Chapters on the School Law of California

I. THE PUBLIC SCHOOL SYSTEM

The constitution of 1849 declared: "The Legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each district at least three months in every year . . . ." The constitution of 1879 reiterated this provision, merely lengthening the term for which a school must be maintained in each district to at least six months in every year. The constitution of 1849 did not attempt to enumerate the schools that should or might be included in the system of common schools. But the constitution of 1879, with the purpose of confining the revenue derived from the state school fund and the state school tax to the support of primary and grammar schools, did set forth the schools that should constitute the system, in the following words:

"The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School Fund and the State school tax, shall be applied exclusively to the support of primary and grammar schools."

This section was amended in 1902 in such wise as to authorize the legislature to levy a special state tax for the support of high schools and technical schools. It was amended again in 1908 for the purpose of making evening schools participants equally with day schools in the school revenue. The nomenclature was also slightly altered, so as to call primary and grammar schools by the name "elementary", and high schools by the name "secondary".

1 Cal. Const. 1849, art. ix, § 3.
2 Cal. Const. 1879, art. ix, § 5.
3 Cal. Const. 1879, art. ix, § 6.
As amended in 1908 the section reads as follows:

"The public school system shall include day and evening elementary schools, and such day and evening secondary schools, normal schools, and technical schools as may be established by the Legislature, or by municipal or district authority. The entire revenue derived from the State school fund and from the general State school tax shall be applied exclusively to the support of day and evening elementary schools; but the Legislature may authorize and cause to be levied a special State school tax for the support of day and evening secondary schools and technical schools, or either of such schools, included in the public school system, and all revenue derived from such special tax shall be applied exclusively to the support of the schools for which such special tax shall be levied."

Sections 5 and 6 taken together contemplate (1) the establishment of a uniform system of "common schools", including solely the primary and grammar schools, now together called elementary schools, which shall be applicable and mandatory in every school district of the state, as to which all local or special laws are expressly forbidden, and to the support of which the entire revenue derived from the state school fund and the general state school tax shall be exclusively applied; and (2) the establishment, either by the legislature or by municipal or district authority, under statutes authorizing the same, of other schools, such as high and technical schools, which, however, can in no degree be supported from the state school fund, but must obtain their whole support from other sources. While the common school is made the special and exclusive beneficiary of the state school fund, all the enumerated educational instrumentalities belong to the public school system, and may be authorized and their support provided for by the legislature. Under the constitutional admonition, the legislature has provided a system of public schools, consisting of primary, grammar and high schools, one of the functions of the last named being to prepare for the state university. Graduates of the grammar school are admitted into the high school without examination, emphasizing the idea of a system. It has been held that beyond any question it was within the power of the legislature, even before the adoption of the amendment of 1902, to provide a plan for the organization and establishment of high schools, and that the only question that could be raised was as

4 Cal. Const. 1879, art. iv, § 25, subd. 27.
5 Los Angeles County v. Kirk (1905), 148 Cal. 385, 83 Pac. 250.
to the specific plan which the legislature had passed for high schools.\(^6\)

In Board of Education v. Hyatt,\(^7\) Sloss, J., said:

"That high schools may properly be included within the term 'public schools' will hardly be questioned. Indeed, section 6 of article IX, of the present constitution, . . . . expressly makes them a part of the 'public school system'. This statute [Consolidation Act], therefore, in conferring upon the board of education of the city and county of San Francisco power to establish public schools, gave to it the power to establish high schools. The act, having been passed before the adoption of the constitution of 1879, was not affected by the restrictions contained in that instrument prohibiting the passing of local or special laws. (Nevada School District v. Shoecraft, 88 Cal. 372, [26 Pac. 211]."

The provision is also construed to include normal schools as a part of the public school system.\(^8\)

On the other hand, the question arises whether the list of schools that may be included in the public school system is exhausted by the enumeration in the constitution. In 1895 the Supreme Court decided that, when a city has adopted kindergarten classes, such classes became a part of the primary schools of that city, to the extent that they may be maintained at the expense of the city, just as high or technical schools may be maintained.\(^9\) This conclusion might be sustained on the same principle that sustained the raising of municipal bonds for school buildings and other school purposes, namely, that it is within the functions of a city to have schools as well as hospitals and fire houses.\(^10\) The decision in the kindergarten case approved the sections of the Political Code which in 1891 had said

"that in cities and towns in which the kindergarten has been adopted, or may hereafter be adopted, as a part of the public primary schools, children may be admitted to such kindergarten classes at the age of four years".\(^11\)

In 1905 the question arose whether kindergartens had by legisla-

---

\(^6\) People v. Lodi High School Dist. (1899), 124 Cal. 694, 57 Pac. 660; Chico High School Board v. Board of Supervisors (1897), 118 Cal. 115, 50 Pac. 275.

