• Commonwealth of Kentucky •

EDUCATIONAL BULLETIN

KENTUCKY COMMON SCHOOL LAWS 1940

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JOHN W. BROOKER
Superintendent of Public Instruction

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KENTUCKY COMMON SCHOOL LAWS

1940

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Published by order of the
State Board of Education

STATE BOARD OF EDUCATION

FOREWORD

This volume of school laws has been prepared in compliance with Section 4384-18, Kentucky Statutes, which makes it the duty of the Superintendent of Public Instruction to prepare for publication of the State Board of Education the complete school laws of the Commonwealth.

This compilation has been prepared by Gordie Young, Assistant Superintendent of Public Instruction, and includes all sections of the Statutes relating to the school laws of the Commonwealth, including the Acts of the General Assembly of 1940. The decisions of the Court of Appeals have been arranged immediately following the sections to which they are most closely related. Some of the decisions may not apply to the specific wording of the section but they are so applicable in whole or in part as to furnish valuable information in the proper interpretation of the specific section.

This volume has been indexed both with reference to the subject matter and sections of the Kentucky Statutes. It is the property of the Commonwealth of Kentucky and is published as a handbook to aid school officers, as well as all others interested in school matters.

JOHN W. BROOKER
Superintendent of Public Instruction

June 1, 1940.

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CHAPTER I

CONSTITUTIONAL PROVISIONS

Sec. 5, Ky. Const. **Freedom of Conscience; Church and State; Education.**—No preference shall ever be given by law to any religious sect, society or denomination; nor to any particular creed, mode of worship or system of ecclesiastical polity; nor shall any person be compelled to attend any place of worship, to contribute to the erection or maintenance of any such place, or to the salary or support of any minister of religion; nor shall any man be compelled to send his child to any school to which he may be conscientiously opposed; and the civil rights, privileges or capacities of no person shall be taken away, or in any wise diminished or enlarged, on account of his belief or disbelief of any religious tenet, dogma or teaching. No human authority shall, in any case whatever, control or interfere with the rights of conscience.

Sec. 55, Ky. Const. **Law; When to Take Effect; Emergency Clause.**—No act, except general appropriation bills, shall become a law until ninety days after the adjournment of the session at which it was passed, except in cases of emergency, when, by the concurrence of a majority of the members elected to each House of the General Assembly, by a yea and nay vote entered upon their journals an act may become a law when approved by the Governor; but the reasons for the emergency that justifies this action must be set out at length in the journal of each House.

Ficke, et al. v. Board of Trustees of Erlanger Consolidated Graded School District, 262 Ky. 312. School districts have liens on personal property. If Governor neither approves nor disapproves act with emergency clause it becomes effective when returned to Secretary of State's Office.

Emergency statute declaring inadequacy of existing remedies and intention to provide additional remedies for collecting school taxes held intended to apply retroactively.

Sec. 59, Ky. Const. **Local and Special Legislation; Limitations Upon.**—The General Assembly shall not pass local or special acts concerning any of the following subjects, or for any of the following purposes, namely: To provide for the management of common schools. (Subsec. 25.)

Stone v. Wilson, 102 Ky. 423, 43 S. W. 397. Local or special legislation applies exclusively to special or particular places, or special or particular persons, and is distinguished from the statute intended to be general in its operation and that relating to classes of persons or subjects.

Sec. 91, Ky. Const. **Treasurer; Auditor; Register; Commissioner of Agriculture; Secretary of State; Attorney General; Super-**

intendent of Public Instruction.—A treasurer, auditor of public accounts, register of the land office, commissioner of agriculture, labor and statistics, secretary of state, attorney-general and **superintendent of public instruction,** shall be elected by the qualified voters of the state at the same time the Governor is elected, for the term of four years, each of whom shall be at least thirty years of age at the time of his election, and shall have been a resident citizen of the state at least two years next before his election. The duties of all these officers shall be such as may be prescribed by law, and the secretary of state shall keep a fair register of and attest all the official acts of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto before either house of the General Assembly. **The officers named in this section shall enter upon the discharge of their duties the first Monday in January after their election, and shall hold their offices until their successors are elected and qualified.**

Sec. 93, Ky. Const. **Officers Ineligible for Succeeding Term; Duties; Inferior Officers.**—The treasurer, auditor of public accounts, secretary of state, commissioner of agriculture, labor and statistics, attorney-general, **superintendent of public instruction,** and register of the land office **shall be ineligible to re-election** for the succeeding four years after the expiration of the term for which they shall have been elected. The duties and responsibilities of these officers shall be prescribed by law, and all fees collected by any of said officers shall be covered into the treasury. Inferior state officers, not specifically provided for in this constitution, may be appointed or elected, in such a manner as may be prescribed by law, for a term not exceeding four years, and until their successors are appointed or elected and qualified.

Sec. 152, Ky. Const. **Vacancies in Office; How Filled.**—Except as otherwise provided in this constitution, vacancies in all elective offices shall be filled by election or appointment, as follows: If the unexpired term will end at the next succeeding annual election at which either city, town, county, district or state officers are to be elected, the office shall be filled by appointment for the remainder of the term. If the unexpired term will not end at the next succeeding annual election at which either city, town, county, district or state officers are to be elected, and if three months intervene before said succeeding annual election at which either city, town, county, district or state officers are to be elected, the office shall be filled by appointment until said election, and then said vacancy shall be filled by election for the remainder of the term. If three months do not intervene between the happenings of said vacancy and the next suc-

ceeding election at which city, town, county, district or state officers are to be elected, the office shall be filled by appointment until the second succeeding annual election at which city, town, county, district or state officers are to be elected; and then, if any part of the term remains unexpired, the office shall be filled by election until the regular time for the election of officers to fill said offices. Vacancies in all offices for the state at large, or for districts larger than a county, shall be filled by appointment of the Governor; all other appointments shall be made as may be prescribed by law. No person shall ever be appointed a member of the General Assembly, but vacancies therein may be filled at a special election, in such manner as may be provided by law. See Secs. 1521, 3758, Ky. Stat.)

Sec. 155, Ky. Const. **Sections 145 to 154 Do Not Apply to Election of School Trustees.**—The provisions of sections one hundred and forty-five to one hundred and fifty-four, inclusive, shall not apply to the election of school trustees and other common school district elections. Said elections shall be regulated by the General Assembly, except as otherwise provided in this Constitution.

Sec. 157, Ky. Const. **Tax Rate; Indebtedness; Submission of Question to Voters.**—The tax rate of cities, towns, counties, taxing districts and other municipalities, for other than school purposes, shall not, at any time, exceed the following rates upon the value of the taxable property therein, viz.: For all towns or cities having a population of fifteen thousand or more, one dollar and fifty cents ($1.50) on the hundred dollars ($100.00); for all towns or cities having less than fifteen thousand and not less than ten thousand, one dollar on the hundred dollars ($100.00); for all towns or cities having less than ten thousand, seventy-five cents (75c) on the one hundred dollars ($100.00) and for counties and taxing districts, fifty cents (50c) on the hundred dollars; unless it should be necessary to enable such city, town, county, or taxing district to pay the interest on, and provide a sinking fund for the extinction of indebtedness contracted before the adoption of this Constitution. No county, city, town, taxing district, or other municipality shall be authorized or permitted to become indebted in any manner or for any purpose, to an amount exceeding in any year, the income and revenue provided for such year, without the assent of two-thirds of the voters thereof, voting at an election to be held for that purpose; and any indebtedness contracted in violation of this section shall be void. Nor shall such contract be enforceable by the person with whom made; nor shall such municipality ever be authorized to assume the same.

Rowan County Board of Education v. Citizens Bank, et al., 279 Ky. 413. This suit tests the validity of a proposed bond issue of the county board of education. Judgment of the lower court affirmed and the issue of bonds of $62,500 is thereby approved.

Citizens' Bank v. Rowan County Board of Education, 274 Ky. 481. Warrants issued over a period of six years for governmental expenses of board of education and which did not exceed, with prior indebtedness, the revenue that could be lawfully anticipated for the particular year, were valid obligations when issued, and hence a note by which warrants were taken up was valid, regardless of whether amount of note exceeded the anticipated revenue for the year in which note was executed.

Abbott, et al. v. Oldham County Board of Education, 272 Ky. 654. If outstanding indebtedness when created did not exceed anticipated revenue as shown by budget and money was expended for lawful purposes, funding bonds may be issued and proceeds applied to reduction of said indebtedness.

Scott County Board of Education v. McMillen, 270 Ky. 483. The plan of the county board of education providing for conveyance to holding corporation properties which were to be jointly mortgaged to secure payment of bonds, was not invalid because all properties were jointly subject to lien for payment of bonds or because provision for refunding of any taxes paid by bondholders if annual payment was within board's unencumbered annual income.

Bales v. Holt, County School Superintendent, et al., 270 Ky. 272. County board of education should assume indebtedness of the independent district which becomes part of county district.

Arrowood v. Board of Education of Paintsville Graded School District, et al., 269 Ky. 464. Court cannot determine the validity of floating indebtedness.

Fiscal Court of Jackson County, et al. v. Board of Education of Jackson County, 269 Ky. 258. Board of Education authorized to convey school site to fiscal court for purpose of issuing bonds to finance construction of school building.

Fiscal Court of Jackson County, et al. v. Board of Education of Jackson County, 268 Ky. 336. This contract to lease a building provides for continuance from year to year and is illegal. It could be remedied by making lease for one year.

Meade v. Board of Education of Johnson County, et al., 268 Ky. 71. Board of education has legal authority to issue bonds to refund validly created indebtedness.

Lee v. Board of Education of Bell County, 261 Ky. 379. Debt which arose from unexpected decrease in value of property of county school district held a valid obligation as regards validity of bonds authorized to fund such ogligations.

Davis v. Board of Education of City of Newport, et al., 260 Ky. 294. Thirty-year lease of school building to board on condition of paying $15,000 a year until all rentals paid on condition that building would be conveyed to board held unconstitutional. Lease of building to board by city for annual rental which does not exceed budget for year constitutional.

City of Frankfort v. Fuss, et al., 235 Ky. 143. This case very similar to Hogan v. Lee Fiscal Court, et al., 235 Ky. 100, and was decided on the same day, June 20, 1930. It contains the dissenting opinion in detail by Chief Justice Thomas and Judges Rees and Dietzman. The county board of education being purely an administrative body and without tax levying authority, can expend only such revenue as comes to it through the channels of law. It has no authority to expend any sum over and above the amount that it obtains by submission of its budget to the fiscal court.

Hogan v. Lee Fiscal Court, et al., 235 Ky. 100. Amount of indebtedness counties may incur depends on how much revenue would have been raised by imposing full constitutional tax rate and not actual revenue. County may fund legally created indebtedness by issuing bonds. Dissenting opinion given by Chief Justice Thomas and Judges Rees and Dietzman.

Billings v. Bankers Bond Co., 199 Ky. 490, 251 S. W. 643. A certain contract in which a board of education under the guise of Reynolds, attempted to secure the erection of a school building, for an amount in excess of the revenues for the current year, was invalid.

Durrett Construction Co. v. Caldwell, 196 Ky. 158, 244 S. W. 409. Rules are laid down by the court for ascertaining the amounts of the revenue of a county for a given year.

Fall v. Read, 194 Ky. 135, 238 S. W. 177. The outstanding indebtedness of a city is not to be considered in determining indebtedness that may be incurred by a school district of which the city forms a part.

Flanders v. Board of Trustees of Little Rock Graded School, 170 Ky. 627, 186 S. W. 506. If a municipality creates a debt greater than the income and revenue for such year without the assent of the voters, the same is in violation of this section, although the amount is divided in equal installments, payable in a series of years.

Sec. 158, Ky. Const. **Indebtedness; Limit of Allowed; Issual of Bonds.**—The respective cities, towns, counties, taxing districts, and municipalities shall not be authorized or permitted to incur indebtedness to an amount, including existing indebtedness, in the aggregate exceeding the following named maximum percentage on the value of the taxable property therein, to be estimated by the assessment next

before the last assessment previous to the incurring of the indebtedness, viz.: Cities of the first and second classes, and of the third class having a population exceeding fifteen thousand, ten per centum; cities of the third class having a population of less than fifteen thousand, and cities and towns of the fourth class, five per centum; cities and towns of the fifth and sixth classes, three per centum; and counties, taxing districts and other municipalities, two per centum: Provided, Any city, town, county, taxing district or other municipality may contract an indebtedness in excess of such limitations when the same has been authorized under laws in force prior to the adoption of this Constitution, or when necessary for the completion of and payment for a public improvement undertaken and not completed and paid for at the time of the adoption of this Constitution: And provided further, If, at the time of the adoption of this Constitution, the aggregate indebtedness, bonded or floating, of any city, town, county, taxing district, or other municipality, including that which it has been or may be authorized to contract as herein provided, shall exceed the limit herein prescribed, then no such city or town shall be authorized or permitted to increase its indebtedness in an amount exceeding two per centum, and no such county, taxing district or other municipality, in an amount exceeding one per centum, in the aggregate upon the value of the taxable property therein, to be ascertained as herein provided, until the aggregate of its indebtedness shall have been reduced below the limit herein fixed, and thereafter it shall not exceed the limit, unless in case of emergency, the public health or safety should so require. Nothing herein shall prevent the issue of renewal bonds, or bonds to fund the floating indebtedness of any city, town, county, taxing district or other municipality.

Board of Education of Kenton County v. Louisville & N. R. Co., 280 Ky. 650. Taxes collected by subdistrict bond issue cannot be used for purposes other than paying interest on retirement of bonds.

Whitworth v. Breckinridge County Board of Education, 276 Ky. 346. Board of Education may refund a funded legal debt and add to the original debt the accumulated interest which it has been unable to pay because of lack of income therefor.

Arrowood v. Board of Education of Paintsville Graded School District, 271 Ky 812. The board of education is limited in its annual spending to its budgeted revenue. The board has the burden of establishing the validity of indebtedness. A proposed issue of school bonds to fund an alleged indebtedness will be approved so far as such consisted of a final judgment in a bona fide suit against the school board.

Runyon v. Simpson, Mayor, et al., 270 Ky. 646. The lapse of eight years between election authorizing bond sale and proposed issue of same did invalidate them if indebtedness is legal.

Sec. 165, Ky. Const. **Incompatible Offices; State.**—No person shall, at the same time, be a state officer or a deputy officer, or member of the General Assembly, and an officer of any county, city, town or other municipality, or an employee thereof; and no person shall,

at the same time, fill two municipal offices, either in the same or different municipalities, except as may be otherwise provided in this Constitution; but a Notary Public, or an officer of the militia, shall not be ineligible to hold any other office mentioned in this section.

Knuckles v. Board of Education of Bell County, 272 Ky. 436. Position of superintendent or assistant superintendent is incompatible with that of teacher in the public schools.

Polley v. Fortenberry, et al., 268 Ky. 369. Constitution nor statutes prohibit holding two state offices or employment at same time. Office of member of county board of education is not incompatible with maintenance supervisor of roads.

Board of Trustees of Fairview Graded Common School District, et al. v. Renfro, 259 644. Principal of a school a state employee and not disqualified to be employed by trustees even though he was a member of the General Assembly.

Sec. 180, Ky. Const. **Purpose of Levy to be Stated.**—The General Assembly may authorize the counties, cities or towns to levy a poll tax not exceeding one dollar and fifty cents per head. Every act enacted by the General Assembly, and every ordinance and resolution passed by any county, city, town or municipal board or local legislative body levying a tax shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose.

Superior Coal and Builders Supply Company v. Board of Education of Dayton, Ky., 260 Ky. 84. Landowner could not recover from the board of education for damages alleged to have been caused by heavy rains in the absence of allegation of negligence of the school board.

Sec. 183, Ky. Const. **Common Schools to be Provided for.**—The General Assembly shall, by appropriate legislation, provide for an efficient system of common schools throughout the state. (See Sec. 4363-1, Ky. Stat.)

Board of Education of Calloway County, et al. v. Talbott, Auditor of Public Accounts, 261 Ky. 66. Held unconstitutional to pay equalization money to teachers because constitution required money for payment of teachers to be distributed on census of pupils.

Sec. 184, Ky. Const. **Fund Set Apart for Common Schools; Taxation for A. & M. College.**—The bond of the Commonwealth issued in favor of the board of education for the sum of one million three hundred and twenty-seven thousand dollars ($1,327,000.00) shall constitute one bond of the Commonwealth in favor of the board of education, and this bond and the seventy-three thousand five hundred dollars ($73,500.00) of the stock of the Bank of Kentucky, held by the board of education, and its proceeds shall be held inviolate for the purpose of sustaining the system of common schools. The interest and dividends of said funds, together with any sum which may be produced by taxation or otherwise for purposes of common school education, shall be appropriated to the common schools and to no other purpose. No sum shall be raised or collected for education other than in common schools until the question of taxation is sub-

mitted to the legal voters, and the majority of the votes cast at said election shall be in favor of such taxation; provided, the tax now imposed for educational purposes, and for the endowment and maintenance of the Agricultural and Mechanical College, shall remain until changed by law. (Sec. 4370-1, Ky. Stat.)

Pollitt v. Lewis, et al., 269 Ky. 680. State Constitution does not permit statute authorizing boards of education to establish junior colleges and require council to levy tax to pay for its operation.

Louisville Banking Co. v. Com., 142 Ky. 690; Com. v. Thomas, 14 Ky. 789, 131 S. W. 797. Although the title to escheated property is vested in the Commonwealth, Sec. 2978a-27, of the Ky. Stats., provides that the school board may take possession for benefit of common schools.

City of Newport, ex parte, 141 Ky. 329, 132 S. W. 580. It was held that the indebtedness of the board of education in a city of the second class is not a portion of the indebtedness of the city, since the bonded indebtedness is secured by a lien upon the school property.

McIntire v. Powell, 137 Ky. 477. Poll taxes may be levied for school purposes in addition to those levied for general county purposes.

Prowse v. Board of Education for Christian County, 134 Ky. 365, 120 S. W. 307; Elliott v. Garner, 14 Ky. 157, 130 S. W. 997. This section leaves to legislative discretion the best method of providing for an efficient system of common schools.

Brown v. Board of Education, 22 R. 483, 108 Ky. 783; Board of Education v. Lee, 153 Ky. 661, 156 S. W. 375. Trustees have no power to levy a tax for school purposes exceeding in one year the income provided for such year without the assent of two-thirds of the voters.

Sec. 185, Ky. Const. **Common School Funds; Investment; Interest on.**—The General Assembly shall make provision, by law, for the payment of the interest of said school fund, and may provide for the sale of the stock in the Bank of Kentucky; and in case of a sale of all or any part of said stock the proceeds of sale shall be invested by the sinking fund commissioners in other good interest-bearing stocks or bonds which shall be subject to sale and reinvestment, from time to time, in like manner, and with the same restrictions, as provided with reference to the sale of the said stock in the Bank of Kentucky. (See Sec. 4370-1, Ky. Stat.)

Sec. 186, Ky. Const. **Distribution of Fund; Surplus Due Counties.**—Each county in the Commonwealth shall be entitled to its proportion of the school fund on its census of pupil children for each school year; and if the pro rata share of any school district be not called for after the second school year, it shall be covered into the treasury and be placed to the credit of the school fund for general apportionment the following school year. The surplus now due the several counties shall remain a perpetual obligation against the Commonwealth for the benefit of said respective counties, for which the Commonwealth shall execute its bond, bearing interest at the rate of six per centum (6%) per annum, paying annually to the counties respectively entitled to the same, and in the proportion to which they are entitled, to be used exclusively in aid of common schools. (See Sec. 4370-4, Ky. Stat.)

Larue v. Redman, 168 Ky. 487, 182 S. W. 622. Legislature may provide a tax for common school purposes without submitting the question to legal voters.

James v. State University, 131 Ky. 156, 114 S. W. 767; James v. Board of Regents for Normal School, 131 Ky. 156. An appropriation may be made for the State University or the State Normal School without a submission to popular vote.

A. & M. College v. Hager, 121 Ky. 87, S. W. 1125; Higgins v. Prater, 91 Ky. 6, 14 S. W. 910. Legislature may impose a tax in aid of educational institutions not a part of the common school system. A. & M. College is not a part of the common school system.

Superintendent of Public Instruction v. Auditor, 97 Ky. 180, 30 S. W. 404. The legislature has constitutional authority to charge the common school fund with the payment of "The expenses of the State Department of Education of whatsoever character or kind" in aid of common schools.

Auditor v. Holland, 14 Bush 147. The General Assembly cannot abdicate its control over the school fund and abandon it to the county courts.

Board of Trustees v. Thomas, 12 R. 832, 15 S. W. 67; Newman v. Thompson, 9 R. 199, 4 S. W. 341. An appropriation of the fund for teaching the higher branches in common schools is valid.

Halbert v. Sparks, 9 Bush 259; Riggs v. Stephens, 92 Ky. 393. Appropriations of the common school fund can only be made for the benefit of common schools controlled and supervised by common school officers.

Sec. 187, Ky. Const. **Each Race to Share Fund Equally; Separate Schools.**—In distributing the school fund no distinction shall be made on account of race or color, and separate schools for white and colored children shall be maintained.

Board of Education of Calloway County, et al. v. Talbott, Auditor of Public Accounts, 261 Ky. 66. Held unconstitutional to pay equalization money to teachers because constitution required money for payment of teachers to be distributed on census of pupils.

City of Pineville v. Moore, 190 Ky. 357, 227 S. W. 477. This section does not forbid a tax upon the property of white citizens for the support of colored schools.

Sec. 188, Ky. Const. **School Fund; Money Received from United States, Part of.**—So much of any moneys as may be received by the Commonwealth from the United States, under the recent act of congress refunding the direct tax, shall become a part of the school fund, and be held as provided in Section 184; but the General Assembly may authorize the use, by the Commonwealth, of the moneys so received, or any part thereof, in which event a bond shall be executed to the board of education for the amount so used, which bond shall be held on the same terms and conditions, and subject to the provisions of Sec. 184, concerning the bond therein referred to. (Sec. 4370-1, Ky. Stat.)

Sec. 189, Ky. Const. **Appropriation for Sectarian Purposes Forbidden.**—No portion of any fund or tax now existing, or that may hereafter be raised or levied for educational purposes, shall be appropriated to, or used by, or in aid of, any church, sectarian or denominational school. (See further Constitution, Sec. 5.)

Williams v. Board of Trustees, Etc., 173 Ky. 708. The Constitution not only forbids the appropriation for any purpose of the common school fund to sectarian institutions, but it contemplates that the separation between the common school and the sectarian school shall be open, notorious and complete.

Williams, et al. v. Board, et al., 173 Ky. 708, 191 S. W. 507. Under this section a public school cannot enter into any contract, agreement or arrangement whereby such school may be brought directly or indirectly under the influence, control or supervision of any sectarian institution or school.

Sec. 237, Ky. Const. **Incompatible Officers; Federal.**—No member of Congress, or person holding or exercising an office of trust or

profit under the United States, or any of them, or under any foreign power, shall be eligible to hold or exercise any office of trust or profit under this Constitution, or the laws made in pursuance thereof.

Knuckles v. Board of Education of Bell County, 272 Ky. 436. Position of superintendent or assistant superintendent is incompatible with that of teacher in the public schools.

Waddle, et al. v. Hughes, Superintendent of Ferguson Independent Graded School District No. 76, et al., 260 Ky. 269. Letter carrier ineligible to hold office of member of the board of education because of violation of Section 237 of the state constitution. This decision quotes from the case in United States v. McCrory (C.C.A.), 91 F. 295, 296 which holds: "Letter carriers are appointed by the postmaster general under authority of the acts of congress, practically during good behavior. They are sworn and give bond for the faithful performance of their duties. They are paid from moneys appropriated for the purpose by congress, and their salaries are fixed by law. They have regularly prescribed services to perform, and their duties are continuing and permanent, not occasional or temporary."

CHAPTER II

GENERAL PROVISIONS

Sec. 4363-1, Ky. Stat. **Uniform System of Common Schools.**—There shall be maintained throughout the Commonwealth of Kentucky a uniform system of common schools in accordance with the Constitution of the Commonwealth and the school laws. (1934, c. 65, p. 204.)

Board of Education of Woodford County, et al. v. Board of Education of Midway Independent Graded Common School District, et al., 264 Ky. 245. County board of education must provide educational facilities for colored people resident within independent districts cities of fifth class. Amended law now does not so require. (May 15, 1936.)

Sec. 4363-2 Ky. Stat. **Common School Defined; Who May Attend.**—A "common school" shall be interpreted as meaning an elementary and/or secondary school of the Commonwealth supported in whole or in part by public taxation. No school shall be deemed a "common school" as defined in this act or receive support from public taxation unless such school be taught by a qualified teacher or teachers for a term of seven or more months during the school year and at which every child residing in the district, between the ages of six and eighteen years, has had the privilege of attending, whether contributing towards defraying the expense or not; providing that nothing herein shall prevent any person over eighteen years of age from attending the common schools of the district in which he resides, and that said person shall not be required to contribute towards defraying the expenses or pay tuition fees; provided further that a board of education may, in its discretion, make a reasonable tuition charge of those persons who have completed a course of study or curriculum of the highest level in the school or schools maintained by the board. (1934, c. 65, p. 204.)

Collins v. Henderson, 11 Bush 74. Common schools are schools actually taught by teachers qualified according to law to teach in districts laid out by authority of the school law and under the control of the trustees elected under those laws.
Newman v. Thompson, 9 R. 199. Teaching of higher branches of learning in common school is not a violation of common school law.

Sec. 4363-3, Ky. Stat. **School Year.**—The school year shall begin on the first day of July and end on the thirtieth day of June. (1934, c. 65, p. 205.)

Sec. 4363-4, Ky. Stat. **Six-Year-Old Child May Enter School.**—Any child who is six years of age or who will become six years of age on or before September 30 shall have the privilege of entering the

school at the beginning of the session. Any board of education which operates its school or schools on the semi-annual promotion basis shall, at the opening of the second session, admit beginning students who will become six years of age on or before February 28. (1934, c. 65, p. 205.)

Sec. 4363-5, Ky. Stat. **Pupils May Attend High Schools Free of Tuition; Promotion and Classification.**—Whenever a pupil in any public elementary school or any approved private or parochial school shall have completed the prescribed elementary course of study he shall be entitled to a certificate of such completion signed by the teacher or teachers under whom the course has been completed, and said certificate shall entitle the pupil to admission into any public high school free of tuition except as hereinafter provided.

