such civil township continues for school purposes as a part of such school township corporation until segregated therefrom by the commissioners and county superintendent of schools on petition of the voters.

(b) Farley v. Lawton School District No. 41. (1912) 137 N. W. 821 (23 N. D. 565)

FACTS: This is an action in which the plaintiff seeks to recover salary as a school teacher under a contract made with the school board of Homer school district. Prior to the date of such contract, the territory in which such school was located was duly segregated from Homer school district and organized into a separate and distinct school corporation, known as Lawton school district No. 41, the defendant, although the school officials for such new
district were not elected and did not qualify until later.

RULE: Where county commissioners and county superintendent of schools, under Rev. Codes 1905, sections 786, 792, 794, 798, segregated some territory from a school district and created a new one, and the school board of the old district ceased to possess any authority over the schools in such new district, the contract by such school board with a teacher in the new district was of no effect.

Key 41. Adjustment of pre-existing rights and liabilities.

Key 41 (1). Property and funds.

(a) State ex rel. Reynolds Special School District v. School District No. 21. (1897) 71 N. W. 772 (6 N. D. 488)

FACTS: This is an action in which a school district was divided, by the organization of a city or incorporated town or village situated within said district, into a special school district. The schoolhouse that had originally belonged to and been used by school district No. 21, defendants, remained in that district, being situated outside the limits of the incorporated town. After the organization of the Reynolds special school district, an effort was made to effect an equalization as contemplated by Laws 1890, c. 62, section 190. To that end, said special school district appointed an arbitrator, and that portion of the old
school district No. 21 outside the special district, and which, of course, still constituted school district No. 21, appointed the county superintendent and two defendant arbitrators. The arbitrators proceeded to apportion the money on hand, and the uncollected taxes, and the outstanding indebtedness of the original district; but the defendant arbitrators refused to in any manner consider the schoolhouse and furniture as exclusive property of school district No. 21. Thereupon this action was brought by the special school district against the original school district No. 21, and against the defendant arbitrators, to compel an adjustment of the rights and claims of the respective districts to the said schoolhouse and furniture.

RULE: Where a school district is divided, by the organization of a city or incorporated town or village situated within said district, into a special school district, under the provisions of chapter 62, Laws 1890, the board of arbitration provided for by said chapter to equalize the interests of said districts must take into consideration the school building owned by the original district, and adjust the rights of the respective districts concerning the same.

DECISION: Reversed in favor of plaintiffs.

(b) State v. Tucker.

For brief, see post Key 57, Case (a).
Further ruling pertinent to this Key section follows:

Uncollected taxes should be taken into account under Comp. Laws 1913, section 1328, in case of annexation by one school district of part of another.

Key 41 (2). Liabilities.

(a) Coler v. Dwight School Township.
(1893) 55 N. W. 587 (3 N. D. 249) 28 L. R. A. 649

FACTS: The county superintendent of schools, under chapter 14, Laws 1879, organized a school district. School district officers were elected, and exercised the functions of their respective offices; teachers were employed by the district and school was taught, and a school meeting was held in the district to vote upon the question of issuing bonds to build a schoolhouse. Such bonds were thereafter issued. In an action upon some of the interest coupons of such bonds, held that the district was a de facto municipal corporation, and that therefore the defense could not be interposed that the bonds were void on the ground that the district had no legal existence because of failure to comply with certain provisions of the statute regulating the organization of districts in matters which went to the jurisdiction of the county superintendent to organize the district.

RULE: A school township organized under Laws 1883, c. 44, becomes, immediately upon such organization, liable for the debts of a district, and the schoolhouse and
furniture become the property of the township. And this liability is complete, and does not depend upon the settlement of equities between several districts included in the new school township, under Laws 1883, c. 44, sections 136-138.

(b) Coler v. Coppin. (1901) 85 N. W. 988 (10 N. D. 86)
For brief, see case immediately preceding.
Further ruling pertinent to this Key section follows:
A school township organized under Laws 1883, c. 44, became by such organization liable for the debts of the old districts whose territory was included in such townships.

(c) State v. Rasmusson.
For brief, see post Key 100, Case (a).
Further rule pertinent to this Key section follows:
The rights of purchasers of bonds of school districts are subject to statutory provisions in effect at the time of the issuance of the bonds, relating to detachment of territory from school districts, organization of new school districts, and the equalization of property, funds on hand, and debts between school districts which have been affected by a change in boundaries. (Comp. Laws 1913, sections 1147, 1327, 1328, 1336.)

Key 41 (3). Proceedings for apportionment of assets and liabilities.
(a) **State ex rel. Reynolds Special School District v. School District No. 21.**

For brief, see ante Key 41 (1), Case (a). Same rule applies herein.

(b) **School District No. 94 v. Special School Dist. No. 23.** (1916) 157 N. W. 287 (33 N. D. 353)

**FACTS:** Two school districts of Cass County changed their boundaries. Arbitrators were appointed to equalize the property and debts. Their decision gave to plaintiff the sum of $239.87. The defendant then and ever since has refused to pay that sum to the plaintiff. It was held that the plaintiff had no cause of action, based on Comp. Laws 1913, sections 1327, 1331.

**RULE:** Arbitration to equalize property and debts of school districts on change of boundaries resulting in award of specific sum to one district was pursuant to Laws cited in above paragraph, which provide that the arbitrators shall make a return of their findings to the county auditor, who shall thereupon extend a tax against the property situated within the districts to pay the various awards, and that the same shall be paid as taxes are collected.

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

**Key 42 (1).** In general.
(a) **Greenfield School District v. Hannaford Special School District.** (1910) 127 N. W. 499 (20 N. D. 393)

**FACTS and HOLDING:** Where the board of education of a special school district under Rev. Codes 1905, section 949, annexed adjacent territory, and a division of the funds and property was made after annexation, and no objection was made to such annexation for more than two years, and at a meeting for the purpose of dividing the property and obligations of the territory divided no protest was filed, and an arbitration agreement was entered into, and the school district thus created levied school taxes on all its property, and bonds were voted for the erection of a new schoolhouse, which was thereafter erected, and taxes were levied and collected under the new conditions, held that the plaintiffs are estopped from questioning the validity of proceedings of the board of education in annexing adjacent territory.

(b) **State ex rel. Nicholson v. Ferguson et al.** (1921) 134 N. W. 872 (23 N. D. 153)

**FACTS:** This is an action in which the voters in a civil township comprising a portion of a special school district petitioned the board of county commissioners and the county superintendent of schools to have the township set off into a separate school district.

**RULE:** Under Rev. Codes 1905, section 949, voters in
the civil township were not entitled to the relief prayed for. The section provides: "That the county commissioners shall detach any part of such adjacent territory which is at a greater distance than three miles from the central school in such special district and attach any adjacent school or special school district or districts upon petition to do so, signed by three-fourths of the legal voters of such adjacent territory."

(c) Sorenson v. Tobiaosn. (1922) 188 N. W. 41 (48 N. D. 924)

FACTS: This is an action in which the board of county commissioners and the county superintendent detached from a special school district territory lying within three miles of the central school. The action is from a judgment against the defendant officers, and they appeal.

RULE: Laws 1919, c. 197, construed in its relation to Comp. Laws 1913, section 1240, and Laws 1919, c. 196, amending section 1147, governing the territory embraced in special school districts and providing for attaching and detaching territory, do not authorize detachment of territory within three miles of the central school, in view of Rev. Codes 1905, section 784 et seq. (Comp. Laws 1913, sections 1229, 1240).

DECISION: Affirmed for plaintiffs.

(d) Harrison School District No. 2 v. City
FACTS: This action was brought to restrain the board of education of the city of Minot from levying taxes and from exercising any jurisdiction over certain territory described in the complaint. The ultimate question presented is whether the territory in dispute is a part of Minot special school district and under the jurisdiction of the board of education of that city, or whether such territory is a part of the plaintiff school district and under the jurisdiction of its officers. Prior to the year 1909, a large portion of the northwest section of the city of Minot had a separate legal existence and was commonly designated as "North Minot." North Minot was in fact embraced within, and a portion of, an organized township known as Harrison Township (plaintiff). In 1909 North Minot was annexed to the city of Minot. The question arises: Did the extension of the limits of the city of Minot also extend the limits of the Minot special school district No. 1, and make the territory so attached to the city a part of such special school district?

RULE: (1) Under Comp. Laws 1913, sections 1229, 1230, 1240, 1241, 1243, 1251, 1254, 1260, 1261, and in view of the legislative history thereof, a special school district can be organized only from a platted or incorporated city, town, or village, or from such city, town or village
and territory contiguous thereto.

(2) Where an incorporated city is organized into a special school district, all the territory within the city must be included within the special school district.

(3) Where a special school district is composed of an incorporated city alone, and the city limits are extended by the annexation of contiguous territory to the city, the special school district is enlarged so as to include the territory annexed to the city.

DECISION: Judgment for defendants affirmed.

(8) Common School District No. 126 of Cass County v. City of Fargo. (1952) 51 N. W. 2d 364 (78 N. D. 583)

In addition to the rules and holdings in the case immediately preceding (Harrison School District No. 2 v. City of Fargo), the following prevailed:

Where city organized as special school district annexed territory under statutes relating to annexation of territory by cities, the territory annexed automatically became part of the special school district of the city, regardless of the limitation of the statute prohibiting detachment from one school district for annexation to special district if part of original district remaining after proposed annexation would have assessed valuation of less than $100,000 for each teacher employed in remaining territory.
or less than $125,000 for each teacher employed in remaining territory, if remaining territory had graded or consolidated school with two or more teachers. (NDRC 1943, 15-2701 et seq., 15-2716, 40-5101 et seq.)

Key 42 (2). High school and graded school districts.

(a) Olson v. Coalfield School District

No. 16 of Divide County. (1926) 208 N. W. 154

(53 N. D. 575)

FACTS: This is an action brought to challenge the establishment of a joint high school district pursuant to the provisions of sections 1192, 1193, and 1194, Comp. Laws 1913. Briefly, the voters in three school districts (one a special district, and two common school districts) voted in favor of establishing the proposed joint district high school. The plaintiffs, as ground for challenge, two propositions from which only the following need be noted: that the statute under which the proposed establishment of a joint district high school was pursued contemplates that a district high school may be established only in common school districts, and that one of the school districts involved in this proposal is a special high school district. There was no controversy as to the essential and controlling matters of fact in the case. The district court held for the defendants.

RULE: (1) Provisions of statutes relating to
establishment of district high schools or graded schools or both held to apply only to common school districts, and not to special school districts, and special school district cannot join with common school districts in election to establish district high school. (C. L. 1913, sec. 1151, 1192, 1194, 1229, 1245)

(2) Election of special school district and two common school districts to establish joint school district cannot authorize establishment of joint high school by the two common school districts only. (Comp. Laws 1913, sections 1151, 1192, 1194, 1229, 1245)

(3) Where two or more school districts join to establish and maintain district high school, no one of such districts need possess qualifications required by statute as to school population and number of schools contained therein, but it is sufficient if all districts taken together possess such qualifications. (See citations in above paragraphs.)

DECISION: Judgment reversed in favor of plaintiffs.

(b) Olson et al v. Coalfield School District No. 16 of Divide County. (1926) 210 N. W. 180 (54 N. D. 657)

(See case immediately preceding.)

FACTS: At the time the hearing was held in the case immediately preceding, the joint high school district, with
a school at Noonan, was already in full operation. The court in the above case reversed judgment in favor of the plaintiffs, and allowed that the organization of the school district was irregular and illegal. However, the plaintiffs did not bring the action soon enough. And in this action they sought to restrain and enjoin the Coalfield school district No. 16, Brown school district No. 40, and the board of education of the special school district (village of Kermit) from in any manner proceeding to further organize, operate or continue a high school known as the Noonan district high school.

**RULE:** When high school is organized, taxes levied, buildings constructed, teachers employed, and school conducted for nine months, acquiescence for such period estops objectors to question regularity of organization proceedings.

**Key 43.** Enumeration of children for school purposes.

No cases in North Dakota.

**Key 44.** Dissolution.

No cases in North Dakota.
CHAPTER V
GOVERNMENT, OFFICERS, AND DISTRICT MEETINGS

Key 45. Administration of school affairs in general.
No cases in North Dakota.

Key 46. Constitutional and statutory provisions.

(a) State ex rel. Langer, Atty. Gen., et al v. Totten et al. (1919) 175 N. W. 563 (44 N. D. 557)

FACTS: This is an original application to this supreme court to compel the board of administration and the educational commission to refrain from preparing and prescribing the courses of study for the common school of the state.

(For brief and rule, see post Key 164, Case (a).)

(b) State ex rel. Agneberg v. Peterson, School Clerk. (1924) 201 N. W. 856 (52 N. D. 120)

The sole question presented on this appeal is whether the office of school treasurer in a special school district, lying partly without an incorporated village, is elective or appointive.

RULE: Laws 1913, c. 256, providing for appointment of clerk and treasurer of special school district, repeals Laws 1911, c. 266, section 147, providing that treasurer of city, etc., comprising special district, shall be treasurer of board of education, and that in certain cases such
officer should be elected.

(c) Batty v. Board of Education of City of Williston.

For brief, see ante Key 11, Case (b).

Further ruling pertinent to this Key section follows:

Statute authorizing school board to adopt and enforce rules and regulations for conduct of schools must be considered in light of legislative policy that public schools shall be equally free, open, and accessible to all children over six and under twenty-one years of age in district wherein schools are maintained (Comp. Laws 1913, sections 1251, subsec. 11, 1343; Const. section 147 et seq.).

Key 47. State boards and officers.

(a) State v. Stockwell, Supt. Public Instruction. (1912) 134 N. W. 767 (23 N. D. 70)

FACTS: During the three terms that the defendant held the office as Superintendent of Public Instruction certain moneys came into his possession regularly by virtue of his office. A certain amount of these unexpended moneys were retained by him, and accounted for, personally by him after the expiration of his term, under his claim in good faith that he was entitled to retain same as owner thereof; and that acting thereon to determine the law involved this action was brought.

RULE: (1) Legislature, in giving the State Super-
intendent of Public Instruction authority to disburse fund for clerical assistance for reading teachers' answer papers, held not to constitute him the owner of the fund.

(2) Burden of establishing title to fund collected under Sess. Laws 1901, c. 85 (Rev. Codes 1905, sections 869-876), in State Superintendent of Public Instruction individually held to be upon him, and not on the state to establish want of ownership on his part.


(b) McDonald v. Nielsen.

For brief, see post Key 130, Case (a).
Same rule appertains to this section.

Key 48. County boards and officers.
Appeal from proceedings for creation of independent district, see ante Key 27.

Powers relative to division of districts, see ante Key 36.

Key 48 (1). Appointment or election.

No cases in North Dakota.
Key 48 (2). Eligibility and qualification.

(a) Wendt v. Waller. (1920) 176 N. W. 930
(46 N. D. 268)

FACTS and HOLDING: The defendant is holder of a professional certificate of the second grade which plaintiffs contend he received fraudulently. There is no proof that their contention is correct. This proceeding was brought by plaintiffs to determine title to the office of county superintendent of schools to which the defendant had been elected in Ward county. It was held: "The Legislature having imposed upon the superintendent of public instruction the duties of determining the existence of the necessary qualifications for a second grade professional certificate and of revoking those improperly issued, a review of such determination by court, except for fraud, or an original attempt to impeach a certificate in a judicial proceeding, involves a collateral attack on the certificate.

DECISION: Judgment for defendant affirmed.

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

(a) Bickford v. Fabrick. (1907) 112 N. W.
74 (16 N. D. 94)

Inasmuch as this case does not strictly pertain to the study of schools and school districts, only statute is set forth:
Under Rev. Codes 1899, section 638, and Rev. Codes 1905, section 764, providing that the term of office of a county superintendent of schools shall be two years, commencing on the first Monday in January after his election, and until his successor is elected and qualifies, a duly elected and qualified acting county superintendent continues as such until his successor is elected and qualifies.


As in the preceding case, this action was brought to determine entitlement to the office of county superintendent of schools.

For rule, see final paragraph in preceding case.

Key 48 (4). Removal or suspension.

No cases in North Dakota.

Key 48 (5). Compensation.

Inasmuch as the cases in this Key section do not strictly apply to a study of schools and school districts, only the statutes and holdings are set forth. For facts, investigate citations.