\(^7\) (1907), 152 Cal. 515, 93 Pac. 117.

\(^8\) Miller v. Dailey (1902), 136 Cal. 212, 68 Pac. 1029.

\(^9\) Sinnott v. Colombet (1895), 107 Cal. 187, 40 Pac. 329.

\(^10\) In re Wetmore (1893), 99 Cal. 146, 33 Pac. 769; Law v. San Francisco (1904), 144 Cal. 384, 77 Pac. 1014.

\(^11\) Cal. Pol. Code, § 1617, subd. 9 (as amended in 1891), § 1662 (as amended in 1891).
tive enactment become a part of the primary schools so as to become participants in the general state school tax on the basis of average daily attendance.\textsuperscript{12} The court held that it might be conceded that the work contemplated in the kindergartens was of such a character that it might to some extent be included by the legislature in the general primary school system of the state, just as it might be conceded that the legislature might extend the general grammar school course so as to include some subjects that have hitherto been pursued only in the more advanced schools, such as high schools. But the statutory provisions upon the subject of the kindergarten make it clear that the legislature has not made the same a part of the "system of common schools, by which a free school shall be kept up and supported in each district at least six months in every year", which, by section 5 of article IX of the constitution, the legislature is required to provide, but, at most, has made it only a part of the "public school system", described in section 6 of the same article, in the same way that high schools, evening schools, normal schools and technical schools established directly by the legislature or by municipal or district authority, are parts of the public school system. The legislature, however, has not gone so far as this even, but it has only authorized the establishment of kindergartens as part of primary schools, maintainable at local expense, but not as separate independent schools in the system of public schools. This may be an evasion; and if it is a successful evasion, perhaps by the same means the legislature could authorize kindergartens as a part of the "system of common schools", prescribed by section 5, as being included within the "primary" (now "elementary") schools authorized by section 6.

In 1907 the question arose whether an evening high school might participate in the apportionment of the state high school fund.\textsuperscript{13} The state high school fund was provided for in an act of the legislature of 1905.\textsuperscript{14} This act provided that the State Superintendent of Public Instruction should apportion this fund among high schools as follows: one-third equally to the high schools in the state irrespective of the number of pupils enrolled or in average daily attendance; and the remaining two-thirds

\textsuperscript{12} Los Angeles County v. Kirk (1905), 148 Cal. 385, 83 Pac. 250.
\textsuperscript{13} Board of Education v. Hyatt (1907), 152 Cal. 515, 93 Pac. 117.
\textsuperscript{14} 1905 Stats. Cal. 58 (By legislation in 1909 repealed, and similar provisions put in §§ 1760 and 1761 of the Political Code.)
pro rata according to the average daily attendance. These apportionments were to be made to such high schools as “have been organized under the high school laws of the state and have maintained the grade of instruction required by law for the high schools”, and no high school should be “eligible to a share in the state high school fund that had not during the preceding school year employed at least two regularly certified high school teachers for a period of not less than 180 days with not less than 20 pupils in average daily attendance for such length of time”. The Humboldt evening high school, which was established and organized by the board of education of San Francisco in 1897, when the city was governed by its special charter known as the Consolidation Act, sought to get the benefit of the state high school fund. On the question as to whether evening schools might be made a part of the public school system, it was held that under section 6 of article IX of the constitution they might be made a part of such system, but that it was not intended thereby to make a separate class of such schools, but that evening schools should possess the character of primary, grammar, high, normal, or technical schools as the case might be.

On the question whether it was necessary, in order for a high school to be entitled to the benefits of the state high school fund, provided by the act of 1905, that it should have been organized under the provisions of section 1670 of the Political Code, it was held, that under the act of April 1, 1872,15 “to provide for the common schools of the City and County of San Francisco”, and authorizing the board of education to maintain existing public schools and “to establish additional ones”, and under section 1616 of the Political Code, the board of education of San Francisco was empowered to establish high schools, which would become, under section 6 of article IX of the constitution parts of the “public school system”, and that such high schools would become entitled to share in the benefits of the state high school fund, if otherwise qualified.

The third question was whether the shortness of the daily session, namely, two hours per day, took the school out of the class of high schools contemplated by the act for the support of high schools. It was held that inasmuch as section 1673 of the Political Code provided only for the maximum number of hours of daily

sessions, and as there was no statute providing a minimum duration of daily sessions, the fact that the sessions of an evening high school were only two hours per day did not prevent this evening school, if otherwise qualified, from participating in the benefits conferred on regularly established high schools. Mr. Justice Shaw, while concurring in the judgment of the court, expressed his doubts whether a high school with daily sessions of only two hours would be entitled to share in benefits for high schools, and whether the “average daily attendance” for the “term of 180 days” required of high schools did not mean a daily attendance for 180 days of substantially the usual and customary number of hours.