Any promotions or credits earned in attendance in any approved public school shall be valid in any other public school to which a pupil may go provided that the superintendent or principal of a school, as the case may be, shall have the authority to assign pupils to the class or grade to which the pupil is best suited; provided further, that such assignment shall not be made in case a pupil transfers from the school of one district to the school of another district until after the pupil has demonstrated that he is not suited for the work in the grade or course to which he has been promoted. (1934, c. 65, p. 205.)

Sec. 4363-5a, Ky. Stat. **Duty to Provide High School Service.**—It shall be the duty of the board of education of each county to provide approved high school service within the county for all children of high school grade under 21 years of age residing in the county district, either by maintaining the school or by contract with an independent district within the county, and the duty of each independent district board of education to provide such service within its district, or by contract with a city or other independent district within the county, for all children of high school grade residing within such district; provided that if the number of such pupils of either race is not sufficient in any county or independent district to maintain a high school, the board shall provide it by transporting them daily to an approved high school in another county or district, or in lieu of transportation shall provide for their board and room within reasonable walking distance of such school if it is found more feasible or more economical to do so, said board and room in no case to cost more than one hundred dollars ($100.00) per year for any pupil. (1940 c. 68.)

Sec. 4363-6, Ky. Stat. **School Month and School Day Defined.**—Twenty school days, or days in which teachers are actually employed in the schoolroom, shall constitute a school month in the common schools of the Commonwealth, including such legal holidays as the State Board of Education may declare to be observed; but no teacher shall teach on Saturdays except in cases of emergencies and then only upon authorization of the State Board of Education. Six hours of actual school work shall constitute a school day; and under no circumstances shall the daily session including recesses and intermissions exceed nine hours in length. (1934, c. 65, p. 206.)

Sec. 4363-8, Ky. Stat. **White and Colored Not to be Taught in Same School; Penalty.**—It shall be unlawful for any person, corporation, or association of persons to maintain or operate any college, school, or institution where persons of white and negro races are both received as pupils for instruction; and any person or corporation who shall operate or maintain any such college, school, or institution shall be fined one thousand dollars ($1,000) and any person or corporation who may be convicted of violating the provisions of this act shall be fined one hundred dollars ($100) for each day they may operate such school, college, or institution after such conviction. Any instructor who shall teach in any school, college, or institution where members of said two races are received as pupils for instruction shall be guilty of operating and maintaining same and fined as herein provided.

It shall be unlawful for any white person to attend any school or institution where negroes are received as pupils or receive instruction, and it shall be unlawful for any negro or colored person to attend any school or institution where white persons are received as pupils or receive instruction. Any person so offending shall be fined fifty dollars ($50) for each day he attends such an institution or school; provided, the provisions of this law shall not apply to any penal institution or house of reform. (1934, c. 65, p. 206.)

Prowse v. Board of Education of Christian County, 134 Ky. 365. Although the Constitution requires the general assembly to maintain separate schools for white and colored children, it does not require a separate system of education for each.

Berea College v. Com., 123 Ky. 209. So much of this section as prohibits the operation by any institution of learning of separate and distinct branches for white and colored persons less than twenty-five miles distant from each other is unreasonable and void as not being within the police power of the state.

Sec. 4363-9, Ky. Stat. **Pupils to Comply With Rules of School; Suspension or Expulsion for Non-Compliance.**—All pupils who may be admitted to the common schools shall comply with the regulations in pursuance of law for the government of such schools. Willful disobedience or defiance of the authority of the teachers, habitual profanity or vulgarity, or other gross violation of propriety or law

shall constitute good cause for suspension or expulsion from school. The superintendent, principal or head teacher of any school may suspend a pupil for such misconduct provided that in case of suspension by the principal or head teacher, such action shall be reported in writing immediately to the superintendent. The board of education of any school district may expel any pupil for misconduct as defined herein, but such action shall not be taken until after the parent or guardian or other person having legal custody or control of the pupil has had an opportunity to have a hearing before the board of education. The decision of the board of education shall be final. (1934, c. 65, p. 207.)

Byrd, et al. v. Begley, 262 Ky. 422. Action of superintendent in suspending pupil for willful disobedience is proper exercise of authority. (Jan. 31, 1936.)

Cross v. Trustees, 129 Ky. 35. It was held that a pupil's conduct in refusing to take part in a dialogue in the annual commencement exercises constituted insubordination and was good cause for suspension. Trustees of a graded school district have no right to arbitrarily expel a pupil from a school which he has attended, nor to arbitrarily refuse him the privilege of attending the school in the future.

Board of Education v. Booth, 110 Ky. 807, 62 S. W. 872. Pupil may be expelled for violation of rules of school, and courts will not interfere with or control action of trustee unless it was arbitrary or malicious.

Sec. 4363-10, Ky. Stat. **Gift, Donation, or Devise to School Fund.**—The State Board of Education is authorized to accept any gift, donation, or devise to the schools under its supervision or control and to provide for the administration of such gift, donation, or devise. (1934, c. 65, p. 208.)

Sec. 4363-11a, Ky. Stat. **Textbooks Criticizing Schools of Healing; Penalty.**—That no person or persons connected with the public school system of Kentucky shall use or cause to be used, read or taught in the public schools of Kentucky any textbook or printed matter of any kind whatsoever, which contains any statement or statements which criticizes, condemns, or contains derogatory statements which could be deemed discrediting, discriminating, or harmful to any legally constituted school or system of healing, science, or profession in the state of Kentucky.

Penalty.—Anyone violating the provisions of this statute shall be subject to a fine of from fifty dollars ($50.00) to five hundred dollars ($500.00) or imprisonment in the county jail for, from thirty days to six months or both. (1940, c. 69, p. 301.)

Sec. 4363-12, Ky. Stat. **Free Textbooks and Necessary School Supplies May be Provided by Boards of Education in any School District.**—The board of education of any school district shall have the power and the right to furnish textbooks and other necessary school supplies free of charge to indigent children in its school district or to such other children as it deems advisable and under such rules and regulations as it may adopt. (1934, c. 65, p. 208.)

MORAL INSTRUCTION

Sec. 4363-7, Ky. Stat. **Bible to be Read.**—The teacher in charge shall read or cause to be read a portion of the Bible daily in every classroom or session room of the common schools of the Commonwealth in the presence of pupils therein assembled, and no child shall be required to read the Bible against the wish of his parents or guardian. The failure of any teacher to conform to this act shall be cause for revocation of his certificate in the manner provided by law. (1934, c. 65, p. 206.)

Hackett v. Brooksville, Trustee, 120 Ky. 608. The Bible is not a sectarian book and the reading thereof without comment does not constitute sectarian instruction.

Sec. 4363-7a, Ky. Stat. **Boards of Education May Provide for Moral Instruction.**—The boards of education of independent and county school districts are hereby authorized and empowered to provide for the moral instruction of pupils subject to the jurisdiction of such boards of education in the manner hereinafter provided in this act. (1940, c. 67, p. 298.)

Sec. 4363-7b, Ky. Stat. **Survey of Religious Preferences May be Made.**—The board of education of each school district may authorize a complete survey of all the pupils attending the public schools within said district and ascertain therefrom those pupils who desire this instruction and have the consent of parent or guardian for said instruction as provided in this act. (1940, c. 67, p. 298.)

Sec. 4363-7c, Ky. Stat. **Time and Place of Instruction to be Determined by Boards of Education.**—On a day in each week, to be fixed by said boards of education, such pupils, as express desire for moral instruction may be excused for at least one hour, for the purpose of attending their respective places of worship, or some other suitable place, there to receive moral instruction in accordance with the religious faith or preference of the said pupils. (1940, c. 67, p. 298.)

Sec. 4363-7d, Ky. Stat. **Rules and Regulations.**—Each school board may make such arrangements with the respective persons in charge of the moral instruction as the said board deems necessary and advisable. (1940, c. 67, p. 298.)

Sec. 4363-7e, Ky. Stat. **Credit for Time Spent in Moral Instruction.**—Pupils taking advantage of the instruction as provided in this act and attending said classes for moral instruction therein at the time specified and for the period fixed shall be credited with the time so spent as if such pupils had been in actual attendance in school. (1940, c. 67, p. 298.)

Sec. 4363-7f, Ky. Stat. **Pupils to Remain in School or be Present in the Aforesaid Classes.**—Any pupil who for any reason fails to take advantage of the aforesaid moral instruction shall remain in school during the time when such instruction is being given as herein provided, but such child shall not receive any educational advantage over children receiving such instruction. (1940, c. 67, p. 298.)

Sec. 4363-7g, Ky. Stat. **Expense.**—The aforesaid moral instruction shall be given without expense to any board of education, beyond the cost of the original survey, hereinbefore mentioned. (1940, c. 67, p. 298.)

Sec. 4363-7h, Ky. Stat. **Intent of Act.**—It is hereby declared to be the intent of the General Assembly of Kentucky that this act shall be permissive and not mandatory. (1940, c. 67, p. 298.)

Sec. 4363-11, Ky. Stat. **Sectarian, Infidel, or Immoral Books Prohibited.**—No books or other publications of a sectarian, infidel, or immoral character shall be used or distributed in any common school of the Commonwealth, nor shall any textbook or other publication be used which reflects on any religious denomination, nor shall any sectarian, infidel, or immoral doctrine be taught in any school. (1934, c. 65, p. 208.)

COMPULSORY EDUCATION OF DEAF CHILDREN

Sec. 298f-1, Ky. Stat. **Deaf Children to be Sent to Special Schools; Term of Schooling.**—That every parent, guardian, or other person residing in the Commonwealth of Kentucky, having the custody, control, care or supervision of any deaf child between the ages of seven and sixteen years, inclusive, shall cause said child to attend some public, private or parochial school, in this Commonwealth, wherein deaf children are taught, instructed and educated, for the full term, each year, for at least nine years. (1918, c. 46, p. 140.)

Sec. 298f-2, Ky. Stat. **Cases Excepted from the Law.**—This act shall not apply in any case where the child is being taught in its home by an instructor who is competent and qualified to give instruction to the deaf; nor to any child who through its parents, guardian, or persons having such child in control, shall produce a certificate from the county board of health of the residence of the parent, guardian or person having control of such child, to the effect that the child is not in proper mental or physical condition to be sent to

any such school as above provided, nor to any deaf child who is successfully pursuing the course of study in some reputable public or private school for the hearing; nor to any child who is regularly enrolled as a pupil in a reputable school for the deaf or the hearing outside the Commonwealth of Kentucky. (1918, c. 46, p. 140.)

Sec. 298f-3, Ky. Stat. **Penalty for Violating this Law.**—Any parent or guardian or person having such child under his or her control or supervision who fails to comply with the provisions of this act, shall, upon conviction in any court of competent jurisdiction, be fined in any sum not less than ten nor more than twenty-five dollars for the first offense, and upon a conviction of a second or any subsequent offense or offenses, be fined not less than twenty-five nor more than fifty dollars, and the costs of the prosecution. (1918, c. 46, p. 141.)

Sec. 298f-4, Ky. Stat. **Penalty for Making False Statement as to Age.**—Any person, proceeded against under this act for a violation thereof, who, with the intent to evade the provisions of this law, shall make a false statement concerning the age of such child, as described above, or the length of time such child has attended a school for the deaf, shall be deemed guilty of misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding fifty dollars, or be imprisoned in the county jail not to exceed thirty days, or both fined and imprisoned, in the discretion of the court. (1918, c. 46, p. 141.)

Sec. 298f-5, Ky. Stat. **Schools Unable to Care for Child Excuses Failure.**—It shall discharge any person from liability under this act, if it be satisfactorily shown to the court that at the time of the proceeding such school or schools in this Commonwealth as provide instruction and education for the deaf is then taxed to its capacity, and that there is no room or means of taking care of or instructing such child. (1918, c. 46, p. 141.)

Sec. 298f-6, Ky. Stat. **Jurisdiction of Prosecution in County Court; Procedure; County Attorney to Prosecute.**—The county courts of this Commonwealth shall have exclusive jurisdiction of all cases wherein this act is violated, and the case shall be prosecuted in the same manner as other cases of misdemeanor are prosecuted therein, and the county attorney of the county wherein the prosecution is had, shall attend and prosecute all violations of this act. (1918, c. 46, p. 142.)

Sec. 298f-7, Ky. Stat. **Evidence Concerning Child's Age.**—A passport, a duly attested transcript of the certificate of birth or bap-

tism, or a certified copy, under oath, of a record in the family Bible, or other religious record showing the date and place of birth of such child, shall be received as evidence of age. In case that any of the foregoing records cannot be produced, then other evidence of the age of the child may be considered by the court. (1918, c. 46, p. 142.)

Sec. 298f-8, Ky. Stat. **Public Schools for the Deaf to Receive Such Children; What Children Not to be Received; Care for Child; Return Transportation.**—It shall be the duty of the trustees, managers, or persons in charge of any public institution in this Commonwealth, whereat the deaf are received for instruction and education, to receive into such institution any deaf child sent to such institution, while in session, unless it can be shown at the time that such institution is taxed to its capacity, and there is no room for or means of taking care of such child, or that the physical condition of the child is such as to prevent study or to constitute a menace to the health of the other pupils of the institution; or that the child is mentally deficient and incapable of successfully pursuing the prescribed course of study of such institution; or that the habits and practices of the child are such as to constitute a detriment to the welfare of the other pupils of the institution, and when such child is so received he or she shall be cared for under the provisions of the statute at the time prevailing, regulating such institutions, and the by-laws prescribed by the trustees or managers for the government of such institutions, and in every case where such child is brought to any public institution to be entered as a pupil, the price of return transportation to the home of the child must be deposited with the executive officer of the said institution or guaranteed to him by some responsible party before the institution is obligated to receive the child for the institution. (1918, c. 46, p. 142.)

SCHOOL BUSSES

Sec. 1376r-10, Ky. Stat. **Act Regulating School Busses.**—All drivers of motor vehicles transporting school children are hereby required to stop each and every such motor vehicle before crossing over any steam or electric interurban railroad main tracks at a grade, stop to be made at not less than ten (10) feet nor more than thirty (30) feet from the nearest railroad over which the highway crosses, except where such crossing is guarded, crossing protected by gates or a flag controlled or operated by employees of such railroad. After making the stop herein required, the driver or operator of a motor vehicle shall carefully look in each direction for approaching

cars or trains and shall not start his vehicle until it is ascertained that no cars or trains are approaching in either direction. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than ten dollars nor more than one hundred dollars for each offense. (1930, c. 83, p. 251.)

Sec. 2739g-28a, Ky. Stat. **Definition of Term "Safety Glass."** —The term "safety glass" as herein used shall be construed as meaning glass so treated or combined with other material as to reduce, in comparison with ordinary sheet or plate glass, the likelihood of injury to persons by objects from exterior sources or by glass when the glass is cracked or broken. (1940, c. 110, p. 444.)

Sec. 2739g-28b. **Safety Glass in Passenger, School Buses; Windshield; Doors; Rear Windows; Replacements; New Buses.**— Whenever glass is used in the windshield or in the window next to the driver or in the doors or rear windows of a bus used for the transportation of persons for hire, or as a school bus, it shall be unlawful to use ordinary glass in any such openings in any such vehicles when such vehicles are being operated on the highways of the Commonwealth of Kentucky, and it shall be unlawful to use in any such opening in any such vehicles ordinary glass or anything other than safety glass as defined in Section 1 hereof. Provided, however, that this Act shall not become operative until said vehicles are replaced, after which time, if it becomes necessary to replace glass in any of the openings described in this Section, safety glass shall be used in making such replacements; and provided further that on and after January 1, 1941, it shall be unlawful for any person, firm or corporation to sell any motor vehicle of the type herein referred to unless the openings in said motor vehicles herein described are equipped with safety glass as defined in Section 1 hereof; nor shall any new vehicle be thereafter registered unless it is so equipped with safety glass in the openings in any such vehicle as hereinbefore described. (1940, c. 110, p. 444.)

Sec. 2739g-46a, Ky. Stat. **Passing Stopped School Bus.**—Whenever any school bus is stopped upon a public highway for the purpose of receiving or discharging passengers, every operator of a vehicle approaching from any direction shall bring said vehicle to a complete stop and shall not start up or attempt to pass until the said school bus has finished receiving or discharging passengers; that the driver of said bus after having stopped for the purpose of receiving or discharging passengers shall permit all vehicles stopped as required herein to proceed before again putting school bus in motion

and anyone found guilty of violating the provisions of this Act shall be deemed guilty of a misdemeanor, and punished upon conviction by a fine of not more than Five Hundred ($500.00) Dollars or imprisoned in jail for not more than six months or both so fined and imprisoned. (1938, c. 117, Sec. 1.)

Sec. 2739g-69L, Ky. Stat. **Overtaking and Passing School Bus.** —(a) The driver of a vehicle upon a highway outside of a business or residence district upon meeting or overtaking any school bus which has stopped on the highway shall come to a complete stop and then may proceed with due caution for the safety of any children and in no event in excess of ten miles per hour in passing such school bus.

(b) This section shall be applicable only in the event the school bus shall bear upon the front and rear thereon a plainly visible sign containing the words "school bus" in letters not less than four inches in height which can be removed or covered when the vehicle is not in use as a school bus. (1938, c. 106, p. 505, Sec. 13[12].)

Sec. 2739g-2d, Ky. Stat. **Affidavit is to be Filed with County Clerk; Words "School Bus" to be Printed on Truck.**— . . . . Providing that any person who applies for the registration of a truck used solely in the transporting, hauling and carrying school children or persons employed in said school or schools in the district shall file with the County Court Clerk an affidavit stating that the truck or trucks are engaged solely in the transporting, hauling or carrying of said school children and persons employed in said school or schools in said district or districts and that he has caused to be printed on each side of the bed of said truck and on the rear door or doors or part of the bed the words "School Bus" in letters of a color easily seen and sufficiently large and that said truck for the next twelve months shall not be used for any other purpose except that stated; then, in that event said person or persons shall be permitted to register said truck and shall be charged therefor only four dollars and fifty cents ($4.50). (1938, 1st ex. s., c. 3, Sec. 1.)

Sec. 2739m-38, Ky. Stat. **Age Limits for Drivers of School Busses.**—It shall be unlawful for any person, whether licensed under this Act, or not, who is under the age of twenty-one years, to drive a motor vehicle while in use as a school bus for the transportation of pupils to or from school, or to drive a motor vehicle while in use as a public passenger-carrying vehicle. 1936, 3rd ex. s., c. 13.)

HEALTH OFFICERS

Sec. 2054a-13, Ky. Stat. **County Health Officer to Inspect Schools; Confidential Reports to Parents.**—The county health officer shall make frequent trips of inspection to all parts of the county to determine and remove causes of sickness. He shall visit the schools of the county and make such inspections of surroundings, premises or inmates as the county or state boards of health may determine are necessary to protect the public from communicable diseases. If in school examinations of children for defective eyesight, hearing, diseased tonsils and teeth and adenoids, such conditions be found either by himself or his assistant, a confidential report in writing shall be made to the parent or guardian of such child or children, calling attention to the defect or disease and requesting that such condition be corrected. (1918, c. 65, p. 290.)

INJURY TO PUBLIC PROPERTY

Sec. 1258, Ky. Stat. **Injury to Public Building or Schoolhouse.**—If any person willfully and unlawfully pull down or injure a church, courthouse, schoolhouse, or other public buildings he shall be fined not less than five nor more than five thousand dollars. (1893, c. 182, p. 756.)

Sec. 3951, Ky. Stat. **Trespass or Injury to Public Property; Penalty.**—Any person for trespass on or injury to any of the public property of the Commonwealth, or of a county shall be liable to be indicted and fined, at the discretion of a jury, in addition to his civil liability. The net proceeds of the fine for trespass on or injury to the public property of the state shall be paid into the treasury, and reported by the treasurer to the next general assembly. The net proceeds of the fine for a trespass on the public property of a county shall be paid to the county court in aid of the county levy. (G. S., c. 89, par. 11.)

Sec. 3952, Ky. Stat. **Trespass or Injury to School or Church Property; Penalty.**—Like remedy, civil and penal, shall be given to the trustees of any college, seminary, school, church, public charity or house of public worship against any person for any injury to or intrusion on the buildings or grounds or property attached thereto, as is given for a similar injury or intrusion on the public property of a county. The net proceeds of the recovery in any such procedure, civil or penal, shall be paid over to the trustees entitled thereto. A civil action for such injuries shall not be impeded by the death, registration, or removal of one or more trustees, but the same shall progress as if he or they were still acting. (G. S., c. 89, par. 12.)

CIGARETTES

Sec. 1277a-4, Ky. Stat. **Prohibited in School Buildings and Grounds.**—Every person, who shall smoke or use a cigarette or cigarettes, in any school building or any building or such parts thereof as may be used for school purposes, or upon school grounds, while children are assembled there for lawful purposes, shall be guilty of a misdemeanor, and, upon conviction, shall be punished for each offense by a fine of not less than one nor more than five dollars. (1904, c. 29, p. 104.)

EXEMPTION FROM JURY SERVICE

Sec. 2253a-1, Ky. Stat. **Members Boards of Education Exempt.**—Members of boards of education, now or hereafter established in any city of this Commonwealth, and members of county boards of education shall be exempt from service on any grand or petit jury. (1924, c. 39, p. 62.)

Sec. 2253a-2, Ky. Stat. **Teachers, School Officers and Employees Exempt.**—That the executive officers, the superintendents, principals, teachers and other employees of boards of education of the cities and counties of this Commonwealth, shall be exempt from service on any grand or petit jury while the common schools are in session. (1924, c. 39, p. 62.)

U. S. FLAG

Sec. 2089i, Ky. Stat. **Flag Day.**—That the fourteenth day of June of the year 1930, and the fourteenth day of June of each year thereafter is hereby designated as "Flag Day", and that same shall be so recognized and observed as a law of this State, as hereinafter provided. (1930, c. 178, p. 666.)

Sec. 2089i-1, Ky. Stat. **Flag to be Displayed on Main Administration Buildings.**—That the Flag of the United States of America be displayed on the main administration buildings of every public institution. (1930, c. 178, p. 666.)

Sec. 2089i-2, Ky. Stat. **Flags to be Supplied Schools; to be Displayed.**—That the Flag of the United States of America, with staff or flagpole, be provided for every schoolhouse, and that the Flag be displayed during school days, either from the flag staff or, in inclement weather, within the school building. (1930, c. 178, p. 666.)

Sec. 2089i-3, Ky. Stat. **Printing or Lettering on Flag Prohibited.**—That printing or lettering of any kind on the Flag of the United States of America, be prohibited. (1930, c. 178, p. 666.)

Sec. 2089i-4, Ky. Stat. **Use of the Flag for Advertising Purposes Prohibited.**—That the use of the Flag of the United States of America, for advertising purposes in any manner, be prohibited. (1930, c. 178, p. 666.)

Sec. 2089i-5, Ky. Stat. **Placing Word, Figure, Etc., Displaying, Etc., Penalty; Mutilating, Etc., Penalty.**—That hereafter any person who, within the Commonwealth of Kentucky, in any manner, for exhibition or display, shall place or cause to be placed any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag, standard, colors or ensign of the United States of America, or shall expose or cause to be exposed to public view any such flag, standard, colors or ensign upon which shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture design or drawing, or any advertisement of any nature; or, who, within the Commonwealth of Kentucky, shall manufacture, sell, expose for sale or to public view or give away or have in possession for sale or to be given away or for use for any purpose, any article or substance being an article of merchandise, or a receptacle for merchandise or article or thing for carrying or transporting merchandise upon which shall have been printed, painted, attached or otherwise placed a representation of any such flag, standard, colors or ensign, to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed, or who, within the Commonwealth of Kentucky, shall publicly mutilate, deface, defile, or defy, trample upon or cast contempt, either by word or act, upon any such flag, standard, colors or ensign, shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding $100.00 or by imprisonment for not more than thirty days, or both, in the discretion of the Court. (1930, c. 178, p. 666.)

TOLLS, BRIDGES

Sec. 1342a-1, Ky. Stat. **Toll for School Children.**—That it shall be unlawful for any person or persons to pass over or upon any part of any toll bridge or ferry, upon which bridge or ferry tolls are at such time collected, without paying to the collector of tolls then stationed at such bridge or ferry at the time of such passage, in legal tender, such amount of toll as may be prescribed by law or regulations for passage over such bridge or ferry, including vehicular traffic over or upon any part of such bridge or ferry, provided, that no such toll shall be charged to children going to or returning from school. Neither shall such toll be charged for school busses or other

vehicles used exclusively in the transportation of school children to and from school. (1934, c. 161, p. 738.)

State Highway Commission v. Henderson County Board of Education, 264 Ky. 95. Children exempt from paying toll according to Section 1342a-1. (Mar. 27, 1936.)

Sec. 1342a-2, Ky. Stat. **Parking Vehicles on Toll Bridge.**—That it shall be unlawful for any person or persons to park any vehicle upon any toll bridge at any time. (1934, c. 161, p. 738.)

Sec. 1342a-3, Ky. Stat. **Penalty.**—Any person or persons found guilty for violation of the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $5.00 nor more than $50.00 for each offense. (1934, c. 161, p. 738.)

MUNICIPAL JUNIOR COLLEGES

Sec. 3219-8, Ky. Stat. **Junior Colleges Authorized.**—The boards of education of cities of the second class are hereby authorized to establish or to acquire by purchase, gift, or lease, or by lawful conveyance, municipal Junior Colleges for the purpose of promoting public education as defined in this act; and for the support and maintenance thereof the board of education of such city may request and the general council or other legislative body of such city shall then annually cause to be levied and collected a tax of not less than five (5) nor more than seven (7) cents on each one hundred dollars ($100) worth of property subject to the taxation for city purposes. (1936, 4th ex. s., c. 23, p. 173, Sec. 1, Eff. Jan. 27, 1937.)

Sec. 3219-9, Ky. Stat. **Municipal Junior College Defined.**—A municipal junior college within the meaning of this act is a college established or supported in whole or in part by funds raised by municipal taxation and controlled and administered by the board of education of such city as a part of the public school system and affording instruction in arts, sciences, and professions and conferring such certificates of attainments as may be authorized by other like or similar institutions of learning above high school grade or standing. (1936, 4th ex. s., c. 23, p. 173, Sec. 2, Eff. Jan. 27, 1937.)

Sec. 3219-10, Ky. Stat. **Tax Levy.**—Such levy of taxes shall be made at the same time and in the same manner as other levies for public school purposes, and the amount so levied shall be placed to the credit of the Board of Education Fund upon completion of the assessment of property for taxation, and paid as collected, subject to such discounts or penalties as is allowed on other city taxes, by the Treasurer of the city to the Treasurer of the Board of Education for the purpose of establishing, acquiring, maintaining, and operating said municipal junior college. The taxes authorized by this act

to be levied shall be construed to be school taxes and to be levied for school purposes and shall be in addition to all other municipal taxes authorized and allowed by law to be used for municipal purposes and shall be in addition to all other taxes authorized and allowed by law to be levied for school purposes. (1936, 4th ex. s., c. 23, p. 173, Sec. 3, Eff. Jan. 27, 1937.)