(a) Wiles v. McIntosh. (1901) 88 N. W. 710 (10 N. D. 594)

Under Rev. Codes, section 652, providing that, in computing the salary of county superintendent, no school shall be included unless it has been taught at least three
months during the preceding year, and that the amount of his salary shall be determined each year by the actual number of schools or separate departments in graded schools, the salaries must be computed on the basis of the number of schools or separate departments of graded schools presided over by the superintendents, which have been taught at least three months in the preceding year and are not to be computed on the number of schools which have been taught less than three months.

(b) *Dickey County v. Denning.* (1905) 103 N. W. 422 (14 N. D. 77)

Under Revised Codes 1899, section 652, providing for a graduated salary for county superintendents of schools corresponding to the number of schools or departments of graded schools under their official supervision in the preceding year, schools in the special districts are not under their official supervision, and are not to be included in computing their salary.

(See also *Dickey County v. Hicks.* (1905) 103 N. W. 423 (14 N. D. 73)

(c) *State ex rel. Bickford v. Fabrick.*

See Key 48 (3), Case (a).

Further ruling in the case, as follows:

A county superintendent of schools, lawfully holding over after two years from his qualification as such, and
(1) Where a proceeding has been instituted attempting to challenge the validity of the formation of certain reorganized districts purported to have been created under the provisions of Chapter 15-53, NDRC 1943 and the 1949 Supplement thereto, and also attempting to challenge the validity of the election of the school boards of such districts, and the judge of the district court has issued a memorandum opinion stating his determination to make an order which will permit the boards of the new districts to function in part and the boards of the old districts to also function in part as governing bodies of districts embracing the same or part of the same territory, thereby creating confusion and duplication, public interest requires that such a result be avoided, and, there being no speedy remedy available, the exigency of the situation justifies the interposition of the general superintending power vested in this court by the constitution.

(2) Section 15-5322, 1949 Supplement NDRC 1943, authorizes the election of school boards of newly elected school districts at special elections, and a board so chosen enters upon its duties on the first day of July succeeding the final approval of the organized district. Where final approval of the district is had before July 1st and its board is elected at a special election held after July 1st, the board may organize and enter upon its duties forthwith.
Key 54. Compensation.
No cases in North Dakota.

Key 55. Powers and functions in general.

(a) Pronovost v. Brunette. (1917)
162 N. W. 300 (36 N. D. 288)

FACTS: A resolution was passed by the school board providing for the calling of a special election "to vote on the question whether or not the school in school district No. 40, Cass County, shall be changed and removed from the present schoolhouse to a room in St. Joseph's Convent in the same district."

HOLDING: That both the order of the school board and the election were void, and that the lease of the new building and the removal of the one school to the other were unwarranted by the law and outside the power of the directors. The legislative policy in North Dakota is that the public schools in the common school districts of the state shall be maintained in buildings which are owned by the public.

(b) Rhea v. Board of Education of Devils Lake School Dist. (1919) 171 N. W. 103 (41 N. D. 449)

QUESTION: The non-vaccination of children—is it cause for excluding them from public schools in a state where smallpox does not prevail, and where the sickness and death resulting from vaccination far exceed that now . . .
resulting from smallpox?

**RULE:** Boards of education and boards of health possess only such powers as the statutes confer upon them. Sections 1346 and 426, Comp. Laws 1913, are held not to authorize the exclusion for non-vaccination...

(c) Gillespie v. Common School District

No. 8 of McClean County. (1927) 216 N. W. 564

(56 N. D. 194)

**FACTS:** This is an action in which the plaintiff, an architect, conferred with two members of a school board with respect to the matter of preparing plans and specifications for a school building. The meeting was informal and no minutes were kept, though the clerk of the school board was present. A contract was signed, purporting to be made by and between the plaintiff and "the board of Underwood school district No. 8," after the meeting. Subsequently the contract was also signed by a third director who had not been at the meeting. Some time later the school board notified the architect (Gillespie) that they would no longer require his services, and they entered into another contract with another architect and built the schoolhouse. Gillespie then demanded payment of the remainder of the compensation which he claimed under the contract, and when payment was refused brought this action.

**RULE:** A school district is not bound by the action
of its directors unless such action is taken at a meeting held and conducted as required by statute (Comp. Laws 1913, section 1160). School directors are agents of the district.

Key 56. Modes of action in general.

No cases in North Dakota.

(a) McWithy v. Heart River School Dist.

No. 22. (1948)

For brief, see post Key 141 (5), Case (a).

Further ruling pertinent to this Key section, as follows:

School boards have only such powers as statutes confer on them.

Key 57. Meetings.

(a) State v. Tucker. (1918) 166 N. W. 820
(39 N. D. 106)

In this action a mandamus is sought to compel a board of arbitrators to reconvene and cause a due and proper levy to be made upon the real and personal property of a school district. This action occurred because the plaintiffs charged that the original meeting was improperly held inasmuch as no written or printed notice of the meeting was given to officials who were to appoint an arbitrator at a special meeting.

RULE: An appointment of an arbitrator which is made at a special meeting of a school board which is not called
in the manner prescribed by statute, and from which one of the members is absent on account of not having received notice thereof, is not binding upon the school district.

Section 1247 of the Compiled Laws of 1913 provides that: "Special meetings may be called by the president or in his absence by any two members of the board or by causing a written or printed notice to be left at his...residence, at least forty-eight hours before the time of such meeting."

(b) Gillespie v. Common School Dist. No. 8, McClean County. (1927) 216 N. W. 564 (56 N. D. 194)

(See Key 55, Case (c))

Key 58-59. No cases listed.

Key 60. Operation and effect of decisions.

No cases listed in North Dakota.

Key 61. Appeal from decisions.

No cases listed for North Dakota.

Key 62. Liabilities of members.

(a) Kenmare School District No. 28, Ward County v. Cole et al. (1917) 161 N. W. 542 (36 N. D. 32)

This is an action brought by the school district against the members of the school board in which it is sought to hold the latter personally liable for the payments they made when they entered into contracts on behalf of the district involving obligations in excess of debt limit and
in excess of the power to levy taxes, which contracts were fully performed, resulting in the construction and equipment of a high school building and in the issuance and payment of warrants for it.

RULE: Members of school board whose contracts for construction and equipment of high school building involved obligations in excess of debt limit and power to levy taxes, in violation of Comp. Laws 1913, Section 2218, were not, in absence of fraud, personally liable for payments so made. So it was held.

Key 63. District and other local officers.
No cases in North Dakota.

Key 63 (1). Appointment, qualification and tenure.
No cases in North Dakota.

Key 63 (2). Title to and possession of office.
No cases in North Dakota.

Key 63 (3). Powers, duties, and liabilities in general.

(a) Gillespie v. Common School Dist. No. 8, McClean County. (1927) 216 N. W. 564 (56 N. D. 194)
(See Key 55, Case (c))

School officers have and may exercise only powers expressly or impliedly granted by statute (Comp. Laws 1913, Section 1160).

(b) School Dist. No. 35 of Cass County v.
in excess of the power to levy taxes, which contracts were fully performed, resulting in the construction and equipment of a high school building and in the issuance and payment of warrants for it.

**RULE:** Members of school board whose contracts for construction and equipment of high school building involved obligations in excess of debt limit and power to levy taxes, in violation of Comp. Laws 1913, Section 2218, were not, in absence of fraud, personally liable for payments so made. So it was held.

**Key 63.** District and other local officers. No cases in North Dakota.

**Key 63 (1).** Appointment, qualification and tenure. No cases in North Dakota.

**Key 63 (2).** Title to and possession of office. No cases in North Dakota.

**Key 63 (3).** Powers, duties, and liabilities in general.

(a) *Gillespie v. Common School Dist. No. 8, McClean County.* (1927) 216 N. W. 564 (56 N. D. 194) (See **Key 55, Case (c)**)

School officers have and may exercise only powers expressly or impliedly granted by statute (Comp. Laws 1913, Section 1160).

(b) *School Dist. No. 35 of Cass County v.*
Shinn. (1931) 237 N. W. 693 (61 N. D. 160)

Plaintiffs brought action to recover alleged unlawful payment of school district funds, approved and made by the defendant as director and treasurer of the school district.

The alleged unlawful payments of school district funds were approved and made by the individual defendants as directors and treasurer.

RULE: Under Section 1168, Comp. Laws 1913, providing that the school treasurer shall pay all warrants properly drawn and signed when presented, if there is any money in his hands or subject to his order for payment, a treasurer who pays for unauthorized or unlawful purposes is not liable on account of such payments, though he had knowledge of the purposes for which the warrants were issued, where they were properly drawn and signed, and were not paid in bad faith or with unlawful or fraudulent intent on his part.

Key 63 (4). Liability on official bonds.

(a) Prairie School Tp. v. Haseleu (1893) 55 N. W. 938 (3 N. D. 328)

In this action bonds were issued and sold by the school board, consisting of the treasurer, clerk and director, but the proceeds thereof were not paid to the treasurer.

RULE: Laws 1883, c. 44, section 35, requires the treasurer of a school township to give a bond for the discharge of the duties of the office, and for the rendition of
a true account of money which shall come into his hands as treasurer.

**DECISION:** Where bonds were issued and sold by the school board but the proceeds thereof were not paid to the treasurer, the sureties on his bond, drawn substantially in the terms of the statute are not liable for the loss of funds.
CHAPTER VI

DISTRICT PROPERTY, CONTRACTS, AND LIABILITIES

Key 64. Capacity to acquire and hold property.
No cases in North Dakota.

Key 65. Acquisition, use and disposition of property in general.
No cases pertinent to this study.

Key 66. School buildings.
Power to incur debts for school buildings.
(See post Key 90)

Key 67. Authority and duty to provide.

(a) State v. Mostad et al, School Directors. (1916) 158 N. W. 349 (34 N. D. 330)

This is a special proceeding under Comp. Laws 1913, Section 1188, by the State, on the relation of J. C. Johnson, against Thorwald Mostad and others, as directors of School District No. 10, in and for Ward County, to compel the erection of a school to accommodate children now distant more than two and one-half miles from any school in the district.

FACTS: A qualified petition requesting that a school be organized for nine or more children living not less than two and one-half miles from the nearest school was presented to the school board of District No. 10. After submitting
the question to a vote of the people, the majority of whom voted against, the school board refused on their own authority, and on the authority granted by section 1185 of the Compiled Laws, to choose a site and erect a building.

**RULE:** In construing section 1188 of the Compiled Laws of 1913, which provides that school boards of the various common school districts shall, upon the petition of those charged with the support and having the care and custody of nine or more children of school age, furnish accommodations for such children within a distance of two and one-half miles from their homes, such two and one-half miles to be measured by the roads which are actually opened and passable, and not as the crow flies, or by taking into consideration section lines which are set apart by section 1920 as highways, but which are not in their present condition passable, and have not been actually opened for travel.

**DECISION:** Affirmed for the plaintiff.

(b) *Kretchmer et al v. School Board of District No. 12, Barnes County, et al.* (1916)
158 N. W. 993 (34 N. D. 403)

**FACTS:** The plaintiffs seek to enjoin the school board from maintaining an alleged high school in the district before first submitting the question of such additional high school to the voters of the district.

**RULE:** Under Compiled Laws 1913, sections 1174, 1184,
a district school board has no authority to establish an
additional school in a new location even if not intended as
high school without submission of question to popular vote.

**DECISION:** Held for plaintiffs.

(c) Wulfkhul v. Galehouse. (1918) 168
N. W. 620 (40 N. D. 172)
Facts similar to those in Case (a) this Key. Ruled
as in Case (a).

(d) Henderson et al v. Long Creek School
Dist. No. 2 of Divide County et al. (1919) 171
N. W. 825 (41 N. D. 640)
In this action, to recover for labor and materials
furnished, the complaint alleged that the plaintiffs erected
a schoolhouse which was needed for the accommodation of the
school children of the defendant district, and that such
action was taken by plaintiffs following an adverse vote at
two separate elections on the proposition of bonding the
district for the purpose of erecting a schoolhouse to take
the place of a building which had been condemned by the
board of health.

**FACTS:** As alleged in the foregoing paragraph.

**RULE:** Section 1184 of the Compiled Laws of 1913
authorizes boards of directors of common school districts
to erect schoolhouses only when directed to do so by a
majority of voters of the district.
DECISION: Complaint does not state a cause of action.

Held for defendants.

Key 68. Location.

(a) Farmers' and Merchants' National Bank of Valley City v. School District No. 53. (1889) 42 N. W. 767 (6 Dak. 255)

FACTS: The action was brought to enforce payment of certain school warrants alleged to have been issued by the defendant through its school board. Findings of fact were made that the inhabitants of the district did not direct the making of or make the contract under which the schoolhouse was erected, did not consent to it, did not select it or authorize the selection of the site upon which it was to be erected, and had never in any way ratified the acts of the school board in issuing warrants for the construction of a schoolhouse.

RULE: Laws 1879, c. 14, section 29, subd. 4, provides that inhabitants qualified to vote at a district meeting may vote for a site for a schoolhouse. By subdivision 5 they may vote a tax to purchase or lease such a site. By section 56 it is made the duty of the district "to purchase or lease such site for a schoolhouse as shall have been designated by the voters at a district meeting," and to build such a schoolhouse as the voters of the district shall have agreed upon.
DECISION: The power to acquire a site for a schoolhouse is vested exclusively in the voters of the district, and the board have no independent authority whatever. Judgment for the defendants affirmed.

(b) Petersburg School District of Nelson County v. Peterson. (1905) 105 N. W. 756 (14 N. D. 344)

FACTS: The defendant appealed from a judgment that certain described lands belonging to him be condemned as a schoolhouse site upon payment of damages to him. The school board had called a meeting of the voters of the district to vote upon the selection and purchase of a site as provided in section 701, Rev. Codes 1899. At this meeting a majority of votes was cast in favor of a site described as follows: "For locating a new schoolhouse on the hill at the south end of Sixth Street, in Peterson's field." The school board met later and fixed the description of the land precisely.

The appellant, however, contended that the voters of the school district had not selected a definite site. That the wording (as set forth in the above paragraph) was too indefinite, and therefore insufficient on which to base condemnation proceedings.

RULE: Under Section 701, Rev. Codes 1899, voters of a school district are required only to select a school site by a general designation, and not by definite description.
DECISION: Affirmed for plaintiffs.

(c) Iverson v. Williams School District. (1919) 172 N.W. 818 (42 N.D. 622)

This action is an appeal from an order denying the plaintiff's motion for an injunction to restrain performance of certain contracts entered into between the defendant school district and certain contractors, looking toward the construction of a new school building.

FACTS: The school board of the district held a special meeting at which it was decided to call a special election to vote upon the question of consolidating all the schools of the district, to select a building site for a central school, and to provide a suitable building. The election was duly held, and the majority vote was in the affirmative. However, the plaintiffs later brought action on the grounds that the ballot did not give sufficient information regarding the selection of building site and the amount of the proposed new building. Their contention was true. The board had held a later election, however, at which they had given specific information on the ballot. The plaintiffs contended that the first election invalidated the succeeding election because the people had actually not, even originally, voted for a building nor a site. The board, however, had taken action on the proposals; and the plaintiffs moved for an injunction to restrain performance
of certain contracts entered into by the school district.

In the subsequent election, also, the voters had voted affirmatively in the majority.

**RULE:** Com. Laws 1913, sections 1185, 1185, and 1190, and Laws 1915, c. 127, authorize the question of building new buildings to be determined exclusively by the voters in the common school districts...also the questions of consolidation of schools, and the selection of sites is to be determined exclusively by the voters.

**DECISION:** Where an election results in a failure to select a site for a schoolhouse by reason of indefiniteness of the question submitted, and the question is again submitted, resulting in the selection of the site previously assumed to have been legally selected, the previous invalid selection is ratified. An injunction here would perform no useful purpose.

Affirmed for defendants.

Key 69. Change of site.

(a) *Torgerson et al. v. Golden Valley School Dist. No. 85 of Williams County et al.* (1919)

171 N. W. 626 (42 N. D. 5)

This action is one involving the validity of an election held in the defendant school district for the purpose of changing the location of the consolidated school therein.

**FACTS:** Under the authority of section 1190, Compiled
Laws of 1913, an election was held on August 1, 1917, resulting in the consolidation of the schools participating, and the site of the consolidated school was determined to be a site already owned by the district near the village of Temple. In the month of May following, a petition was presented to the school board, signed by more than one-third of the electors of the district, asking that an election be called to submit the question asking for the removal or change of site of the consolidated school from the village of Temple to a site in section 16 in the same township. In pursuance of the petition, an election was held, at which a majority voted in favor of the site in section 16. Majority less than required.

**QUESTION:** Is the last election legal?

**RULE:** Where a consolidated school is formed and a site selected by the electors of the district, acting under section 1190, Compiled Laws of 1913, such school cannot be removed without a two-thirds vote of the electors, proceeding under sections 1184 and 1185 of the Compiled Laws of 1913.