In 1880 it was held that the educational department of San Francisco, “as a state matter”, was not controlled by the city and county charter, but was subject to the constitution and to the general laws relating to the public schools. In 1890, in reply to the contention that the provisions of the Political Code in reference to education were not applicable to the city and county of San Francisco, it was held that a general statute on education applying to all cities must control special statutes applicable to particular cities. And in 1893 the authoritative case on this subject was decided. The freeholders’ charter of the city of San Diego of 1889 provided for a public school fund of the city, to consist of all moneys received from the city, county, and state school funds, and other sources. It further provided that “all moneys of this fund shall be deposited with the city treasurer”. Suit was brought to compel the auditor and treasurer of San Diego county to deposit with the city treasurer money then in the county treasury apportioned by the county superintendent of schools to the city of San Diego. Section 1532 of the Political Code requires the state superintendent of public instruction to apportion the school money of the several counties, and when he has so apportioned it, to draw his order on the controller “in favor of each county treasurer” for the moneys appropriated to that county; and section 1543 requires the county superintendent of schools to apportion the school moneys of the county to each school district within the county, and on the order of the board of trustees or board of education”, to draw his requisition upon the

36 Earle v. Board of Education (1880), 55 Cal. 489.  
37 Kennedy v. Board of Education (1890), 82 Cal. 483, 22 Pac. 1042.  
38 Kennedy v. Miller (1893), 97 Cal. 429, 32 Pac. 558.
THE PUBLIC SCHOOL SYSTEM

county auditor for all necessary expenses against the school fund of any city, town, or district", and "upon receipt of such requisition the auditor shall draw his warrant upon the county treasurer in favor of the parties, and for the amounts stated in such requisition". The court held that the money was to remain with the county treasurer until it was paid out by him upon receipt of the proper requisition. The school moneys never lose their character of public moneys belonging to the state, and are to remain under the control of the state officers for the purposes for which they have been appropriated. The fact that they are apportioned to the several school districts does not give to those districts any proprietary right therein, or any right to their custody; but the districts, through their authorized agents, have the right merely to contract for their proper disbursement within the purposes authorized by law. This is furthermore borne out by the stipulations of section 1621 of the Political Code, which requires that any portion of the moneys thus apportioned and not used during the year shall be reapportioned by the county superintendent just as other moneys are apportioned.

The determination of this suit in this way was predicated upon the rule that article IX of the constitution makes education and the management and control of the public schools a matter of state care and supervision. The argument of the court, speaking through Mr. Justice Harrison, in establishing this rule was as follows:

"Article IX of the constitution makes education and the management and control of the public schools a matter of state care and supervision. The election of a state superintendent of public instruction, and of a county superintendent of schools for each county, is therein authorized, and a public fund for the support of schools is provided, which, it is declared in section 4, 'shall be inviolably appropriated to the support of common schools throughout the state'; and in section 6, that the revenue from this fund, as well as from the state school tax, 'shall be applied exclusively to the support of primary and grammar schools'; and, in section 8, it is further declared that no public money 'shall ever be appropriated for the support of any . . . . school not under the exclusive control of the officers of the public schools'. The legislature is directed, in section 5, to provide for a system of common schools', and section 6 declares that 'the public school system shall include primary and grammar schools', and such 'other (of certain designated) schools as
may be established by the legislature or by municipal or district authority'.

"The term 'system' itself imports a unity of purpose as well as an entirety of operation, and the direction to the legislature to provide 'a' system of common schools means one system which shall be applicable to all the common schools within the state. In pursuance of this direction, the legislature has enacted chapter 3 of title 3, part 3, of the Political Code, wherein the system outlined in the constitution is amplified, and provision made for the organization of school districts, and the election of the officers thereof, as well as of the officers authorized by the constitution, and defining their powers and duties, and also providing for the proper application of the revenue from the state school fund, and for the raising of additional money by taxation for the support of the common schools.

"Section 1576 of the Political Code declares that 'each county, city, or incorporated town, unless sub-divided by the legislative authority thereof, forms a school district'. By virtue of this legislative authority, each school district becomes a public corporation (Estate of Bulmer, 59 Cal. 131; Hughes v. Ewing, 93 Cal. 414), and its functions and powers as such corporation are those which are given to it by the act under which it is created. The legislative declaration that every incorporated city is a school district does not import into the organization of the school district any of the provisions of the city charter, or limit the powers and functions which, as a school district, it has by virtue of the Political Code. The city is a corporation distinct from that of the school district, even though both are designated by the same name, and embrace the same territory. The one derives its authority directly from the legislature, through the general law providing for the establishment of schools throughout the state, while the authority of the other is found in the charter under which it is organized; and even though the charter may purport to define the powers and duties of its municipal officers in reference to the public schools in the same language as has the legislature in the Political Code, yet these powers and duties are referable to the legislative authority, and not to the charter.