Sec. 3219-11, Ky. Stat. **Tuition Fee.**—The board of education of any second class city that may establish or acquire a municipal junior college under the terms of this act may, for the purpose of supplementing the tax provided in this act, charge each pupil attending the municipal junior college a tuition fee not to exceed one hundred dollars ($100) per annum. The tuition fee shall be collected by the Treasurer of the board of education and shall be placed to the credit of the Board of Education College Fund, and shall be used for maintaining and operating the municipal junior college. (1936, 4th ex. s., c. 23, p. 173, Sec. 4, Eff. Jan. 27, 1937.)

Sec. 3219-12, Ky. Stat. **College Entitled to Support; When.**—A municipal junior college shall be entitled to support under this act only when its principal work is the maintenance of courses of instruction in advance of the instruction maintained in high schools under the control of the board of education. (1936, 4th ex. s., c. 23, p. 173, Sec. 5, Eff. Jan. 27, 1937.)

Sec. 3219-13, Ky. Stat. **Appropriation of Site or Building.**—The board of education of any second class city may set apart or appropriate any site, or school building, or part of a school building, and grounds, not especially needed for general school purposes, for the use of said municipal junior colleges. (1936, 4th ex. s., c. 23, p. 173, Sec. 6, Eff. Jan. 27, 1937.)

Sec. 3219-14, Ky. Stat. **Annual Financial Report.**—An annual report and an audit of receipts and disbursements of the Junior College Fund shall be made by the board of education of the city. (1936, 4th ex. s., c. 23, p. 173, Sec. 7, Eff. Jan. 27, 1937.)

Sec. 3219-15, Ky. Stat. **Effect of Act.**—Nothing in this Act shall be construed to affect cities that have established, and are now operating such colleges other than by boards of education. (1936, 4th ex. s., c. 23, p. 173, Sec. 8, Eff. Jan. 27, 1937. See Pollitt v. Lewis, et al., 269 Ky. 680.)

PUBLISHING ANNUAL STATEMENT

Sec. 3747a-1, Ky. Stat. **Publish Annual Statement of Collections—County, City and District Officers, Except in Jefferson County, to Make.**—Every public official of any county, graded school dis-

trict, city, town or subdivision or district, less than a county, whose duty it is, by virtue of his office, to collect, receive, have the custody, control or disbursement of public funds of said county, graded school district, subdivision or district of said county, city or town, except in counties containing a city of the first class or a county or city which by law is required to make quarterly publication of its fiscal and financial affairs; shall at the expiration of each fiscal year prepare an itemized, sworn statement of such funds so collected, received, held or disbursed by him during the fiscal year just closed, which statement shall show the amount of public funds collected and received and from what sources received; the amount disbursed, the date of each disbursement, for what purposes expended and to whom paid; and said official shall procure and include in or attach to said report as a part thereof a certificate from the cashier, or other proper officer of the bank or banks in which such funds are or have been during the year past deposited, showing the balance, if any, of such public fund or funds to the credit of the official making such statement; and such officer shall within thirty days after the close of the fiscal year cause such statement to be published in full in a newspaper published in said county which has the largest circulation therein, and said officer shall file a written or printed copy of said statement, subscribed and sworn to, in the office of the clerk of the county court of the county in which said officer resides, or holds office. Provided, that the publication required in this act shall be made in the size of type provided by law and at the rate provided by law, to be paid for out of the public funds in the hands of the officer making such statement. (1928, c. 136, p. 460.)

DISTILLED SPIRITS, $1.25 MAXIMUM

Sec. 4108, Ky. Stat. **Values Certified to Auditor and Clerk.**—Immediately after finally fixing such values, the board shall certify to the auditor of public accounts the value of the spirits as assessed for state tax; and said officer shall certify to the said county clerk of the respective counties, the amount liable for county, city, town or district taxation, and the date, when the bonded period will expire on such spirits. The report shall be by the county clerk filed in his office, and by him certified to the proper collecting officer of the county, city, town or taxing district for collections.

Said spirits, in addition to the tax thereon for state purposes, shall be taxed for county purposes, school purposes and town and city purposes at the prevailing rates of taxation on tangible personal property in the respective counties, school districts, towns and cities

in which such spirits are warehoused or stored; provided, however, that the combined rate of taxation for city purposes and school purposes in cities of the first class shall not exceed one dollar and twenty-five cents ($1.25) on each one hundred dollars ($100.00) of assessed value of such spirits. (1938, c. 97, p. 478, Sec. 1.)

SPECIAL BUILDING TAX

Sec. 2978e-1, Ky. Stat. **Tax for Erection of School Buildings.**—That in addition to other taxes now levied for Cities of the First Class for school purposes, said cities may annually levy a tax of not less than 4 cents nor more than 10 cents on each one hundred ($100) dollar valuation of property assessed by said Cities, to provide a fund for Boards of Education in Cities of the First Class for the purchase of sites for school buildings, for the erection of school buildings and the complete equipping thereof and for the major alteration and enlargement of existing buildings and the complete equipping thereof. (1938, c. 98, p. 480, Sec. 1.)

Sec. 2978e-2, Ky. Stat. **Proceeds to Accumulate.**—The proceeds from said taxes when collected by said Cities shall be paid over to the Boards of Education in said Cities, and may be accumulated over a period of years. Such taxes shall be kept in a separate account designated as "School Building Fund", and shall be used only for the purposes enumerated in Section 1 hereof, and at such times as the Board shall determine. (1938, c. 98, p. 480, Sec. 2.)

Sec. 2978e-3, Ky. Stat. **Fund Deposited or Invested.**—Said fund shall be kept in the selected depository, or depositories of the Boards, or invested in bonds of the United States Government, Commonwealth of Kentucky or of said Cities of the First Class. Such bonds may be sold by the Boards when necessary to provide cash for said building fund. (1938, c. 98, p. 480, Sec. 3.)

Sec. 2978e-4, Ky. Stat. **Expenditures.**—All expenditures from said fund for the purchase of sites, for the erection of school buildings and the equipping thereof, or the alteration or enlargement and equipping thereof, shall be made in accordance with the general school laws of the Commonwealth of Kentucky. (1938, c. 98, p. 480, Sec. 4.)

Sec. 2978e-5, Ky. Stat. **Report.**—The Boards of Education in said Cities shall annually file a report with the Mayor thereof, showing the condition of said fund, together with a detailed report of all expenditures. (1938, c. 98, p. 480, Sec. 5.)

COMMERCIAL EDUCATION

Sec. 3480-1, Ky. Stat. **Contract with Private Institutions.**—In any City of the Third Class any City School Board is hereby authorized and empowered to enter into and to make a contract with any private institution for the instruction of the students in the city schools of said city, provided that said private institution offers a course of study which has been approved by the State Board of Education as an accredited high school course in commercial subjects. (1938, c. 104, p. 490, Sec. 1.)

Sec. 3480-2, Ky. Stat. **Compensation.**—Such City School Board is hereby authorized and empowered to provide in said contract the amount of such compensation to be paid for such instruction and the manner in which payment shall be made and the time of such payments. (1938, c. 104, p. 490, Sec. 2.)

INDEBTEDNESS; EXCEPTIONS TO SECTION 583, KENTUCKY STATUTES

Sec. 583, Ky. Stat. **Indebtedness of Person to; Highest Amount Permitted; Certain Bills of Exchange Not Included.**—No bank shall permit any of its stockholders, or any person, company or firm, including in the liability of the company or firm the liability of the individual members thereof, directly or indirectly, to become indebted or obligated as guarantor or surety to it in a sum exceeding twenty per cent of its capital stock actually paid in and its actual amount of surplus, unless such borrower, guarantor or surety, pledge with it good collateral security, or execute to it a mortgage upon real or personal estate, which at the time is of more than the cash value of such loan, indebtedness or obligation above all other encumbrances, and if borrower is a director or officer of such bank he shall not be permitted to become indebted or obligated as guarantor or surety to it in excess of ten per cent of its paid-up capital stock, without securing the excess by the mortgage or pledge of real or personal property double in value the amount of such excess; and in no event shall the indebtedness or obligation of any person, company or firm, including in the liability of the company or firm the liability of the individual members thereof, exceed thirty per cent of its paid-up capital and actual surplus. Any loan made, or obligation entered into, for the benefit of a person, company or firm shall be included in the total liabilities of the person, company or firm. Provided that the discount of bills of exchange drawn against actually existing value and the purchase or discounting of commercial or business paper actually owned by the person negotiating the same

shall not be considered as borrowed money within the meaning of this section in fixing the limit of indebtedness, or obligation of any person, firm or corporation, selling or negotiating said paper to the bank.

The limitations and restrictions herein contained shall not apply to obligations or indebtedness of the United States or of the State of Kentucky and obligations or indebtedness guaranteed as to principal and interest by the United States or the State of Kentucky and obligations of Kentucky counties and school districts incurred through borrowing in anticipation of the current year's tax receipts as authorized respectively by Section 938q-16, Baldwin's 1939 Supplement to Carroll's Kentucky Statutes, and Section 4399-44 of Carroll's Kentucky Statutes, 1936 Edition. (1940, c. 20, p. 196.)

BRIBERY, BOARDS OF EDUCATION

Sec. 1366, Ky. Stat. **Any Person, Legislator, Executive or Ministerial Officer, Offering or Accepting Bribe.**—Every person who promises, offers, gives or causes or procures to be promised, offered or given any money or other thing of value or makes or tenders any contract, undertaking, obligation, gratuity or security, for the payment of money or for the delivery or conveyance of anything of value to any member of either house of the General Assembly, or to any judicial, executive or ministerial officer of the Commonwealth of Kentucky, or to any county or city executive, ministerial, judicial or legislative officer, including members of boards of education and subdistrict trustees, after such member or officer shall have been elected, and before or after such member or officer has been qualified and assumed office, or taken his seat, with intent to influence his vote or decision on any question, matter, cause or proceeding which may be at any time pending in either house of the General Assembly or before such judicial, executive or legislative officer, or which may be pending before any committee of either house of the General Assembly, shall, on conviction, be punished by a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000.00), or by imprisonment in the state penitentiary for a period of not less than one nor more than five years, or by both such fine and imprisonment.

Any member of the General Assembly or any other executive, judicial, ministerial or legislative officer of the Commonwealth of Kentucky or of any county or city, including members of boards of education and subdistrict trustees, who shall take or agree to take any bribe to do or omit to do any act in his official capacity

shall upon conviction, be subject to a fine of not less than fifty dollars ($50.00) nor more than one thousand dollars ($1,000.00), or be confined in the state penitentiary for a period of not less than one year nor more than five years, and shall forfeit his office and be disqualified from the right of suffrage for ten years.

Every prosecution under this Act must be begun in five years from the date of the commission of the offense, or it will be barred. Provided, however, that any teacher or other person who gives to any subdistrict trustee any remuneration in return for recommendation or appointment to any position in the school system shall be exempt from prosecution under this Act if said teacher or other person appears as a witness against the subdistrict trustee. (194, c. 137, p. 543.)

COUNTY, MUNICIPALITY AND OTHER TAXING DISTRICTS BONDS

Sec. 186c-6, Ky. Stat. **Bond Issues to be Approved by Court.**—It shall be unlawful for any Fiscal Court, City Council, Board of Trustees of town and other Taxing Districts, to issue and offer to sell any bond, or obligation thereof until the issuance thereof has been approved by a court of competent jurisdiction, declaring the same are based upon and to cover an indebtedness thereof, within the constitutional limitation of the indebtedness governing the creation of such indebtedness, and any bond sold, assigned, transferred without the approval of such court, in advance of its issuance, shall be null and void, and the same shall not thereafter, directly or indirectly assumed or paid by such county, city, municipality, or other taxing district. (1932, c. 22, Sec. 1.)

Ebert v. Board of Education of School District of City of Newport, et al., 278 Ky. 75. Board cannot validly anticipate revenue in excess of amount which it has fixed in its budget. Proof established the validity of approximately $73,000 of the $90,000 asked so bond issued could be approved in amount of $73,000. (April 28, 1939.)

Ebert v. Board of Education of School District of City of Newport, et al., 277 Ky. 633. In order to establish validity of indebtedness records in office of Superintendent of Public Instruction should show the same situation as record submitted to the court. (March 24, 1939.)

Williams, et al. v. Board of Education of Paintsville, et al., 274 Ky. 624. Court refused to approve bonds, where board of education paid out of its current revenue, a debt declared to be invalid, and then issued warrants for what appeared to be current operating expenses. (June 24, 1938.)

Hancock v. Henderson County Board of Education, 272 Ky. 432. Political unit desiring to issue funding bonds should plead and prove sources of revenue available to unit so as to enable the court to determine for itself the aggregate amount of revenue that might be anticipated for each year. (April 21, 1938.)

Hancock v. Henderson County Board of Education, 271 Ky. 473. County board of education given authority to refund indebtedness. (Jan. 14, 1938.)

Marcum v. Borders, et al., 269 Ky. 59. Valid indebtedness may be funded if bonded indebtedness does not exceed anticipated revenue for the year. Sets up conditions for funding debt by a board of education. (June 4, 1937.)

Sec. 186c-7, Ky. Stat. **When Approval of Court to be Given; Burden of Proof.**—In every action instituted for the purpose provided for in Section one (Sec. 186c-6) hereof, no bond or obligation

of any county, city, municipality or other taxing district shall be approved by the court until and unless it is alleged and proven by such county, city, municipality or other taxing district that the indebtedness thereof and for which the bond is intended to evidence, was created and was within the constitutional limitation of the indebtedness thereof, and unless and until the county, city, municipality or other taxing district, shall in appropriate pleading set forth each and every item of indebtedness, created and existing or unpaid and owing by the county, city, municipality or taxing district during the period of time in which the indebtedness was created and for which the proposed bond or bonds is intended to cover. And if it shall appear in such suit or action that the county, city or municipality or taxing district, that the officials in office at the time of the creation of such indebtedness have not had due regard for the finances of the county, city, municipality or other taxing district, during the time in which said indebtedness was created, then the court shall not have the right and power to approve such bond issue. On all disputed issues, in such action or suit, the burden of proof shall be on the county, city, municipality or taxing district; Provided, however, that if and when any judgment is rendered against a county, municipality or taxing district and an action is brought hereunder to refund any indebtedness evidenced by such judgment against a county, city, municipality or other taxing district, a copy of the judgment, pleading and proof in that action shall be made a part of the petition seeking a judgment for the issuance of bonds in conformity with the first judgment, and unless the first judgment purporting to establish such indebtedness, pleadings, and evidence clearly establish that the indebtedness of the county, city, municipality or other taxing districts does not exceed the constitutional limit provided for in Section one hundred and fifty-eight of the Constitution of Kentucky, the court shall have no jurisdiction to decree the issuance of such bonds, notwithstanding the judgment first evidenced, declaring the indebtedness thereof. No judgment declaring the amount of such indebtedness in such action shall be received as evidence, in any court, unless the pleadings and proof upon which it was entered clearly established that the indebtedness of the county, city, municipality or other taxing unit as shown by such judgment, does not exceed the constitutional limit of the indebtedness thereof as fixed by Section one hundred and fifty-eight (158) of the Constitution of Kentucky, and this Act shall be retroactive and apply to proceedings to fund prior floating indebtedness. (1936, c. 21; 1932, c. 22, p. 124, Sec. 2, Eff. Feb. 18, 1936.)

CHAPTER III.

SCHOOL FUND.

Sec. 4370-1, Ky. Stat. **What Constitutes the Fund.**—The school fund shall consist of the fund dedicated by the Constitution and laws of this Commonwealth for the purpose of sustaining a system of common schools therein: (a) The interest on the bond of the Commonwealth for one million three hundred and twenty-seven thousand dollars $1,327,000) in aid of common schools, at the rate of six per cent (6%) per annum, payable semi-annually on the first day of January and July of each year. (b) The interest on fifty-two thousand dollars ($52,000) now invested in Fourth Liberty Loan Bonds drawing 4½ per cent interest and payable in 1938; said bonds having been purchased in accordance with Chapter 6 of the Acts of the General Assembly of 1920. (c) The dividends from whatever remains of the original investment of seventy-three thousand and five hundred dollars ($73,500) in the capital stock of the Bank of Kentucky, other than the income from the Liberty Bonds mentioned herein under (b). (d) The surplus, three hundred and eighty-one thousand nine hundred and eighty-six dollars and eight cents ($381,986.08), now due the several counties and remaining a perpetual obligation against the Commonwealth for the benefit of said respective counties, for which the Commonwealth shall execute its bond, bearing interest at the rate of six per cent (6%) per annum, payable annually on the first day of July to the counties respectively entitled to the same, and in the proportion to which they are entitled, to be used exclusively in aid of common schools. (e) The interest at six per cent (6%) per annum, payable semi-annually on the first day of January and July, on six hundred and six thousand six hundred and forty-one dollars and three cents $606,641.03), received from the United States under an act approved March 2, 1891, for which the Commonwealth has executed bond pursuant to an act approved March 12, 1892. (f) Such part of the athletic fees collected under Section 1290a-13 of the Statutes as is apportioned to the common school fund annually. (g) Such part of the annual state taxes apportioned in Section 4019 of the Kentucky Statutes for the benefit of the schools, and such other state taxes as the General Assembly may appropriate in aid of the common schools. (1934, c. 65, p. 208.)

Commonwealth, by Board of Revenue Agent v. Louisville National Bank, 220 Ky. 89. School taxes can be classified only as state taxes, and not as local taxes levied and collected exclusively for particular territory, district, or subdivision in which they may be expended.

See also: **City of Louisville v. Commonwealth for School Board, 134 Ky. 488, 121 S. W. 411; City of Louisville v. Board of Education, 154 Ky. 316, 157 S. W. 379; Whitt v. Wilson, 212 Ky. 281, 278 S. W. 609; North Vernon Lumber Co. v. City of Louisville, 163 Ky. 467, 173, S. W. 1120; Hoskins v. Ramsey, 197 Ky. 465, 247 S. W. 371.** (May 20, 1927.)

Sec. 4370-2, Ky. Stat. **Common School Fund Shall Not be Used for Any Other Purpose.**—The foregoing shall constitute the annual resources of the common school fund of Kentucky, and shall be paid into the treasury and shall not be drawn out or appropriated except to pay the expenses of the State Department of Education of whatever character or kind and in aid of common schools, as provided in this act. (1934, c. 65, p. 210.)

Crabbe, Etc. v. Board of Trustees, 132 Ky. 478. School fund to be used solely for educational purposes.

Collins v. Henderson, 11 Bush 74. It was held that the school fund must be used exclusively in aid of common schools, and an act appropriating a part of the school fund to purchase "Collins' History of Kentucky" was unconstitutional.

Sec. 4370-3, Ky. Stat. **Fund Used for Payment of Teachers Unless Otherwise Provided.**—Except as otherwise expressly provided in this act, no part of the common school fund or of the revenue thereof shall be used for any other purpose than the payment of teachers of the common schools legally qualified and employed in pursuance herewith.

The net revenue of the common school fund accruing during each school year shall constitute the sum to be distributed. But no fees, discount or checks, or other incidental expenses shall be paid out of the distributable share of the revenue apportioned to any school district. (1934, c. 65, p. 210.)

Underwood v. Wood, 93 Ky. 177. The Legislature has no power to divide the commoi school fund in a particular district, and appropriate a part of this to the payment of teachers in a private school.

Halbert v. Sparks, 9 Bush 259; Underwood v. Wood, 93 Ky. 177. The school fund cannot be devoted to payment of teachers salaries not under control of the officers of common schools.

Sec. 4370-4, Ky. Stat. **Superintendent of Public Instruction to Estimate Per Capita; Duty of Auditor of Public Accounts and Superintendent.** The Superintendent of Public Instruction shall, on or before the first day of July in each year, ascertain and estimate for the school year the amount of the common school fund to which each school district will be entitled according to the number of children listed in its census enumeration. If at the time of making such estimates and apportionment the census of any school district has not been determined, then the census returns made for the school year next preceding shall become the basis for the apportionment. It shall be the duty of the Auditor of Public Accounts to furnish the Superintendent of Public Instruction such data as may be needed in

making such estimate and apportionment. It shall be the duty of the Superintendent of Public Instruction, as soon as practical, to file such a copy of said estimate and apportionment with the Auditor of Public Accounts and to inform the board of education of each school district of the amount to which the said district shall be entitled. Whatever difference may exist between the estimated and the actual revenue of the school fund for any school year shall be taken into account in making the estimate and apportionment for the succeeding school year. (1934, c. 65, p. 210.)

Sec. 4370-5, Ky. Stat. **Reports to State Department of Education at Close of Year.**—It shall be the duty of the officials of each educational institution and each school district supported in whole or in part from taxation in this Commonwealth, to make a report to the State Board of Education at the close of each scholastic year, showing in detail all funds received from the Commonwealth of Kentucky, and from all other sources during such year, and a detailed statement of all expenditures for the year. (1934, c. 65, p. 211.)

Sec. 4370-6, Ky. Stat. **Distribution by Auditor of Public Accounts on Warrants of Superintendent of Public Instruction; Dates of.**—For each school year the Auditor of Public Accounts, on the successive warrants of the Superintendent of Public Instruction, shall draw his warrant on the Treasurer for the amount of the school fund due each district, and said checks or warrants, in case the warrants are stamped interest-bearing, shall be turned over to the Superintendent of Public Instruction for distribution to the proper officials of the several school districts when such districts have fully complied with the school laws and rules and regulations of the State Board of Education. The school fund shall be distributed in the same number of installments as there are months in the minimum school term declared by the Superintendent of Public Instruction upon the approval of the State Board of Education. The first installment shall be paid on or before September 1 of each year and the subsequent installments paid on or before the first day of each succeeding month until all of said installments shall have been paid.

If the amount in the treasury on or before the first day of September or on or before the first day of each succeeding month upon which apportionments of the fund shall be payable to the several school districts is insufficient to admit of a full distribution of the apportionment, the Auditor of Public Accounts shall upon the successive warrants of the Superintendent of Public Instruction issue

his warrant, bearing interest at the rate of five per cent (5%) per annum for the residue. The warrant shall be paid, together with the interest thereon, out of the common school fund. (1934, c. 65, p. 211.)

Sec. 4370-7, Ky. Stat. **Length of School Term.**—The minimum school term shall not be less than seven months (140 days) and may by the Superintendent of Public Instruction, upon approval of the State Board of Education, be extended to eight, nine, or ten months when the resources of the school fund or contributions by local taxation or donations shall justify such extension; provided, however, no such extension shall be made if it reduces the salaries of the teachers below the minimum fixed by law; and provided further, that a board of education may extend its term beyond the minimum term set by the Superintendent of Public Instruction. (1934, c. 65, p. 212.)

Sec. 68b-37, Ky. Stat. **Disposition of Moneys Collected Under This Act.**—All moneys collected by the various sheriffs in this Commonwealth under the provisions of this act shall, after deducting the amounts paid out for loss, damages, compensation and other expenses necessary for the enforcement of this act, revert to the school fund of the county. And the same shall be paid for by the county so furnished out of the live stock fund. If there are no funds in this fund they shall be paid for from the general fund of the county and said general fund shall be reimbursed from the live stock fund when such fund has collected an amount equal to that advanced from the general fund. (1930, c. 1, Sec. 37, p. 19; 1918, c. 112, Sec. 37, p. 498.)

CHAPTER IV.

STATE BOARD OF EDUCATION

Sec. 4377-1, Ky. Stat. **State Board of Education Created.**—There is hereby created a State Board of Education which shall have under its jurisdiction the management and control of the common schools; the management and control of public higher education for negroes; and the management and control of vocational education and vocational rehabilitation. (1934, c. 65, p. 213.)

Sec. 4377-2, Ky. Stat. **Composition of State Board.**—The State Board of Education shall be composed of the Superintendent of Public Instruction and seven lay members who shall be appointed by the Governor in the following manner: (a) On or before June 1, 1934, the Governor shall appoint four laymen from the state at large to assume office on July 1, 1934; two of whom shall be appointed for terms of two years, and two for terms of three years. These four appointed members, together with the present ex officio board, shall constitute the State Board of Education until the first Monday in January, 1936. (b) On the first Monday in January, 1936, the Governor shall appoint three laymen from the state at large; two of whom shall be appointed for terms to end July 1, 1938, and one for a term to end July 1, 1939. Each of these three members shall assume office upon appointment. (c) These three appointed members, together with the four previous appointees and the Superintendent of Public Instruction, shall constitute the State Board of Education after the first Monday in January, 1936. (d) All subsequent appointments to the State Board of Education shall be for four-year terms; except that should any vacancy occur, the vacancy shall be filled by appointment of a layman, by the Governor, the person so appointed to hold office only for the remainder of the period of time that his predecessor in office would have held, had no vacancy occurred. (1934, c. 65, p. 213.)

Sec. 4377-4, Ky. Stat. **Title of Board.**—The board thus constituted shall be a body politic and corporate by the name and style of the Kentucky State Board of Education. (1934, c. 65, p. 214.)

Sec. 4377-5, Ky. Stat. **Qualifications of Board Members.**—The qualifications for members of the State Board of Education shall be the same as those set out hereinafter for school board members

except that members of the State Board of Education shall be at least 30 years of age. In the appointment of members of the State Board of Education the Governor is to be influenced only by consideration of merit and fitness for the position, and appointments shall be made without reference to place of residence in any part of the Commonwealth, occupation, party affiliation, or similar considerations; except, that no member at the time of his appointment or during the term of his service shall be engaged as a professional educator. (1934, c. 65, p. 214.)

Sec. 4377-7, Ky. Stat. **Organization of Board.**—The Superintendent of Public Instruction shall within ten days after the appointment of the State Board of Education call a meeting of the board. At this meeting the board shall organize and adopt rules and regulations governing its action and policy. The board shall also elect a secretary who shall be an employee in the State Department of Education. The secretary shall have charge of the board's correspondence and shall keep a record of its proceedings. (1934, c. 65, p. 215.)

Sec. 4377-8, Ky. Stat. **Quoroum; Special Meetings; Location of Office; Traveling Expenses; Treasurer.**—A majority of the board shall constitute a quorum for the transaction of busniess. The board shall meet every three months and at such other times as it may by resolution determine. Special meetings of the board may be called by the chairman. Upon written request of three members the chairman shall call a special meeting of the board. Notice of each meeting shall be given by the chairman through the secretary by registered mail to each member of the board at least ten days prior to the time of any meeting unless notice of the meeting is waived, in writing, by all members of the board. The offices of the State Board of Education shall be at the seat of government and shall be provided by the state. The members of the said Board of Education shall serve without pay. They shall receive their actual and necessary traveling expenses while on official business. The State Treasurer shall be the treasurer of the State Board of Education. (1934, c. 65, p. 215.)