**DECISION:** Judgment for plaintiffs affirmed.

(b) *Deide et al v. Antelope School District No. 7 of Stark County et al.* (1920) 173 N. W. 942 (44 N. D. 256)

This is an action to restrain and enjoin the
defendant from moving what is known as schoolhouse No. 1, located within the school district in question, from its present location to Antelope, which is about one-half mile distant from the present location.

FACTS: The school board called an election for the specific purpose of voting upon the removal of a schoolhouse from present site to another definite location, which was named in the resolution. The notice of the election did not state the purpose of the election in accordance with the resolution of the school board and the provision in section 1185, Compiled Laws 1913.

RULE: Section 1185 of the Compiled Laws of 1913 contains the following with reference to the notices of election: "Three notices of the time, place and purpose of such election shall be posted in three of the most public places in the district at least fourteen days prior to such meeting."

DECISION: The notice of election was insufficient... that the election held in pursuance of such invalid notice was invalid.

Judgment for the appellants (plaintiffs).

(c) Barnes et al v. Meehan et al. (1927) 212 N. W. 856 (55 N. D. 224)

This action arose out of the contesting of an election which was held for the purpose of voting on the
question of moving a schoolhouse from one location to another within the district.

**FACTS:** For our purposes, it is necessary to merely state that the school election was contested because there was evidence that it was not satisfactorily conducted or supervised.

A restraining order was issued by the judge of the district restraining the defendants from moving the schoolhouse from its present location during the pendency of the contest and until the further order of the court.

The contest proceeding was begun under section 1046 of the Compiled Laws of 1913.

**RULE:** Section 1046 of the Compiled Laws of 1913 provides for instituting election contests by notice. The section, however, is designed to give the right of contest to persons "claiming the right to hold an office, or an elector of the proper county desiring to contest the validity of an election..." Nowhere in the article is there any provision referring to contests of school elections upon the proposition for the removal of schoolhouses.

**DECISION:** Contest by notice is a statutory proceeding, and may only be resorted to in those instances where it has been authorized.

Judgment for defendants affirmed.

Key 70. Purchase or hiring.
(a) Pronovost v. Brunette. (1917) 162 N. W. 300 (36 N. D. 288)
(See brief of this case in Key 55.)

Supplementary holding to above case:

Under Compiled Laws 1913, sections 1174, 1184, where a common school district owns school building adequate to its needs, and there are not nine school children residing two and one-half miles therefrom for whom additional accommodations are needed, district has no authority to lease another building and remove school thereto.

Key 71. Construction.
(a) Iverson v. Williams School District.
(For case brief, see Key 68.)

Selection of school sites held determinable exclusively by voters within the common school district.

Key 72. Control and use.
No cases for North Dakota.

Key 73. Care, maintenance, and repair.
Liability for tort, see post, Key 89.

Key 74. Sale or other disposition.
No cases in North Dakota.

Key 75. School furniture, books, apparatus, and other appliances.
No cases in North Dakota.

Key 76. School libraries.
Key 77. Contracts.

No cases in North Dakota.

Key 78. Capacity of district to contract in general.

No cases in North Dakota.

Key 79. Powers of district or other board officers.


FACTS: The minutes of a district school meeting disclosed that a motion was carried to build a schoolhouse, a tax levied for that purpose, and the school board was appointed as a building committee, but it did not appear that the meeting selected a site or directed the erection of any building.

RULE: Laws 1879, c. 14, section 56, provide that the board shall purchase or lease such site as shall have been designated by the school meeting, and shall build such schoolhouse as the voters in the district meeting shall have agreed upon.

DECISION: The proceedings at the school meeting did not authorize the board to build a schoolhouse.

(b) Ellingson v. Cherry Lake School District. (1927) 212 N. W. 773 (55 N. D. 141)

FACTS: In May, 1926, the board of directors of the
defendant school district published a notice for bids for certain improvements of schoolhouse No. 4 in the district. The then condition of the schoolhouse and the proposed improvements are described as follows in the affidavit:

"That the schoolhouse to be remodelled was constructed in 1914, and when built it was approved... The inside ceiling (now) is not in good repair, and the building is rather cold.

"The outside toilets are also in bad repair and will have to be rebuilt...

"...and contract let for the remodeling of said building provides for a basement under the schoolhouse, a furnace, inside toilets... a cistern in the basement, with a filter..."

A statement of contemplated improvements continues.

**QUESTION:** Is the plaintiff correct in his contention that the contract in this case provides for remodeling and alteration, and that the school board have no authority to enter into such a contract unless they are authorized to do so by a vote of the electors of the district?

**RULE:** The board of a common school district may contract to remodel the schoolhouse to provide for heating, water supply, and toilet facilities without submitting the proposition to a vote. (Compiled Laws 1913, sections 1173, 1175, 1184, 1186)
Key 80. Making, requisites, and validity.

No cases in North Dakota.

Key 80 (1). In general.

No cases in North Dakota.

Key 80 (2). Proposals or bids.

(a) Rosatti v. Common School District
No. 96, Cass County. (1925) 204 N. W. 833 (52 N. D. 931)

FACTS: That the plaintiff, an architect, entered into an express contract with the defendant whereby the former performed professional services as an architect in the preparation of plans, general drawings, and specifications, and made preliminary studies for the construction of a school for the defendant; that the agreed value for such services was the sum of $1,557.50; that the defendant, a common school corporation, refused to pay on the grounds that, in the exercise of the powers granted to school boards, such boards are limited by the provisions of section 1259, C. L. 1913, which reads in part:

"No expenditure involving an amount greater than one hundred dollars shall be made except in accordance with the provisions of a written contract, and no contract involving an expenditure of more than five hundred dollars for the purpose of erecting any public buildings or making any improvements shall be made except upon sealed proposals and to
the lowest responsible bidder, after public notice for fourteen days previous to receiving such bids."

RULE: By the amendment of section 1356, chapter 266, S. L. 1911, contracts for professional services were excepted from the requirement that contracts for the expenditure of school funds be let only after advertising for proposals and to the lowest responsible bidder.

DECISION: Affirmed for the plaintiff.

(b) Ellingson v. Cherry Lake School District.
For brief, see ante Key 79, Case (b).
Further ruling in the case, pertinent to this Key section, as follows:
"Responsible," as in "lowest responsible bidder," includes integrity, skill, ability, and capacity to perform particular work (Comp. Laws 1913, section 1356).

FACTS: The defendants, a public school corporation, set out to build a gymnasium after rejecting as too high the bids that had been submitted. Before finally proceeding to build they published no further advertisement for bids, either for general construction or for material or labor. It procured structural steel from the plaintiff. So far as the records of the school district show, no contract with

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the plaintiff was authorized or entered into by the defendant district or the school board thereof. But it procured the steel. Thereafter, on January 23, 1930, the warrant in suit was issued in the amount of $732.03 in payment of the bill to plaintiff. The warrant was registered and noted as not paid for want of funds. Plaintiff sued to recover amount of the warrant.

Defendant defends on ground that the warrant is void because it was issued in payment of the purchase price of certain material used in the construction of a school building, which said material was purchased illegally and without first advertising for bids as required by statute.

DECISION: Statute requiring competitive bidding in letting contracts involving expenditure of school funds held not repealed by implication by subsequent statute requiring competitive bidding in letting contracts for repair work in excess of $3,000, which provided for repeal of all conflicting acts, since there was no irreconcilable inconsistency (Comp. Laws 1913, section 1356; Laws 1929, c. 195).

The question here is not as to whether the plaintiff can recover the property obtained from it by the defendant or the reasonable value thereof. The plaintiff seeks to recover the contractual purchase price.

Affirmed for defendant. Contract for purchase of steel used in building school gymnasium entered into without
observing mandatory provisions of statute requiring competitive bidding for letting such contracts held invalid.

Key 81. Contractors' bonds.
No cases in North Dakota.

Key 81 (1). Bonds of textbook publishers.
No cases in North Dakota.

Key 81 (2). Bonds of contractors for construction of schoolhouses.
No cases in North Dakota.

Key 82. Unauthorized or illegal contracts.

For brief, see ante Key 79, Case (a).

Further ruling in the case, pertinent to this Key section, as follows:

"Laws Dak. 1879, c. 14, section 29, gives the school district meeting power 'to vote a tax annually, not exceeding one per cent of the taxable property...to purchase or lease a site, and to build, hire, or purchase a school house.' Section 56 provides that the school board shall build, purchase, or lease a school house 'out of the funds provided for that purpose.' Held that the school meeting could not authorize a contract for a schoolhouse for an amount exceeding the funds on hand and the annual tax of one per cent actually levied, and the use of the house by
the district created no liability either under the contract or for the value received."

**Further:** A contract, authorized by the inhabitants of a school district at a district meeting, to build a schoolhouse for an amount in excess of funds on hand or subject to collection for that purpose and the amount that could be realized from the maximum tax which could be levied by the inhabitants for the current year and used for that purpose, is void.

**Key 82 (2). Ratification of contracts.**


See preceding case.

Further ruling in the case, pertinent to this Key section, as follows:

"A contract to build schoolhouse for an amount in excess of funds available, void because the district board had no authority to make it, could not be made binding upon the district by subsequent ratification by the inhabitants."

(b) *Gillespie v. Common School District No. 8, McClean County.*

For brief, see ante Key 55, Case (c).

Further ruling in the case, pertinent to this Key section, as follows:

"Contract of school directors with architect to draw
plans of building, invalid for irregularities, held binding on the district through subsequent ratification."

Further: "Contract by school directors, not binding on district for irregularities, may become binding by subsequent ratification if contract was within power of district and might lawfully be made when executed." (Also ruled in case following.)

(c) *St. Paul Foundry Co.* v. *Burnstad School District No. 31.*
For brief, see ante Key 80 (2), Case (c).
Further ruling in the case, pertinent to this Key section, as follows:

Refer to final paragraph ruling above from *Gillespie v. Common School District No. 8, McClean County.*

Further: "When school district warrant was unenforceable because of failure to observe requirement of competitive bidding, school district officers' subsequent recognition of validity of warrant held not such ratification as would make enforceable where there was at no time any attempt to comply with statutory requirements for competitive bidding."

Key 83. Implied contracts.

(a) *Henderson v. Long Creek School Dist.* No. 2 of Divide County.
For brief, see ante Key 67, Case (d).
Further ruling in the case, pertinent to this Key section, as follows:

"In view of Comp. Laws 1913, section 1184, where board of a common school district, who had not obtained requisite authority, refused to contract for construction of schoolhouse, the district was not liable upon contract by its acceptance of a building so constructed without authority."

Key 84. Construction and operation.
No cases in North Dakota.

Key 84½. Modification and rescission.
No cases in North Dakota.

Key 85. Performance or breach.
(a) Kasbo Const. Co. v. Minto School Dist. of Cavalier County. (1921) 184 N. W. 1029 (48 N. D. 423)

FACTS: Plaintiff's action is to recover the balance claimed to be due under the terms of a written contract, and for extras alleged to have been furnished for the construction of a schoolhouse. The defendant interposed a defense to the effect that the building was not constructed in accordance with the terms of the contract, plans, or specifications; that the workmanship was poor, etc. The evidence abundantly established that the building was not constructed according to specifications, and that it was very defective.
After completion of the schoolhouse, the defendant school district used the building, and the plaintiff thereupon contended that the district had accepted possession of the building.

**RULE:** (1) Where a building contract was defectively performed, if the defects were irremediable, the contractor was not entitled to recover, but, if remediable, he was entitled to recover the contract price plus proved extras which ought to be paid for, less the amount necessary to remedy defects.

(2) In an action against a district for balance of constructing a schoolhouse, where there was no other place where a school could be held, so that the defendant was compelled to use the defective building, by doing so it waived none of its claims or causes of action for defective construction.

Judgment affirmed for defendant.

**Key 86.** Remedies of parties.

**Key 86 (1).** Contracts for textbooks.

No cases in North Dakota.

**Key 86 (2).** Contracts for construction or equipment of schoolhouses.

(a) **Henderson v. Long Creek School Dist.**

No. 2, Divide County.

For brief and decision, see ante **Key 67, Case (d).**
(b) **Bartelson v. International School Dist. No. 5, Portal Township.** (1919) 174 N. W. 78 (43 N. D. 253)

(Because of the unusual nature of this case--its circumstances and the decision deriving from it--it shall be set forth at some length from the opinion of one of the Supreme Court judges who reviewed it, and who entered judgment reversing the trial court judgment, which held for the plaintiff.)

This is an action where it is sought to recover the amount due a contractor for the construction of a school building, in excess of the constitutional debt limit, by requiring the school district to return the property received or be declared a trustee for the use or rental value thereof, and where it appears that the building cannot be returned, or any part thereof segregated, without destruction or loss of property of the municipality, and that no burden can be imposed upon the municipality without exceeding the debt limit.

**FACTS:** In May, 1913, pursuant to an election, so authorizing, the board of education made a contract with the plaintiff to erect a high school building for the contract price of $24,000. Accordingly the building was constructed, and its value, as stipulated, since completion is $30,000. The plaintiff has received $19,769.10. There is a balance
due and unpaid of $4,295.90, with interest.

In 1914 an action to enjoin the school district, its officers, and the plaintiff herein was instituted by a resident taxpayer of the district to enjoin further issuance or reception of warrants in payment of outstanding warrants for the construction of such building. In that case (Anderson v. International School District—see post Key 90, Case (b)) this court, in November held that the contract created a present debt against the district, greatly in excess of the constitutional debt limit, and that to the extent of such excess the contracts were void, and enjoined further payments thereon.

The sole question involved...is the right of the plaintiff in equity, upon the facts, to obtain relief for the amount unpaid and due him.

Equity properly recognizes that a municipal corporation should not be permitted to take the property of another, and receive the benefits thereof, and thus be enriched through the loss of another, without compensation.

On the other hand, constitutional limitations upon the creation of indebtedness of municipalities are mandatory restrictions, enacted for the purpose of curbing taxing power and of restraining excessive expenditures, that entail tax burdens. It is well settled that those who deal with municipalities are bound to take notice and be bound by
these constitutional restrictions.

**RULE:** Accordingly, it must be recognized that, in applying equitable relief in the present form of action, equity must not accomplish by indirection what the law has prescribed must not be done directly.

**DECISION:** Judgment reversed in favor of defendant.

(c) Kasbo Const. Co. v. Minto School District of Cavalier County.

For brief, see ante Key 85, Case (a).

Key 87-88. District expenses and charges, and liabilities specially imposed by statute.

No cases in North Dakota.

Key 89. Torts.

(a) Anderson v. Board of Education of City of Fargo. (1922) 190 N. W. 807 (49 N. D. 181)

**FACTS:** Plaintiff brought an action against the defendant, charging it in her complaint with negligence in establishing and maintaining upon its school playgrounds certain apparatus, consisting of several heavy swings and chutes, more particularly described in the complaint, and in appropriate language alleging that her son, while on the school playgrounds, by reason of such negligence was injured and killed. She claimed damages in the sum of $25,000, and in addition thereto $200 to cover burial expenses of the boy and for physician's fees.
RULE: The board of education of the city of Fargo, a body corporate by virtue of a special law approved March 4, 1885, as amended, authorizing such board to provide such apparatus as is necessary for the physical improvement and health of the pupils, in providing heavy swings and chutes on a school playground acted in a purely governmental capacity, and was not subject to a suit, either in action for damages or otherwise for the death of a pupil injured and killed when struck by an iron-barred swing seat in operation on the school playgrounds.

DECISION: Judgment affirmed for defendant.
CHAPTER VII

DISTRICT DEBTS, SECURITIES, AND TAXATION

Key 90. Power to incur indebtedness and expenditures.

(a) Farmers' and Merchants' National Bank of Valley City v. School District No. 53.
For brief, see ante Key 68, Case (a).
Further ruling in the case, pertinent to this Key section, as follows:

"Laws 1879, c. 14, restricts the amount of obligations a school district may incur in any one year to 1½ per cent on the value of the taxable property in the district. Held that warrants payable immediately, for sums exceeding such percentage, are invalid."

(b) Anderson v. International School District No. 5, Portal Township. (1916) 156 N. W. 54 (32 N. D. 413)

FACTS: Defendant school district, whose debt limit was about $16,000, entered into a contract on May 27, 1913, with defendant Bartelson for the erection of a schoolhouse at the agreed price of $24,000. Eighty-five per cent of the labor and materials furnished was payable monthly upon estimates of the architect, and the balance within a short time after the completion of the building, which was to be completed on or before October 15, 1913, entered into two
other contracts, one for heating and ventilating the building, and the other for lighting it, which called for additional payments on the completion thereof.