* * * * * * * * * *

"The provision, in the charter of the city of San Diego, that all moneys belonging to the school fund of the city shall be deposited with the city treasurer, cannot, as we have seen, supersede the requirements of the Political Code that all moneys pertaining to the public school system shall be paid into the county treasury. Aside from the fact that this provision in the charter purports in terms to apply only to those taxes levied by the common council, and not to those
levied by the board of supervisors, a consideration of the functions of the city government relative to the county government will show that the provisions of the charter cannot have the effect contended for by the appellant. The constitution has authorized the city to frame this charter 'for its own government', and this limitation implies that its authority is restricted to its own officers and the inhabitants within its territory, and that it cannot extend the authority of its officers to matters outside of its territory, or to subjects that have been placed by the constitution exclusively within the control of the legislature, or that have been confided by the legislature to the management of other officials. The county treasurer and the county auditor are elected by the county at large, and constitute a portion of the political government of the state, with duties and powers prescribed by the legislature, and in their official positions act for the welfare of the state; but if it should be held that the inhabitants of a city, by means of a charter framed by themselves, prescribe the powers and duties of these officers, the charter of that city would cease to be a charter 'for its own government', and we might have the spectacle of different cities within the same county prescribing different, and perhaps contradictory, duties for officers who had not been chosen by them, but had been elected by different constituencies under the general law of the state, and who were accountable for their acts to the citizens by whom they had been elected."

Following the rule laid down in this leading case of Kennedy v. Miller, it has been held that a city superintendent of schools, under section 1793 of the Political Code, is an employee of the board of education of the city and that the fixing of his salary pertains to that board and not to the city council.19 The constitution provides that the legislature shall not pass local or special laws for the management of the common schools, nor in any case where a general law can be made applicable;20 that all laws of a general nature shall have a uniform operation;21 and that the provisions of the constitution are mandatory and prohibitory. Applying these provisions to the principle enunciated in Kennedy v. Miller, that the legislature is directed to establish one system of common schools to prevail throughout the state, it was held that that portion of section 1543 of the Political Code, as amended in 1893, which provided that in cities having boards of education the city treasurer should have the custody of the state and county

19 City of San Diego v. Dauer (1893), 97 Cal. 442, 32 Pac. 561.
21 Cal. Const., art. i, § 11.
school money apportioned to the city, was inconsistent with subdivision 2 of section 1617 of the Political Code, directing that all school moneys be paid to the county treasurer, and was accordingly unconstitutional and void.\textsuperscript{22}

In 1897 it was held that a rule adopted by the San Diego county board of education requiring that holders of state normal school diplomas should have one year's experience before receiving a teacher's grammar grade certificate was inconsistent with the provisions of the Political Code,\textsuperscript{23} making uniform regulations for the granting of teachers' certificates, and was therefore void.\textsuperscript{24}

Likewise, the action of the board of education of San Francisco, in 1899, in making a change in the books used in penmanship classes, inconsistent with the general rules of the Political Code,\textsuperscript{25} was in excess of its powers and void.\textsuperscript{26}

Every city, according to the Political Code, constitutes a separate school district, including such outlying territory as may be legally attached to it.\textsuperscript{27} But the school district is not thereby brought under any municipal power or control. The school system being a matter of general concern, and not a municipal affair, a city charter has no effect upon the existence or legal character of a school district, formed under the general law. The function of the city under the charter is simply to furnish the officers who compose the governing body of the district, and, when a new charter is adopted, the former board of school trustees is superseded as the governing body by the city board of education. There is no change in the existence of the district, but simply a change in the officers who govern it.\textsuperscript{28}

The unity and entirety of the state school system is upheld in a case which sustains the authority of the state board of education as a correlating agent in the state system.\textsuperscript{29} In this case the court said that it was apparent,

"under the general power conferred on the state board of education 'to adopt rules and regulations not inconsistent with the laws of this state . . . . for the government of public schools' that it had the authority to define what should

\textsuperscript{22}Bruch v. Colombet (1894), 104 Cal. 347, 38 Pac. 45.
\textsuperscript{24}Mitchell v. Winnek (1897), 117 Cal. 520, 49 Pac. 479.
\textsuperscript{25}Cal. Pol. Code, § 1874, subd. 3.
\textsuperscript{26}Greene v. Board of Education (1900), 131 Cal. 165, 63 Pac. 161.
\textsuperscript{27}Cal. Pol. Code, § 1576.
\textsuperscript{28}Hancock v. Board of Education (1903), 140 Cal. 554, 74 Pac. 44.
\textsuperscript{29}San Francisco v. Hyatt (1912), 163 Cal. 346, 125 Pac. 751.
THE PUBLIC SCHOOL SYSTEM

constitute a minimum school day for any purpose, even for the apportionment of school funds, in the absence of any law defining it, or power elsewhere conferred to do so. The conference of this general power upon the state board of education is in harmony with the constitutional provision (art. IX) requiring the adoption of one system of common schools which shall be applicable to all the common schools of the state, and the term 'system' itself imports a unity of purpose, as well as an entirety of operation. Aside from general legislation designed to secure this entirety of operation and with a view to promote it, power to do so is expressly conferred on the state board, and unless there is some law which otherwise governs, it would appear that as this rule fixing the minimum school day operates in the apportionment of the state school funds equally and uniformly throughout the state without discrimination, it is within the power of the state board to prescribe it.