Sec. 4377-9, Ky. Stat. **The Scope of the Jurisdiction of the Board; Transfer of Powers.**—The State Board of Education shall succeed to and is hereby vested with all the duties, rights, powers, purposes, responsibilities, and jurisdiction of the present Kentucky State Board of Education; the Board of Trustees of Kentucky State Industrial College for Colored Persons, at Frankfort, Kentucky; the Board of Trustees of West Kentucky Industrial College for

colored persons at Paducah, Kentucky; and the State Board for Vocational Education. (1934, c. 65, p. 215.)

Sec. 4377-10, Ky. Stat. **Possession of Records and Property.**—The State Board of Education shall have custody and control in the name of the Commonwealth of all records, books, papers, offices, equipment, supplies, moneys, funds, appropriations, lands and other property, real or personal, now or hereafter held for the benefit of the bodies, offices, and officers whose duties, powers, purposes, responsibilities, and jurisdiction are transferred to and vested in the State Board of Education. (1934, c. 65, p. 216.)

Sec. 4377-12, Ky. Stat. **Powers and Duties.**—Subject to and in conformity with the Constitution and the laws of the Commonwealth, the State Board of Education shall have the management and control of the common schools of Kentucky, public higher education for negroes, and public vocational education and vocational rehibilitation.

The State Board of Education is hereby authorized from time to time, on the recommendation and with the advice of its executive officer, the Superintendent of Public Instruction, to prescribe, print, publish, and distribute at public expense such rules, regulations, courses of study, curriculums, bulletins, programs, outlines, reports, and placards as it may deem to be necessary for the efficient management, control, and operation of the schools under its jurisdiction, provided that all rules and regulations of the State Board of Education shall have been published before they shall be deemed in full force and effect. (1934, c. 65, p. 216.)

Sec. 4377-13, Ky. Stat. **Enforcement of Provisions.**—For the purpose of enforcing the provisions of this act the State Board of Education is hereby given the authority to and shall remove from office for immorality, misconduct in office, incompetency, or willful neglect of duty, any school board members under its jurisdiction whether elected by popular vote, appointed under the provisions of this act, or by any special school law. A copy of the charges preferred against such officer shall be furnished him, and he shall be given an opportunity to be heard in person or by counsel upon not less than ten days' notice. Vacancies in office caused by such removal shall be filled in the manner provided by law. (1934, c. 65, p. 217.)

CHAPTER V.

SUPERINTENDENT OF PUBLIC INSTRUCTION.

Sec. 4384-1, Ky. Stat. **Election Qualifications; Term; Oath.**—A superintendent of public instruction shall, in accord with Section 91 of the Constitution, be elected by the qualified voters of the state at the same time the Governor is elected, for a term of four years. He shall be at least thirty years of age at the time of his election, and shall have been a resident citizen of the Commonwealth at least two years next before his election. He shall qualify by taking the constitutional oath required of all state officers and shall enter upon the discharge of his duties the first Monday in January after his election, and shall hold office until his successor is elected and qualified, but may not succeed himself. (1934, c. 65, p. 217.)

Sec. 4384-2, Ky. Stat. **Bond.**—For the faithful performance of his duties he shall give bond for at least twenty-five thousand dollars ($25,000), which shall be executed by some surety company authorized to do business in the Commonwealth, and the bond shall be paid for out of the common school fund. Said bond shall be filed with the Secretary of State. (1934, c. 65, p. 218.)

Sec. 4384-3, Ky. Stat. **Salary.**—The salary of the Superintendent of Public Instruction shall be four thousand dollars ($4,000) per year. (1934, c. 65, p. 218.)

Sec. 4384-4, Ky. Stat. **Location of Office.**—The Superintendent of Public Instruction shall keep his office at the seat of government in such public buildings as may be provided and shall devote his entire time to the duties of his office. (1934, c. 65, p. 218.)

Sec. 4384-5, Ky. Stat. **Duties of the Superintendent of Public Instruction.**—The Superintendent of Public Instruction shall be ex officio chairman and the executive officer of the State Board of Education in its administration of all public education placed under its management and control. It shall be the duty of the Superintendent of Public Instruction to execute under the direction of the State Board of Education, the educational policies which have been decided upon by the board and to direct, under such general rules and regulations as the board may adopt, the work of all persons engaged in the administration of the common schools; public higher

education for negroes; and public vocational education and vocational rehabilitation. (1934, c. 65, p. 218.)

Sec. 4384-6, Ky. Stat. **Shall Recommend Divisions of Department of Education.**—The Superintendent of Public Instruction shall recommend for approval by the State Board of Education the establishment of such divisions of the State Department of Education as he deems necessary for the successful administration and supervision of the common schools and other educational agencies placed under the management and control of the board, provided that in addition to an Assistant Superintendent of Public Instruction who is authorized to act in the absence of the Superintendent of Public Instruction, the divisions now maintained in the State Department of Education shall be maintained until the first Monday in January, 1936; thereafter in addition to an Assistant Superintendent of Public Instruction, who is authorized to act in the absence of the Superintendent of Public Instruction, the following divisions shall be included in the organization of the State Department of Education, along with such other divisions as may be established as provided in this section: finance and inspecting; attendance; supervision; teacher training and certification; public relations; research and statistics; vocational education; vocational rehabilitation and special education; school buildings and grounds; and negro education; and the Superintendent of Public Instruction may group the established divisions under such bureaus as he deems wise. (1934, c. 65, p. 219.)

Sec. 4384-7, Ky. Stat. **Appointment of Assistants; Employees.**—The Superintendent of Public Instruction shall be responsible for the administration of the State Department of Education, and shall have general supervision of all the assistants, agents, and employees in the department. He shall appoint and set the salary of all division heads, assistants, agents, and employees of the State Department of Education, and he may dismiss for cause all such appointees; provided that the appointment and dismissal of all division heads and other professional staff members shall be upon the approval of the State Board of Education. In the case of the dismissal of such appointees, they shall be entitled to ten days' written notice and a hearing before the board. (1934, c. 65, p. 219.)

Sec. 4384-8, Ky. Stat. **Bonds of Heads of Divisions and Assistants.**—Heads of divisions and assistants in the Department of Education may be required by the State Board of Education to make such bond as it may deem sufficient to faithfully and diligently perform, under the direction of the Superintendent of Public Instruction, such duties as may be assigned to them. Such bond shall be filed in

the office of the Superintendent of Public Instruction and shall be paid for out of the common school fund. (1934, c. 65, p. 220.)

Sec. 4384-9, Ky. Stat. **Traveling Expense.**—The Superintendent of Public Instruction and his assistants shall be reimbursed for all actual and necessary traveling expenses, and disbursements incurred or made by them in the performance of their official duties, and no part of such reimbursement shall be included in or accounted as a part of their salaries. (1934, c. 65, p. 220.)

Sec. 4384-10, Ky. Stat. **Superintendent of Public Instruction to Attend Educational Conferences.**—The Superintendent of Public Instruction may in his discretion attend educational associations, conventions and conferences whether within or without the state for the purpose of keeping informed upon and familiar with progressive educational policies and practices, that the schools of the state may be more efficiently served. When thus engaged, his traveling expenses shall be paid in the same manner and from the same funds as the usual traveling expenses are paid; provided, that the total traveling expenses of the Superintendent of Public Instruction shall not exceed in the aggregate fifteen hundred dollars ($1,500) in any one year. (1934, c. 65, p. 220.)

Sec. 4384-11, Ky. Stat. **Shall Explain Law.**—The Superintendent of Public Instruction shall explain the true intent and meaning of the school laws and of the published rules and regulations of the State Board of Education, and in so doing he shall freely consult with the Attorney General. (1934, c. 65, p. 221.)

Sec. 4384-12, Ky. Stat. **Shall Decide Controversies.**—The Superintendent of Public Instruction shall decide without expense to the parties concerned all controversies and disputes involving the proper administration of the public schools, but in all such matters he shall freely consult the Attorney General. He shall have authority to administer oaths, and to examine under oath, in any part of the Commonwealth, witnesses in any matter pertaining to the public schools, and to cause the testimony to be reduced to writing. Any person who, after having been sworn or affirmed to tell the truth, shall willfully give false testimony, shall be guilty of false swearing and punished for perjury. (1934, c. 65, p. 221.)

Sec. 4384-13, Ky. Stat. **Removal of Board Members, Superintendents, Principals, Teachers, and Other Public School Officials.**—The Superintendent of Public Instruction shall recommend for removal by the State Board of Education any school board member within the system of public education under the management and

control of the State Board of Education, who in his opinion is guilty of immorality, misconduct in office, incompetency, or willful neglect of duty. In all cases the charges shall be in writing. The Superintendent of Public Instruction shall recommend, to the proper school authorities, the removal of any superintendent of schools, principal, teacher, or other public school officer, who in his opinion is guilty of immorality, misconduct in office, incompetency, or willful neglict of duty. In all such cases the charges shall be filed in writing. (1934, c. 65, p. 221.)

Sec. 4384-14, Ky. Stat. **Shall Receive and Examine Reports.**—The Superintendent of Public Instruction shall receive and examine all reports required by law or by the State Board of Education and, in person or through his assistants, shall examine the expenditures, business methods, and accounts of all boards of education and all institutions placed under the management and control of the State Board of Education, and advise on the same. (1934, c. 65, p. 222.)

Sec. 4384-15, Ky. Stat. **May Issue Processes to Compel Attendance of Witnesses; Penalties.**—The Superintendent of Public Instruction shall at all times have access to the papers, books, and records of any and all teachers, trustees, superintendents, or other public school officials, and shall have power to issue processes and to compel attendance of witnesses before him and to administer oaths to and compel witnesses to testify in any of the investigations he is authorized to make, and upon the failure of any witness to attend or testify without legal excuse, he shall be deemed guilty of a misdemeanor, and upon conviction, fined not to exceed twenty-five dollars ($25.00) for each offense. He shall have power to clothe his assistant with full power of attorney to act for him in the supervision, inspection, and administration of the schools over which he has supervisory and administrative control. When he or his assistants shall find any mismanagement, misconduct, violation of law or wrongful or improper use of any school district fund or state school fund or neglect in the performance of duty on the part of any official, he shall report any and all such violations of the school laws whenever discovered to the State Board of Education, whose duty it shall be, through the Superintendent of Public Instruction or one of his assistants, to call in the assistants of the county attorney or the Commonwealth's attorney in the county or district where such violation occurs to assist in the indictment, prosecution, and conviction of the accused, and it shall be the duty of the county attorney or the Commonwealth's attorney, when called, to assist the State Board of Education and the Superintendent of Public Instruction in such

cases. If indictment, prosecution, and conviction are not warrantable, the Superintendent shall report such neglect or misconduct to the State Board of Education, which shall have power to rectify and regulate all such matters. (1934, c. 65, p. 222.)

Combs v. State Board of Education, et al., 249 Ky. 320. Since the Superintendent of Public Instruction sent representatives and made investigation as required by statutes, and thereafter made no charges and required no hearing by State Board of Education, and since people have relief sought through the courts, State Board of Education is not required to take further action. (May 23, 1933.)

Sec. 4384-16, Ky. Stat. **May Call Conferences of School Officials.**—The Superintendent of Public Instruction, in order to carry out the educational policies of the State Board of Education, may call and conduct conferences of boards of education, superintendents, supervisors, principals, teachers, attendance officers, and other regular public school employees, on matters relating to the condition, need, and improvement of the schools. Personal traveling expenses incurred by those attending conferences, called by the Superintendent of Public Instruction, shall be a legitimate public expense and may be paid by boards of education. (1934, c. 65, p. 223.)

Sec. 4384-17, Ky. Stat. **Biennial School Budget.**—The Superintendent of Public Instruction shall prepare, or cause to be prepared, and submit for approval by the State Board of Education the biennial state school budget. (1934, c. 65, p. 224.)

Sec. 4384-18, Ky. Stat. **Shall Prepare School Laws for Publication by the State Board of Education.**—The Superintendent of Public Instruction shall prepare for publication biennially, by the State Board of Education, the complete school laws of the Commonwealth, including abstracts of decisions of the appellate court, and opinions and interpretations of the Attorney General and the Superintendent of Public Instruction. (1934, c. 65, p. 224.)

Sec. 4384-19, Ky. Stat. **Publication of the Regulations of the State Board of Education.**—The Superintendent of Public Instruction shall prepare for publication by the State Board of Education the rules, regulations, minimum standards for schools, and educational policies or programs adopted by the board for the operation, regulation and government of the schools placed under its supervision. (1934, c. 65, p. 224.)

Sec. 4384-20, Ky. Stat. **Report of Condition of Schools.**—The Superintendent of Public Instruction shall biennially prepare the report of the State Board of Education to be submitted to the Governor of the Commonwealth and to the General Assembly.

The report shall set out the number attending the public schools; the amount of state funds apportioned, and the source from which derived; the amount raised by county school and independent school district taxes, or from other sources of revenue for school purposes, and the amount expended for salaries of teachers, for the erection of school buildings, and for incidental and other expenses in the operation of the public schools under his supervision, together with such other facts, statistics, and information as may be deemed of interest to be known, including recommendations for the improvement of the schools. He shall cause to be printed by the contractor for public printing, one copy for each school district and one for each superintendent of schools in the state, seven hundred and fifty copies for the use of the members of the General Assembly and for exchange with superintendents of other states, and five hundred copies for distribution by the Superintendent according to his discretion. (1934, c. 65, p. 224.)

Sec. 4384-21, Ky. Stat. **Classification of Schools.**—The Superintendent of Public Instruction shall prepare, or cause to be prepared, and submit for approval and adoption by the State Board of Education rules and regulations for grading, classifying, and accrediting of all common schools, and for determining the scope of instruction that may be offered in the different classes of schools, and the minimum requirements for graduation from the courses offered. (1934, c. 65, p. 225.)

Sec. 4384-22, Ky. Stat. **School Census Taking and Keeping.**—The Superintendent of Public Instruction shall prepare, or cause to be prepared, and submit for approval and adoption by the State Board of Education rules and regulations for taking and keeping a school census; also the forms and blanks to be used in taking and keeping the census, and in compiling the required reports thereon. The Superintendent of Public Instruction is hereby authorized, if in his judgment the whole or any part of such census has not been accurately reported, to take a special census in any school district of the Commonwealth. (1934, c. 65, p. 225.)

Sec. 4384-23, Ky. Stat. **Approval of School Building Plans.**—The Superintendent of Public Instruction shall be furnished a copy of all plans and specifications for new public school buildings contemplated by boards of education and for all additions to or alterations of old buildings. It shall be his duty to examine or cause to be examined all such plans and specifications and to approve or disapprove the same in accordance with the rules and regulations of the State Board of Education. No board of education may award a con-

tract for the erection of a building or contract for an addition to, or alteration of, an old building until the plan for the same has been approved by the Superintendent of Public Instruction. (1934, c. 65, p. 225.)

Sec. 4384-24, Ky. Stat. **Regulation of Sanitary Conditions.**—The Superintendent of Public Instruction shall prepare, or cause to be prepared, and submit for approval and adoption by the State Board of Education regulations for the sanitary and protective construction of public school buildings, toilet, physical equipment of school grounds, school buildings and classrooms, regulations governing medical inspection, physical education, physical recreation, and such other rules and regulations as he may deem necessary or advisable for the protection of the physical welfare and safety of the public school children of the Commonwealth. (1934, c. 65, p. 226.)

Sec. 4384-25, Ky. Stat. **Transportation of Children.**—The Superintendent of Public Instruction shall prepare, or cause to be prepared, and submit for approval and adoption by the State Board of Education rules and regulations concerning the transportation of children to and from school. (1934, c. 65, p. 226.)

Sec. 4384-26, Ky. Stat. **Minimum Courses of Study; Minimum Equipment.**—The Superintendent of Public Instruction shall prepare, or cause to be prepared, and submit for approval and adoption and publication by the State Board of Education minimum courses of study for the different grades and kinds of common schools of the Commonwealth, and regulations governing educational equipment of school buildings and classrooms. (1934, c. 65, p. 226.)

Sec. 4384-27, Ky. Stat. **Private and Parochial Schools.**—The Superintendent of Public Instruction shall prepare, or cause to be prepared, and submit for adoption and approval by the State Board of Education, rules and regulations for approving private and parochial schools of elementary or high school grade and commercial schools. (1934, c. 65, p. 227.)

Sec. 4384-28, Ky. Stat. **Holidays and Absences.**—The Superintendent of Public Instruction shall prepare, or cause to be prepared, and submit for approval and adoption by the State Board of Education rules and regulations fixing the holidays on which the schools may be closed and special days to be observed and the pay of teachers during absence because of sickness or quarantine, or when the schools are closed by quarantine. (1934, c. 65, p. 227.)

Sec. 4384-29, Ky. Stat. **School Budgets; Salary Schedules.**—The Superintendent of Public Instruction shall prepare, or cause to be prepared, and submit for approval and adoption by the State Board of Education rules and regulations governing the preparation of budgets and salary schedules for the several school districts under the management and control of the State Board of Education. (1934, c. 65, p. 227.)

Sec. 4384-30, Ky. Stat. **Uniform Record Forms.**—The Superintendent of Public Instruction shall prepare, or cause to be prepared, and submit for approval and adoption by the State Board of Education, a uniform series of forms and blanks, educational and financial, including forms of contracts, for use in the several school districts in the Commonwealth, and it shall be his duty to see that all financial and educational accounts are accurately and neatly kept and that all reports are made according to the forms adopted by the State Board of Education. (1934, c. 65, p. 227.)

Leslie County Board of Education v. Melton, 277 Ky. 772. Contract of teacher required to be in writing. A verbal contract is not enforceable. (April 18, 1939.)

Ebert v. Board of Education of School District of City of Newport, et al., 277 Ky. 633. In order to establish validity of indebtedness records in office of Superintendent of Public Instruction should show the same situation as record submitted to court. (March 24, 1939.)

Bullock v. Brown, 258 Ky. 522. Law requires written contract with a teacher. Petition fails to state that employment was evidenced by written contract. It, therefore, fails to state a course of action. (March 22, 1935.)

Sec. 4384-31, Ky. Stat. **Prepare Lists of Schools, Bulletins, Courses of Study, Placards, Etc.**—The Superintendent of Public Instruction shall prepare, or cause to be prepared, annually, and submit for approval and publication by the State Board of Education a list of all public and private high schools or other secondary schools in the Commonwealth showing the classification of each. He shall also prepare, or cause to be prepared, and submit for approval and publication by the State Board of Education such bulletins, programs, outlines of courses, placards, and/or courses of study as he may deem to be useful in the promotion of the interests of the public schools; higher education for negroes; vocational education and vocational rehabilitation. (1934, c. 65, p. 227.)

Sec. 4384-32, Ky. Stat. **Shall Perform all Duties Imposed by Board.**—The Superintendent of Public Instruction shall perform such other duties as are imposed upon him by law, or assigned to him from time to time by the State Board of Education. (1934, c. 65, p. 228.)

Sec. 4384-33, Ky. Stat. **Retirement from Office.**—Upon retiring from office the Superintendent of Public Instruction shall deliver

to his successor all books, papers, and effects belonging to the office, and on failure to do so he shall be fined in a sum not less than one hundred dollars ($100) nor more than five hundred dollars ($500) to be recovered by indictment in the Franklin Circuit Court. (1934, c. 65, p. 228.)

CHAPTER VI.

SCHOOL DISTRICTS.

ORGANIZATION.

Sec. 4399-1, Ky. Stat. **School Districts.**—All school districts in operation when this act goes into effect shall continue to operate except as otherwise provided by law. (1934, c. 65, p. 228.)

Elkhorn Coal Co. v. Wright, et al., 230 Ky. 33. Where graded common school districts have been established and in operation for a long time, public policy is against declaring original organization fatally defective unless there is some insuperable obstacle present. (June 11, 1929.)

Sec. 4399-2, Ky. Stat. **County School Districts.**—Each county in this Commonwealth shall constitute one county school district; provided that in any county in which there are one or more independent school districts, the county school district shall be composed of the remainder of the county outside of the boundaries of such independent school district or districts. Each county school district shall provide by the establishment of schools or by contract with another district at least an approved twelve-grade school service for the pupils in its district. (1934, c. 65, p. 228.)

City of Covington v. State Tax Commission, 231 Ky. 606. Court held, "That the northern boundary of the city of Covington under the descriptions found in the controlling instruments bearing upon that question is the Ohio River, and that there is nothing contained in such descriptions limiting such boundary to low water mark on the south shore of that stream, that in such case the law construes the boundary as extending to the center or thread of the stream, and which rule applies to a municipal boundary on such streams the same as to boundaries of a riparian owner on a water course." (Nov. 22, 1929.)

Sec. 4399-3. **Independent School Districts.**—All school districts embracing cities of the first five classes together with the territory within their limits, including any territory which has heretofore been added for school purposes outside of the limits of such cities or districts, and any territory which may be included by any future change in the limits of such cities, and all independent graded common school districts having a school census enumeration of two hundred (200) or more white children shall hereafter be known and designated as independent school districts, provided that no such district other than cities of the first, second, third, fourth, and fifth classes, operating as independent districts at the time this Act becomes effective, shall continue to operate when its school census enumeration of white children falls below two hundred (200) pupils unless it appears to the State Board of Education that the district can maintain a more efficient program of school service by operating as an independent district. The State Board of Education may permit an independent graded common school district existing at

the time of the passage of this Act with a census enumeration of white children below two hundred (200) to operate as a temporary independent school district for a one-year period beginning with July first (1), nineteen thirty-eight (1938), if it appears to the State Board of Education that such district can maintain a more efficient program of school service by operating as a temporary independent district, and the decision of the State Board of Education shall be final; provided, at the end of each one-year period the State Board of Education may permit such independent district to operate for an additional one-year period on the condition that such inspection as the State Board of Education may make shows that it is operating a school in accordance with the school law and the standards, rules and regulations set up by the State Board of Education. The State Board of Education may by order make any temporary independent school district a part of the county district whenever the same is not complying with the school law and the standards, rules, and regulations of the State Board of Education, and after it has been given a reasonable time, to be fixed by the State Board of Education, within which to so comply. The first application of such district to operate as a temporary independent district shall be filed with the State Board of Education not later than July first (1), nineteen thirty-eight (1938). Each subsequent application of such independent district to operate as a temporary independent district for an additional one-year period shall be filed with the State Board of Education not later than May first (1). Each independent school district shall maintain at least an approved twelve-grade school service for the white children residing in its district. Provided, however, any independent school district that maintains within the district at least an approved ten-grade school service for the white children residing in its district, may furnish free transportation for white children residing within the district to attend school in an adjoining district for completing the eleventh and twelfth grade school work and provide by contract with an adjoining district which maintains at least an approved twelve-grade program of school service, for such children procuring eleventh and twelfth-grade service in such an adjoining district. Provided further that each independent school district shall provide by establishment or by contract with another district for at least an approved twelve-grade program of school service for its colored children. (1938, c. 147, p. 719, Sec. 1; 1936, c. 42; 1934, c. 65, Art. 5, Sec. 3.)

Bd. of Trustees of Bromley Ind. Sch. Dist., No. 38 v. State Bd. of Edu., 269 Ky. 253, 106 S. W. (2d) 985. State Board may authorize an independent graded school district which has less than 250 pupils to run temporarily as such district for a period of one year or any number of years not exceeding four. Its

action in consolidating it with the county district will not be disturbed unless it be shown that it acted arbitrarily and unreasonably. It was not shown that it had so acted in this case. State Board did not abuse discretion in placing into county district independent district of Bromley. State Board may grant permit to operate as independent district for period from one to four years. (June 15, 1937.)

Board of Education of Woodford County, et al. v. Board of Education of Midway Independent Graded Common School District, et al., 264 Ky. 245. County board of education must provide educational facilities for colored people resident within independent districts cities of fifth class. Amended law now does not so require. (May 15, 1936.)

City of Covington v. State Tax Commission, 231 Ky. 606. Court held, "That the northern boundary of the city of Covington under the descriptions found in the controlling instruments bearing upon that question is the Ohio River, and that there is nothing contained in such descriptions limiting such boundary to low water mark on the south shore of that stream, that in such case the law construes the boundary as extending to the center or thread of the stream, and which rule applies to a municipal boundary on such streams the same as to boundaries of a riparian owner on a watercourse."

Nelson v. Board of Education of the City of Williamsburg, et al., 215 Ky. 40. Where a fourth class city district, which voted bonds with which to build a schoolhouse, was abolished, and a graded school district succeeded it, the board of trustees of the graded school district has authority to sell these bonds and expend the proceeds for building a schoolhouse, especially where boundaries of the new school district are the same as the boundaries of the abolished district.

Sec. 4399-3a, Ky. Stat. **Transfer of Area to County District.**—That boards of education in independent school districts in incorporated cities where the independent district boundaries extend beyond the city boundaries, may by joint and concurrent action with the county board of education of the county wherein the independent district is located, transfer to the county district any portion of the area of the independent district outside the corporate limits of the city.

Provided, however, that no transfer shall be made if such transfer would reduce the number of census pupils of the independent district to less than 250 in number. (1938, c. 22, p. 204, Sec. 1.)

Sec. 4399-4, Ky. Stat. **Merger of School Districts.**—Boards of education of any two or more contiguous school districts may by their concurrent action merge their districts into one school district. In case of a merger, the members of the boards of education of districts thus consolidated may serve out the terms for which they were elected and qualified.

In case of any merger of school districts, the resulting district shall take over all the assets and legal liabilities of the districts joining in the merger; provided that tax levies authorized for the payment of interest and the retirement of bonds or the provision for sinking funds for such purposes shall continue to be levied and collected over the same area by or for the new board in accordance with the laws under which the levies were originally made until all bonded obligations of the old district or districts shall have been retired. (1934, c. 65, p. 231.)

Piggott v. Kasey, et al., 271 Ky. 651. Where bonds for school purposes were issued by city and later school merged with county district the bonds were valid and county board assumed all obligation of the independent district board. Bonds may be sold to private persons. (March 17, 1938.)

Webster County Board of Education v. Hocket, et al., 267 Ky. 498. Where independent districts were merged with county district prior to repeal of statutes authorizing county board to assume liabilities of districts of such merger, county board authorized to issue refunding bonds and not required to make levy on property of these districts to pay off such indebtedness. (March 2, 1937.)