RULE: (1) In Const. section 183, limiting to five per cent the debt of school districts, the word "debt" includes liabilities created under executory contracts for public improvements, though nothing is due thereon until same are executed in part or in whole.

(2) In determining whether the five per cent limit on indebtedness, prescribed by Const. section 183, has been exceeded, funds in the school district's treasury available for meeting its liabilities and also taxes levied and uncollected may be considered, but the district officers cannot anticipate revenues from future levies.

DECISION: Held that these contracts created a present debt against the district at the date they were entered into, which debt, after deducting available funds in the treasury applicable to the payment thereof, greatly exceeded the constitutional debt limit, and to the extent of such excess the contracts are void, and further payments thereon are enjoined.

(c) Rosatti v. Common School District No. 96, Cass County.

For brief, see ante Key 80 (2), Case (a).

Further ruling in the case, pertinent to this Key

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section, as follows:

(1) Comp. Laws 1913, section 1259, relating to expenditure of school money, being part of article 9, c. 12, dealing with special school districts, is limitation on powers of boards of education of special school districts only, and does not apply to common school district boards, sections 1173-1207 dealing with powers and duties of common school boards.

(2) Comp. Laws 1913, section 1356, included in c. 12, and restricting expenditure of school money is a statute of general application, and, unless otherwise provided, operates to circumscribe powers of all school boards, including those of common school districts, regardless of sections 1184, 1185, relating to powers of such districts.

(d) Jones v. Brightwood Independent School District No. 1. (1933) 247 N. W. 884 (63 N. D. 275)

FACTS: Plaintiffs sought to enjoin the defendants from levying taxes to pay certain warrants and bonds issued by Brightwood independent school district No. 1, Richland County. Plaintiffs further alleged that defendants are paying illegal debts, are threatening to continue illegal and excessive tax levies, and will do so unless enjoined.

RULE: Resident taxpayers seeking to enjoin school district from levying taxes to pay outstanding indebtedness, some of which was clearly legal, must differentiate between
legal and illegal indebtedness, and establish amount thereof.

**DECISION:** Judgment affirmed for defendants.

(e) *Knudson v. Norman School District*

No. --, **Traill County.** (1934) 256 N. W. 224 (64 N. D. 779)

Not pertinent to this study.

(f) *State v. Rasmusson, County Auditor.*

(1941) 300 N. W. 25 (71 N. D. 267)

See post Key 100, Case (a).

Key 91. Constitutional and statutory provisions.

No cases in North Dakota.

Key 92. Administration of finances in general.

No cases in North Dakota.

Key 92 (1). Custody and disbursement of funds.

No cases in North Dakota.

Key 92 (2)-94. No titles listed.

Key 95. Warrants, orders, and certificates of indebtedness.

Action against officers issuing order, see ante Key 62.

Key 95 (1). In general.

(a) *Farmers' and Merchants' National Bank of Valley City v. School District No. 53.*

For brief see ante Key 68, Case (a). Also for

*
additional ruling see same case in Key 90, Case (a).

Ruling pertinent to this Key section, as follows:

"Where the statute, section 29, subd. 4, c. 14, Laws 1879, required that the voters of a school district should select a site for a schoolhouse, and the district board, without this having first been done, selected it, built a house and issued warrants therefor without the authority and ratification of the voters, held the warrants were void ...where there was a restriction on the amount of revenue a school district might raise in any one year, and a board in issuing certain warrants payable immediately, exceeded this limit, held, the warrants were void."

Key 95 (2). Issuance, requisites and validity.

(a) Goose River Bank v. Williston Lake School Township. (1890) 44 N. W. 1002 (1 N. D. 26)

FACTS: The action was upon three school township warrants issued by the officers of the defendant. They were issued to pay for the services of a teacher who held no lawful certificate of qualification.

RULE: Every contract relating to the employment of a teacher who does not hold a lawful certificate of qualification is void by the express terms of the statute (section 1723, Comp. Laws), and every warrant issued in payment of services of such teacher is without consideration and void.

DECISION: The teacher had no claim against the
defendant, because the statute declares she should not have been employed to teach, and every act in violation of this provision was a nullity, so far as the liability of the defendant is concerned. The plaintiff cannot claim protection as innocent purchaser for value. That such instruments are not negotiable in the sense that their negotiation will cut off defenses is the voice of all decisions.

Judgment affirmed in favor of defendant.

(b) Crane and Ordway Co. v. Sykeston School District No. 11. (1917) 162 N. W. 413 (36 N. D. 254)

FACTS: This action arises out of a contractor’s inducing a board of directors of a school district to issue a district warrant by making false representations as to the payment for materials used in the performance of a contract between such contractor and the district. The contractor’s representation that all materials and labor had been paid for was false.

RULE: Where contractor induces directors of a school district to issue a warrant by false representations as to payment for material used under a contract with district, warrant may be rescinded, and contractor be required to surrender it for cancellation.

FACTS: Plaintiff brought this action to recover on certain warrants alleged to have been issued by the defendant school district. All the warrants involved in this case were presented to the treasurer of the defendant school district for payment either on the day on which they were issued or within three days afterward. The warrants were endorsed by the school treasurer as provided by law to the effect that they had been presented for payment and not paid for want of funds. Six years later the plaintiff commenced this action, and the defendant contended that the rights and causes of action were barred by the statute of limitations.

RULE: In these circumstances the statute of limitations did not commence to run until the warrants were called for payment and notice given to the holder as required by law.

DECISION: Judgment affirmed for plaintiff.


For brief, see ante Key 80 (2), Case (c).

Further ruling in the case, pertinent to this Key section, as follows:

"Warrant issued by school district in payment of obligation arising out of contract which was invalid for failure to observe statutory provision requiring competitive bidding held unenforceable, since the warrant created no
greater liability than the debt it represented."

Key 95 (3). Negotiability and transfer.

(a) Goose River Bank v. Willow Lake School Township.

For brief, see ante Key 95 (2), Case (a).

Further ruling in the case, pertinent to this Key section, as follows:

(1) Warrants for the payment of a teacher's services are not negotiable so as to cut off defenses, and an assignee cannot recover thereon as being a bona fide purchaser.

(2) School township warrants are not negotiable instruments, in the sense that their negotiation will cut off defenses existing against them in the hands of the payee.


For brief, see ante Key 79, Case (a).

Further ruling in the case, pertinent to this Key section, as follows:

A warrant issued by a school district, though in the hands of a bona fide purchaser, creates no greater liability than the demand represents, and it is subject to the same defenses.

Key 95 (4). Payment.

(a) School District No. 35 of Cass County v. Shinn.
For brief, see ante Key 63 (3), Case (b).

Further ruling in the case, pertinent to this Key section, as follows:

School treasurer is ministerial officer without discretion respecting payment of warrants properly drawn and signed (Comp. Laws 1913, sections 1161, 1168, 1173).

Key 95 (5). Rights and remedies of holders.

(a) **Capital Bank of St. Paul v. School District No. 63 of Barnes County.**

For brief, see ante Key 79, Case (a).

Further ruling in the case, pertinent to this Key section, as follows:

A warrant creates no greater liability than the debt it represents, whether in the hands of the original party or of a purchaser before maturity and for value.

(b) **Crane and Ordway Co. v. Sykeston School Dist. No. 11.**

For brief, see ante Key 96 (2), Case (b).

Further ruling in the case, pertinent to this Key section, as follows:

That members of a school board have disbursed funds in payment of individual judgments against them for material supplied to the district does not prevent them from defending an action on a school district warrant which had been obtained by fraud.
(c) Osage Farmers National Bank v. Van Hook

Special School District No. 8.

For brief, see ante Key 95 (2), Case (c).

Further ruling in the case, pertinent to this Key section, as follows:

Where payment of school district warrant was refused on presentment for want of funds, indorsement to such effect was made on warrant by school district treasurer and warrant was registered in treasurer's books, limitation did not commence to run until warrant was called for payment and notice given to holder to present warrant for payment.

Key 96. Bills and notes.
No cases in North Dakota.

Key 97. Bonds.
See Key 97 (1) immediately following.

Key 97 (1). Authority to issue bonds in general.

(a) Prairie School v. Haseleu.
For brief, see ante Key 63, Case (a).

Further ruling in the case, pertinent to this Key section, as follows:

Laws 1883, c. 45, section 1, provides that school township bonds shall be signed by the township clerk and director. Section 2 provides that all moneys received from the sale of the bonds shall be paid to the treasurer. Held that the treasurer has no authority as such to issue or
sell bonds.

(b) **Schouweiler v. Allen.** (1908) 117 N. W. 866 (17 N. D. 510)

**FACTS:** After a majority of the voters of a school district had instructed the school board to issue bonds for building purposes, a taxpayer and voter of the district brought suit to enjoin the issuance of the bonds voted, alleging that enough illegal votes were cast in favor of the bonds to change the result.

The school board answered, denying all allegations of the complaint relating to illegal votes; but subsequently a majority of the board stipulated personally with the plaintiff in such action that judgment should be rendered and entered in favor of the plaintiff permanently enjoining the defendants from issuing the bonds so voted.

**Held** that such stipulation constitutes collusion between the plaintiff and the officers, and a legal fraud upon the district and the court.

**RULE:** The officers of a school district are in effect agents of the voters and taxpayers, and when the district, at a regularly called and conducted election, votes to issue the bonds of the district and from the proceeds to build a schoolhouse, such vote is an instruction by the principal, and such officers have no discretion as to obeying instructions.
Key 97 (2). Funding indebtedness.

(a) State v. School Dist. No. 50 of Barnes County. (1909) 120 N. W. 555 (18 N. D. 616)

FACTS AND RULE: The municipal bonds of defendant school district which are sued upon in this case were issued without first submitting to the electors of the school district the question of their issuance, and, furthermore, the school district had no power to issue the same by the express provisions of the act under which it is claimed they were issued as there were not 25 legal votes cast in such district at the preceding annual school election therein. Chapter 11, p. 39, Laws 1887, under which the plaintiff contends such bonds were issued, is printed upon the back of the bonds, and section 9 thereof expressly provides that the question of refunding prior indebtedness shall be first submitted to a vote of the qualified voters of the district after giving certain notice therein prescribed of an election for such purpose, and that the proposition to issue such bonds must receive the affirmative votes of at least two-thirds of all the votes cast; also that no school district in which less than 25 legal votes were cast at the annual school election next preceding the issuance of such bonds shall avail itself of the provisions of this act.

DECISION: Judgment affirmed for defendant. Held, that such bonds are void.
Key 97 (3). Limitation of amount of bonds. No cases in North Dakota.

Key 97 (4). Submission of question of issue to popular vote.

(a) Shouweiler v. Allen.
For brief, see ante Key 97 (1), Case (b).
Further ruling in the case, pertinent to this Key section, as follows:

Rev. Codes 1905, section 911, providing that if a majority of all the votes cast at a school district election shall be in favor of issuing bonds, the school board, through its proper officers, shall forthwith issue the bonds, is mandatory.

(b) Shirley v. Coal Field School Dist. No. 16, Divide County. (1920) 179 N. W. 551 (46 N. D. 51)

FACTS: This is an action to enjoin school officials from issuing school bonds approved by the voters at a special election, where the complaint alleges active fraud and fraudulent design on the part of the school officials in the calling of such election, the posting of notices thereof, and in the time when the same was held for the purpose of preventing an expression by the majority of the voters in the district...the clerk of the district did, however, post notices of such election, viz., one at the post office, one...
at the village hall, one at the town pump house, and one at the schoolhouse, all in the village of Noonan.

**RULE:** In a special election to vote upon an issue of school bonds pursuant to section 1333, Comp. Laws 1913, notices thereof posted in at least three public and conspicuous places in the school district comply with the statute. It is not essential that such notices be posted upon the bulletin boards or places designated pursuant to section 4248, Comp. Laws 1913.

**DECISION:** Judgment affirmed for defendants.

(c) Knudson v. Norman School District, Traill County.

Not pertinent to this study.

**Key 97 (4 1/2).** Proceedings to determine validity of bonds.

**Key 97 (5).** Sale or other disposition of bonds by district.

**Key 97 (6).** Form, execution, and issuance of bonds.

(a) Schouweiler v. Allen.

For brief see ante **Key 97 (1), Case (b).** Rule applies also to this **Key** section.

(b) State v. School District No. 50 of Barnes County.

For brief, see ante **Key 97 (2), Case (a).** Rule applies also to this section.
Key 97 (8). Ratification and estoppel.

(a) State v. School District No. 50 of Barnes County.

See annotation in (b) above.

Further ruling in the case, pertinent to this key section, as follows:

The bonds in suit contain a recital to the effect that they are issued for the purpose of refunding present indebtedness "as authorized by act of the legislative assembly approved March 11, 1887," Laws 1887, p. 39, c. 11, entitled "AN act to provide for refunding the outstanding indebtedness which existed prior to July 30, 1886, of any incorporated board of education or school district in the territory of Dakota." Held, that such recital does not estop the school district from urging the defense, even as against an innocent purchaser, that such bonds were illegally issued.

Key 97 (9). Payment.

No cases in North Dakota.

Key 97 (10). Rights and remedies of holders.

(a) State v. School District No. 50 of Barnes County.

See Rule in Case (a), Key 97 (8) above.

Key 98. School taxes.

Key 99. Power and duty to tax.

(a) Jones v. Brightwood Independent School
District No. 1.

For brief, see ante Key 22, Case (d).

Further ruling in the case, pertinent to this Key section, as follows:

General statute regarding school district tax levies held applicable to school district organized by act of territorial Legislature. Comp. Laws Supp. 1925, sections 2079-b1 to 2079-b13.

Key 100. Purposes and grounds.

(a) State v. Rasmusson. (1941) 300 N. W. 25 (71 N. D. 267)

FACTS: This is an action by plaintiff to command the defendant to levy and extend against certain property taxes to pay school's bond issue in fall.

RULE: The statute requiring that a tax sufficient to pay bonds be levied upon taxable property in school district must be read into the school bond contract.

DECISION: Affirmed for defendant.

(b) State v. School Dist. No. 50, Barnes County.

For brief, see ante 97 (2), Case (a).

Further ruling in the case, pertinent to this Key section, as follows:

A recital in school district bonds that they were issued to refund present indebtedness as authorized by Act

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March 11, 1887 (Laws 1887, p. 39, c. 11), does not stop the
district from urging the defense, even against an innocent
purchaser, that the bonds were illegally issued.

(c) *Payne v. Board of Trustees of the*

*Teachers' Ins. and Retirement Fund.* (1948) 35 N. W.
2d 553 (72 N. D. 278)

**FACTS:** The plaintiff, William H. Payne, had been
engaged in teaching in the public schools for twenty-six
years, eighteen of which, including the last five years of
such service, were in the public schools of North Dakota and
in equivalent service of the army. He completed the pay­
ments of the assessments at the end of the school year 1945-
46 but lacked one year of teaching in North Dakota. He com­
pleted such teaching service in the state about May 31,
1947; he was fifty-nine years old. On August 27, 1947, he
wrote to the executive secretary of the Board and applied
for retirement under the provisions of Senate Bill 103 as
passed by the 1947 Legislature.

Senate Bill 103 became Chapter 165, S. L. 1047, Sec.
15-3928, 1947 Supp. NDRC 1943. The Board refused to grant
the annuity provided by that chapter on the grounds that the
plaintiff had performed no teaching services after it became
effective. The Board pointed out that he was entitled to
payments under the old law. Plaintiff then brought this
suit to determine and enforce his claimed rights under the
1947 law. The District Court found in his favor and the Board brought this appeal.

The stipulated facts show that the plaintiff on May 31, 1947, had fully complied with the act and fulfilled all the conditions therein. By ceasing to teach he retired. He was at that time entitled to the deferred payments, in the form of an annuity, provided by the Teachers' Insurance and Retirement Act, for the services he had performed. It became the duty of the Board, as soon as requested, to determine the amount of his annuity according to the law then in force, and commence payments as of that date.

DECISION: It follows that the plaintiff is only entitled to receive annuities under Sec. 15-3928, 1947 Supp. NDRC 1943.

Judgment of the District Court is reversed in favor of defendants, and remanded for further proceedings according to law.

Key 101. Amount of tax.

(a) Great Northern Ry. Co. v. Duncan.