In Oakland and in San Francisco the question arose whether the municipality might issue bonds for school-houses. It was contended that on the theory that the management and control of schools was a state affair and not a municipal affair the only local authority for issuing bonds for school-houses was the school districts. In both cases, however, it was held that a municipality has power to incur bonded indebtedness for the erection of new school-houses, for the acquisition of land for these purposes, and of additional land for playgrounds of established schools. The grounds of these decisions were that, as school-houses are essential aids in the promotion of education, their erection is but incidental to the maintenance of the schools, and falls as completely within the functions of a municipal government as does the erection of a hospital for its indigent poor, or buildings for its fire-engines. Better and more comprehensively stated, the rule of these decisions was, as expressed in a later case:

"it . . . . may be taken as decided and settled that a city, as such, may bond itself for public school purposes, and that this power extends to all cases where the object is in furtherance, and not in derogation of or in conflict with, the general school system established by the state".

In the last cited case, the Los Angeles city school district, had followed the procedure under the general law for the issuance of

---

30 Kennedy v. Miller (1893), 97 Cal. 429, 32 Pac. 558.
31 In re Wetmore (Wetmore v. Oakland) (1893), 99 Cal. 146, 33 Pac. 769; Law v. San Francisco (1904), 144 Cal. 384, 77 Pac. 1014.
school bonds, to the point where it certified its action to the county board of supervisors. The board of supervisors refused to proceed as required by section 1884 of the Political Code, on the alleged ground that the city of Los Angeles, as a municipal corporation, had, under its charter and the laws of the state, the exclusive right to issue bonds for school purposes. In other words, the county supervisors contended that, under the authority of the Wetmore and Law cases, all matters touching schools within the corporate limits of a city were "municipal affairs", and being provided for in the Los Angeles charter, were so far as Los Angeles was concerned, withdrawn from control by general law, under section 6 of article XI of the constitution. This contention was fully and completely answered by Mr. Justice Henshaw as follows:

"In this connection it must be remembered, as was said in Hancock v. Board of Education, 140 Cal. 554, [74 Pac. 44], that the school system of the state is a matter of general concern, and not a municipal affair. It may be well to dwell upon this distinction with more particularity, and in so doing to point out the well-recognized and oft-repeated difference between the acts of the city as a city and the acts of the school district which may comprise the same territory. They are essentially the acts of two different corporate entities—the powers of the city being drawn from its charter, the powers of the school district being derived from the provisions of the Political Code; the bonds which the city issues being municipal bonds of that city, and the power to issue them being derived from the charter taken with the general laws, while the bonds of the school district are in name and in fact school-district bonds, the right and power to issue them being derived from the Political Code. What, therefore, the Wetmore case and the Law case decided was that the erection of school-houses within the corporate limits of a municipality was justly to be regarded as a municipal affair, and that the city, therefore, as such, could create a bonded indebtedness for such and like purposes, even though power to do the same thing was, under the general school system of the state, vested in a school district which, while occupying the same territory as that of the city, was still in point of law a distinct corporate entity. It follows, therefore, that the declaration of this court that the issuing of bonds for the building of school-houses by a city as a municipal affair

constitutes in no sense a negation of the idea that another corporate entity—the school district—may, under the general school system of the state, do the same thing for the same purpose."

The general theory of the public schools in California is that while they constitute a state system, this state system is to be locally administered. Under the constitution of 1849 the possibilities of centralization were greater than was intended by the constitution of 1879. For the earlier constitution was framed in general language and left large discretion to the legislature, there being no limitations, and the only injunction being that "the Legislature shall provide for a system of common schools, by which a school shall be kept up and supported in each district at least three months in every year".\textsuperscript{35}

The spirit of the Constitutional Convention of 1879 was antagonistic, on the one hand, to higher education, and on the other, to centralization of authority in the matter of the common schools. The opposition to high schools, controlled somewhat by the conservative elements in the convention, led to the adoption of § 6 of article IX of the constitution, reading:

"The public school system shall include primary and grammar schools, and such high schools, evening schools, normal schools, and technical schools as may be established by the Legislature, or by municipal or district authority; but the entire revenue derived from the State School Fund and the State school tax, shall be applied exclusively to the support of primary and grammar schools."