Nelson v. Board of Education of the City of Williamsburg, et al., 215 Ky. 40. Where a fourth class city district, which voted bonds with which to build a schoolhouse, was abolished, and a graded school district succeeded it, the board of trustees of the graded school district has authority to sell these bonds and expend the proceeds for building a school house, especially where boundaries of the new school district are the same as the boundaries of the abolished district. (June 8, 1926.)

Sec. 4399-4b, Ky. Stat. **Annexation of County Subdistricts.**—Any independent school district may annex and unite as a part of the independent school district any county subdistrict, subdistricts, or parts of subdistricts lying adjacent to the independent school district, or any county district may annex a part of an independent district either lying within, partly within, or adjacent to the county district, subject to the following provisions:

When a part of the county district is to be annexed to an independent district, the board of education of the independent school district shall secure the approval of the county board of education and of the Superintendent of Public Instruction. Such approval of the Superintendent of Public Instruction shall consider the ratio of the per census pupil wealth of the territory proposed to be added to the independent school district to that of the average per census pupil wealth of the county school district as a whole and the effect of the proposed territorial loss of the county district on the educational program of such county school district.

If and when such approval has been secured in writing, the board of education of the independent school district shall submit to the legal voters of the territory proposed to be added the question of whether or not said territory shall become a part of such independent school district. If said proposal shall be adopted by a majority vote of the legal voters resident within the territory to be added to the independent district, such territory shall become a part of the independent school district.

When a part of the independent district is to be annexed to the county district, the board of education of the county school district shall secure the approval of the board of education of the independent school district and of the Superintendent of Public Instruction. Such approval of the Superintendent of Public Instruction shall consider the ratio of the per census pupil wealth of the territory proposed to be added to the county school district, to that of the average per census pupil wealth of the independent school district and the

effect of the proposed territorial loss of the independent school district on the educational program of said independent school district.

If and when such approval has been secured in writing, the board of education of the county school district shall submit to the legal voters of the territory proposed to be added the question of whether or not said territory shall become a part of such county school district. If said proposal shall be adopted by a majority of the legal voters resident within the territory to be added to the county school district, such territory shall become a part of the county school district. (1940, c. 70, p. 302.)

Sec. 4399-5, Ky. Stat. **Title to School Property in Transferred Territory.**—The title to school property in the territory transferred from one school district to another shall remain vested in the board of education of the district from which the territory was transferred.

In case of the sale of such property the board of education to which the property belongs may allow a credit on the sale price of the property in proportion to the ratio which the school population of the transferred territory is to the total school population of the district from which the territory was transferred before the transfer was made.

A board of education owning and operating a school plant in another district at the time of the passage of this act may continue to own and operate such plant, and a county board of education may establish and maintain a school in an independent school district; and any independent school district may purchase school sites and establish and maintain schools outside the school or corporate limits of the independent district, but such independent districts containing cities of the first or second class shall not purchase school sites or establish or maintain schools outside the county in which such independent district is located. (1934, c. 65, p. 231.)

Green v. Elliott County Board of Education, 244 Ky. 500. Both parties to contract to exchange land must sign agreement because contract must be mutually binding. If only one party signs, the agreement is not binding on the other, and therefore not binding on either. (June 14, 1932.)

County Board of Education for Jefferson County, et al. v. Mill Creek Methodist Church, South, et al., 242 Ky. 147. The church authorities stood by without manifesting objection to erection of a school building by county board of education. The erection of building was amply sufficient to put the church on notice of the claim of right of county board of education. The equities of the case do not authorize a restoration of that part to joint occupancy. Permissive occupancy is of negligible value. He who is silent when he should speak will not be heard when he would speak. (January 26, 1932.)

Bridges v. Scott Co. Bd. Ed., 235 Ky. 141. Court held facts involved in this case were same as Waller vs. Georgetown Board of Education, 209 Ky. 726, except it involved the county board of education instead of the city, but this difference does not call for any distinction between the cases. The plan of erecting building by holding company held legal. (June 20, 1930.)

Webster County Board of Education v. Gentry, 233 Ky. 35. Where deed provided that land should revert to grantor or his heirs on failure to use it for school purposes, school district forfeited title by abandoning property for school purposes, notwithstanding Kentucky Statutes, section 4437, providing that title to land for site of school house should be acquired in fee simple. (Feb. 11, 1930.)

Lincoln County Board of Education v. Board of Trustees of Stanford Graded Common School District, 225 Ky. 21. Property in Stanford, Kentucky, which formerly belonged to Stanford College, part of which property had been given by the Commonwealth by act of 1798, held not to belong to the Lincoln County Court because of Kentucky Statutes, section 323, but to the property of the county board of education, so that such board could pass good title. The Lincoln County Board of Education should use the fund realized from the sale of the property formerly owned belonging to Stanford College in the erection or maintenance of a high school in Stanford. (June 5, 1928.)

Binder v. County Board of Education of Jefferson County, 224 Ky. 143. School lot does not revert when ceased to be used for school purposes. School trustees held to have obtained fee simple title to land acquired under condemnation proceedings. Where full and complete consideration is paid for land condemned by school trustees for school purposes, right of reverter does not arise except from clearest and most explicit language. (April 20, 1928.)

Bowling v. Grace, 219 Ky. 496. Deed providing that when land conveyed was not used for school purposes it was to revert back to the grantors, their heirs and assigns, held not to suspend their absolute power of alienation. (April 22, 1927.)

Nelson v. Board of Education of the City of Williamsburg, et al., 215 Ky. 40. Where a fourth class city district, which voted bonds with which to build a schoolhouse, was abolished, and a graded school district succeeded it, the board of trustees of the graded school district has authority to sell these bonds and expend the proceeds for building a schoolhouse, especially where boundaries of the new school district are the same as the boundaries of the abolished district. (June 8, 1926.)

Breathitt County Board of Education v. Black, 214 Ky. 284. On reverter of site granted for school purposes by reason of its abandonment, grantor is not entitled to school furniture and apparatus in school thereon. (May 4, 1926.)

Gadberry v. County Board of Education of Russell County, et al., 209 Ky. 114. The provisions in this statute in respect to the time of appeal from the selection of a school site by a county board of education is mandatory. (May 19, 1925.)

Duncan v. Webster County Board of Education, 205 Ky. 86. An attempt to vest reversionary right in land conveyed for school purposes out of a large tract, in whomsoever happened to own the original tract at the time the property should cease to be used for school purposes creates a perpetuity and is invalid under section 2360, relating to suspension of the powers of alienation. (Oct. 17, 1924.)

Williams v. McKenzie, 203 Ky. 376, 262 S. W. 598. School lands may be leased for the production of oil. (February 10, 1924.)

Cunningham v. Shelby County Board of Education, 202 Ky. 763. After the selection of a site the court will not disturb the county board's selection simply because it is not in the exact center of the district. The selection of the school site by a county board will not be disturbed simply because it is not in the exact center of the district. (April 25, 1924.)

Vincent, et al. v. Edmonson County Board of Education, 169 Ky. 34, 183 S. W. 232. The authority to select schoolhouse sites rests solely in the county board of education; its actions in that respect will not be disturbed by the courts unless it is made to appear that the board has, in the selection of the site, abused sound discretion.

Ridder v. County Board of Education of Edmonson County, 150 Ky. 847. After the county board of education has selected a site, it may rescind its action and select a different site.

Sec. 4399-6, Ky. Stat. **Subdistricts of County School Districts.**—The existing boundary lines of subdistricts of county school districts shall not be affected by this act except that any county board of education shall have the authority to change the boundaries of school subdistricts of the county school system and, when necessary, to establish new subdistricts, or to unite subdistricts or parts of subdistricts, or to discontinue subdistricts, or to transfer a child or children to other subdistricts, except that no subdistrict shall exist which has less than fifty white census pupils residing therein; provided that the State Board of Education, upon application of a county board of education, may authorize the maintenance of emergency subdistricts from year to year which do not have fifty white census pupils residing therein; and provided further that, except upon approval of the State Board of Education, the boundary of any independent school district which may become a part of a county school district as the result of this act shall not be reduced nor shall such district be abandoned as a subdistrict; and provided

further that the boundary of any subdistrict having a bonded indebtedness cannot be extended except upon a favorable vote of two-thirds of the legal voters in the territory proposed to be added to the subdistrict, and that all subdistrict tax levies which have been authorized may continue to be collected for the benefit of the subdistrict for which they were levied until the expiration of time for which the levy was made; and provided further that any subdistrict tax may be removed by the vote of the people in the same manner in which it was authorized. The boundary of any subdistrict which levies a tax for purposes other than for bonds may be changed by the county board of education upon the request of a majority of the voters within the territory proposed to be added to the subdistrict which levies the tax. (1934, c. 65, p. 232.)

Cottongim v. Stewart, et al., 277 Ky. 706. Where county superintendent properly recommended teachers and three of five members voted against their employment constituted rejection of nominations rather than postponement of election. (February 7, 1939.)

Hall, Superintendent of Schools of Floyd County, et al. v. Cooley, et al., 277 Ky. 429. Where teacher recommended by subdistrict trustee was not employed because of unprofessional conduct and subdistricts had been discontinued before nomination was rejected county superintendent had authority to recommend teacher. (March 17, 1939.)

Smith et al. v. Withers, et al., 270 Ky. 568. County board of education may discontinue subdistricts and court will not interfere with action except in case of abuse of authority. (November 9, 1937.)

Simpson County Board of Education, et al. v. Strickler, 268 Ky. 72. Subdistrict was not abolished. It was merely enlarged and the subdistrict trustee had authority to recommend the teachers. (March 26, 1937.)

Bell County Board of Education, et al. v. Wilson, et al., 263 Ky. 556. County board of education may exercise reasonable though not arbitrary discretion in consolidating districts. This case held abuse of discretion. (March 27, 1936.)

County Board of Education of Bath County, Ky., et al. v. Goodpaster, 260 Ky. 198. County board of education has authority to discontinue all subdistricts provided it can show necessity therefor and if the results would be reasonably useful, convenient, and proper. The board has discretion to exercise this authority. The constitutionality of the new school code is determined by this case. The constitutionality of the new school code was referred to by the court in the case of County Board of Education of Montgomery County, et al., on petition ex Parte, 260 Ky. 246. (June 18, 1935.)

Audas, et al. v. Logan County Board of Education, 246 Ky. 534. County board of education may consolidate schools in two ways: (1) Action of county board, (2) vote of the people. Whether consolidation is necessary rests within sound discretion of county board. County board of education, after suit was commenced, could amend original order consolidating subdistricts by making it more definite. (December 16, 1932.)

Whalen, et al. v. County Board of Education of Harrison County, 239 Ky. 341. Court cannot interfere with county board's exercise of discretion in consolidating subdistrict unless abused. Whether consolidation is necessary rested within county board's discretion. (May 29, 1931.)

Brown, et al. v. Bailey, et al., 238 Ky. 287. Whether transfer of pupils from subdistrict to public school of another subdistrict is "desirable" is matter for determination by county board of education. (March 27, 1931.)

Holton, Etc. v. Board, Etc., 176 Ky. 578. The county board of education is authorized to create a consolidated school district out of parts of subdistricts, as well as out of entire subdistricts.

Sec. 4399-7, Ky. Stat. **Subdistrict Trustee; Qualifications.**—Each subdistrict of each county school district in this Commonwealth shall elect one subdistrict trustee who, when duly elected and qualified, shall serve for a term of four years from the third Saturday in July next succeeding his election and until his successor is duly elected or appointed and qualified, unless sooner removed for cause. Each candidate for the office of subdistrict trustee shall be at least

twenty-five (25) years of age and shall have resided in the subdistrict at least six (6) months prior to the date of election. (1934, c. 65, p. 233.)

Penny v. McRoberts, 163 Ky. 313, 173 S. W. 786. A person is not authorized to vote in the common school district in which he has resided for sixty days before the election, unless he has resided in the county for at least six months preceding the election, and in the state one year preceding the election.

Sec. 4399-8, Ky. Stat. **Filing Petition; Election by Secret Ballot; Ballots; Procedure.**—Each candidate for the office of subdistrict trustee shall make known his intention of becoming a candidate for such office by filing, in writing, a notification to the superintendent of schools of his county district, not less than fifteen (15) days, nor more than sixty (60) days prior to the date of election.

Elections for subdistrict trustees shall be by secret ballot and each legal voter of the subdistrict shall be eligible to vote in the election of subdistrict trustee, provided each has resided in the subdistrict for at least sixty (60) days prior to the date of the election.

Separate printed ballots shall be furnished by the board of education of each county school district in sufficient numbers for such election, provided the county board of education shall arrange for at least ten (10) per cent more ballots than the estimated number of legal voters in any subdistrict. The name of each qualified candidate for subdistrict trustee shall be printed on the ballots of this subdistrict. Such names shall be printed in the order in which the written notifications were filed with the county superintendent. As many blank spaces shall be left on each ballot as there are candidates in each subdistrict. There shall also be blank spaces provided for the signatures of the judge and the clerk and no ballot shall be considered valid unless it bears the name of either the judge or the clerk of the election.

On the second Saturday of July, 1934, between the hours of eight (8) A. M. and four (4) P. M., and every four (4) years thereafter, subdistrict trustee elections shall be held. Such elections shall be held at such place or places in the subdistrict as the board of education of the county shall direct. The election of subdistrict trustee shall be conducted by at least three qualified voters of the subdistrict who shall be appointed by the county board of education. One of the election officers shall serve as judge, one as sheriff, and one as clerk. In its discretion the county board of education may appoint more than one clerk to serve at such elections. Election officers shall serve without pay, but one officer of each subdistrict, or other person or persons designated by the county board of education, shall be entitled to actual expenses incurred in delivering bal-

lots and ballot boxes to the designated voting place or places and returning safe to the office of the board of education. The county board of education shall provide ballot boxes with locks and shall make other necessary arrangements for conducting the election. The expenses of all subdistrict trustee elections shall be paid out of the county school fund. The county board of education shall provide for the safe-keeping of the ballots and ballot boxes. The counting shall start not later than ten o'clock of the next week day following the election and shall proceed by subdistricts until the county is completed. Any candidate in the subdistrict trustee election shall have the privilege of being present in person or by a representative during the counting of the ballots in his subdistrict. As soon as the counting is finished in any subdistrict the tabulators shall announce, at the door of the counting room, the results for that subdistrict and shall certify the results to the county board of education, whereupon the county board of education shall issue a certificate of election to the candidate receiving the greatest number of votes.

Each subdistrict trustee elected under the provisions of this act shall serve with the trustees of his subdistrict and each of said subdistrict trustees shall share alike the duties and powers conferred upon subdistrict trustees by the provisions of this act, but no subdistrict trustee shall be elected or appointed after the effective date of this act except as provided in this act. Any subdistrict trustee who is not an actual resident of the subdistrict for a period of sixty (60) days shall forfeit his office. Such vacancy shall be filled as provided by law. (1934, c. 65, p. 233.)

Bates,, et al. v. Dixon, et al., 250 Ky. 479. Evidence in school election contest sustained finding that voter owning no property in election subdistrict, and alleged to be only temporarily absent from district, was not legal voter. Evidence sustained finding that three specified voters did not live in election subdistrict and hence were not legal voters in school election. Evidence in school election contest failed to establish that voter not permanently present within district had made his home with his uncle living within election subdistrict so as to become legal voter. Contestant declared receiving highest number of votes cast. (October 3, 1933.)

Morgan v. Adams, et al., 250 Ky. 441. Contestant could not sue to oust elected school trustees where contestant was not entitled to office because he did not receive plurality of votes cast. One receiving less than plurality of votes cannot be declared elected, though candidate who receives plurality is ineligible. (Sec. 4426b-1, Ky. Stat.; Civil Code of Practice, Secs. 483–485.) (Sept. 29, 1933.)

Harris v. Caudill, 222 Ky. 162. Contest of election for school trustee must be filed within ten days after final action of Board of Canvassers under Kentucky Statutes, section 1596a-12, which under present law is county board of education. (December 2, 1927.)

Sec. 4399-9, Ky. Stat. **Nominating Teachers.**—The subdistrict trustee shall nominate a competent and qualified teacher or teachers for each teaching position in his subdistrict, provided that no subdistrict trustee shall nominate any person related to such subdistrict trustee as father, mother, brother, sister, husband, wife, son,

daughter, nephew, niece, aunt, uncle, son-in-law, daughter-in-law, or first cousin for any teaching position in his subdistrict and the board of education of the county school district shall elect such person or persons to such teaching position or positions except that the board of education of the county school district may reject the nomination or nominations for cause provided all rejections shall be stated in writing. In the event of the rejection of the person or persons nominated, the subdistrict trustee or trustees shall nominate another person for the position or positions and the board of education may reject such nomination or nominations for cause, provided that the nomination for teachers shall be made in writing on or before the first day of April next preceding the beginning of the school year, and such nomination shall not be made before the first day of February.

After a written recommendation has been filed with the county board of education, the subdistrict trustee shall not have authority to withdraw such recommendation except for legal cause or by permission of the county board of education; provided further that in case the subdistrict trustee withdraws his recommendation for cause or by permission of the county board of education, he shall make another recommendation on or before the subsequent regular meeting of the county board of education; and provided further that if the subdistrict trustee does not recommend a teacher within the time set out in the law, the county board of education has authority to elect a teacher upon the recommendation of the county superintendent. (1934, c. 65, p. 235.)

Hall, Superintendent of Schools of Floyd County, et al. v. Cooley, et al., 277 Ky. 429. Where teacher recommended by subdistrict trustee was not employed because of unprofessional conduct and subdistricts had been discontinued before nomination was rejected county superintendent had authority to recommend teacher. (March 17, 1939.)

Simpson County Board of Education, et al. v. Strickler, 268 Ky. 72. Subdistrict was not abolished. It was merely enlarged and the subdistrict trustee had authority to recommend the teachers. (March 26, 1937.)

Hurd v. Laurel County Board of Education, et al., 267 Ky. 730. This case involves proper manner of making an appeal, etc. Trustee elected in 1934 can nominate teacher. (March 16, 1937.)

Bowling, et al. v. Combs, et al., 266 Ky. 56. County superintendent is largely a ministerial officer and as such it is his duty to accept and submit to the county board of education all applications for teaching positions if made within the prescribed time. (November 6, 1936.)

Hamilton v. Board of Education of Pike County. Injunction of Judge Thomas in which the whole court considered the motion when subdistrict trustee has actually made a recommendation between February 1 and April 1 such right continues at least until school begins. (October 22, 1936.)

Swinford v. Chasteen, et al., 261 Ky. 249. Subdistrict trustee may recommend teachers between February 1 and April 2. After that date county superintendent has sole recommending authority. (November 8, 1935.)

Morgan County Board of Education v. Elliott, 260 Ky. 672. Only subdistrict trustee elected in 1934 has legal authority to recommend teachers. (October 11, 1935.)

Taylor v. Bell County Board of Education, 260 Ky. 253. Where two teachers were to be chosen, county board held unauthorized to consider the teacher's nomination signed by trustee and filed two months after filing of same trustee's nominations of two other teachers. County board of education must consider employment of teachers nominated. (June 21, 1935.)

Bullock v. Brown, 258 Ky. 522. Law requires written contract with a teacher. Petition fails to state that employment was evidenced by written contract. It, therefore, fails to state a course of action. (March 22, 1935.)

Reynolds, et al. v. Spurlock, 257 Ky. 582. Qualifications of teacher determined when applicant begins to teach. Withdrawal of recommendation not valid because trustee was not before the board and no record was made of his attempted withdrawal. (February 1, 1935.)

Wilson, et al. v. Alsip, et al., 256 Ky. 466. Subdistrict trustee has authority to nominate teachers in schools where only elementary grades are taught through the eighth grade. County superintendent nominates in all other schools. (November 23, 1934.)

Conley v. Carty, Superintendent of Schools, et al., 251 Ky. 375. County superintendent recommends all teachers in schools where high schools are located. (November 21, 1933.)

Trosper, et al. v. Woodford County Board of Education, et al., 248 Ky. 780. County board of education, having reduced two-teacher to one-teacher school, must select qualified teacher recommended by subdistrict trustees. (Sec. 4399a-7, Ky. Statutes, Acts 1932, c. 79.) (April 28, 1933.)

Logan County Board of Education, et al. v. Funk, 245 Ky. 701. When board elected second recommendee as teacher, status of parties became fixed, and board could not subsequently without legal cause, pass new resolution to make it appear that trustee had withdrawn first recommendation. Subdistrict trustee's filing recommendation of teacher with board held not withdrawal of prior recommendation of another, in view of rule that trustee having once recommended teacher in writing, could not withdraw that except by writing filed with the board or by statement before board in session and its recordation in minutes of board. (November 4, 1932.)

Rynerson v. Mercer County Board of Education, et al., 244 Ky. 292. Only principals and teachers nominated by county superintendent can be elected for high schools by county board of education. (Secs. 4399a-7, 4399a-11, 4526b-3.) (May 27, 1932.)

Cartee v. Lewis County Board of Education, et al., 242 Ky. 748. Because teacher had recommendation of the subdistrict trustee for a position in which he could recommend, the board of education had the burden. Subdistrict trustee could not nullify his written recommenation of teacher by orally telling board it could dispose of application of person recommended as it saw fit. Subdistrict trustee can withdraw written recommendation of teacher only in writing or by appearing before board in meeting. (February 9, 1932.)

Abrams v. Jackson County Board of Education, 230 Ky. 151. Under contract for employment of school teacher for seven months, it was duty of school board to furnish house in which to teach and in absence of stipulation in contract for cessation of teacher's salary during such period. Failure of board to furnish a suitable house in which to teach constituted a breach of contract. School teacher held not entitled to recover for breach of employment contract to teach school for seven months on destruction of school building by fire, in absence of evidence showing that she attempted to find similar employment in locality. (June 21, 1929.)

Rice v. Gilliam, 226 Ky. 613. County board of education under mandatory duty to elect teacher nominated by subdistrict trustee where he was qualified at time of meeting at which selection of teachers was to be made, though he had no teacher's certificate at time he was nominated. (November 30, 1928.)

Lovelace v. Steinbeck, 225 Ky. 669. County board must elect teacher, if she is qualified when election takes place. She must take responsibility of being qualified when school begins. Subdistrict trustee having recommended teacher who possessed necessary qualifications, it was duty of county board of education to elect her, as against one whose application did not bear indorsement of subdistrict trustee. (October 5, 1928.)

Foreman v. Board of Education of Christian County, 219 Ky. 573. County board given discretion to appoint or reject persons recommended by subdistrict trustees in view of provisions permitting county superintendent to include other recommendations and county board's authority to remove teachers for incompetency or unfitness. (April 29, 1927.)

Christian County Board of Education v. Gee, 217 Ky. 561. Where subdistrict trustee, after notice, failed to recommend teacher for colored school in his subdistrict, board of education may, after reasonable time, hire teacher on recommendation by any of its members notwithstanding acts of 1924, chapter 52, section 3. (January 14, 1927.)

Sec. 4399a-10a. **Appointment of County School Superintendents in Counties Having Cities of the First or Second Class.**—The county board of education of each county containing cities of the first or second class shall appoint, on the first Monday in January, 1933, a county superintendent of schools for a term of not more than four years next succeeding his appointment, and he shall hold office until his successor has been appointed and qualified. No person thus appointed shall be eligible to the office who does not hold a proper

certificate in scholarship, administration and supervision, as provided by law, provided that all county superintendents of schools in counties containing cities of the first or second class holding office at the time that this act shall take effect shall continue to serve to the end of the term for which they were originally appointed and until their successors are appointed and qualified, unless removed as provided by this act, and he shall be eligible for reappointment.

The county superintendent of schools shall devote his entire time to the public school business and shall receive such compensation as the county board of education shall direct, to be paid from the county school funds in monthly installments, provided that no county superintendent of schools appointed to office under the provisions of this section shall be paid a salary of less than twelve hundred dollars ($1,200.00) per year. In case of vacancy due to any cause the county board of education shall fill the vacancy and the appointment shall be for the unexpired term, and until his successor shall have been appointed and qualified.

The county superintendent of schools as executive officer of the county board of education, shall see that the laws relating to the schools, the by-laws, rules and regulations of the State Board of Education and regulations and policies of the county board of education are carried into effect.

The county superintendent of schools shall recommend for condemnation school buildings which are unsanitary and unfit for use. He shall recommend the repairs, the purchase of grounds, school sites and grounds, the sale of the same, and shall cause to be prepared all plans and specifications for remodeling of old buildings, provided that the plans and specifications for any and all buildings to be erected in said county shall be submitted to the State Superintendent of Public Instruction or his agent for approval.

The county superintendent shall approve in writing all contracts, of any kind, entered into by the county board of education, and no contract entered into by the county board of education without the written approval of the county superintendent of schools shall be valid.

The county superintendent of schools shall be the representative of the State Superintendent of Public Instruction in all examinations for teachers' certificates, conducted within the county, and shall perform such duties connected therewith as may be required by law. (1932, c. 71, p. 362.)

Note.—This section not specifically repealed by c. 65, Acts 1934; see Sec. 4399-34, Ky. Stat., for appointment of superintendent.—Ed.

Oberwarth v. McCreary County Board of Education, et al., 274 Ky. 319. The minutes of board must show that a contract has been approved by the board of education before it can be said to be legal. (November 11, 1938.)

Bullock v. Brown, 258 Ky. 522. Law requires written contract with a teacher. Petition fails to state that employment was evidenced by written contract. It, therefore, fails to state a course of action. (March 22, 1935.)

Sec. 4399-10, Ky. Stat. **Vacancies; How Filled.**—In the event of a vacancy in the office of subdistrict trustee, regardless of the cause, the board of education of the county school district shall, on the recommendation of the superintendent of schools, at its next regular meeting, appoint a qualified person to fill such a vacancy. The subdistrict trustee so appointed shall serve until the next regular time for the election of subdistrict trustees. Any person removed from the office of subdistrict trustee for cause shall be deemed ineligible for appointment by the school board of the county district to fill any vacancy in the office of subdistrict trustee prior to the date of the next regular election of such trustees. The subdistrict trustee shall be eligible to succeed himself. (1934, c. 65, p. 236.)

Ellis, et al. v. Van Horn, 245 Ky. 188. County board of education's attempt to select successor of school district trustee, who withdrew resignation before it was acted on, held void. (October 7, 1932.)

Logan County Board of Education v. Fowler, 241 Ky. 166. County board of education without authority to fill a teaching position while a vacancy in the trusteeship exists. County board must elect teacher recommended by subdistrict trustee who moved out of subdistrict or fill the vacancy existing in the trusteeship and give him a chance to recommend the teacher. (November 20, 1931.)