(1919) 176 N. W. 992 (42 N. D. 346)

FACTS: The action is one to recover certain taxes alleged to have been paid by the plaintiff under protest. The facts alleged in the complaint may be briefly stated as follows: In the year 1915 the county auditor of Towner County levied a mill tax for school purposes upon the
property of the plaintiff, acting under the authority ex­
pressed in section 1224, Comp. Laws 1913.

The tax is $114.69 in excess of the amount which the
auditor would be authorized to levy under Chapter 254 of the
Session Laws of 1915, if the provisions of this chapter were
applicable and if the authority contained in section 1224,
Compiled Laws of 1913, is restricted by the later enactment.
The tax was paid under protest.

RULE: Session Laws 1915, c. 254, section 1, which
provides for limiting taxes levied at a certain rate in
mills during the years 1915-16, limits the taxes that may be
extended by the county auditor for school purposes, under
Comp. Laws 1913, section 1224.

DECISION: Judgment affirmed for plaintiff.

(b) State v. Kramer. (1922) 190 N. W. 271
(49 N. D. 397)

FACTS: The plaintiff and petitioner alleges, among
other things, that prior to the 15th day of August, 1922, a
special election was held in Devils Lake special school dis­
trict for the purpose of authorizing a tax levy of 25 per­
cent in excess of the limit otherwise provided by chapter
122 of the Session Laws of 1921, and that an election held
on August 15th resulted in a favorable vote on the proposit­
ion; that the board of education thereupon, by resolution,
directed the levy of $17,000 for school purposes, which sum
was within the 25 per cent increase authorized at the election; that upon certification of the levy to the county auditor, the latter refused to extend the taxes. Judgment was brought in favor of the plaintiff.

**RULE:** Session Laws 1921, c. 122, providing that the total amount of taxes levied for any purpose, except special levies for local improvements and maintenance of sinking funds in any county or political subdivision, or any village, town, or city within the state, shall not exceed any amount equal to one-third of the total combined levies which were made for the years 1918, 1919, and 1920, except that school districts may levy not to exceed 30 per cent in excess of such amount, and provided that any county or political subdivision, or any village, town, or city, may increase such levy in same proportion as assessed property valuation increases or has increased over that of year 1919, and provided that the electors may by a majority vote authorize a levy of 25 per cent in excess of this limit, held to authorize electors of school districts by a majority vote to increase the tax levy above the limit otherwise prescribed.

**DECISION:** Judgment for plaintiff affirmed.

(c) **Great Northern Ry. Co. v. Severson,**

County Treasurer. (1951) 50 N. W. 2d 889 (78 N. D. 610)

**FACTS:** Plaintiff brought this action to recover
money paid under protest as excess tax levies. The clerk of
the school board of the district certified to the County
Auditor of Nelson County for the year 1946 a levy of 33
mills, which was the maximum levy established by the elec­
tors of the district at the special election in 1946.
Despite the fact that no other election was held in the dis­
trict, the clerk of the school board, for the year 1947,
certified a levy of 50.12 mills, which was 14.12 mills in
excess of the 36-mill limitation established by Chapter 359,
SLND 1947. This excess levy applied to valuation of plain­
tiff's property amounts to $903.85. This amount the plain­
tiff sought to recover. The plaintiff did not contest the
right of the school district to levy 36 mills as prescribed
by Chapter 359, SLND 1947, but challenges the right of the
school district to use the right of the 1946 election and
the levy increase approved at that time as a basis for in­
creasing the levy limit prescribed by that statute.

RULE: The 1947 amendatory statute which raised the
aggregate amount of tax that could be levied by any school
district giving four years of standard high school work
from 22 mills to 36 mills is prospective in its operation
and does not furnish an enlarged basis for applying the per­
centage increase approved by the voters of a school district
at an election held when the prior levy limit of 22 mills
was in effect.
DECISION: Judgment affirmed for plaintiff.

Key 102. Persons and property liability.

(a) State v. Rasmusson.

For brief, see ante Key 100, Case (a).

Further ruling in case, pertinent to this Key section, as follows:

Where territory is detached from one school district and organized into a new school district, tax levies by old district for debt service do not follow detached territory except as directed by an arbitration board under the statute providing that the board shall take an account of the assets, funds on hands, the debts justly and properly belonging to or chargeable to each corporation, or part of a corporation affected by such change, and levy such tax against each as will in its judgment justly and fairly equalize their several interests.

Key 103. Levy and assessment.

Key 103 (1). Making requisites, and validity in general.

No cases in North Dakota.

Key 103 (2). Submission of question to voters.

No cases in North Dakota.

Key 103 (3). Statement of purpose of tax.

No cases in North Dakota.

Key 103 (4). Certificates, estimates, and

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determination of rate or amount of levy.

(a) State v. Kramer.

For brief, see ante Key 101, Case (b).

Further ruling in the case, pertinent to this Key section, as follows:

Session Laws 1915, c. 144, providing that the board of education shall, on or before the 20th day of July in each year, levy a tax for the support of the schools of the corporation for the fiscal year next ensuing, held not applicable as to the time of certification of the tax to the county auditor to an additional tax authorized by the electors, under Session Laws 1921, c. 122.

Key 104. Lien.

No cases in North Dakota.

Key 105. Payment.

No cases in North Dakota.

Key 106. Correction and enforcement.

No cases in North Dakota.

Key 107. Remedies for erroneous taxation.

(a) Great Northern Ry. Co. v. Mustad, County Auditor, et al. (1948) 33 N. W. 2d 436 (76 N. D. 84)

FACTS: In this action the plaintiff entered a complaint showing that the school district had levied and extended against the plaintiff's property an allegedly
excessive tax on the theory that the vote of the electors of the district to exceed the legal tax limit by 50 per cent authorized a levy of tax 50 per cent in excess of legal tax limit as increased by subsequent legislation, and that the defendants had threatened to and would collect such tax if not restrained.

**HELD:** Railroad was not entitled to injunctive restraining levy and collection of school district tax on its personal property in excess of amount which district was authorized to levy in absence of showing that exaction of tax would result in irreparable injury to railroad, since railroad had an adequate remedy at law by paying tax under protest and suing to recover amount of illegal exaction.

**Key 108.** Assessments and special taxes for particular purposes.

No cases in North Dakota.

**Key 109.** Poll taxes.

No cases in North Dakota.

**Key 110.** Disposition of proceeds of taxes and other revenues.

(a) **Stinson v. Thorson.** (1916) 158 N. W. 351 (34 N. D. 372)

**FACTS:** This is an action to restrain the school board of Grand Forks independent school district from carrying out a contract for the erection of a high school
building, because certain funds had been diverted from the purpose for which they had been levied, and that without such funds said contract creates a debt in excess of the constitutional limit.

RULE: Transfer of funds from teachers' general fund of independent school district is not prohibited by Const. section 175, relating to application of taxes.

DECISION: Original judgment for plaintiffs is reversed.

(b) Gerhardt v. Heid.

For brief and decision, see ante Key 2, Case (a).

Key III. Rights and remedies of taxpayers.

(a) Anderson v. International School Dist. No. 5, Portal Township, Burke County.

For brief, see ante Key 90, Case (b).

Further ruling in the case, pertinent to this Key section, as follows:

Payments on contracts of a school district creating a debt in excess of the five per cent limit prescribed by Const. section 183, will be enjoined at the suit of a taxpayer.

(b) Kretchmer v. School Board of Dist. No. 12, Barnes County.

For brief, see ante Key 67, Case (b).

Further ruling in the case, pertinent to this Key
Evidence held to show establishment and attempt to maintain high school by defendants without submission of question to popular vote, as required by Comp. Laws 1913, section 1192, so that injunction against such section is authorized.

(c) *Shirley v. Coal Field School Dist. No. 16, Divide County.*

For brief, see ante Key 97 (2), Case (b).

Identical rule applies to this section.

(d) *Weeks v. Hetland.* (1925) 202 N. W. 807 (52 N. D. 351)

(e) *Beckman v. Belyea.* (1931) 236 N. W. 361 (60 N. D. 738)

(f) *Mootz v. Belyea.* (1931) 236 N. W. 358

**FACTS:** These are companion cases. There were four schools in the district and four teachers to employ. At the time the contract was entered into with Mary Mootz to teach school No. 2 as shown her case, the board employed Anna Collins to teach school No. 1. When the new board decided "that Mary Mootz was not legally hired and she should be notified to that effect," it transferred Anne Collins to school No. 2 and employed Signy K. Stoner to teach school No. 1 in place of Anne Collins. Contracts were signed for
the term of nine months each, beginning September 8, 1930, with agreed compensations, the teachers immediately took charge of the schools, have been teaching there ever since with the full consent and acquiescence of the school board and under its direction, and there is no question raised as to their competency.

The plaintiffs brought this action to enjoin the school board from paying out any money to Anne Collins or to Signy K. Stoner, from interfering with Mary Mootz as teacher in school No. 2, and to compel them to observe the contract set forth by Mary Mootz in her case against the school board.

**RULE:** Taxpayers held not entitled to enjoin school board from preventing teacher alleged to have been validly employed from carrying out contract by employing another teacher; taxpayers held not entitled to enjoin school board from paying teacher employed by board because of previous employment by board's predecessors of another teacher replaced by second teacher.

**DECISION:** Affirmed for defendants.

(g) Simmons v. Board of Education of Crosby. (1931) 237 N. W. 700 (61 N. D. 212)

**FACTS:** This action was brought by the plaintiff, a theater operator, suing as an elector and a taxpayer in the defendant school district to prevent school from renting the
high school auditorium for theatrical entertainments. The District Court held that the provisions "shall apply only to professional entertainers and shall not be considered as restraining anyone connected with the defendant school or its classes, chautauquas, local entertainments, athletic contests, or those who are not professional entertainers." The District Court rendered judgment on these points for the plaintiff; defendants appealed.

RULE: Theater operator suing as taxpayer held not entitled to enjoin school district's officers from renting out high school auditorium for theatrical entertainments where there was no showing of injury to taxpayers.

DECISION: Judgment reversed in favor of defendants.

For brief, see ante Key 22, Case (d).
Rule applies to this Key.
CHAPTER VIII

CLAIMS AGAINST DISTRICTS, AND ACTIONS

Key 112. Presentation and allowance of claims.
No cases in North Dakota.

Key 113. Actions by or against the district.
No cases in North Dakota.

Key 114. Capacity to sue or be sued.
No cases in North Dakota.

Key 115. Rights of action and defenses.

(a) Farmers' and Merchants' Nat. Bank of Valley City v. School Dist. No. 53. N. W. 767 (6 Dak. 255)
For brief, see ante Key 95 (1), Case (a).
Further ruling in the case, pertinent to this Key section, as follows:

A school district, in an action against it on its warrants, will be permitted to defend on the ground that the warrants were issued in excess of its powers.

(b) Ogren v. Crystal Springs School Dist. No. 29, Kidder County. (1925) 203 N. W. 324 (52 N. D. 455)

FACTS: This action may be and was considered as an action for money had and received. In his complaint the plaintiff, generally setting out his version of the facts,
alleges that he advanced the defendant the sum of $5,030; that he received therefore a warrant for that amount; that the same was not paid for want of funds and was duly registered; that the defendant received the money thus paid by the plaintiff and used the same in the building of its schoolhouses; that payment has been demanded but refused.

**RULE:** Action for money had and received may not be maintained against a school district, to recover money unlawfully borrowed by the treasurer of such district to replace defalcations of the district's funds, although money was kept in Bank of North Dakota as required by Laws 1919, c. 147.

**DECISION:** Verdict for plaintiff affirmed...plaintiff should recover amount district actually received from him.

**Key 116.** Time to sue and limitations.

No cases in North Dakota.

**Key 117.** Use of name of district or of officers.

No cases in North Dakota.

**Key 118.** Parties.

No cases in North Dakota.

**Key 119.** Process and appearance.

No cases in North Dakota.

**Key 120.** Pleading.

No cases in North Dakota.

**Key 121.** Evidence.

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No cases in North Dakota.

**Key 122. Trial.**

No cases in North Dakota.

**Key 123. Judgment.**

No cases in North Dakota.

**Key 124. Execution and judgment.**

(a) *Auran v. Mentor School District No. 1 of Divide County.* (1929) 228 N. W. 435 (58 N. D. 934)

**FACTS:** In this action the plaintiff, having a judgment against the defendant, Mentor School District No. 1 and the members of the board of education of the school district, caused an execution to be issued on the judgment and commenced a garnishment proceeding against Divide County, the county auditor, and the county treasurer. The garnishees appeared by the state's attorney and objected to the jurisdiction of the court on the ground that the funds held by the garnishees were held as a trust fund, and not subject to execution, attachment, or garnishment.

**RULE:** (1) Public funds belonging to a school district are not subject to execution, attachment, or garnishment.

(2) Judgment against a school district can be collected only under statute providing for levying taxes to pay judgment (Comp. Laws 1913, sections 1223, 1227).
Key 125. Appeal and error.
No cases in North Dakota.

Key 126. Costs.
No cases in North Dakota.
CHAPTER IX

TEACHERS

Key 127. Eligibility in general.
No cases in North Dakota.

Key 128. Teachers' institutes.
No cases in North Dakota.

Key 129. Certificate or license.
No cases in North Dakota.

Key 130. In general.

(a) McDonald v. Nielsen. (1919) 175 N. W. 361 (43 N. D. 346)

FACTS: The plaintiff, who was then incumbent, and the defendant were opposing candidates for the office of superintendent of public instruction with the result that the defendant won. The plaintiff, however, refused to surrender the office, contending that the defendant was not the "holder of a teacher's certificate of the highest grade issued in the state," and hence was not eligible to the office.

The defendant contended that she is "the holder of such a certificate within the meaning of section 1105, Comp. Laws 1913. It appears from the record in this case that the defendant on November 27, 1900, received from the then superintendent of public instruction a normal certificate
under the provisions of section 738, Rev. Codes 1899. The result of the examination taken by her is indorsed on the certificate. The record also disclosed that on November 8, 1902, the then superintendent of public instruction issued a professional certificate to the defendant.

RULE: Manifestly, the changes made in the former law as disclosed by section 1105, Comp. Laws 1913, do not indicate any intention on the part of the legislature to disqualify those then holding a teacher's certificate of the highest grade issued in this state from holding the office of superintendent of public instruction.

A professional certificate issued under the provisions of Rev. Codes 1899, section 737, is a "teacher's certificate of the highest grade" issued in the state within the purview of Comp. Laws 1913, section 1105.

DECISION: Judgment affirmed for defendant.

(b) Wendt v. Waller.

For brief, see Key 48 (2), Case (a). Same rule applies.

Key 131. Requisites to appointment or employment.

(a) Goose River Bank v. Willow Lake School.

For brief, see ante Key 95 (2), Case (b). Same rule applies.

(b) Hosmer v. Sheldon School District No. 2 of Ransom County. (1894) 59 N. W. 1035 (4 N. D. 197)
FACTS: In this action judgment was originally made in favor of the plaintiff, and the defendant school district appealed. It appears from the complaint that on August 7, 1891, when the written contract between the plaintiff and the defendant was entered into, the plaintiff held a first grade certificate issued by the superintendent of Barnes County. This certificate would be valid in Ransom County when indorsed by the superintendent of schools of Ransom County. Such indorsement was not made until September 4, 1891. The allegation is that it was made August 29, 1891, and the formal entry September 4. But it was the formal entry that constituted the indorsement, and what preceded that was but a promise to indorse. Hence, neither at the time of entering into the contract, nor at the time of commencing to teach, did the plaintiff hold a certificate in Ransom County. For that reason the defendant contends that the contract of employment, dated August 7, 1891, was void under section 122, c. 62, Laws 1890, as amended by section 24, c. 56, Laws 1891.

RULE: (1) A contract duly executed between the proper officers of a school district and another person, by the terms of which said person is employed as a teacher in a public school in the district, is void where such person, at the time of making the contract, holds no certificate of authority to teach in the county where the district is
located.

(2) The subsequent procurement of such certificate will not enable such person to recover against the district damages for the breach of such contract.

DECISION: Judgment reversed in favor of defendant.

(c) Schafer v. Johns (1912) 137 N. W. 481 (23 N. D. 593)

FACTS: From a verdict in favor of the defendant the plaintiff appealed. At the time the plaintiff entered upon a contract with the school board to teach in the school district he did not possess a certificate of qualification. However, he was duly elected by the school board and signed a contract; later the school board declared the contract void because he had not received a qualifying certificate at the time of the signing of the contract. Again, as in the preceding case, the plaintiff did receive a qualifying certificate to teach.

RULE: (We note in this case that there is a revision in law which holds differently than in the case preceding.)