The opposition to centralization was mainly directed toward control by a state board of education. The chief cause of this attitude was the fact of a serious scandal in the early seventies. It was the practice of the state board to prepare the questions for the teachers' examinations, and send them to the several county authorities. More or less of a traffic in these examination questions grew up, and they were for sale, at least in San Francisco, to candidates for teachers' certificates. The decentralization spirit also aimed to take from the state board the power of selecting text-books for the schools at large. The root of this purpose was, likewise, the belief that the state board had been open to improper and venal influences in the selection of school text-books. To attain these objects section 7 of article IX was adopted, as follows:

"The local Boards of Education, and the Boards of Super-

\textsuperscript{35} Cal. Const. 1849, art. ix, § 3.
visors, and County Superintendents of the several counties which may not have County Boards of Education, shall adopt a series of text-books for the use of the common schools within their respective jurisdictions; the text-books so adopted shall continue in use for not less than four years; they shall also have control of the examination of teachers and the granting of teachers' certificates within their several jurisdictions".

This section was amended in 1884-85, in such wise as to establish a state board of education, with the function of preparing and adopting a uniform series of text-books for use in the common schools throughout the state. The control of teachers' examinations and the granting of teachers' certificates was left in the hands of county boards of education.

The construction of this provision of the constitution came before the Supreme Court in 1897 in the leading case of Mitchell v. Winnek. In this case the plaintiff was the holder of a diploma from a California state normal school, and applied to the San Diego county board of education for a grammar grade teachers' certificate. The county board refused the certificate unless the plaintiff complied with a rule adopted by the board which required that applicants in general for teachers' certificates must have two years' experience in teaching, and holders of state normal school diplomas at least one year's experience. Against this rule of the San Diego county board was a provision of the Political Code which provided that holders of state normal school diplomas should be entitled to receive grammar grade certificates. The county board of education based its right to adopt the rule in question on section 7 of article IX of the constitution providing that county boards of education should have control of the examination of teachers and the granting of teachers' certificates within their respective jurisdictions.

The principal controversy was as to the meaning of the word "control" as used in the clause of the constitution, the county board contending that it was synonymous with the term "to govern", "rule", "regulate"; that the fact of governing included every exercise of authority and to "regulate" was the power to prescribe the rules by which it should be governed. The court argued, in response to this contention, that the word "control", in order to support the view of the county board must have been used in its

36 (1897), 117 Cal. 520, 49 Pac. 579.
largest sense; in other words, that the control thus vested in the county board was unlimited and exclusive. In adopting the rule in question the county board must have been exercising legislative functions, and, if such legislation by the local board could supersede an enactment by the state legislature on the same subject, the county boards must have the absolute and exclusive power to legislate upon that subject. The court further argued, that the "control" of the examination of teachers by the county boards did not necessarily imply that the legislature might not prescribe the rules by which the qualifications of teachers should be determined. Not only was it contemplated that all applicants for the position of teachers would not be educated in the universities or normal schools, and that, therefore, many teachers would necessarily be examined by the county boards, but, as to those, it was competent for the legislature to prescribe the general rules or standard by which their qualifications to teach should be determined, and the enactment of such rules would be entirely consistent with the "control" of the county board in making such examinations and in granting certificates in conformity therewith. Such had been, of course, the legislative construction of the constitutional provision under consideration.

The court said, that in view of the entire provisions of the constitution upon the subject of education, they thought it could not have been intended that the legislature should be excluded, prevented or prohibited from prescribing to whom and upon what conditions certificates should be granted. If it be claimed that the legislature did not have power to enact section 1503 of the Political Code, such restriction must be found in the constitution and the prohibition must be clear. There is no express prohibition, and the only implied prohibition that can be found is in the word "control". But to give "control" such effect, some qualifying word, such as "exclusive", "absolute", or "unlimited", must be implied, since without implication that word does not necessarily mean that the legislature has no power to declare that holders of normal school diplomas should be entitled to certificates of the grammar grade.

Debates of the Constitutional Convention\(^\text{38}\) were quoted, where discussion took place upon a proposed amendment to a pending section 8 of article IX, relating to "local boards of education",

\(^{38}\) Debates of the Constitutional Convention, 1879, vol. iii, p. 1400.
the last clause reading: "They shall also have control of the examination of teachers and the granting of teachers' certificates within their several jurisdictions." It was then proposed to amend this section by adding the words: "subject to general legislative enactments". This amendment was opposed upon the ground that a section 7 of article IX which provided for a state board of education had been defeated. Mr. Laine said: "It seems to me that it will open the door to bring back the old system. We have got rid of this board of education [meaning the state board], but that thrusts us back to the old system whenever the legislature desires to have it so"; and Mr. Larkin contended that it "would destroy all we have done in relation to placing the schools under local control. It will again reinstate the old law. . . . . We have placed it under the local control of the counties, and that amendment will destroy all that we have done". The amendment was defeated.