Sec. 4399-11, Ky. Stat. **Trustees in Office at the Time this Act Becomes Effective.**—Each subdistrict trustee in office when this act becomes effective and each such trustee that may be elected under the provisions of this act, shall have the power and it shall be his duty, to exercise general control over the school property of the subdistrict under the general supervision of the county board of education. Each shall advise freely with the superintendent of the school of the county districts on all matters pertaining to the general welfare of the school or schools in his subdistrict. (1934, c. 65, p. 237.)

Sec. 4399-12, Ky. Stat. **Special Tax Levies in Subdistricts.**—The board of education of any county school district shall have the power to lay off a proposed subdistrict boundary within the county school district and submit to the voters within that boundary or to voters of any existing subdistrict, or proposed subdistrict within the county school district, the proposition of the levy annually, or for a specified number of years of a tax upon the taxable property in such proposed subdistrict, or existing subdistrict, for local school purposes, which may include transportation of all pupils who do not live within reasonable walking distance of school; provided that the rate

of taxation shall not exceed seventy-five cents (75c) annually on each one hundred dollars of taxable property within the proposed subdistrict, or the existing subdistrict, as valued in the assessment for local school purposes next preceeding the levy of the tax.

On written petition of forty (40) per cent of the voters of any proposed subdistrict asking that a subdistrict tax be levied, it shall be the duty of the county board of education within fifteen days from the time the petition is filed to make an order which shall be recorded in the minutes of the board for holding an election to determine the will of the voters on the proposition.

Such proposition for taxation may be submitted to the voters of the proposed area or to any existing subdistrict by the board of education at an election called for that purpose; provided that not less than fifteen days' notice be given of said election by written or printed posters signed by the chairman and secretary of the county board, stating the purpose of the election, the area affected, and the date, place or places, and hours of said election, posted at not less than two public places in each subdistrict concerned, and by one insertion of the notice in a newspaper, if there be one published in the county. The county board of education shall appoint at least three legal voters of the proposed subdistrict, or existing subdistrict, to serve as election officers in said election and to certify the returns of the same to the county board of education. The decision of two of the three officers shall be final in determining any questions which arise during the holding of said election.

In case a majority of the votes cast are in favor of the proposition, the tax shall be levied annually as provided in this section for the period of years specified in said proposition by the fiscal court of the county in accordance with the requisition by the county board of education, and shall be included by the county clerk in the regular tax bills rendered for county purposes. Said tax shall be collected by the tax collector legally authorized to collect taxes for the district and settled for with the county board of education as in the case of county school taxes and at the same rate of commission for collection.

If in a proposed subdistrict a majority of the votes cast are in favor of the tax proposition, the proposed area shall thereafter be a subdistrict; but if a majority of the votes cast in such proposed boundary are against the proposition, the subdistrict status and boundary will be unchanged by the election.

All such taxes shall be for the use and benefit of the school or schools of such subdistricts. (1934, c. 65, p. 237.)

Emmons v. Board of Education of Lewis County, 260 Ky. 17. County board of education has authority to deed property to holding corporation with understanding it will be deeded back when bonds are paid. (June 11, 1935.)

Knox County Board of Education v. Fultz, et al., 241 Ky. 265. Consolidation means at least some concentration of pupils. Board of education unauthorized to provide for transportation of pupils in consolidated districts out of county funds without submitting the question to vote of the people. County board must maintain colored schools out of county school fund. (November 27, 1931.)

County Board of Education of Meade County v. Bunger, et al., 240 Ky. 155. 1. All legal voters of common school district entitled to vote. 2. All property of school district subject to the tax. 3. If order consolidating school is defective, it may be completed or amended at a subsequent meeting. (June 9, 1931.)

Layson, et al. v. Nicholas Co. Bd. of Education, et al., 235 Ky. 70. Consolidated school district election held not invalid because posters giving notice were small and the type thereon inconspicuous. Notice of election for tax levy in consolidated school district need not state the amount of money to be raised. That is required by section 4458 and not by section 4426-2. (June 20, 1930.)

Harney, et al. v. Nicholas Co. Bd. of Education, et al., 235 Ky. 59. Same as Layson, et al. v. Nicholas Co. Bd. of Education, et al., 235 Ky. 70, except court held unnecessary for election notice to describe the subdistrict boundary by metes and bounds. (June 20, 1930.)

Byrne v. Caldwell, Superintendent of Schools, 227 Ky. 59. In a proper case, duty of county board of education to use tax for transportation of pupils of consolidated school for which tax was voted may be enforced by mandamus. (December 18, 1928.)

Hope v. Shelby County Board of Education, 213 Ky. 717. Where board of education established a consolidated school district, and, after tax therefor had been voted, added part of another subdistrict and district as a whole voted a new tax in lieu of former one, held tax so voted was valid.

Gibson v. Anderson, Sheriff, 170 Ky. 664. The board of education has authority to submit to the voters in a consolidated district the question whether they will vote a tax to provide a schoolhouse alone without submitting to them the question of transporting pupils or maintaining the school. When the schoolhouse has been provided the tax cannot be longer collected.

Travelstead v. Ray, Sheriff, Etc., 169 Ky. 706. Where there has been a full, free and fair school election and the voters understand the question to be voted on and have ample notice of the time and place, when and where the election is to be held, there is little reason for disturbing the election on mere technical grounds.

Sec. 4399-12a, Ky. Stat. **General Tax by Board of Education of County District.**—In every county school district where all of the subdistricts thereof levy a special tax, the board of education of the county district may, in its option, abolish all of the special levies of subdistricts and in lieu of the said special levy or levies and the regular or general county levy the county board of education may levy a general tax of not more than the maximum levy permitted for county school districts increased by not more than the lowest of the subdistrict levies. (1940, c. 72, p. 309.)

Sec. 4399-13, Ky. Stat. **Bonds of Subdistricts and Subdistrict Levies for Other Purposes.**—The board of education of any county school district may at any time submit to the voters of any one of its subdistricts or of any group of its subdistricts the question of whether or not said board shall issue and sell bonds of such proposed subdistrict or group of subdistricts in any amount not exceeding the limit provided by Section 158 of the Constitution of this Commonwealth for the purpose of buying a site or sites, or building or equipping a school building or buildings for such subdistrict or subdistricts, and of whether or not the board shall levy annually a school tax on each one hundred dollars of taxable property within the district, as valued in the assessment for local school purposes next preceding the levy of the tax, to provide a sinking fund for the

payment of the interest on bonds annually and the liquidation of bonds at their maturity or to provide for the annual interest and retirement of bonds if other than sinking fund bonds are issued, and the tax accruing from said levy as is made for the payment of interest and sinking fund purposes shall be by the said board of education at once irrevocably set aside and used for this purpose and not otherwise. The election for this purpose shall be called and conducted in accordance with the provisions of the section providing for special tax levies in subdistricts; and the tax, if approved by two-thirds of the votes cast, shall be collected and settled for as therein provided. The election for this purpose may, in the discretion of the county board of education, be called at the same time and place as that provided for in the section providing for special tax levies and conducted by the same election officers. (1934, c. 65, p. 239.)

Hoagland v. Henry County Board of Education, et al., 230 Ky. 75. Election for voting bonded indebtedness to determine whether voters of school district were willing to incur annual tax levy not exceeding 25c on the $100 held not invalid because part of fund raised was to constitute sinking fund for extinguishment of bonds, and in payment of interest and remainder was to be used for maintenance of school, as against contention that tax for maintenance under laws 1926, chapter 82, section 2 (Kentucky Statutes, Supplement 1928, section 4426-2), required only majority of votes while bond issue required two-thirds majority under section 3 (Kentucky Statutes, 1928, section 4426-3), since when bond issue is contemplated, election must be held under section 3, and in such election it is unnecessary that two purposes of levy be voted for separately. (June 14, 1929.)

Travelstead v. Ray, Sheriff, Etc., 169 Ky. 706. Where there has been a full, free and fair school election and the voters understand the question to be voted on and have ample notice of the time and place, when and where the election is to be held, there is little reason for disturbing the election on mere technical grounds.

Sec. 4399-14, Ky. Stat. **Boundaries of District and Subdistricts to be Kept by Board.**—The board of education of each school district shall cause a complete and accurate description of the boundary of the district and all subdistricts of the district, in the case of county districts, to be made not later than July 1, 1936, and recorded in the office of the board and all changes made thereafter shall be so recorded. Said record of boundaries shall be accessible to any teacher, attendance officer, or other employee of the board, and to the officers of the State Department of Education upon request. (1934, c. 65, p. 240.)

Dean, et al. v. Board of Education of Harrodsburg, Board of Education of Harrodsburg v. Shirley, et al., 247 Ky. 553. Statute respecting extension of boundaries of graded common school district held inapplicable to graded school district in fourth class city. Statute providing that cities of fourth class including any territory theretofore added for school purposes outside of limits of city, should constitute school district, referred only to territory legally added to district. County superintendent could not extend boundaries of graded school district in fourth class cities by describing district as containing territory contiguous to city. (February 3, 1933.)

City of Covington v. State Tax Commission, 231 Ky. 606. Court held, "That the northern boundary of the city of Covington under the descriptions found in the controlling instruments bearing upon that question is the Ohio River, and that there is nothing contained in such descriptions limiting such boundary to low water mark on the south shore of that stream, that in such case the law construes the boundary as extending to the center or thread of the stream, and which rule applies to a municipal boundary on such streams the same as to boundaries of a riparian owner on a water course." (November 22, 1929.)

Sec. 4399-15, Ky. Stat. **Subdistricts in Parts of Two Counties.**—With the concurrence of the county boards of education, the county superintendents of two or more adjoining counties, where the division line intersects a neighborhood whose convenience requires it, may lay off a subdistrict composed of parts of these counties. The selection and payment of teachers and control of such subdistricts shall be lodged in the county board of the county in which the school building is located, but the county board of the other contracting county or counties shall pay such proportion of the total expense of conducting said school as may be mutually satisfactory and stated in a written contract, which contract shall also state definitely the boundaries of such subdistrict. Said contract shall be spread upon the minutes of each board. Duplicate copies signed by the chairman and secretary of each board of education shall be filed in the office of the county clerk of each of the contracting counties. The school census of such a subdistrict shall list the children according to the counties of their residence and shall show the total number of school age in the entire subdistrict and the total number in the subdistrict residing in each of the respective counties. Copies of the census shall be filed with the superintendent of each district represented.

In case an independent district is reverted to the county and is composed of parts of two counties, the school shall be operated as provided by law for subdistricts in parts of two counties and the board of education in the county in which the building is located shall have control of the school, and the boards of education of the counties concerned shall pay for operation of the school such amount of the total cost as the number of census pupil children in each district is to the whole number in the school census. In case the reverted independent district has bonded indebtedness, the tax for bond purposes shall be levied by the fiscal courts of the respective counties, collected by the tax collectors of the respective counties, and turned over to the treasurer of the board of education of the county in which the building is located for purposes of retirement of the bonds. (1934, c. 65, p. 240.)

Laurel County Board of Education, et al. v. Bowling, 267 Ky. 763. When boundary of a subdistrict includes the owner of farm, it also includes farm and those living on it, in absence of words of exclusion. (March 16, 1937.)

Sec. 4399-16, Ky. Stat. **Superintendent Shall Furnish District Boundaries.**—It shall be the duty of the superintendent of schools in each district in which any franchise paying corporation operates to furnish on or before the first day of July in each year to such corpo-

ration the boundary of his school district in which is located any property belonging to such corporation. A copy of the report shall be filed with the county clerk of the county in which the district is situated. (1934, c. 65, p. 241.)

SCHOOL BOARDS AND SCHOOL EMPLOYEES

Sec. 4399-17, Ky. Stat. **School Districts Under Control of Board of Education.**—Each school district in this Commonwealth is hereby placed under the management and control of a board of education consisting of five members to be nominated and elected as hereinafter provided and shall be known as the "Board of Education of ....., Kentucky." (The name of the district to be inserted in the blank space.) (1934, c. 65, p. 242.)

Hunter, et al. v. Board of Education of Floyd County, 265 Ky. 162. Court not authorized to substitute its judgment for that of board and the variety of evidence and facts it considered. Information furnished does not show that the board of education acted arbitrarily or without creditable, competent and relevant evidence. Held that board acted within its discretion in removing him from office. (June 23, 1936.)

Sec. 4399-18, Ky. Stat. **Board of Education Body Corporate.**—Each board of education shall be a body politic and corporate with perpetual succession and shall have power in its own name to sue and be sued; to contract and to be contracted with; to purchase, receive, hold, and sell property; to issue its bonds to build and construct improvements, and to do all things necessary to accomplish the purpose for which said board has been created.

Each board of education shall succeed to all property, property rights, and privileges, of whatever kind or nature, granted and belonging to any previous corporation or board of education for said school district or for the district in which said district was embraced, or the officers thereto authorized or empowered by any enactment of the General Assembly to do anything in reference to public education; provided that all pending suits to which any such previous corporation, board of education, or school district or officers thereto, is a party may be prosecuted to and end in the name of such party. (1934, c. 65, p. 242.)

Sec. 4399-19, Ky. Stat. **Titles to Property.**—The titles to the property previously granted to such district by any party or owned and held by it for common school purposes and the title to all school lands and other property of every kind owned by the district shall be vested in the Commonwealth of Kentucky for the benefit of the district board of education created by this act. In the acquisition of land for school purposes the title thereof shall be made in fee simple, except where land is obtained by condemnation proceedings, and the titles to land now held by boards of education shall be per-

fected at the earliest date possible. Any reversionary interest in any land now used for school purposes shall not deprive boards of education of buildings or other improvements thereon. (1934, c. 65, p. 243.)

Fayette County Board of Education, et al. v. Bryan, et al., 263 Ky. 61. Schools and School Districts. Conveyance of land to school district trustees to be held so long as it should be used for school created determinable or qualified fee, subject to termination on cessation of that use, notwithstanding fact that school facilities were being provided on other lands. (March 3, 1936.)

Fayette County Board of Education, et al. v. Mollie H. Bryant, et al., 262 Ky. 61. This case involves the right of the board of education to three tracts of land which were deeded for school purposes with a reversionary clause which provided that when the property ceased to be used for school purposes that it should revert to the original owner or the original tract or to the owner of the tract from which one of the plots was taken. The deed in this case conveyed this reversionary right to the purchaser of the tract in which it was reserved. The courts held in each case that the county board of education had no control over the property when it ceased to be used for school purposes.

Emmons v. Board of Education of Lewis County, 260 Ky. 17. County board of education has authority to deed property to holding corporation with understanding it will be deeded back when bonds are paid. (June 11, 1935.)

Terry, et al. v. Rose, et al., 251 Ky. 314. Reverter clause could not be enforced, because land conveyed as an individual to the conveyer as an official. Such reverter prohibited by statutes. (November 14, 1933.)

Webster County Board of Education v. Gentry, 233 Ky. 35. Where deed provided that land should revert to grantor or his heirs on failure to use it for school purposes, school district forfeited title by abandoning property for school purposes, notwithstanding Kentucky Statutes, section 4437, providing that title to land for site of schoolhouse should be acquired in fee simple. (February 11, 1930.)

Trustees of Congregational Church of Evarts v. Board of Trustees of Evarts Graded Common School District, 230 Ky. 94. Where board of school trustees made sale of school property to church without fraud, school trustees subsequently elected could not nearly five years after sale rescind sale because it decided it was a bad trade, since school board is a continuing body and was in the position of a natural person. (June 14, 1929.)

Lincoln Co. Bd. of Ed. v. Bd. of Trustees of Stanford Graded Common Sch. Dis., 225 Ky. 21. Property in Stanford, Kentucky, which formerly belonged to Stanford College, part of which property had been given by the Commonwealth by Act of 1798, held not to belong to the Lincoln County Court because of Kentucky Statutes, section 323, but to the property of the county board of education, so that such board could pass good title. The Lincoln County Board of Education should use the fund realized from the sale of the property formerly owned belonging to Stanford College in the erection or maintenance of a high school in Stanford. (June 5, 1928.)

Binder v. County Board of Education of Jefferson County, 224 Ky. 143. School trustees held to have obtained fee simple title to land acquired under condemnation proceedings. Where full and complete consideration is paid for land condemned by school trustees for school purposes, right of reverter does not arise except from clearest and most explicit language. School lot does not revert when ceased to be used for school purposes. (April 20, 1928.)

Breathitt County Board of Education v. Black, 214 Ky. 284. Site granted to trustees of graded common school on condition that it should revert if use for school purposes ceased, held not to revert, when under Kentucky Statutes, Supplement 1924, section 4469, subdistrict, common school was substituted in place of graded common school and succeeded to its property. (May 4, 1926.)

Duncan v. Webster County Board of Education, 205 Ky. 86. An attempt to vest reversionary right in land conveyed for school purposes out of a large tract, in whomsoever happened to own the original tract at the time the property should cease to be used for school purposes creates a perpetuity and is invalid under section 2360, relating to suspension of the powers of alienation. (October 27, 1924.)

Sec. 4399-20, Ky. Stat. **Powers and Duties.**—Each board of education shall have general control and management of the public schools in its district and may establish such schools and provide for such courses and other services as it deems necessary for the promotion of education and the general health and welfare of pupils as are consistent with the rules and regulations of the State Board of Education.

In an independent school district embracing a city of the first

class the board of education shall have the authority to make provision for the training of teachers in the district.

Schools shall be maintained for pupils of elementary grades within a reasonable walking distance of their homes or the board of education shall furnish transportation from its general funds or otherwise for any elementary pupil or pupils who do not reside within such distance, and any board of education may provide transportation from its general funds or otherwise for any pupil or pupils of any grade or grades who do not live within a reasonable walking distance from the school; provided that such board shall adopt such rules and regulations as will insure the comfort, health and safety of the children who are transported; and provided further that such rules and regulations shall be consistent with the rules and regulations of the State Board of Education dealing with the transportation of pupils. Pupils attending private schools shall be entitled to the same rights and privileges as to transportation to and from school as are provided herein for pupils of public schools.

The board shall have control and management of all school funds and shall have under its control and management all public school property of its district and shall have the right to use such funds and property to promote public education in such ways as it may deem necessary and proper. Each board shall exercise generally all powers in the administration of its public school system, appoint such officers, agents, and employees as it may deem necessary and proper, prescribe their duties, and fix their compensation and terms of office.

Each board shall have power to fix the time and place of its meetings, to make, amend, adopt, and repeal rules, regulations and by-laws for its meetings and proceedings, for the government, regulation, and management of the public schools and school property of such district for the transaction of its business, and for the qualification and employment of teachers and the conduct of pupils.

Such rules, regulations, and by-laws shall be consistent with the general school laws of the Commonwealth and shall be binding on such board of education and parties dealing with it until repealed by an affirmative vote of three members of such board and shall be spread on the minutes of the board and be open to the public. (1940, c. 66, p. 296.)

Cottongim v. Stewart, et al., 277 Ky. 706. Where county superintendent properly recommended teachers and three of five members voted against their employment constituted rejection of nominations rather than postponement of election. (February 7, 1939.)

Scott County Board of Education v. McMillen, 270 Ky. 483. The plan of the county board of education providing for conveyance to holding corporation properties which were to be jointly mortgaged to secure payment of bonds, was not invalid because all properties were jointly subject to lien for payment of bonds

or because provision for refunding of any taxes paid by bondholders if annual payment was within board's unencumbered annual income. (November 5, 1937.)

Hunter, et al. v. Board of Education of Floyd County, 265 Ky. 162. Court not authorized to substitute its judgment for that of board and the variety of evidence and facts it considered. Information furnished does not show that the board of education acted arbitrarily or without creditable competent and relevant evidence. Held that board acted within its discretion in removing him from office. (June 23, 1936.)

County Board of Education of Bath County, Ky., et al. v. Goodpaster, 260 Ky. 198. County board of education has authority to discontinue all subdistricts provided it can show necessity therefor and if the results would be reasonably useful, convenient, and proper. The board has discretion to exercise this authority. The constitutionality of the new school code is determined by this case. The constitutionality of the new school code was referred to by the court in the case of County Board of Education of Montgomery County, et al., on petition ex Parte, 260 Ky. 246. (June 18, 1935.)

Emmons v. Board of Education of Lewis County, 260 Ky. 17. County board of education has authority to deed property to holding corporation with understanding it will be deeded back when bonds are paid. (June 11, 1935.)

Thompson v. Pendleton County Board of Education, et al., 258 Ky. 843. Findings of the county board of education in proceeding wherein principal-teacher and principal teachers were tried on charge were conclusive on court unless it is clearly shown that the board abused its discretion. (April 23, 1935.)

Montgomery County Board of Education, et al. v. Messer, 257 Ky. 836. (1) Board of education may establish qualifications higher than the minimum required by the statutes. (2) The board may require transcript of college work filed before application of the teacher is placed before the board. (3) Board may require sixty-four semester hours' college training of teachers under its order except those who taught in the county the preceding year. (January 22, 1935.)

Board of Education of Bowling Green v. Simmons, 245 Ky. 493. Creation by board of education of position of nurse and employment to fill such position held for interest of schools of city within statutes and Constitution. City school board cannot itself raise revenue to defray school expenses, but may make appropriation out of school funds in its hand not otherwise appropriated by law. Statutes controlling qualifications of teachers held inapplicable to position of school nurse and teacher of health and physical education. (Ky. Stat., Secs. 3464, 3474, 3478; Constitution, Sec. 184.) (October 25, 1932.)

Schlake v. Board of Education of Ft. Thomas, et al., 240 Ky. 426. Refusing injunction was proper, since the collections were not compulsory and a failure to pay on the part of any student did not affect his standing in the school or deprive him from participating in the distribution of the materials purchased, but by means of the collection the principals of the various schools were able to furnish the pupils the necessary materials at price less than they could ordinarily buy them, and uniformity in work of the pupils was thereby produced. (October 9, 1931.)

Bridges v. Scott Co. Bd. Ed., 235 Ky. 141. Court held facts involved in this case were same as Waller v. Georgetown Board of Education, 209 Ky. 726, except it involved the county board of education instead of the city, but this difference does not call for any distinction between the cases. The plan of erecting building by holding company held legal. (June 20, 1930.)

Kirkpatrick v. City Board of Education of Russellville, et al., 234 Ky. 836. Contract to sell school site to corporation with option to lease and repurchase held valid and not violative of constitutional debt limitation. School building having been condemned by fire marshal, city board of education, to meet emergency, sold school site to corporation which agreed to erect school building thereon and to lease property to board from year to year, not exceeding twenty years, at annual rental within constitutional debt limit of board, which rent should be used to discharge bonds secured by mortgage on property used for construction of building, with option in board to require reconveyance on discharge of mortgages and all other liens and claims and providing that if board should not occupy premises for entire twenty years, property should be sold and proceeds used to pay liens, and to pay surplus to board. (June 17, 1930.)

Trustees of Congregational Church of Evarts v. Board of Trustees of Evarts Graded Common School District, 230 Ky. 94. Where board of school trustees made sale of school property to church without fraud, school trustees subsequently elected could not nearly five years after sale rescind sale because it decided it was a bad trade, since school board is continuing body and was in the position of a natural person. (June 14, 1929.)

City of Louisville v. Board of Education City of Louisville, 229 Ky. 325. Board of education did not have authority to equip school building from proceeds of bonds issued for erection of schools; language used in act, "to erect schoolhouses," not conferring authority to furnish schoolhouses. (May 7, 1929.)

Jesse Whitworth v. Breckinridge Co. Bd. of Education, et al., 225 Ky. 222. Concerning holding company. (June 22, 1928.)

Daviess County Board of Education v. Vanover, 219 Ky. 565. County board of education may require the teachers it employs to teach the first eight grades of its schools to have higher educational qualifications than are required by statute for such teachers to obtain a provisional elementary teacher's license. Kentucky Statutes, section 4399a-4, and Kentucky Statute Supplement 1926, section 4399a-7, authorizing county board to determine the "educational policies" of the county, implies the power to prescribe qualifications of teachers at least in so far as requirements do not transgress the minimum requirements fixed by statute for teachers to obtain license. (April 29, 1927.)

Williams v. McKenzie, 203 Ky. 376, 262 S. W. 598. School lands may be leased for the production of oil. (February 10, 1924.)

Katterjohn v. Board of Education of the City of Paducah, 202 Ky. 690. A board of education in a city of the second class gave a bonus to a contractor for the speedy erection of a school building. By sections 3235a-1 to 3235a-42 the board was not conferred any authority to give such bonus and the provision in the contract allowing it is void under section 162 of the Constitution, which provides that a municipality cannot pay any claim under any agreement or contract made, without express authority of law. (May 22, 1923.)

Elliott County Fiscal Court v. Elliott County Board of Education, 193 Ky. 66, 234 S. W. 947. The county board of education is a body politic and corporate with perpetual succession, and therefore a debt created by the board is a continuing obligation of the board, regardless of any change in its membership, and no question of assumption of indebtedness which an old board contracted can arise. Where the county board of education prepares and submits to the fiscal court a detailed expense budget for the succeeding year, it is incumbent on the fiscal court to make a levy for the amount required unless the board acted corruptly or in bad faith, or embraced in their expenditures items not authorized by law. A budget of the county board of education filed with the fiscal court may include outstanding indebtedness.

Lawrence Co. v. Lawrence Fiscal Court, 191 Ky. 45. Records of fiscal court show that on the day the questioned resolution was passed there were seven justices present and the county judge, that a roll call of the justice showed four votes cast for the resolution and three against. The record is silent as to the action of the county judge. The validity of the resolution is attacked among others on the ground that it was necessary in order to carry the resolution for it to receive five votes, eight members of the fiscal court being present, and having received only four votes it failed. Court says rule of law is, viz.: "When the requisite number of the body to form a quorum is present and has opportunity to and does vote upon a proposition, those members who are present and do not vote will be considered as acquiescing with the majority and their silence construed as they voting with the majority."

Beauchamp v. Snider, 170 Ky. 220, 186 S. W. 868. The county board of education cannot allow the county superintendent the salary of an office assistant, unless the board has itself employed such assistant and agreed upon his compensation.

Vincent, et al. v. Edmonson County Board of Education, 169 Ky. 34, 183 S. W. 232. The authority to select schoolhouse sites rests solely in the county board of education; its actions in that respect will not be disturbed by the courts unless it is made to appear that the board has, in the selection of the site, abused sound discretion.

Spradlin v. Floyd County Board of Education, 162 Ky. 677. The control and disposition of school funds by the board of education when they act within the scope of the statute is entirely in their discretion, and citizens cannot maintain suits to have the money expended in certain ways or on certain buildings.