Under the school law, as revised and re-enacted by Laws 1911, c. 266, a contract between a school board and a teacher is not void or voidable merely because at its date the teacher did not hold a certificate or permit qualifying him to teach.

DECISION: Judgment reversed in favor of plaintiff.
Key 132. Revocation.
No cases in North Dakota.

Key 133. Selection, appointment, and term of employment in general.
Rules of board of education, see ante Key 55.
(a) Mootz v. Belyea.
For brief, see ante Key 111 (f).
(b) Beckman v. Belyea.
For brief, see ante Key 111, Case (e).

Further ruling in case, pertinent to this Key section, as follows:
School board's formal approval of previous informal employment of teacher constitutes ratification of employment.

(c) Seher v. Woodlawn School Dist. No. 26, Kidder County. (1953) 59 N. W. 2d 805

FACTS: Inasmuch as this case received broad publicity in North Dakota, and because it provides for broad application, it shall be discussed at length with rulings applicable here and in sections following.

This is a teacher's action for breach of teaching contract consisting of his dismissal prior to expiration of contractual term wherein defendant contended that dismissal had been for cause. The district court entered judgment for the plaintiff, and defendant appealed. The Supreme Court
held that the evidence sustained the determination of the
trial judge that plaintiff had not been guilty of plain
violation of contract, gross immorality, or flagrant neglect
of duty.

**RULE:** A school teacher, including a superintendent,
employed by school district is not an "officer" of the dis­
trict, but is a mere "employee," and relationship between
district and teacher is purely contractual.

**Key 134.** Contracts of employment.
No cases in North Dakota.

**Key 135.** Making, requisites, and validity.
No cases in North Dakota.

**Key 135 (1).** Authority to contract in general.

(a) **Auran v. Mentor School District No. 1,**
Divide County.
For brief, see ante Key 124, Case (a). Same rule
applies.

**Key 135 (2).** Authority to bind successors.
No cases in North Dakota.

**Key 135 (3).** Requisites and validity in general.
No cases in North Dakota.

**Key 135 (4).** Formal requisites.

(a) **Michaelsohn v. Norway School District**
No. 12 of McHenry County. (1933) 249 N. W. 776
(63 N. D. 683)
FACTS: This is an action to recover damages for the refusal of the defendant school corporation to execute a teacher's contract with the plaintiff. The contract was oral, and the defendant declined to execute a contract in writing, and later would not allow the plaintiff to enter upon the performance of his oral contract.

RULE: Statutory requirement that contracts for employment of teachers be in writing held mandatory barring teacher's action for damages against school district based on oral contract of employment. Until a contract for the employment of the teacher has been entered in the manner required by the statute, no binding contract is formed which can be used as the basis of an action for damages against the district. (Comp. Laws 1913, section 1178)

DECISION: Affirmed for defendant.

Key 135 (5). Ratification and estoppel.

No cases for North Dakota.

Key 136. Construction and operation.

(a) Auran v. Mentor School District No. 1, Divide County.

For brief, see ante Key 124, Case (a).

Further ruling in the case, pertinent to this Key section, as follows:

Teacher cannot employ, nor require school board to accept, substitute in performance of services she contracted
to perform.

(b) Seher v. Woodlawn School Dist. No. 26 of Kidder County.

For brief, see ante Key 133, Case (c).

Ruling pertinent to this Key section follows:

The laws in existence when contract is entered into become a part of the contract, as though written therein, and, therefore, statutory provision that school board could dismiss teacher at any time for certain causes became part of teacher's contract. (NDRC 1943, 15-2508)

Key 137. Performance or breach.

(a) Auran v. Mentor School District No. 1.

For brief, see Key 111, Case (e).

Key 138. Remedies for enforcement.

No cases in North Dakota.

Key 139. Resignation and abandonment.

No cases in North Dakota.

Key 140. Suspension, removal, and reassignment.

No cases listed for North Dakota.

Key 141. In general.

Key 141 (2). Authority to remove or discharge in general.

No cases for North Dakota.

Key 141 (3). Contracts reserving right.

No cases in North Dakota.
**Key 141 (4). Grounds for removal or suspension.**

(a) **Clark v. Wild Rose Special School District No. 90. 182 N. W. 307 (47 N. D. 297)**

**FACTS:** On April 22, 1919, at a special meeting of the school board, the board discussed the advisability of dismissing the plaintiff for voluntary neglect of work by not reporting for duty on the preceding day, which was Monday. The clerk was authorized to deliver a communique to her, and with it a warrant for her salary to date. On the following day, no resignation having been received, the board held another special meeting, at which it was resolved that the plaintiff be dismissed from her position for the good of the district. A communication to this effect was authorized, in which it was stated that the dismissal should take effect immediately, and that the notice was given by virtue of plaintiff's refusal to hand in her resignation as requested.

On the above facts the district court was called upon to determine whether or not the plaintiff had been legally dismissed and removed under subdivision 8 of section 1251, Comp. Laws 1913.

**RULE:** Where a board of education of a special school district undertakes to dismiss and remove a school teacher under subdivision 8 of section 1251, Compiled Laws of 1913, which provides for removal "for cause," it is prerequisite
to a valid removal that the teacher be informed of the charges and be given reasonable opportunity for a hearing thereon.

**DECISION:** Judgment for plaintiff.

(b) *Seher v. Woodlawn School District No. 26.*

For brief, see ante Key 133, Case (c).

Ruling pertinent to this Key section, as follows:

1. A school board's dismissal of a teacher is an exercise of executive function, but whether dismissal constituted a breach of teacher's contract is for judicial determination, and, therefore, decision of school board, which had dismissed teacher prior to termination of contractual term, that there was cause for dismissal was not final or controlling upon court in teacher's action for breach of teaching contract. (NDRC 1943, 12-508)

2. Public school education is a governmental, rather than a proprietary, function and legislature may declare that question of facts as to whether there is cause for dismissing a teacher shall be administrative rather than a judicial question. (NDRC 1943, 12-508)

**Key 141 (5).** Proceedings and review.

FACTS: The plaintiff brought this action for a balance she claims due under a contract with the defendant school district. The contract is admitted. It provided that plaintiff should teach the school for eight months. She was paid her salary from September 11, 1944, until December 1, 1944. During those three months eight children were in attendance, only seven of whom were of compulsory school age. They belonged to two families and were all the children of school age in the district. One of these families was that of the president of the school board. The evidence shows that the plaintiff had some difficulties with discipline in her school. In early November she got into a dispute with the son of the president of the school board over a matter of history in which she was clearly right. The son defied her. The father took the son's part. About the 11th of November he took his three children out of school and sent them to another school. He also visited the father of the other family attending school, and told him to keep his children out "for ten days--enough days so the contract of the teacher would be void." Then on November 29 the school board met and passed a resolution closing the school on the grounds that the attendance was less than six for ten consecutive days. The evidence does not show that the plaintiff was notified thereof. Shortly after the ten days had expired the five children belonging to the other
family returned to school. Plaintiff continued to teach them the rest of the term. In that she was not disturbed, although the president of the school board knew that she was teaching. She reported to the county superintendent. Her pupils took the required examinations and passed.

The evidence indicates clearly that the cause of the attempted closing of the school was the dissatisfaction of the president of the school board, with plaintiff's conduct of the school and the progress of his children under plaintiff's teaching.

**RULE:** Proceeding to dismiss teacher for failure to perform her duty or to remove her for incompetency must be brought under statutory provision for revocation of teacher's certificate for incompetency or provision for dismissal of teacher for violation of contract or neglect of duty after hearing and notice to teacher in sufficient time to prepare defense, not under statute providing for discontinuance of school when average attendance falls below six pupils for ten consecutive days. (R. C. 1943, 15-2508, 15-2509, 15-3615, 15-3616)

**DECISION:** Case remanded with directions to district court to order judgment for the balance due on the contract.

(b) Clark v. Wild Rose Special School

District No. 90.

For brief, see ante Key 141 (4), Case (a).
Further ruling in case, pertinent to this Key section, as follows:

Where a board of education of a special school district undertakes to dismiss and remove a school teacher under Comp. Laws 1913, section 1251, subdivision 8, which provides for removal "for cause," it is prerequisite to a valid removal that the teacher be informed of the charges and be given a reasonable opportunity for a hearing thereon.

(c) Seher v. Woodlawn School District No. 26.

For brief, see ante Key 133, Case (c).

Ruling pertinent to this Key section, as follows:

Statutes providing for review by superintendent of public instruction of decisions of county superintendent of schools was not intended to apply in case of dismissal of school teacher, and, therefore, appeal to superintendent of public instruction by teacher who was dismissed prior to termination of contractual period was not a condition precedent to commencement of action for breach of teacher's contract. (NDRC 1943, 15-2107, 15-2217)

Key 141 (6). Reinstatement.

No cases in North Dakota.

Key 142. Actions for damages.

For brief, see ante Key 133, Case (c).

Further rulings in the case, pertinent to this Key section, as follows:

(1) See ruling for this case above, Key 141 (5), Case (c).

(2) See ruling for this case above, Key 141 (4), Case (b).

(3) Burden of proof is upon school district in action by school teacher for breach of contract based upon dismissal of teacher prior to expiration of contractual period to prove by fair preponderance of evidence that the school board had justifiable cause for such dismissal, and fact of dismissal is no evidence that it was justifiable.

Where teacher was dismissed without cause before expiration of term of his employment, was paid to date of dismissal, and suit for breach of teacher's contract resulting from dismissal was not tried until term of employment had expired, amount recoverable by teacher was the contract price, less what he earned, or by reasonable diligence could have earned, subsequent to his discharge. (NDRC 1943, 15-2107, 15-2217, 15-2508)

Key 143. Compensation.

No cases in North Dakota.

Key 144. In general.

No cases in North Dakota.
Key 144 (1). Right to compensation in general.
No cases in North Dakota.

Key 144 (2). Effect of closing school because of contagious disease.
No cases in North Dakota.

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

(a) McWithy v. Heart River School District No. 22.
For brief, see ante Key 141 (5), Case (a).
Further ruling pertinent to this Key section, as follows:

A teacher receiving no notice of district school board's resolution discontinuing school taught by her because of average attendance of less than six pupils for ten consecutive days, was justified in continuing to teach five children, returning after such time, with belief that closing of school was abandoned, and was entitled to her salary for whole school term under teaching contract.

Key 144 (4). Rate or amount of compensation.
No cases in North Dakota.

Key 144 (5). Payment, and orders therefor.
No cases in North Dakota.

Key 145. Actions.

(a) McWithy v. Heart River School District
For brief, see ante Key 141 (5), Case (a).

Further ruling pertinent to this Key section, as follows:

In action against school district for balance due teacher under contract for services rendered after passage of school board's resolution closing school on ground of insufficient attendance, district school board, attempting to show an affirmative defense that it acted under statute, had burden of showing by preponderance of evidence that proper and convenient school facilities for pupils were furnished in another school as required by statute. (R. C. 1943, 15-2509.)

Key 146. Pensions.


FACTS: The purpose of this action is to test the validity of the so-called Teachers' Insurance and Retirement Act. It is based on appeal from a judgment directing and commanding the defendant, as county treasurer of Ransom County, to set aside from the county tuition fund a sum equal to ten cents for each child of school age and to transmit the same to the state treasurer, as required by section 1515 of the Compiled Laws of 1913, as amended by chapter 140 of the Laws of 1915.
The defendant and appellant contends that the act, though attempting to create a teachers' insurance and retirement fund, does not provide for the levy of the tax directly, but attempts to reach into a fund created for another purpose to carry out its object. He submits that a person teaching in one part of the state is not giving his services to the support of schools in another part of the state, or in other words, funds raised by taxation for the support of schools in one county are used for past or present services performed in another county, and this he claims cannot be done.

RULE: There being no constitutional requirement that taxes levied for general public purpose must be disbursed in taxing district, there can be no objection to Comp. Laws 1913, section 1515, as amended by Laws 1915, c. 140, providing for a teachers' pension fund, as taxes are collected throughout the state and pensions are not always paid to teachers residing in the taxing district.

DECISION: Affirmed in favor of plaintiff. The establishment of state teachers' pension fund is a public purpose and enterprise, within the power of the Legislature.

(b) Payne v. Board of Trustees of the Teachers' Insurance and Retirement Fund.

For brief, see ante Key 100, Case (c).

Further ruling in the case, pertinent to this Key.
section, as follows:

(1) Relation between teachers and state retirement fund is contractual in nature, and principles of law governing contracts apply as far as possible. (R. C. 1943 and 1947 Supp., section 15-3901 et seq.)

(2) Teacher upon entering service of teaching accepts provisions of Teachers' Insurance and Retirement Act, and by continued teaching and payment of assessments for 25 years performs obligations imposed thereby, relation thus arising being subject only to such limited modification provided for or inherent in laws to maintain the fund in such condition that intent of the statute to encourage persons to enter and remain in teaching profession may be obtained. (See citation at end of preceding paragraph.)

(3) Where teacher completed service on May 31, 1947, at the age of 59 years after teaching required number of years in state public schools, teacher became eligible for annuity under the Teachers' Insurance and Retirement Act, the amount thereof to be measured by terms of the statute in effect on May 31, rather than under the statute which went into effect on July 1, 1947, notwithstanding teacher's application for annuity was not made until August 1947. (R. C. 1943 and 1947 Supp., sections 15-3901 et seq., 15-3928, 15-3930.)

(c) *State ex rel. Chamberlain v. Johnstone*,
et al. (1935) 262 N. W. 193 (65 N. D. 727)

FACTS: The relator is a school teacher who "after more than fifteen years of service as a teacher in the public schools of this State had elapsed" was suffering from a permanent disability which she suffered on March 11, 1929. The permanent character of her disability was determined under the provisions of subdivision 2 of section 1518, Comp. Laws, as amended by chapter 161, section 6, Sess. Laws of 1919. She says that she is entitled to annuity payable from and after the date of her disability, rather than from and after the time when she completed payment on her assessments.

RULE: Disabled teacher held required to pay into Teachers' Insurance and Retirement Fund full amount of all statutory assessments before being entitled to share in fund, and when, after disability is suffered, there is an amount due on such assessments, right to annuity does not accrue until deficiency in assessments is paid, and does not relate back to date of disability. (Comp. Laws 1913, sections 1504, 1522, and sections 1518, subd. 2, 1521, as amended by Laws 1919, c. 161, sections 6, 8, and section 1524, as amended by Laws 1919, c. 161, section 10.)

(d) Barrett v. Board of Trustees of Teachers' Insurance and Retirement Fund. (1952) 55 N. W. 576.
**FACTS:** The plaintiff is more than 55 years of age and has been a teacher in the public schools of North Dakota, as the term teaching is defined in section 15-3901, NDRC 1943, since the year 1901. Several years prior to July 1, 1947, she had completed 25 years of teaching in the public schools of this state and had paid into the Teachers' Insurance and Retirement Fund the assessments necessary to make her eligible for retirement under the provisions of the act which is now Chapter 15-39, NDRC 1943 and supplement thereto, but she continued to teach.

For more than five years next preceding August 15, 1947, she was employed as Deputy County Superintendent of Schools in and for Stutsman County, during which time she paid an assessment into Fund from her salary. On August 15, 1947, she retired from that office and applied for retirement under the provisions of the Act.

The defendants refused to grant the petition of the plaintiff for pension or annuity under Chapter 165, SLND 1947, for the reason that she had not been employed as a teacher for a term comprising a school year subsequent to July 1, 1947, the effective date of Chapter 165. The period of her teaching service after the effective date of the new statute was from July 1 to August 15, 1947, or approximately six weeks.

**RULE:** Where teacher had been employed as public
school teacher, or equivalent thereof, from 1901 to August 15, 1947, and, prior to July 1, 1947, had qualified for retirement benefits under the 1943 act, but had spent last five years as acting county superintendent of schools, teacher had continued to teach within the meaning of the 1949 retirement act and, upon payment of additional assessments from her wages, was entitled to qualify under the new retirement act which became effective after July 1, 1947.

(NDRC 1943, 15-3901 et seq., 15-3927, 15-3928, as amended by Laws 1947, c. 165; NDRC 1949 Supp. 15-3928.)

Key 147. Duties and liabilities.

No cases in North Dakota.
PUPILS AND CONDUCT AND DISCIPLINE OF SCHOOLS

Key 148. Nature of right to instruction in general.
No cases for North Dakota.

Key 149. Eligibility.

Key 153. Residence.