As the court says, it is apparent that the contest was between a state system and a local system of common schools. The convention had just defeated the provision for a state system by defeating the section providing for a state board; but the situation was changed by the adoption in 1884 of an amendment to section 7 providing for a state board and establishing the state system which had been defeated in the convention of 1879. The court says:

"It is true the language in the concluding part of the section adopted by the convention is the same as the concluding part of the section as it now stands; but the system of schools adopted by the convention was swept away by the amendment and a different system adopted, and this should have great weight in the construction of the clause immediately under consideration; and so the whole constitution should be examined with a view to arriving at the true intention of each part."

The case of Vernon School District v. Board of Education, holds that, if public schools and school property within municipalities are subject to municipal control, it follows that the school belonging to a school district, the territory of which has been annexed to a city by the act of 1889, belongs then to the city and is rightfully in possession and under the control of the board of education of said city and is its property. Even if this property had not been annexed to the city for municipal purposes under the

---

39 (1899), 125 Cal. 593, 58 Pac. 175.
593, 58 Pac. 175.
40 1889 Stats. Cal. 358.
act of 1889, but upon petition had been annexed to the city "for school purposes only", the part of the outside school district so annexed would, under the operation of the general laws, have come under the sole control of the board of education of the city.\textsuperscript{41}

Under the general Municipal Corporations Act, school districts are spoken of and they are said to be governed by "boards of education". The Supreme Court has, however, held,\textsuperscript{42} that these terms are used in a quite different sense from that given to them in the Political Code,\textsuperscript{43} for, in the cities and towns organized under the Municipal Corporations Act, the "school district" is no longer a separate corporate body, but is merged in the city, and the board of education is but a department of the general city government. Otherwise, the subject of schools would not be embraced in the title of the act, which relates merely to "the organization, incorporation, and government of municipal corporations", and includes the school system of the city only on the hypothesis that it is part of the municipal organization. The court raises the question; which it finds to be unnecessary to decide, whether the provisions of the Municipal Corporations Act, thus withdrawing cities of the classes therein specified from the operation of the general system of common schools established by the Political Code, are constitutionally valid.

In Denman v. Webster,\textsuperscript{44} a distinction is made between a "municipal function" and a "school function". It was contended in this case that the charter of San Francisco in requiring the city attorney to prosecute and defend suits by or against the board of education, was attempting to impose a school function upon a municipal officer. It was held, however, that in prosecuting and defending such suits he was not exercising a school function, but simply the functions of an attorney employed by the city. On this subject, in this same case, on rehearing,\textsuperscript{45} Shaw J., said:

"It is said that the school system is a state institution, and is governed by the general laws, and hence that city charters cannot prescribe the duties of the school officers. This may be conceded in so far as any provision of a charter may conflict

\begin{itemize}
\item \textsuperscript{41} Cal. Pol. Code, § 1576.
\item \textsuperscript{42} Board of Education v. Board of Trustees (1900), 129 Cal. 599, 62 Pac. 173.
\item \textsuperscript{43} Cal. Pol. Code, §§ 1576, 1593, 1616, 1617.
\item \textsuperscript{44} (1902), 70 Pac. 1063.
\item \textsuperscript{45} (1903), 139 Cal. 452, 73 Pac. 139.
\end{itemize}
with a general law on the subject, but where the general law is silent the charter will be allowed to control."

The power of local boards to control the place of residence of teachers, to prescribe the length of the school day, and to pass on charges made against a teacher, have been discussed by the courts as illustrating the relative spheres of local and central authorities. Section 1616 of the Political Code provides:

"Boards of education are elected in cities under the provisions of the laws governing such cities, and their powers and duties are as prescribed in such laws, except as otherwise in this chapter provided."

It has accordingly been held that a resolution of the board of education of San Francisco, requiring teachers and other employees to reside within the city and county during their employment, is a reasonable exercise of power under the San Francisco Charter, which empowers the board of education to enforce necessary regulations for the government and efficiency of the schools.\(^4\)

In City and County of San Francisco v. Hyatt,\(^7\) Lorigan, J., said:

"It may not be questioned but that, in the absence of any statute or rule of the state board on the subject, the local board could exercise the right to regulate the school day sessions in their respective cities or counties. This power exists, however, not by virtue of their right to prescribe a course of study, but under section 1617 of the Political Code, which gives them the same authority over the schools in their district that is conferred on the state board over the public schools throughout the state, namely, 'to prescribe and enforce rules ... for the government of schools' within their districts. But the exercise of this power is subject to the control of the state board on that subject, because in this same section it is declared that such rules must be 'not inconsistent with law or those prescribed by the state board of education'. It is apparent from this section that, except as to those matters where express power is conferred on the local board to act exclusively, it was the intention of the legislature to make their action, relative to public school matters, secondary and subsidiary to the control of the state board."