Vaughan v. Hindman, 145 Ky. 507, 140 S. W. 641. A teacher had a contract with a board of trustees to teach a public school for a term of six months; the school building was destroyed by fire before expiration of the six months and no other building was provided. The teacher had no right of recovery for the salary for the remainder of the term.

Davis, et al. v. Harris, et al., 140 Ky. 520, 131 S. W. 272. See also, Vaughan v. Hindman, 145 Ky. 507, 14 S. W. 641; Educational Division v. Butler, 155 Ky. 164, 159 S. W. 679; Campbell v. Owens, 150 Ky. 686, 150 S. W. 844. The board can only employ teachers at a regular or call meeting, when a quorum is present in person, and a majority of the board must vote for the teacher who is employed.

Fiscal Court of Logan County v. Board of Education of Logan County, 138 Ky. 98. The county board of education may expend the school funds in its discretion for educational needs of the county and courts will not interfere so long as the discretion is not abused or unreasonably exercised.

Board of Education v. Booth, 110 Ky. 807, 62 S. W. 872. Pupils may be expelled for violation of rules of school and courts will not interfere with or control the action of trustees unless they acted arbitrarily or maliciously.

Sec. 4399-20a, Ky. Stat. **Insurance Against Negligence of Bus Drivers.**—Each board of education shall have power and authority to set aside funds to provide for liability and indemnity insurance against the negligence of the drivers or operators of school busses owned or operated by the board. The indemnity bond or insurance policy shall be issued by some surety or insurance company or other insurance carrier duly authorized to transact business as such within this Commonwealth, and shall bind the surety, insurance company, or insurance carrier to pay any final judgment or

judgments rendered against the insured or policy holder arising out of the death or injury to any school child or school children, for loss or damage to property of any such school children, or death or injury to any person or persons. (1940, c. 65, p. 295.)

Sec. 4399-20b, Ky. Stat. **Insurance Provision in Transportation Contract.**—If the transportation of pupils be let out under contract, then such contract shall provide that the contractor shall carry indemnity or liability insurance against negligence in such an amount as the board of education may require and designate, said indemnity bond or insurance to be provided by a duly authorized surety or insurance company or other insurance carrier as set out in the foregoing paragraph. (1940, c. 65, p. 295.)

Sec. 4399-21, Ky. Stat. **Power to Purchase and Condemn Real Estate.**—Each board of education shall have the power, when unable to contract with the owner of any real estate necessary to the proper accomplishment of the purpose for which such board is created, to institute condemnation proceedings in accordance with the law governing railroad corporations operated or incorporated under the existing laws of this Commonwealth, under laws which may hereafter be enacted; and to have in such proceedings the same rights, powers, privileges, and restrictions as are now granted to or conferred upon such railroad corporations. (1934, c. 65, p. 245.)

Gadberry v. County Board of Education of Russell County, et al., 209 Ky. 114. The provisions in this statute in respect to the time of appeal from the selection of a school site by a county board of education is mandatory.

Cunningham v. Shelby County Board of Education, 202 Ky. 763. After the selection of a site the court will not disturb the county board's selection simply because it is not in the exact center of the district.

Bells' Committee v. Board of Education of Harrodsburg, 192 Ky. 700, 234 S. W. 311. A board in condemning land is not limited to an acre nor to land on which there is no residence, garden, orchard, or burying ground. In estimating damages enhancement of the remainder of the land from condemnation for school purposes must be excluded from the estimate of value, both before and after condemnation.

Sec. 4399-22, Ky. Stat. **Qualifications of Board Members.**—A person to be eligible to membership on a board of education must have attained the age of twenty-four years, must have been a citizen of the Commonwealth of Kentucky for at least three years preceding his election and must be a voter of the district for which he is elected. He must have completed at least the eighth grade in the common schools as shown (a) by the records of the school in which said eighth grade was completed; or (b) by affidavits of the teacher or teachers under whom the work was completed; or (c) by an examination to be held under such rules and regulations as may be adopted by the State Board of Education for holding such an examination. He must not hold or discharge the duties of any civil or political office, deputyship, or agency under the city or county of his

residence. A board member shall be eligible for reelection unless he becomes disqualified as herein provided.

No member of a board of education shall vote regarding the appointment or employment in any capacity of any person related to such member as father, mother, brother, sister, husband, wife, son, daughter, nephew, niece, aunt, uncle, son-in-law, daughter-in-law, or first cousin, and the majority vote of the remainder of the board shall be required in case of appointment or employment of such person.

No person shall be eligible to this office who at the time of his election, is directly, or indirectly interested in the sale to the board of books, stationery, or any other property, materials, supplies, equipment, or services for which school funds are expended. If, at any time after the election of any member of such board, he shall become interested in any such contract with or claims against the board, or if he shall after election become a candidate for any office or agency for the nomination thereto, the holding and the discharging of the duties of which would have rendered him ineligible before election, or if he shall move his residence from the district for which he was chosen or if he shall do or incur anything which would have rendered him ineligible for reelection, his office shall without further action be vacant, and it shall be filled as hereinafter provided.

No person shall be eligible to serve as a member of a board of education who has been removed from membership on a board of education for cause. (1938, c. 4, p. 134, Sec. 1; 1934, c. 65, Art. V, Sec. 17.)

Commonwealth v. Begley, 273 Ky. 636. A person holding a contract to teach in the district at the time of his election is disqualified thereby to hold office as a member of the board of education. Attorney General may determine whether an emergency exists as to employment of counsel when he gives permission to bring suit in his name. (May 20, 1938.)

Commonwealth, by Meredith, Atty. Gen. v. Moye, et al., 273 Ky. 384. Affidavit of substitute teacher and testimony of fellow students that member had completed the eighth grade not sufficient and could not be considered. (May 3, 1938.)

Commonwealth v. Norfleet, 272 Ky. 800, 115 S. W. (2d) 353. Provisions of this section for the educational qualifications of county boards of education held mandatory. Evidence held to fail to show the qualification of members as so required. (May 12, 1938.)

Bert Whittaker and Orville T. Wilson v. Commonwealth of Kentucky, 272 Ky. 794. Bert Whittaker filed an affidavit of his teacher. This affidavit stated that the teacher does not have the records of the school and cannot state from memory what grade he was in but that he passed and completed to the best of her knowledge whatever grade he was taking each of the two years she taught in the Burnside school. He also filed affidavits of persons who went to school with him which stated that they were in the eighth grade with Whittaker.

In passing on this information the court said, as in the case of Commonwealth of Kentucky v. Norfleet, that it is ". . . mandatorily required that such qualification must be manifested by (a) the record of the school in which the eighth grade was completed, or (b) the affidavit of the teacher or teachers who taught the pupil through the eighth grade." The court further said that since he failed to meet all of the requirements of (a) and (b) above cited, and failed to take advantage of (c), which provides for an examination, he was not qualified to serve.

In the case of Wilson, the court held that because of the fact that he was employed as a teacher in the common schools when he was elected, he violated section 4399-22, Kentucky Statutes, and was, therefore, not eligible to serve as a member of the board of education. (May 12, 1938.)

Commonwealth v. Griffen, 268 Ky. 830, 105 S. W. (2d) 1063. Former teacher of candidate for board of education testified that said candidate had been his pupil and had completed the eighth grade as "he was entitled to a diploma as having completed the work if I had the right to give it." Held this was sufficient evidence of the educational qualification required of such candidate.

Polley v. Fortenberry, et al., 268 Ky. 369. Constitution nor statutes prohibit holding two state offices or employment at same time. Office of member of county board of education is not incompatible with maintenance supervisor of roads. (May 4, 1937.)

Commonwealth ex rel. Vincent, Atty. Gen. v. Withers, 266 Ky. 29, 98 S. W. (2d) 24. Evidence held to fail to establish that member of county board had forfeited his office by being interested in contracts with the board. Nature of disqualifying interest to cause vacation of office discussed. (Nov. 4, 1936.)

Hall v. Boyd County Board of Education, et al., 265 Ky. 500. Member of a board of education may refuse to vote for a teacher related to another member as prohibited by law even though recommended by superintendent and otherwise qualified or else statute requiring unanimous vote of the remainder of the board would be made ineffective. (October 9, 1936.)

Sec. 4399-23, Ky. Stat. **Oath of Office.**—Any person elected to membership on a board of education shall, before assuming the duties of his office, qualify by taking the following oath, in addition to the constitutional oath. Such oath shall be kept on record by such board.

"State of Kentucky

"County of ....., ...being duly sworn, says that he is eligible under the law to serve as a member of the board of education, and that he will not, while serving as a member of such board, become interested, directly or indirectly, in any contract with or claim against said board, and that he will not be influenced during his term of office by any consideration except that of merit or fitness in the appointment of officers or engagement of employees, and that he will support the Constitution of the United States and of this State, and faithfully perform the duties of his office.

"....."

"Sworn to and subscribed before me this.....day of .....

"....."

(1934, c. 65, p. 246.)

Commonwealth ex rel. Vincent, Atty. General. v. Withers, 266 Ky. 29. If interest in property of a board member is such that there is a mere possibility for gain it does not disqualify. If interest is so remote that it cannot reasonably be calculated to affect judgment law is not violated. (November 4, 1936.)

Sec. 4399-24, Ky. Stat. **Manner of Election of School Board Members.**—School board members shall be elected for a term of four years. In independent school districts, the members shall be elected from the district at large; in county school districts, members shall be elected from divisions.

The board of education of each county school district in the State shall, not later than July 1, 1940, divide their respective county school districts into five divisions as nearly equal in population and containing integral voting precincts in so far as is practicable.

In making the first division into districts the board shall, if more than one of its members reside in one division, determine by lot which members from that division shall represent that division, and which members shall represent the divisions in which no member resides. The members so determined to represent divisions in which no member resides shall be considered the members from those divisions until their terms expire, and thereafter the members from those divisions shall be nominated and elected as provided in sections 4399-25 and 4399-27.

When it is made necessary by changes in precinct boundaries or shifts in population, the county board of education may alter the boundary of the educational divisions in order to equalize the population of the divisions or to make them conform to precincts but no change shall be made in the boundaries of the divisions within six months prior to the day in which a member of the school board is to be elected from the division. A record of the boundaries of each division and any changes which may be made in the division line shall be kept in the office of the county board of education, and shall be published by the county board of education in a newspaper of general circulation.

Any citizen in the district may prosecute an appeal from the action of the board in making a division line or a change thereof to the county court and from the county court to the circuit court of the county in which the district is located. The procedure on appeal shall be the same as in other civil cases. (1940, c. 71, p. 304.)

Sec. 4399-25, Ky. Stat. **Election by Secret Ballot; Nominating Petitions; Ballots; General Election Laws Applicable; Procedure.**—All elections for members of boards of education shall be by secret ballot. The ballot shall be on a separate sheet from all other ballots used in any election. The county clerk shall cause to be printed on the ballot the names of legally eligible candidates in whose behalf he is petitioned to do so in writing, by not less than fifty legal voters of the county school district division or independent school district as the case may be; provided that in independent school districts embracing cities of the first and second class the number of such petitioners shall not be less than one hundred. The petitions must be filed in the office of the county clerk not more than sixty and not less than fifteen days before the day of election, and

each petition must be signed by the requisite number of qualified persons, and shall show the district or the division of the county district, as the case may be, and the place of residence of each person signing it. In county school district divisions no person shall sign more than one petition, and in independent school districts not more petitions than the number of offices to be filled.

The ballot shall be in the form prescribed for ballots by the general election law, except that no party emblems or other emblem or distinguishing mark shall be placed upon the ballot, save the words "School Ballot" at the head thereof; and that the name of all candidates for membership on the board of education shall be printed on the first fifty ballots in a single column in the order of the petitions are filed. On each of the succeeding fifty ballots the names shall be printed in the same order, save that the last name on the preceding fifty ballots shall be shifted to the first place; and so on thereafter throughout, a like change being made in the printed order of names for every fifty ballots; and such ballots shall be so bound that in the book of ballots for each voting precinct each candidate's name will appear first on approximately the same number of ballots as that of every other candidate. As many additional lines shall be left blank as there are members to be elected from the district or division as the case may be.

The general election laws shall apply to all school elections. The sheriff of each county in which a school district is situated shall provide for each precinct in the district a separate box for the reception of ballots used in the election of members of the board of education. The judge of election of the opposite political party to the clerk of election in each precinct shall issue the school ballots in the same manner as other ballots are issued by the clerk of election, by writing the name and residence of the voter upon the primary stub and his registered number, in districts where registration is required by law, upon the secondary stub of the school ballot, and by observing, as to these ballots, such other regulations for the issue and deposit of ballots as may be prescribed for elections generally.

An election officer or other person within the election booth telling or indicating to a voter the political affiliation of any candidate shall be punished by fine not exceeding two hundred dollars.

The expense of the election shall be paid by the fiscal court out of the general funds of the county in all school districts except those embracing cities of the first five classes; in such case, the expense of the election shall be paid by the city from its general funds. (1940, c. 71, p. 304.)

Sec. 4399-26, Ky. Stat. **Number of Candidates to be Voted For. In County School Districts,** the names of the candidates shall be arranged on the ballot in accordance with the petitions filed with the county clerk. The voting in each case shall be by districts. Each voter shall be issued a school ballot and shall have the privilege of voting for only one candidate by making a cross in the square opposite the name of the candidate for whom he wishes to vote. The legally eligible candidate receiving the highest number of votes cast in his district shall be declared elected.

In independent school districts each voter may vote for as many candidates as there are members to be elected by making a cross in the square opposite the name of each candidate for whom he wishes to vote, and the ballot shall show the number of board members to be elected. The candidates, in number equal to the number of members to be chosen, who have the highest number of votes shall be declared elected. (1940, c. 71, p. 304.)

Note.—School elections do not come within and are not controlled by the provisions of sections 145 to and including 154 of the Constitution. (See section 155 of the Constitution of Kentucky.)

Huff, et al. v. Black, et al., 259 Ky. 550. Person whose name was written on the ballot entitled to contest in election even though not on a petition. Signatures on first petition not invalidated because later signed another petition. (May 14, 1935.)

Horn v. Wells, 253 Ky. 494. Unsuccessful candidate held entitled to contest election on ground prevailing candidate violated Corrupt Practice Act, though successful contest would not give contestant office. (May 10, 1934.)

Howard v. Whittaker, 250 Ky. 836. Evidence established that bribery was committed in interest of candidate for county board of education with candidate's knowledge. (1565b-1 et seq.)

Candidate's knowledge of violation of Corrupt Practice Act may be established by showing he committed, consented to, or authorized others to commit, or personally observed commission of, prohibited acts or by circumstances surrounding candidate and his workers during preparation for election and on day thereof.

Large plurality received by candidate held not to entitle him to office where violation of Corrupt Practice Act was shown. (October 24, 1933.)

Caudill v. Stidham, 246 Ky. 174. Election commission held authorized to dissolve tie between candidates for election as member of county board of education by lot and issue certificate of election to winner thereby determined.

Election of member of county board of education must be held void and vacancy declared where vote of one precinct in which over 20 per cent of votes cast were illegal, exceeded such percentage of total vote. (November 25, 1932.)

Sec. 4399-27, Ky. Stat. **Time of Election.**—Except as hereinafter provided, all elections for membership on boards of education shall be in even numbered years, for a term of four years. In independent districts embracing cities of the first class and those of the fourth class which have been holding school board elections in even numbered years prior to the passage of this act, three board members shall be elected at the regular election in November, 1934, and two at the regular November election in 1936. In independent districts embracing cities of the second class there shall be elected two board members at the regular election in November, 1934, and three members at the regular election in November, 1936 At each regular November election in even numbered years thereafter there shall be held

an election in such independent districts to fill the membership of boards of education of such districts for the terms which will expire the first Monday in January following, and the regularly elected members shall hold office for four years and until their successors are duly elected and qualified.

In all school districts in which board members have been elected at the regular November election in odd numbered years prior to the passage of this act, there shall be elected two board members at the regular November election in 1935, who shall serve for three years and until their successors are duly elected and qualified, and in such districts there shall be elected three members at the regular November election in 1937 to serve for three years and until their successors are duly elected and qualified. Thereafter all elections in such districts shall be held at the regular November election in even numbered years to fill the membership of such boards of education for the terms which will expire the first Monday in January following, and the regularly elected members shall hold office for four years and until their successors are duly elected and qualified.

In all other districts there shall be five members elected at the regular November election in 1934. The members so elected shall draw lots to determine which three shall serve for four years and which two shall serve for two years. At each regular November election in even numbered years thereafter, there shall be held an election in such districts to fill the membership of boards of education for the terms which will expire on the first Monday in January following, and the regularly elected members shall hold office for four years and until their succcessors are duly elected and qualified; provided that any independent school district embracing a city of the fifth class may, at the discretion of its board of education, hold its election of board members at its public school building on the first Saturday in May, the election to be held by three officers appointed by said board of education and the expenses of such district election to be paid from the treasury of such school district, and in all other respects the provisions of this act relating to holding elections for board members shall apply. (1934, c. 65, p. 249.)

Brown v. Rose, 233 Ky. 549. Directions to General Assembly given by Constitution, section 236, to prescribe time when general officers authorized and directed by Constitution to be elected or appointed shall enter upon duties where time is not fixed by Constitution held to have no application to membership on county board of education which is not constitutional office. It is general rule that one elected to office to fill a vacancy must qualify within reasonable time after he has received certificate of election to office. (March 25, 1930.)

Ridings v. Jones, 213 Ky. 810. The provisions in the Corrupt Practice Act, sections 1565b-1, to 1565b-18, inclusive, providing for the filing of a pre-election expense account is mandatory, but directory only as to the time of filing, the prevailing candidate for county board of education failing to file a pre-election account, as required by this act, cannot be declared a duly elected officer, nor can his contestant be declared elected, but the election must be declared void. (March 26, 1926.)

Sec. 4399-29, Ky. Stat. **Number of Meetings and Attendance at Meetings.**—Each board of education shall hold at least one regular meeting each month. Special meetings may be called by the chairman. On request of three members of the board, the secretary shall call a special meeting of the board of education. Each member of the board shall have due and timely notice of such meetings and the nature, object, and purpose for which called.

A majority of the board shall constitute a quorum for the transaction of business. It shall be the duty of the secretary to be present at the meetings of the board and to record in a book, to be provided for the purpose, all its official proceedings, which shall be a public record open to inspection.

Any board member failing to attend three consecutive regular meetings, unless excused by the board for reason satisfactory to it, shall be deemed to have vacated his office of board member. (1934, c. 65, p. 251.)

Baisden v. Floyd County Board of Education, et al., 270 Ky. 839. Where member of county board was absent from one meeting and was absent from the next two meetings, although he made trips to town for purposes of attending meetings because of board's failure to inform him of change in time of holding meetings board's removal of such member was arbitrary and improper. (November 12, 1937.)

Brown v. Turman, 264 Ky. 407. All members must have legal notice of meeting of board of education. Electing superintendent under conditions cited in this case held illegal. (May 19, 1936.)

Board of Education of Wurtland Independent School District, et al. v. Stevens, et al., 261 Ky. 475. Office of member missing three consecutive meetings not vacant unless action of board so declares. Boards of education had authority to merge districts. (November 26, 1935.)

Sec. 4399-30, Ky. Stat. **Vacancies; How Filled.**—Any vacancy in any board of education, from whatever cause occurring, shall be filled for the unexpired term by the other members of the board within 90 days after such vacancy occurs, and in case the vacancy is not filled by the other members of the board within said 90-day period, it shall be filled by the State Board of Education within 30 days after information has been filed by any citizen of the district that such vacancy has existed for more than 90 days. The member so chosen shall hold office for the unexpired term and until his successor is elected and qualified. (1934, c. 65, p. 252.)

McClendon, et al. v. Hamilton; Acton v. Jasper, et al., 277 Ky. 734. In the absence of statutory authority to the contrary, a judgment in quo warranto proceeding cannot be suspended pending final appeal. Offices of board members became vacant January 29, 1938, when circuit court rendered judgment. (May 2, 1939.)

Spurlock, et al. v. Spradlin, et al., 266 Ky. 164. Failure to attend three successive meetings constitutes no vacancy until board takes action on such failure. (November 13, 1936.)

Barton, et al. v. Brafford, et al., 264 Ky. 480. By authority of section 4399-30 empowering "other members" to fill vacancies one member may fill a vacancy when four others have been removed, etc. (May 26, 1936.)

Board of Trustees of Salt Lick Graded Common School District, et al. v. Kercheval, et al., 242 Ky. 1. Remaining members of board cannot fill a vacancy if there does not exist a quorum. Where a deadlock exists, the Governor may, after reasonable time, exercise power of appointment. (August 19, 1931.)

Middleton v. Middleton, et al., 239 Ky. 759. (Evarts G. S. Dist., Harlan County.) School trustees may perform only duties enumerated in statute. Constitution and statute held intended to prohibit same person from filling two offices at the same time. Office of school trustee is "state office" and office of city councilman or town trustee is "municipal office" and are incompatible. (June 4, 1931.)

Sec. 4399-31, Ky. Stat. **Exempt from Jury Duty and Service as Election Officer.**—All board members shall be exempt from jury duty and from service as election officer during their term of office. (1934, c. 65, p. 252.)

Sec. 4399-32, Ky. Stat. **Expenses of Board Members for Attending Meetings.**—Members of boards of education shall receive no salaries, but members of county boards of education may receive a per diem of five dollars ($5.00) for each regular or special meeting attended and actual expenses for attending meetings, and may be reimbursed for other actual and necessary expenditures incurred in the district in the performance of their duties authorized by the board but in no case shall such expense or per diem of any member exceed one hundred dollars ($100.00) per year. All claims shall be made out according to law and filed with the Secretary of the board and shall be approved and paid as other claims against the board. (1938, c. 11, p. 151.)

Sec. 4399-33, Ky. Stat. **Rules and By-Laws for Government of Schools.**—All rules and by-laws heretofore made by boards of education, trustees, or controlling officers of school districts shall continue in force in so far as they are consistent with this act until altered or repealed by a board of education. Within sixty days after this act goes into effect each board of education which has not already done so shall meet and adopt a body of rules, regulations, and by-laws for its meetings and proceedings; for the government, regulation, and management of the schools and school property; and for the qualification and employment of teachers and the management of pupils. Such rules, regulations, and by-laws may be changed, altered, or set aside only upon an affirmative vote of three members of a board of education. (1934, c. 65, p. 253.)

Montgomery County Board of Education, et al. v. Messer, 257 Ky. 836. (1) Board of education may establish qualifications higher than the minimum required by the statutes. (2) The board may require transcript of college work filed before application of the teacher is placed before the board. (3) Board may require sixty-four semester hours' college training of teachers under its order except those who taught in the county the preceding year. (January 22, 1935.)

Sec. 4399-34, Ky. Stat. **Appointment of Superintendent.**—Each board of education shall appoint a superintendent of schools whose term of office shall begin on July 1, following his appointment, and said appointment may be for a term of one, two, three, or four years. In the case of a vacancy in the office for an unexpired term, the

appointment shall be made so the term will end on June 30. Before any superintendent assumes his duties he shall present to the board of education which elected him a statement signed by the Superintendent of Public Instruction that he has been duly issued a certificate of administration and supervision, issued in accordance with the provisions of law and which qualifies him to hold the position to which he has been elected, and he shall hold such certificate throughout the period of his employment; provided any superintendent in office when this act goes into effect who holds a valid certificate of administration and supervision, issued upon a minimum of two years of standard college work, may be elected to succeed himself for a period not to exceed four years. A superintendent of schools may be removed by a vote of four members of a board of education for cause; provided that written notice setting out the charges for removal must be spread on the minutes of the board and given the superintendent fifteen days before action is taken on his removal.

The superintendent shall be the executive agent of the board which appoints him and shall meet with the board except when his own tenure, salary, or the administration of his office is under consideration. His salary shall be determined by the board and shall be paid in monthly installments, but it shall not be less than twelve hundred dollars ($1,200) per year.

As executive officer of the board, the superintendent shall see that the laws relating to the schools, the by-laws, rules and regulations of the State Board of Education, and the regulations and policies of the district board of education are carried into effect. He shall have the right to administer the oath required by the board of education to any teacher or other person. He shall be the professional adviser of the board in all matters, except as hereinafter provided in independent districts embracing cities of the first and second classes; and under the direction of the board shall prepare all rules, regulations, by-laws, and statements of policy, specific and general, for the board for its approval and adoption. The superintendent of schools shall have general supervision, subject to the control of the board of education, of the general conduct of the schools, the course of instruction, the management of teachers, the discipline of pupils, and the management of business affairs, except as hereinafter provided in independent districts embracing cities of the first and second classes.

The board of education may, on the nomination of the superintendent of schools, appoint as many assistant superintendents as

it deems necessary, whose compensation shall be fixed by the board and who may be removed for cause by the superintendent, with the approval of three members of the board of education. Except as provided under article V, section 6½ (now 4399-7) of this Act, all appointments, promotions, transfers, and dismissals of principals, supervisors, teachers, and other public school employees shall be made only upon the recommendation of the superintendent of schools, subject to the approval of the board, except as hereinafter provided in independent districts embracing cities of the first and second classes; provided that supervisors, principals, and teachers shall not be employed for a period longer than one year. In the event the board of education cannot agree with the superintendent as to any certificated person recommended by such superintendent, such board of education may appeal to the State Board of Education to review the case and the decision of the State Board of Education shall be final. The superintendent shall have the power to suspend any teacher or other employee for cause deemed by him sufficient, and the board of education shall take such action upon the restoration or removal of such person as it may deem proper. All employees of the board shall have such qualifications as may be prescribed by law and by the regulations of the State Board of Education and/or of the employing board. Supervisors, principals, teachers, and other employees may be appointed by the board of education for any school year at any time after the first day of April next preceding the beginning of the school year.

The superintendent of schools shall devote himself exclusively to his duties and shall have power to appoint necessary clerks, whose number and salaries shall be determined by the board, and he shall have the power to remove same. He shall exercise general supervision of the schools of his district, examine their condition and progress, and shall keep himself informed of the progress in other districts. He shall prepare or have prepared all budgets, salary schedules, and other reports required of his board by the State Board of Education. He shall advise himself of the need of extension of the school system of the district, shall receive and examine reports from teachers and other school officers, and shall make reports from time to time as may be required by the rules of his board or as he may be directed to do by the board, and he shall be responsible to the board for the general conditions of the schools.

Any outgoing superintendent shall make all reports required by law to date of his retirement and shall have information assembled to date of his retirement for any other reports to be made by

the incoming superintendent before the last month's salary of the outgoing superintendent is paid. Failure to comply with the provisions of this section shall be grounds for the revocation of the superintendent's certificate. Any superintendent who is guilty of a violation of this section shall be fined not less than one hundred dollars ($100) nor more than one thousand ($1,000) for each offense. (1934, c. 65, p. 253.)