(a) Gardner v. Board of Education of City of Fargo. (1888) 38 N. W. 433 (5 Dak. 259)

FACTS: This is an action in which the plaintiff claimed for his children the school privileges due a resident of a certain city. He owns a farm which has been his domicile, takes his family and part of his furniture to the city during the winter, for the purpose of giving his family the social and school advantages, and lives there in a rented house, employing a hired man to take care of his farm while the family is absent. He returns with his family and furniture each spring to carry on the farm. He has voted unchallenged at an election in the city; he has also been a town officer where the farm is situated.

RULE: In determining the true residence, choice is an element to be considered, but it is inferior in weight to tangible acts indicating residence.

DECISION: Judgment affirmed for the defendants. Farmer's legal residence continues to be at the farm.
(b) Todd v. Board of Education of City of Williston.

For brief, see ante Key 20, Case (a).

Further ruling in the case, pertinent to this Key section, as follows:

Governing board of receiving district, to whose high school nonresident pupils apply for admission, has discretion to determine whether facilities warrant their admission, and such determination will not be disturbed by courts, except by manifest abuse. (Laws 1921, c. 107; Laws 1925, c. 189; Comp. Laws 1913, sections 1179, 1251, subsec. 14, 1300.)

Key 154. Assignment or admission to particular schools.

(a) Todd v. Board of Education of City of Williston.

For brief, see ante Key 20, Case (a).

Further ruling in the case, pertinent to this Key section, as follows:

Where high school district already had so many nonresident pupils that buildings were overcrowded and teachers overloaded, excluding further pupils from high school by school board was not discriminating. (Comp. Laws 1913, sec. 1251, subsec. 11.)

(b) State v. Alquist. (1930) 231 N. W. 952 (59 N. D. 762) A. L. R. 494.
FACTS: The defendants are residents of West Fargo school district, a common school district which contains no high school. Children of the defendants have finished the eighth grade in their district and attend the high schools of Fargo, an independent school district organized under a special statute of the territorial Legislature of 1885 and governed by the board of education of the city of Fargo. This board of education by appropriate resolution had declared that all nonresident pupils may not attend its school without paying $100 per year for tuition, and charged the children of the defendants this sum. The defendants, as the board of directors of West Fargo school district, offer to pay the sum of $1.50 per week for tuition and no more. The schools of the city of Fargo do not receive any aid from the state of North Dakota under the provisions of sections 1430-1438, Compiled Laws of 1915 (section 1433 of Supp. 1925) and "are not in fact supervised, governed and inspected by the officials and departments of the State of North Dakota mentioned, in the said acts of its legislature."

RULE: High school in special district, not supervised by state department of public instruction nor receiving state aid, held not "standardized high school" within statute relating to admission of nonresident pupils. (Comp. Laws 1925, sections 1438a1-1438a3.)

DECISION: Affirmed for plaintiffs.
Key 155. Proceedings to compel admission.

No cases in North Dakota.

Key 156-157. Health regulations in general.

(a) Martin v. Craig. (1919) 173 N. W. 787 (42 N. D. 213)

FACTS: The plaintiff and appellant is the legal custodian of two children of school age, and he petitioned to compel the defendants to admit them to school. The defendants justify the refusal on the ground that one of the children had been found by a reputable physician and by a qualified representative of the Federal health service to be afflicted with trachoma, a disease of the eyes which is communicable and of a very serious nature, frequently resulting in blindness.

RULE: An order by a county board of health, requiring school officers to exclude from the schools children affected or suspected of being affected with trachoma, held reasonable.

DECISION: Affirmed for defendants.

Key 158 (1). Vaccination in general.

(a) Rhea v. Board of Education of Devils Lake Special School District.

For brief, see ante Key 55, Case (b).

Further ruling in the case, pertinent to this Key section, as follows:
Comp. Laws 1913, section 425, providing for vaccination of minors, and section 426, enumerating causes for which children may be excluded from schools, but not expressly including nonvaccination, construed together, do not permit exclusion on sole ground of nonvaccination.

Key 159. Payment of tuition.

(a) State v. Valley City Special School District.

For brief, see ante Key 11, Case (a).

Further ruling in the case, pertinent to this Key section, as follows:

Laws 1915, c. 142, relating to payment of tuition by school districts for students or pupils attending any school connected with the State University, or other higher institution of learning, wherein students or members of the faculty of such University or other institution teach, held not unconstitutional as violating Const. sections 152 and 154.

(b) Todd v. Board of Education of City of Williston.

For brief, see ante Key 20, Case (a).

Further ruling in this case, pertinent to this Key section, as follows:

Tuition charge imposed upon nonresident pupils admitted to high school must be alike to all (Laws 1921,
c. 107; Laws 1925, c. 189; Comp. Laws 1913, sections 1179, 1251, subsec. 14, 1300).

(c) **State v. Alquist.**

For brief, see ante Key 154, Case (b).

Further ruling in this case, pertinent to this Key section, as follows:

School district not having required high school course held not obligated to pay tuition of its pupils attending high school other than "standardized high school" (Comp. Laws Supp. 1925, sec. 1438a2).

(d) **Anderson v. Breithbarth. (1933) 245 N. W. 483 (62 N. D. 709)**

**FACTS:** For our purposes, it need only be stated that this case requires a definition of the phrase "residing in the district," as used in section 1343 of the Supplement, which says: "The public schools provided for in this chapter (sections 1105-1422 of the Compiled Laws of 1913) shall be at all times equally free, open and accessible to all children over six and under twenty-one years of age residing in the district."

Because plaintiff's parents are separated, she has by her wishes, and with the consent of her mother, come to the school district to live with her aunt and uncle, and has been a member of their family ever since, and has been treated as such.
RULE: Phrase "residing in district," within statute declaring schools free, is not restricted to parents' domicile, but means actual residence of child. Child of non-resident parents, living as member of aunt's family in local school district, held "residing in district" within statute declaring schools free. (Comp. Laws Supp. 1925, section 1343.)

(e) Batty v. Board of Education of City of Williston.

For brief, see ante Key 11, Case (b). Same rule applies.

Under statute, school board held without power to impose tuition charge on resident pupil of school age who has failed to complete high school course within prescribed time on account of indifference and indolence, notwithstanding that school board has wide discretion in management of schools. (Comp. Laws 1913, sections 1229-1285, 1251, sub-sec. 11, 1343; Laws 1935, c. 260; Const. section 147 et seq.)

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

(a) State v. Mostad. (1914) 148 N. W. 831 (28 N. D. 244)

FACTS: This is an action to compel the school board to furnish transportation for the children of the petitioner to and from a certain school located in school district...
No. 10, Ward County. The petitioner's children were boys from 10 to 19 years of age who had to cross a frozen river and walk a distance of from one-fourth to one-third of a mile to meet a team which had been sent for the children of two other families who lived about a mile further on. The river was reasonably passable for pedestrians, and all three families lived beyond the two-and-a-half-mile limit and needed to be accommodated. For the team to have picked up the petitioner's children would have required it to go two miles out of its way to a bridge; also extra expense would have been involved.

RULE: Under Laws 1911, c. 266, section 232, transportation must be furnished to children living more than two and a half miles from the district school, regardless of whether or not the district is consolidated.

DECISION: In a reversal of the trial court judgment for plaintiff, the Supreme Court judgment held that it is not "an unjust or illegal discrimination," nor "a denial of transportation," to require the children of the petitioner to walk the short distance across the river to meet the team. Judgment for the defendants.

(b) Eastgate v. Osago School District of Nelson County. (1919) 171 N. W. 96 (41 N. D. 518)

FACTS: This is an action by the plaintiff to recover the sum of $440 for conveying his children from his home to
one of the schools of the district located at the village of Pekin, in said district, during the school years of 1912, 1913, 1914, and 1915. The school is alleged to be a distance of five miles by the nearest route from the residence of the plaintiff. The plaintiff testifies there was a school two miles south of them, which was three and a fourth miles by the nearest travelled route.

RULE: (1) Under Laws 1911, c. 266, section 232, subd. 4, as amended by Laws 1913, c. 267, and Laws 1915, c. 141, imposing duty upon school boards to require children between the ages of six and 15 to attend public schools, and to provide transportation for such children who reside beyond district prescribed by law, it is the duty of the school board to ascertain what children within district reside beyond such distance from the school and convey them to school.

(2) Where the school board neglects or fails to furnish transportation to children between the ages of six and 15 years, in disregard of law, and the parent or guardian of any such children conveys them to the nearest public school in the district by the nearest way, and such service is accepted by the school district, it is under implied contract to compensate him therefor.

(3) The words "nearest route," as used in Laws 1911, c. 266, section 232, subd. 4, as amended by Laws 1913,
c. 267, and Comp. Laws 1913, section 1342, as amended and re-enacted by Laws 1915, c. 141, relating to transportation of pupils living a certain distance from schools by the nearest route, mean the nearest public route or one which has been duly authorized or exists by law.

(c) Sandry v. Brooklyn School Dist. No. 78 of Williams County. (1921) 182 N. W. 689 (47 N. D. 444) 15 A. L. R. 719

FACTS: In an action brought by a driver to recover the compensation stipulated in a driver's contract with a school district for the transportation of teachers and pupils to and from a consolidated school, where plaintiff seeks to recover upon his own contract and upon claims arising under three similar contracts of which he is assignee, for a period of 13 weeks, during which the school was closed on account of an epidemic of influenza, it is held:

RULE: The driver's contract is not so far analogous to a teacher's contract that the driver, upon showing readiness to perform during a period when the school is closed on account of an epidemic, may recover the agreed compensation as upon full service performed.

(d) Seiler v. Gelhar. (1926) 209 N. W. 376 (54 N. D. 245)

FACTS: This action relates to the transportation of pupils to and from a consolidated school. The plaintiff is
the father of a girl under 11 years of age. Prior to con­solidation there was a school within three-fourths of a mile from his home. During the first two years after the girl became of school age, the district provided vehicular trans­portation for her to and from the consolidated school, but in 1923 the practice was discontinued. The reason assigned for ceasing to operate the bus was that the plaintiff's child was the only person of school age in that part of the district and that, consequently, the cost of furnishing ac­tual transportation was greater than the district board felt it could justifiably incur. The plaintiff is 71 years old. He testifies that it is impossible for him to transport his daughter to school; that, as a result, his child is being deprived of the educational advantages to which she is en­titled under the Constitution and the laws of this state.

RULE: Statute providing for transportation of pupils of consolidated schools, does not deprive children or guard­ians of any constitutional rights merely because option as to furnishing transportation or paying compensation therefor lies within discretion of school board or in judgment of people through election (Comp. Laws 1913, section 1343, and section 1190, as amended by Laws 1921, c. 113; Laws 1919 (Sp. Sess.), c. 53, amending Laws 1919, c. 199, and Laws 1915, c. 127; Const. sections 147-149).

DECISION: Judgment affirmed for defendants.
(e) Monke v. Iowa School District No. 3 of Hettinger County. (1927) 215 N. W. 284 (55 N. D. 809)

FACTS: This action is brought by the parent of a school child to recover transportation under the compulsory attendance statute as it was amended in 1917, Session Laws 1917, c. 206. In the trial court the plaintiff had judgment for an amount calculated upon the basis of the number of days the child was actually transported by the parent in three years at the rate of 35 cents per day, as fixed by the school board. From this judgment the plaintiff has appealed, and assigns as error the refusal of the trial court to enter judgment based upon the number of days the child attended school rather than the number of days the plaintiff furnished transportation.

RULE: Parent, entitled to compensation for transporting pupil to school, cannot recover for days child attended school when not transported (Comp. Laws 1913, section 1342, as amended by Laws 1917, c. 206).

DECISION: Affirmed for defendant.

(f) Parrish v. Menz School District No. 5, Sioux County. (1929) 223 N. W. 284 (57 N. D. 616)

FACTS: This is an appeal from a judgment in favor of the plaintiff in an action to recover for transportation furnished a pupil attending school. The child of the
plaintiff was of compulsory school age, and the plaintiff was responsible for her attendance at school. They lived on a farm in the defendant school district. The plaintiff had transported the child to and from school for 169 days, such school being maintained in a common school district adjacent to the defendant school district and being more than two miles and a quarter distant from the plaintiff's dwelling house. The officers of the defendant school district arranged for such attendance and paid tuition in the adjoining district for the plaintiff's child but refused to provide for transportation or to compensate the plaintiff therefor. The nearest school in the defendant school district was approximately five miles from the plaintiff's home. The trial court found the reasonable value of the transportation to be 25 cents a day, the minimum fixed by statute, and judgment was entered accordingly.

RULE: (1) Officers of common school district may arrange for paying transportation of pupils to attend school in another district (Comp. Laws 1913, section 1179).
(2) Obligation of common school district to furnish transportation is not limited to pupils attending school within district (Comp. Laws Supp. 1925, section 1342).

DECISION: Judgment affirmed for plaintiff.

(g) McWithy v. Heart River School Dist.
No. 22.
For brief, see ante Key 141 (5), Case (a).

Further ruling in this case, pertinent to this Key section, as follows:

A district school board must furnish adequate, convenient, and proper facilities for every child of school age in district, though it closes school district, as authorized by statute, because of average attendance of less than six pupils for 10 consecutive days, in view of provision in such statute that school can be closed only if proper and convenient school facilities for pupils can be provided in another school in same territory until closed school may be reopened by board. (R. C. 1943, 15-2509)

(h) Reich v. Dietz School District No. 16, Grant County. (1952) 55 N. W. 2d 638

FACTS: This is an action in which a parent voluntarily transported his own children to school after refusing several offers by the school district to furnish vehicular transportation or its equivalent. For such transportation the plaintiff parent sought more compensation than that fixed by statute to pay transportation charges.

RULE: As used in statute authorizing school district to furnish vehicular transportation for pupils and in statute authorizing school district to pay transportation allowance to each family living more than two miles from school district, the words "to each family" are not to be construed

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as meaning "to every family," but, on contrary, statutes, when construed together, authorize school board in its discretion to pay some patrons according to number of miles travelled and to furnish other patrons vehicular transportation or its equivalent.

Parent voluntarily transporting his own children to school after refusing several offers by school district to furnish vehicular transportation or its equivalent could recover only compensation fixed by statute authorizing school district to pay transportation charges, there being no implied contract with school district for reasonable value of parent's services. (NDRC 1949 Supp. 15-3404; NDRC 1943, 15-3405.) (Citation also applies to preceding paragraph.)

Key 160. Compulsory attendance.

(a) State ex rel. Fried v. McDonald.
(1926) 208 N. W. 99 (53 N. D. 723)

FACTS: In this action the relator, Jacob Fried, seeks relief from a judgment of the district court of Morton County. He was prosecuted on the charge of having violated the Compulsory School Attendance Law, section 1342, C. L. 1913, as amended by chapter 206, S. L. 1917. A fine was imposed. Defendant is the sheriff of Morton County.

Relator, Fried, is the parent of four children of school age residing within Crown Butte school district No.
It is not disputed that the relator lives more than two and one-fourth miles from the nearest school, and that the school board offered to pay the defendant 50 cents a day for transporting his children to school.

It is the contention of the state that the tender of compensation is the equivalent of offering transportation, within subdivision 5 of section 1342, and that, the parent having failed to require his children to attend school after such tender by the board, he violated the provisions of the Compulsory School Attendance Law.

RULE: Where board of common school district offers to pay 50 cents per day per family for transporting pupils living more than two and one-quarter miles from school, but does not offer actual carriage of children, their parent and guardian is not subject to the penalties of Compulsory School Attendance Law. (Laws 1911, c. 266, section 232, subd. 4, amended by Laws 1913, c. 267--Comp. Laws 1913, section 1342--, amended by Laws 1915, c. 141, and Laws 1917, c. 206.)


(b) State v. Kessel. (1926) 208 N. W. 845 (53 N. D. 723)

FACTS: Evidence in this action was held sufficient to establish that the residence of the defendant was within
two and one-fourth miles of the school by the nearest route, yet he failed to send his children of school age to school.

**RULE:** (1) Complaint charging failure to send children to school, as required by statute, and alleging facts constituting offense charging it to be contrary to form of statute and against peace and dignity of state, was sufficient, even though specific statute had been amended (Comp. Laws 1913, sections 1342, 10685, 10693; Laws 1915, c. 141; Laws 1917, c. 206).

(2) Evidence held sufficient to establish residence of person accused of violation of Compulsory School Attendance Law was within two and one-fourth miles from school by nearest route (Comp. Laws 1913, section 1342, as amended by Laws 1917, c. 206).