In McKenzie v. Board of Education,\(^8\) Cooper, J., said:

"In this case the defendants as a board of education heard and determined charges against the petitioner in regard to her fit-

---

\(^4\) Stuart v. Board of Education (1911), 161 Cal. 210, 118 Pac. 712.

\(^7\) (1912), 163 Cal. 346, 125 Pac. 751.

\(^8\) (1905), 1 Cal. App. 406, 82 Pac. 392.
ness to teach. They had jurisdiction to hear and determine said charges if properly made.\textsuperscript{49} This is not controverted by respondent, but it is claimed that the board of education never acquired jurisdiction because the method provided by the charter of the city and county of San Francisco as to making the charges is the only method provided and the source of the power of the board to act, and that the charges were not made as provided by the charter. If the charter of the city and county of San Francisco were the only law upon the question, there would be much force in respondent’s contention. The legislature, under the constitution, has provided a general system in regard to the common schools, and prescribed the duties of boards of education in counties and cities and counties of the state. The general laws passed by the legislature are paramount, and in case any provision of the charter of any city conflicts with the general laws as to matters pertaining to the public schools, the charter must give way to the general law. But the charter of a city or city and county may make additional provisions, or provide for matters not enumerated in the general law, provided such provisions are not in conflict with the general law.\textsuperscript{50} It is the duty of the court in all cases to consider the different provisions of the charter of a city or city and county and the general law, so as to make them harmonize, if possible, and give effect to each if it can be done. We find no difficulty in this case in so harmonizing them, and holding that the board of education had jurisdiction upon the written charges made by citizens."

In Pasadena School District v. City of Pasadena,\textsuperscript{51} a new situation arose in respect to the relations between a municipality and a school district covering the same territory. The city had adopted an ordinance establishing a building code under which buildings to be constructed in the city were classified and fire districts fixed. Within certain fire districts only buildings of a certain class were allowed to be erected. Plans and specifications had to be submitted to the building inspector and his approval obtained. The school district was proceeding to erect a concrete and steel school building within the city of Pasadena, without complying with the provisions of the city ordinance. Under a threat of arrest of the school trustees and of their builder and contractor, an agreed case was presented for decision by the courts.

\textsuperscript{49} Cal. Pol. Code, §§ 1791, 1793; Kennedy v. Board of Education (1890), 82 Cal. 483, 22 Pac. 1042.
\textsuperscript{50} Kennedy v. Miller (1893), 97 Cal. 429, 32 Pac. 558.
\textsuperscript{51} (1913), 166 Cal. 7, 134 Pac. 985.
The question at issue was, has the city of Pasadena the power to subject the school district erecting a school building within its corporate limits, but which also constitutes territory of the school district, to its regulatory building ordinances in the exercise of its police power? The school district contended that it was an independent governmental agency of the state created under general law. Such a contention is based on taking together the whole scheme of the state school law as embodied in title 3, chapter 3, of the Political Code. The sections therein contained provide for the management and control of school property within school districts by the trustees or boards of education thereof, grant school authorities the power to build school houses, and require the county superintendent of schools, except in incorporated cities having boards of education, to approve all plans for school houses, and require the school trustees to obtain such approval from the county superintendent. It is, hence, contended that in harmony with the constitutional provision requiring the legislature to provide for a system of common schools, a scheme of complete government respecting school affairs has been created, and thereunder the authorities of the school district are given the right to exercise the police power in the construction of school buildings to the exclusion of any interference on the part of the municipality.

A school district could not claim, however, that the police power has been given otherwise than by implication. And it is a cardinal principle that school districts are, as commonly described, quasi-municipal corporations of the most limited power known to the law, and that their trustees have special powers which they cannot exceed. It was accordingly held, in the Pasadena case, that power in the school trustees to determine for themselves all matters concerning school structures to be erected regardless of the right of the municipality to impose police regulations could not be implied from a grant solely of power to control the school affairs of the district and to plan and build school houses. Under the constitution, power is explicitly conferred upon every county, city, town or township to make and enforce within its limits all such local police and sanitary regulations as do not conflict with general laws. This constitutional right vested in a municipality to impose reasonable police regulations within its territorial limits

53 Cal. Const., art. xi § 11.
"is itself a charter for each city, so far as its local regulations are concerned, and nothing less than a positive and general law upon the same subject can be said to create a conflict.' Therefore, as the court says in the Pasadena case,

"the mere fact that the school district embraces a part of a city where building regulations are imperative for public safety could afford no reasonable excuse why, if it is necessary to construct a school building in the city, the trustees should not, in the interest of the public good, be subject to the same building regulations as others erecting structures therein are subjected to. In promoting the municipal welfare and safety the school district ought to be subject to them."

William Carey Jones.

Berkeley, California.

---

54 Ex parte Campbell (1887), 74 Cal. 20, 15 Pac. 318.