**DECISION:** Judgment against defendant affirmed.

**Key 161.** Truants and truant officers and schools. No cases in North Dakota.

**Key 162.** School terms, vacations, and holidays.

(a) *State ex rel Beierle v. Seibel.* (1930) 230 N. W. 734

**FACTS:** This is an action in which the plaintiffs attempted to compel the officers of a common school district to open and conduct a school within the district. The school district within which the petitioners reside had at one time organized schools which were conducted in four
school buildings within the district. On or about March 8, 1928, the school conducted in building No. 4 was discontinued owing to lack of attendance. During the following school year additional children of school age moved into that portion of the district previously accommodated by the school that was closed, the total number not being sufficient to invoke the mandatory duty of the school board to organize a separate section.

**RULE:** Board could not be compelled to reopen one of district schools, though new children moved into territory previously accommodated by closed school (Comp. Laws 1913, section 1189, and section 1188, as amended by Laws 1923, c. 283).

**Key 163.** Grades or classes and departments.

No cases in North Dakota.

**Key 164.** Curriculum and courses of study.

(a) *State ex rel. Langer, Attorney General* *et al.* *v.* *Totten et al.* (1919) 175 N. W. (44 N. D. 557)

**FACTS:** This is an original application to the Supreme Court to compel the board of administration and the educational commission to refrain from preparing and prescribing the courses of study for the common schools of the state.

**RULE:** (1) The Legislature, under Const. sections
147, 151, except as restricted by constitutional limitations, possesses the power to regulate the educational system and public schools of the state, and to prescribe the courses of study in such schools.

(2) The Board of Administration Act, known as S. B. No. 134, enacted by Legislature in 1919 and referred to and adopted by the people, so far as granting to the board of administration specific power to control preparation of courses of study in common schools is not unconstitutional as interfering with and taking away prerogatives possessed by superintendent of public instruction as a constitutional officer under Const. sections 82, 83.

(3) The superintendent of public instruction has no constitutional or inherent power to prescribe and prepare the courses of study for the common schools of the state; such right having been granted to the Legislature by Const. section 83.

(4) Under Board of Administration Act, enacted in 1919, pursuant to Senate Bill No. 134, specifically granting to such board the supervision of preparation of courses of study for public schools, and by section 9 making powers of superintendent of public instruction subject to supervision only so far as such powers were subject to supervision of state board of education and boards to which Board of Administration succeeded, such superintendent has power to
prescribe courses of study in common schools subject to supervision by Board of Administration.

Key 165. Religious instruction and reading of Scriptures.

(a) Gerhardt v. Held.  
For brief, see ante Key 2, Case (a).

Further ruling in this case, pertinent to this Key section, as follows:

Conduct of sectarian religious exercises and giving of sectarian instruction in public schools is prohibited by Constitution. (Const. sections 4, 147, 152.)

Key 166. Textbooks.
No cases in North Dakota.

Key 167. Selection or adoption and change.
No cases in North Dakota.

Key 168. Duty to furnish.
No cases in North Dakota.

Key 169. Control of pupils and discipline in general.
No cases in North Dakota.

Key 170. Rules and regulations.
No cases in North Dakota.

Key 171. Authority to make.

Key 172. Reasonableness and validity.

(a) Stromberg v. French et al. (1931) 236 N. W. 477 (60 N. D. 750)
**FACTS:** This action was brought to restrain the defendants from enforcing the following rule adopted by the board of education of the city of Langdon, to wit: "Notice is hereby given that on and after September 29, 1930, any boy wearing metal heel plates on his shoes will be refused admittance to classes and will be suspended or expelled until the heel plates are removed." The boys in the school complied with this request. Murray Stromberg was one of the boys who used heel plates. His mother noticed that he had removed the plates and directed him to replace them. He complied with his mother's direction and the school authorities, objecting, sent him home until such time as he should remove them. Plaintiff was informed of this action of the principal and superintendent and at once interviewed them. He insisted that as a parent he had the right to determine what apparel his boy should wear at school. So this action evolved.

**RULE:** Special school district board of education may forbid pupils to wear metal heel plates (Comp. Laws 1913, section 1251).

*Key 172½.* Construction and operation.

No cases in North Dakota.

*Key 173.* Violation of rules and offenses.

No cases in North Dakota.

*Key 174.* Punishment.
No cases in North Dakota.

**Key 175.** In general.

No cases in North Dakota.

**Key 176.** Corporal punishment.

No cases in North Dakota.

**Key 177.** Expulsion or suspension.

(a) *Stromberg v. French.*

For brief, see ante Key 172, Case (a).

Further ruling pertinent to this Key section, as follows:

Pupil's intentional refusal to observe board of education's rule because of parent's command constitutes "insubordination," within statute respecting suspension or expulsion (Comp. Laws 1913, section 1251).
CHAPTER XI

SUMMARY AND CONCLUSIONS

The background of school law is the story of education.

Practically every important phase of public education has come before the court in one way or another, and it will be noted, from the nature of the cases, that common-sense principles emerging from experiences as a society underlie the legal structure which controls the schools. It is natural that questions relative to the meaning of legal provisions affecting schools and people connected with schools are bound to arise. The reason for existing confusions is, of course, that no laws apply specifically to the question at hand, and differences arise as to their implied applications.

The State Constitution is the foundation of the educational system, with the legislature as the most important agency of the people in determining the educational policies of the state. Education therefore is a state function, and it is the responsibility of the state to enact laws which assure to all children equal and satisfactory educational opportunities.

This summary is devoted to a general discussion of the more important issues of school law which have been
considered by the Supreme Court in North Dakota. To present the results of every case would be merely repetitious.

PRIVATE SCHOOLS AND ACADEMIES

This chapter contained but one case, Gerhardt v. Heid,¹ in which sectarianism was the issue. The court held that teachers may wear religious garb in the public school without violating the law, if there is no attempt made to give sectarian or religious instruction.

ESTABLISHMENT, SCHOOL LANDS, FUNDS, AND REGULATIONS IN GENERAL

A review of the eleven cases reported reveals two principal issues: (1) In State ex rel. v. Board of University and School Lands v. McMillan² the court established that the proceeds from the sale of what is commonly termed "school lands" constitutes a permanent trust fund which may be used only for educational purposes, and (2) that the right of the board to exercise its discretion in the investment of the money of the permanent school fund, which was challenged in Moses v. Baker,³ was affirmed by the court.

¹ 267 N. W. 127.
² 96 N. W. 310.
³ 299 N. W. 315.
CREATION, ALTERATION, EXISTENCE, AND DISSOLUTION OF DISTRICTS

Twenty-seven cases pertain to this chapter.

Laws enacted for the consolidation or division of school districts are based solely on legislative discretion or policy. There are no limitations on the legislature regarding laws for reorganization of school districts (School District No. 94 v. King). And the legislature, having complete power over school districts, may provide for the division of property and the apportionment of the debts when a portion of the territory or property of one district is transferred to the jurisdiction of another (Coler v. Dwight School Township).

An incorporated village constituting part of three common school districts may be organized as a special school district (Billings School District v. Loma Special School District), and a school district composed of an incorporated city alone is empowered to include adjoining territory annexed to the city (Weeks v. Hetland).

If the legislature confers on a special board,

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4 127 N. W. 515.
5 55 N. W. 587.
6 219 N. W. 336.
7 202 N. W. 807.
composed of county commissioners and the county superintendent, the power to organize new school districts (Tailmadge v. Walker), then the action of the board in granting a petition and organizing a new district is legislative, not judicial, in character, and the members of the board are not bound to take oath as to whether the new school district is desirable or necessary after having been satisfied that it was for the best interests of the territory affected (State v. Strauss). Further, the board of county commissioners and the county superintendent, upon being petitioned to do so by at least two thirds of the school voters residing within a proposed new school district, are authorized to organize such new district from another district or portions of districts already organized. The power thus conferred upon the board to organize a new common school district is not made dependent upon the vote of the people of the proposed new district (Bloomington School District v. Larson). However, the special board must, in all cases involving redistricting, exercise its powers to conform with statute.

8 159 N. W. 71.
9 187 N. W. 964.
10 207 N. W. 650.
11 Ibid.
GOVERNMENT, OFFICERS, AND DISTRICT MEETINGS

The significant issue in this chapter, which reports nineteen cases, is that officers must at all times exercise only powers granted by statutory law (legislative authority) (Gillespie v. Common School District No. 8, McClean County), and an action of directors does not bind a school district unless taken at a meeting held and conducted according to provisions of statutes.

In adopting and enforcing rules and regulations for the conduct of schools, school boards must always gauge their procedures in light of the legislative policy that public schools shall be equally free and open, and accessible to all children over six and under twenty-one years of age, a prevailing rule (Batty v. Board of Education of City of Williston).

DISTRICT PROPERTY, CONTRACTS AND LIABILITIES

In this area twenty cases are presented, the majority of which are devoted to powers and authorities of school officers in administering the affairs of the school district.

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12 216 N. W. 564.
13 Ibid.
14 269 N. W. 49.
It should be noted that they must always proceed according to statute, as in Chapter V preceding.

Boards of directors of common school districts are charged with the duty of erecting schoolhouses when directed by the majority of voters in the district (Henderson v. Long Creek School District No. 2),\(^{15}\) and statutes concerning petitions to school boards to call an election regarding a school site and the building of a schoolhouse are mandatory before an election, but directory thereafter; that is, statutes concerning petitions for elections must be strictly followed. In a proceeding brought prior to election to enforce the requirements of such petitions the court will enforce the requirements of the statute and no election can be held without meeting the requirements of the petition statute. However, should the same proceeding be brought after a free election has been held, the same court will not void the election on the basis that, no complaint having been made prior to the election, the requirements of petition are met and it will be presumed that the board or other agency, as the case may be, had performed their duty and exercised their discretion according to law (State v. Wyndmere School District of Richland County).\(^{16}\) However, a contract to

\(^{15}\) 171 N. W. 825.

\(^{16}\) 215 N. W. 267.
build a schoolhouse for an amount in excess of funds available is void if the school board had no authority to make it, and subsequent ratification could not make it binding upon the district (Capital Bank of St. Paul v. School District No. 53 of Barnes County). But contracts entered into by school districts, even if they were irregularly made, may become binding upon the district by subsequent ratification, if the contract had been within the power of the district when executed (St. Paul Foundry Co. v. Burnstad School Dist. No. 31).

**DISTRICT DEBTS, SECURITIES, AND TAXATION**

The power of school districts to incur indebtedness is limited by the Constitution and statutes, and a contract which increases the indebtedness of the district beyond the limit is void (Anderson v. International School District No. 53). School districts may exercise the power of taxation only under valid delegation by the legislature, and statute limits the taxes that may be expended by the county auditor for school purposes (Great Northern Railway Co. v. Duncan).

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17 48 N. W. 363.
18 269 N. W. 738.
19 156 N. W. 54.
20 176 N. W. 992.
A resident and taxpayer within a school district is entitled to bring suit on his own behalf and on the behalf of the public to prevent unlawful expenditures and waste of the district's funds (Weeks v. Hetland). 21

CLAIMS AGAINST DISTRICTS, AND ACTIONS

This chapter contains three cases, the most significant holding that judgment against a school district may be collected only under statute providing for levying taxes to pay the judgment (Auran v. Mentor School District No. 1 of Divide County). 22 The holding is significant because the law does not contemplate an involuntary appropriation of funds necessary in the operation and maintenance of a public institution. To do so would work irrevocable harm against such institution. In the alternative, and applicable to school districts, the legislature has provided a system of additional taxation to replace the judicial remedies of garnishment. 23

TEACHERS

This chapter contains fourteen cases which generally point out that the teaching position is considered not to be

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21 202 N. W. 807.
22 228 N. W. 435.
23 Ibid.
that of public officers, but of employees (Mootz v. Bell-yea);\(^{24}\) and possession of a teacher's certificate is a necessary prerequisite to appointment or employment (Hosmer v. Sheldon School District).\(^{25}\) However, a teacher may be uncertified when a contract is made, and may be granted a certificate before actual teaching begins; and if the certificate is so granted, the transaction is valid (Schafer v. Johns);\(^{26}\) and the right of a teacher to recover compensation for services rendered is dependent upon possession of the proper certificate or license, where required by statute (Sandry v. Brooklyn School District).\(^{27}\)

In an action to dismiss a teacher, where a mode of procedure is prescribed, the latter must be followed in order for the dismissal to be valid (see citation 23 above). And where a teacher is dismissed without cause before the expiration of his term of employment, he is paid to date of dismissal, and if suit for breach of the teacher's contract resulting from dismissal was not tried until term of employment expired, amount recoverable by the teacher is the contract price, less what he earned, or could have earned by

\(^{24}\) 236 N. W. 358.
\(^{25}\) 59 N. W. 1035.
\(^{26}\) 237 N. W. 481.
\(^{27}\) 182 N. W. 689.
reasonable diligence, subsequent to his discharge (Seher v. Woodlawn District No. 26, Kidder County).28

PUPILS, CONDUCT AND DISCIPLINE OF SCHOOLS

Four of the twenty cases reported in this chapter broadly summarize the issues involved.

A district school board must furnish adequate, convenient, and proper facilities for every child of school age in the district (McWithy v. Heart River School District No. 22);29 and any child of school age, living within the district under the care, custody or control of a resident thereof is a resident of that district (Anderson v. Breitbarth).30

A pupil's intentional refusal to observe a board of education rule because of a parent's command constitutes "insubordination," within the statute respecting suspension or expulsion (Stromberg v. French).31

Finally, the Constitution empowers the legislature to regulate the educational system and public schools of the state, and to prescribe the courses of study within the schools (State v. Totten).32

28 59 N. W. 2d 805.
29 32 N. W. 2d 886.
30 245 N. W. 483.
31 236 N. W. 477.
32 175 N. W. 563.
The recurring emphasis upon legislation to establish "adequate, proper, and convenient" facilities for all children of school age was marked throughout this study. Further, it is apparent that the regulation of schools and school districts is a state function, with certain powers delegated to the officers of school districts, and permissive privileges, such as the right to petition and vote, being granted to the electors of districts. The control of moneys and property is cause for most litigation; but such litigation is generally the outgrowth of local misconceptions and misinterpretations of the law which eventually must be clarified by decision of the court.

The cases which have been represented in Chapter II through Chapter X of this summary were studied to determine the number and types of cases and the pervading principles of school law which were most frequently employed in the court decisions.

A number of conclusions may be made in wake of the cases and the summary which precede. In some instances, the motives and compulsions of the litigants are clear; in other instances, the causes of litigation are either privy to the individual or individuals involved. Certainly, in many cases the litigants, especially the district citizens who are confronted with the possibility of redistricting and consolidation, feel that their private rights have been
invaded, and that, perhaps, the law is interfering with their freedom to make decisions involving problems which are privy and singular to the district.

Also, tenacious claim to property, whether it be personal or belonging to the district, insinuates itself into litigations.

In North Dakota there is a prevailing opinion that nobody or individual outside the district is as intimately familiar with the problems of that particular community as is the school board and the people whom it represents. The rural community feels its rights have been established by a pattern of long-established processes. Indeed, the people do not hesitate to take their school matters to court because they are certain that their claims are substantiated by long-adhered-to practice, the law notwithstanding. They are defiantly confident that their rights will be upheld.

Rural communities cling to the country school because (1) it is still the center of the farm community, (2) the people feel they are adjusted to such problems as, for example, their particular tax problem, and (3) the citizens feel that they still have some local control over the education of their children.

Repeatedly, in this summation, reference has been made to the redistricting and consolidation problem, which exists because citizens in towns and villages, for example,
realize that, in a sense, survival of their community depends upon the maintenance of their school. The school, they feel, keeps the community "together."

It is not the purpose of this thesis to argue pros and cons of these problems. However, there are factors which will inevitably serve to alleviate the difficulties and misunderstandings which have been arising relative to redistricting and consolidation: (1) country roads are being improved; (2) centers of trade are shifting from the rural village to the larger centers of activity; (3) in the rural communities there has been an infiltration of information regarding problems of education, and Parent-Teacher Associations are being more widely organized. As a result of these factors, plus the fact that school tax levies in the rural school districts have become prohibitively excessive, litigations should be considerably reduced in number and complexity, and rural areas will cease to struggle for survival of the local "country school" district where questions of redistricting and consolidation arise.

An examination, then, of the problems giving rise to the greatest number of cases, relative to school law, which have been brought before the North Dakota Supreme Court, namely, cases concerned with redistricting and consolidation, reveals that the motives behind such litigations are based upon the desire of the district to maintain local control.
plus the fact, of course, that moneys and properties are involved.

Finally, it may be observed that the enactments of the state legislature are supreme in school legislation unless the constitutionality of a law passed by that body is challenged; then the issue is placed before the Supreme Court of the State of North Dakota.
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