Starns v. Board of Education of Bourbon County, 280 Ky. 747. Board did abuse its authority of law by dismissing the superintendent of schools. (Dec. 8, 1939.)

Coleman, et al. v. Board of Education of Pike County, et al., 277 Ky. 588. Where person recommend as primary teacher appeared at hearing before county board on charges preferred against him and refused to deny the most far-reaching charges, board was justified in rejecting recommendation. (March 24, 1939.)

Maynard v. Allen, et al., 276 Ky. 485. A superintendent may be appointed before the first day of April in the year in which his term begins, provided the appointment is made by the same board authorized to act when the vacancy actually occurs and by members whose term extend beyond the date when term of appointed office begins. (January 24, 1939.)

Knuckles v. Board of Education of Bell County, 272 Ky. 436. Position of superintendent or assistant superintendent is incompatible with that of teacher in the public schools. (April 21, 1938.)

Whitley County Board of Education v. Rose, 267 Ky. 283. Salary and expense of superintendent of schools could not be reduced during term of office under Kentucky Statutes 1930. Successor could serve only remainder of the term. (February 16, 1937.)

Hunter, et al. v. Board of Education of Floyd County, 265 Ky. 162. Court not authorized to substitute its judgment for that of board and the variety of evidence and facts it considered. Information furnished does not show that the board of education acted arbitrarily or without creditable, competent and relevant evidence. Held that board acted within its discretion in removing him from office. (June 23, 1936.)

J. W. Smith v. Board of Education of Ludlow, et al., 264 Ky. 150. Held that facts in the case did not warrant conclusion that the charges or evidence was sufficient to remove appellant superintendent from his office. In quoting from 22 R. C. L., page 571, section 822, the court held that the word "cause" in the statutes authorizing the removal of the officers for cause means legal cause and not any cause which the board authorized to make such removal may deem sufficient. Where an officer holds for a fixed term and is removable for cause only, it is essential to a valid removal that the charges be legally sufficient. (February 25, 1936.)

Board of Trustees of Fairview Graded Common School District, et al. v. Renfro, 259 Ky. 644. Principal of a school a state employee and not disqualified to be employed by trustees even though he was a member of the General Assembly. (May 28, 1935.)

Conley v. Carty, Superintendent of Schools, et al., 251 Ky. 375. County superintendent recommends all teachers in schools where high schools are located. (November 21, 1933.)

Stith, et al. v. Powell, County Superintendent of Schools, et al., 251 Ky. 155. County board of education cannot reject nominations made by county superintendent of school for principals, assistant principals and teachers for county consolidated and high schools, except for lack of moral and educational qualifications, as to which board has discretion in determining fitness. Order requiring county board to elect principal and teachers nominated by county superintendent held proper, where nominees were morally and educationally qualified.

County superintendent could withdraw nomination at meeting of county board where nomination was considered.

Election of principal by county board after county superintendent notified board at its meeting that he withdrew nomination held void, though information of withdrawal was received by board not in accordance with parliamentary rules. (Sections 4399a-7, 4399a-11.) (November 3, 1933.)

Bell County Board of Education v. Howard, 248 Ky. 766. Superintendent of schools held entitled to mandamus to recover salary for period preceding removal from office. Evidence was presumed sufficient to support judgment for plaintiff, notwithstanding traverse in answer, where evidence was not presented on appeal and judgment recited that facts were shown by statement of counsel and reading of records of board of education.

Admission made to court by attorney relative to issues are binding on client (April 28, 1933.)

Howard v. Bell County Board of Education, 247 Ky. 586. Where county board removed county school superintendent, courts will not retry case, but will examine record to ascertain abuse of discretion.

That removed county superintendent was so busy with other activities in advancement of public school interest, he had no time to comply with statute and failed to establish a defense, held no excuse. (January 27, 1933.)

Rynerson v. Mercer County Board of Education, et al., 244 Ky. 292. Only principals and teachers nominated by county superintendent can be elected for high schools by county board of education. (Secs. 4399a-7, 4399a-11, 4526b-3.) (May 27, 1932.)

Board of Education for Logan County, et al. v. Akers, et al., 243 Ky. 177. County board cannot reject a teacher because she has no certificate when selected where certificate was received before commencement of school year.

Board cannot adopt rules precluding teacher from securing a position because of active support of candidate for office of subdistrict trustee. (March 25, 1932.)

Floyd County Board of Education, et al. v. Hall, et al., 242 Ky. 680. County board of education without authority to choose a principal of a school without his first being nominated by county superintendent. (March 8, 1933.)

Commonwealth ex rel Baxter, Commonwealth's Attorney v. Burnett, 237 Ky. 473. County superintendent not county officer and, therefore, cannot be proceeded against by Commonwealth's Attorney. (Feb. 17, 1931.)

Gover v. Stovall, et al., 237 Ky. 172. 1. Written contract required of teachers. 2. Define misconduct for which teacher may be dismissed. (Jan. 30, 1931.)

Board of Education of Boyle County, et al. v. McChesney, 235 Ky. 692. Power of board to remove county superintendent limited to removal for cause after proper notice and compliance with due process. County superintendent held "public officer" and not mere employee of board to serve at its pleasure. (October 21, 1930.)

Abrams v. Jackson County Board of Education, 230 Ky. 151. Under contract for employment of school teacher for seven months, it was duty of school board to furnish house in which to teach and in absence of stipulation in contract for cessation of teacher's salary during such period. Failure of board to furnish a suitable house in which to teach constituted a breach of contract. School teacher held not entitled to recover for breach of employment contract to teach school for seven months on destruction of school building by fire, in absence of evidence showing that she attempted to find similar employment in locality. (June 21, 1929.)

Rice v. Gilliam, 226 Ky. 613. County board of education under mandatory duty to elect teacher nominated by subdistrict trustee where he was qualified at time of meeting at which selection of teachers was to be made, though he had no teacher's certificate at time he was nominated. (Nov. 30, 1928.)

Lovelace v. Steinbeck, 225 Ky. 669. County board must elect teacher, if she is qualified when election takes place. She must take responsibility of being qualified when school begins.

Subdistrict trustee having recommended teacher who possessed necessary qualifications, it was duty of county board of education to elect her, as against one whose application did not bear indorsement of subdistrict trustee. (October 5, 1928.)

Preston v. Board of Education Colored Graded School District of Princeton, 216 Ky. 525. Evidence held to support verdict for defendant school board in superintendent's action for salary for months in which school was not in session. (November 12, 1926.)

Hale, et al. v. County Board of Education, 213 Ky. 366. Where the county board of education has converted a common school into a high school, it is authorized under section 4526b-3, to employ teachers of both high school and common school branches, without recommendation of district trustees. Section 4399a-7, providing for recommendations of district trustees in the employment of teachers applies only to common schools and has no reference to 4526b-1, et seq. (March 2, 1926.)

Graham v. Jewell, et al., 204 Ky. 260. "Incompetency and immoral conduct as ground for removal of school superintendent have no technical meaning." (July 1, 1924.)

Moss, et al. v. Eubank, et al., 176 Ky. 739. If a school has been designated and created by the county board of education as a high school, the authority for the employment of teachers in the entire school is with the county board of education, and the trustee of the district in which the high school is created has no authority to appoint or designate teachers in the school, not even for the branches taught in the common school before it was designated as a high school.

Sec. 4399-35, Ky. Stat. **Expenses of Superintendent.**—A board of education shall have power to pay the necessary expenses of its superintendent and/or other employees when such expenses are incurred on order of the board of education. (1934, c. 65, p. 256.)

Sec. 4399-36, Ky. Stat. **Superintendents Shall Not Buy Teachers' Claims.**—No superintendent shall be allowed to buy for himself or for another any teacher's claim, neither shall he be interested, directly or indirectly, in such claim, nor shall he act as an agent for any textbook company. Any superintendent who is guilty of a violation of this section shall be fined not less than one hundred

dollars ($100) nor more than one thousand dollars ($1,000) for each offense. (1934, c. 65, p. 257.)

Sec. 4399-37, Ky. Stat. **Business Director.**—Boards of education of independent districts embracing cities of the first and second classes may appoint a business director whose term of office shall begin July 1 following his appointment. Said business director may, at the discretion of the board, be directly responsible to the board of education or he may be recommended by the superintendent of schools and serve as an assisant superintendent of schools in charge of business affairs, responsible directly to the superintendent of schools, as are principals, teachers, and other professional employees. He may be appointed for a term of one, two, three, or four years. In the case of a vacancy in the office for an unexpired term, the appointment shall be made so the term will end on June 30. He may be removed for cause by a vote of three members of the board. His qualifications and salary shall be determined by the board. He shall qualify by taking the oath prescribed by law unless he is designated as an assistant to the superintendent of schools. He shall execute for the board, in the name of the board, its contract and obligations and shall see that all contracts made by or with the board are fully and faithfully performed. He shall oversee the construction of buildings in process of erection and the repairs of buildings owned or controlled by the board. He shall advertise for bids and shall purchase all supplies and equipment authorized by the board and shall be deemed the business manager of the board. He shall devote his entire time to the duties of his office and may, in the discretion of the board of education, be required to execute such bond as it deems necessary and satisfactory. In case the bond executed is guaranteed by a bonding company, the board shall pay the premium on same. He shall make such reports as required by the rules, regulations, and by-laws of the board and such special reports as the board may require of him, and he shall furnish the superintendent of schools such information as the superintendent may need in making reports to the State Board of Education or the Superintendent of Public Instruction. The business director shall appoint, subject to the approval of the board of education, engineers, janitors, and such other custodial employees as may be necessary for the proper management of the board's school properties. The board shall fix the salary for such employees. Said appointees shall be under the direction of the business manager, and he shall be responsible for their work. Such employees may be removed by the business man-

ager, subject to the approval of the board of education. The board of education may prescribe such requirements as it deems necessary for the positions of engineers, janitors, and other custodial employees consistent with the general school laws and with the rules and regulations of the State Board of Education; provided that if said business director is made assistant superintendent of schools in charge of business affairs he shall perform all above mentioned duties only with the approval and under the direction of the superintendent of schools. (1934, c. 65, p. 257.)

Sec. 4399-38, Ky. Stat. **Secretary of the Board.**—Each board of education shall appoint a secretary for a term of one, two, three, or four years, and who shall not be a member of the board of education, but the superintendent may serve as the secretary of the board. A board of education of an independent school district, embracing a city of the first or second class, which appoints a business manager or assistant superintendent of schools in charge of business affairs may designate this officer as secretary. The board may fix a reasonable salary for the secretary. The secretary shall keep the records of the board and perform such other duties as may be imposed upon him by such board. All orders of the board must be signed by the secretary and countersigned by the chairman of the board. The secretary shall be custodian of all securities, documents, title papers, and other papers of the board under such conditions as the board may direct; provided that all records of the board shall be made available to the superintendent of schools by the secretary at any time, and the secretary, when other than the superintendent, shall furnish the superintendent of schools such information as is revealed by his records at any time upon the request of the superintendent. (1934, c. 65, p. 259.)

Hunter, et al. v. Board of Education of Floyd County, 265 Ky. 162. Court not authorized to substitute its judgment for that of board and the variety of evidence and facts it considered. Information furnished does not show that the board of education acted arbitrarily or without creditable, competent and relevant evidence. Held that board acted within its discretion in removing him from office. (June 23, 1936.)

COLLECTION AND MANAGEMENT OF SCHOOL FUNDS

Sec. 4399-39, Ky. Stat. **Fiscal year.**—The fiscal year for all school districts shall begin July 1 of each year and end on June 30, except in those districts where the law governing the municipality which they embrace provides otherwise. (1934, c. 65, p. 259.)

Duke White, Mayor, et al. v. Board of Education of the City of Maysville, 263 Ky. 1. Held that the city council should make the levy requested by the board of education because it appeared that the board did nothing which would appear to be corrupt or in bad faith in arriving at the amount of money which should be included in its budget. (February 28, 1936.)

Sec. 4399-40, Ky. Stat. **Levy and Collection of Taxes; the Budget.**—All school taxes shall be levied by the fiscal court of each county except in independent school districts embracing cities of the first, second, third, and fourth classes, when the boundary lines of independent districts in such cities are coterminous with the municipal limits of such cities. In such independent districts, the tax shall be levied and collected by the governing body of the city except as hereinafter provided. All school taxes shall be levied on all property subject to local taxation in the jurisdiction of the tax levying authority as herein provided. It shall be the duty of the clerk of each county and the clerk of each city to certify to the school district or districts which the county or city may embrace as the case may be, the total assessed valuation of property in the school district as determined by its tax assessor, subject to taxation under the provisions of this act.

It shall be the duty of each board of education to prepare a school budget, showing the amount of money needed for current expenses, debt service, capital outlay, and other necessary expenses of the schools during the succeeding fiscal year and also the estimated total amount which will be received from the common school fund and the amount that will be needed to be raised by local taxation, including the rate of levy necessary to raise such an amount, which, in no event, shall be less than twenty-five cents (25c) nor more than one dollar and fifty cents ($1.50) annually on each one hundred dollars ($100) of property subject to local taxation; provided that no school district may request a tax levy in excess of the maximum levy now authorized for its particular type of district at the time of the passage of this Act. A copy of said budget shall be filed with the clerk of the tax levying authority of the district, as herein provided on or before March 20, and it shall be the duty of said tax levying authority to make its annual school levy during the month of April unless the tax levying authority of a school district is required by law to make all of its levy, including the school levy at a different time of the year. It shall be the duty of such clerk to present the budget to the proper tax levying authority when said authority convenes to make its school levy. At the same time a copy of the budget is filed with the clerk, a copy shall be filed with the State Board of Education for its approval. It shall be the duty of such tax levying authority to levy the rate specified by the district board of education and approved by the State Board of Education along with such poll tax as the district board of education may request, provided that the poll tax shall not exceed

two dollars ($2) on each male inhabitant within the district over twenty-one years of age; provided further, there shall be no poll tax levied in an independent district embracing a city of the first class; and provided further that the failure of a board of education or a tax levying authority by inadvertence or otherwise to furnish such budget or make the levy within the date prescribed shall not invalidate any levy made thereafter; and provided further that the tax levying authority for an independent district embracing a city of the first class shall determine, within the tax limits set out herein, the rate of the levy which shall be made for school purposes in such district.

It shall also be the duty of each board of education, if so required by the State Board of Education, to prepare and submit to it not later than fifteen days after the state per capita has been officially declared a close estimate or working budget which shall conform to such rules and regulations as may be prescribed by the State Board of Education. The close estimate or working budget shall be consistent in its major divisions with the general budget previously prepared.

The money collected by taxation under the provisions of this act and other school money shall be expended by the board of education in accordance with the recommendations contained in the budget submitted to the tax levying authority as herein provided. One-half of the money raised by the levy under this act shall be used for supplementing teachers' salaries, provided this amount is necessary to pay all teachers the minimum salary provided herein, and after such minimum has been reached the money raised by such levies may be used as provided in the properly adopted budget; but the amount necessary, as well as the levy necessary, for supplementing teachers' salaries and for other purposes herein set forth, must be itemized in the budget submitted by the board of education to the proper tax levying authority at the time the request for the levy is made.

The tax provided for herein shall be levied and collected in the same manner and at the same time as other local taxes are levied and collected, except as stipulated herein; provided that not more than one per cent (1%) of the school tax so collected may be paid to the tax collector as a fee for collecting same; and provided further that nothing in this act shall be construed to mean that any allowance shall be made for the collection of school taxes to any collecting officer who may continue to collect such taxes which was not allowed him prior to the passage of this act. It

shall be the duty of the tax collector to pay on or before the tenth day of each month to the depository of the district board of education the amount of school tax collected up to and including the last day of the preceding month, and the amount so paid together with the classes of property from which it was received shall be reported in writing to the treasurer of the board, and the report shall be accompanied by a duplicate of the receipt given to the tax collector by the depository for such moneys, and it shall be the duty of the tax collector to make final settlement with the district board of education at the same time he makes final settlement with the local taxing authority to which he is responsible. Blanks for such purposes shall be furnished by the State Board of Education.

The laws applying to penalties on and the collection of delinquent school taxes shall be the same as the general laws applying to penalties on and the collection of delinquent taxes of the taxing districts which embrace the various school districts. The school tax provided for in this section is exclusive of any tax which may be levied for sinking fund purposes. (1934, c. 65, p. 259.)

Ebert v. Board of Education of School District of City of Newport, et al., 277 Ky. 633. In order to establish validity of indebtedness records in office of Superintendent of Public Instruction should show the same situation as record submitted to the court. (March 24, 1939.)

Harris v. Holt, et al., 266 Ky. 576. Taxing district may issue bonds for indebtedness. Legality of debt must be adjudged by court of competent jurisdiction before bonds may be issued. (December 15, 1936.)

Lawson v. Board of Education of Greenup County School District, 265 Ky. 630. Board of education may refund valid debt. (October 16, 1936.)

Duke, White, Mayor, et al. v. Board of Education of the City of Maysville, 263 Ky. 1. Held that the city council should make the levy requested by the board. (February 28, 1936.)

Lee v. Board of Education of Bell County, 261 Ky. 379. Debt which arose from unexpected decrease in value of property of county school district held a valid obligation as regards validity of bonds authorized to fund such obligations. (November 19, 1935.)

Madison County Board of Education v. Madison County Fiscal Court, 249 Ky. 540. Since pleadings do not show that the representative of the board was not authorized to accept a 65c levy instead of 75c, it appears the fiscal court was not authorized to levy 65c, because former decision of Court of Appeals stated county board of education might ask less than 75c if it chooses. (June 2, 1933.)

Trimble County Board of Education, et al. v. Board of Trustees of Milton Graded Common School District, 249 Ky. 211. Tax on privately owned bridge to low water mark due graded school district and due county board of education for that part of bridge between low water mark on Kentucky side to low water mark on the Indiana side of river. (May 16, 1933.)

Newell, et al. v. Cincinniati, N. O. & T. P. Ry. Co., 246 Ky. 628. Fiscal court must make levy recommended in good faith by board of education to produce revenue to cover all legal items. If levy requested by board is insufficient to maintain schools, fiscal court must provide adequate tax. Board's failure to maintain school standards anticipated by law or to properly spend money, could not affect validity of fiscal court's levy of tax. Board of education must comply with statute to compel fiscal court to make levy board regards necessary for school purposes. Maintenance of eight months' term or in alternative shorter term with consent of State Board of Education, held not requisite condition for levying of school tax in excess of fifty cents. (October 11, 1932.)

Madison County Board of Education v. Madison County Fiscal Court, 246 Ky. 201. County board of education is judge of needs of school districts and rate of taxation to be levied to meet board's requirements. Fiscal court must make levy demanded within statutory limits in absence of bad faith or inclusion of illegal items in budget. Where board demands rate patently insufficient to meet budget requirements, fiscal court must make adequate levy within statutory limits. Indebtedness of board caused by fiscal court's failure to fix sufficient rate held legally incurred and properly included in budget for subsequent year. (November 4, 1932.) (See rehearing of June 2, 1933.)

Trustees of Eddyville G. S. District No. 18 v. Cash's Admr., et al., Cash's Admr. v. Commonwealth, for Use and Benefit of Eddyville, Kentucky, Common G. S. Board in Dist. No. 8, et al., 245 Ky. 764. School district tax levies not stating purpose for which made held void. Surety on sheriff's bond held not liable for taxes collected by sheriff on void school district levies. Money collected by sheriff on void school district levies was trust fund for benefit of taxpayers, recoverable if in sheriff's hands, in taxpayer's direct action against sheriff, but not in action by school board. (November 11, 1932.)

Allen County Fiscal Court v. Allen County Board of Education, 242 Ky. 546. Fiscal court must make the tax levy demanded by the county board of education in absence of bad faith or illegal items in the budget. (February 23, 1932.)

Board of Trustees of Hopkinsville Public Schools v. City of Hopkinsville, 241 Ky. 375. City of third class discharged its duty when it made the levy and paid to board of education all money which came into its hands. If collector was lacking in diligence, cause for action was not against city of Hopkinsville. (December 9, 1931.)

Fiscal Court of Pendleton County v. Pendleton County Board of Education, 240 Ky. 589. 1. Fiscal court required to comply with demand of county board in making levy if in accordance with statutes. 2. Action of boards looking toward the merger of school districts with county system held sufficient. Not necessary to state in minutes that merger is because more economic and efficient administration is possible. 3. Validity of indebtedness must be proved as well as alleged. (October 20, 1931.)

Hockensmith v. County Board of Education of Franklin County, 240 Ky. 76. Board of education only an administrative body with no power to levy and collect taxes. Since board of education could have procured levy sufficient to pay indebtedness, it is not authorized to incur an indebtedness where board did not request increased levy. Bond issue to fund floating indebtedness held unauthorized. Ky. Stat. 4399a-8, 4281u-4, Sec. 157 Const. (June 19, 1931.)

McCreary County Fiscal Court v. McCreary County Board of Education, 236 Ky. 149. 1. Board of education presenting budget to fiscal court held equivalent to submission to county clerk, he being ex officio clerk of fiscal court. 2. Where budget showed 75 cents levy was necessary in school district, fiscal court improperly fixed levy at fifty cents, though school could not be maintained in view of revenue for eight months, where state board of education approved shorter term.

County Board of Education of Marshall County v. Fiscal Court of Marshall County, 229 Ky. 774. Fiscal court must levy a tax for school purposes within the limits of law sufficient to take care of the budget submitted by the county board of education, if the budget is fairly made up and contains items allowable under the law.

County Board of Education of Daviess County v. Fiscal Court of Daviess County, 221 Ky. 106. Where legislature, by Acts of 1926, chapter 81, amending Acts of 1920, chapter 36, section 8, raised tax rate which might be imposed by fiscal courts for school purposes from fifty cents to seventy-five cents, chapter 172 relating to administration of school affairs, passed by General Assembly on same day, but signed later, should be construed also as increasing tax rate, where latter chapter dealt with tax rate only incidentally, and omission of reference to increased rate was inadvertent. Fiscal court had no power to revise budget submitted by county board of education on account of item claimed to have been properly included, where board acted in good faith.

Elliott County Fiscal Court v. County Board of Education, 192 Ky. 66. Fiscal courts are required to levy such a rate, within the statutory limit, as will produce the amount requested by the county board of education in its budget. The county board may include any outstanding indebtedness in its budget.

Fiscal Court v. Board of Education, 191 Ky. 263, 230 S. W. 57. Mandamus may issue to compel the calling of a special term of the fiscal court and the making of a levy under this statute.

Sec. 4399-41, Ky. Stat. **Collection of School Taxes.**—School taxes shall be collected by the regular tax collectors for the tax levying authorities which make the school levies for the various school districts, except as provided herein. The bond of the regular tax collector shall be made to cover his duties as the tax collector of the school district or districts for which he collects taxes, and in no event may the fee for the collection of any school taxes exceed a rate of one per cent (1%), and in no event may any fee be charged for collecting or receiving any school taxes or school funds other than those received from the local school levy; provided, however, that an independent school district may select a special tax collector to collect its school taxes, and in such case the special tax collector shall be required to execute bond in the same manner as provided

herein for the execution of a treasurer's bond, and the penal sum of the bond shall be not less than the aggregate of the tax bills that come into the hands of the special tax collector.

It shall be the duty of the clerk to include all school taxes on the regular tax bills furnished the tax collector except in case an independent district has selected a special tax collector, and in such case the school taxes shall be listed by the clerk on a separate bill, and the clerk shall be allowed a fee not to exceed three cents (3¢) for each separate school tax bill, which fee shall be paid by the independent district board of education. (1934, c. 65, p. 263.)

Mt. Vernon Independent Graded School Dist., et al. v. Clark, et al., 281 Ky. 230. Where no officer had been appointed to collect taxes sheriff was by virtue of his office "collector of school taxes" and sureties on bond were liable for shortage. (January 12, 1940.)

City of Pineville v. Board of Education of Pineville Independent School District, 272 Ky. 636. Penalties and interest on taxes collected by fourth class cities on school taxes must be paid to the board of education. (May 5, 1938.)

Phillips, Ex-Sheriff v. Warren County Board of Education, 265 Ky. 580. Sheriff entitled to only one per cent for collecting taxes. (Octber 13, 1936.)

Board of Education of Paducah v. City of Paducah, et al., 261 Ky. 549. City held not liable for delinquent taxes, interests, and penalties due on assessment to the board of education. City is liable for taxes, interests, and penalties collected. (December 3, 1935.)

Shively v. Edwards, Sheriff, 252 Ky. 789. Sheriff, selected as collector of grade and common school taxes, need not execute separate bond to school district board of trustees. (Ky. Statutes, section 4476.) School district board of trustees permitting county clerk to prepare tax receipts and deliver them to sheriff for collection and paying clerk therefor, impliedly selected sheriff as collector of taxes for district. (Sec. 4476, Ky. Stat.) Collector of school district taxes must be elected before tax receipts are delivered to sheriff and in no event after September 1st of year in which taxes are due. (Sections 4476, 4476a-1, Ky. Statutes.) Sheriff must act as collector of school taxes, if district board of trustees fails to elect collector by September 1 of year in which taxes are due or before receipts therefor are delivered to sheriff by county clerk. (Ky. Stats., secs. 4476, 4476a-1.) (February 13, 1934.)

Fidelity & Deposit Co. of Maryland v. Commonwealth for Use and Benefit of Nelson County, et al., 249 Ky. 170. 1. Sheriff due to pay R. R. franchise collected by him even though not certified by State Auditor. 2. Amount of tax levy voted by people not affected by later statute lowering maximum. 3. Sheriff chargeable for penalty and interest on delinquent school taxes. (April 25, 1933.)

Hoskins, County Attorney v. Regis, Ex-Sheriff, 248 Ky. 82. Sheriff only entitled to one per cent for collecting school taxes and without further commission from the general funds of the county. (March 10, 1933.)

Russell, Sheriff v. County Board of Education of Logan County, 247 Ky. 703. Chapter 142, Acts of 1932, relating to the extension of the redemption period and reduced interest and penalties on collection of taxes held valid. (February 24, 1933.)

Fidelity & Deposit Co. of Maryland v. Board of Trustees of Elkton Graded School District, 247 Ky. 535. Shortage in sheriff's school tax collections under selection by school board, made subsequent to execution of official bond, held nevertheless within bond. (Secs. 4129, 4476, 4476a-1, 4556, Ky. Statutes.) (January 31, 1933.)

Commonwealth, for Use and Benefit of Phillips, County Treasurer, et al. v. Tate, et al., 247 Ky. 517. In action to charge sheriff with failure to pay over amount of settlement due the county school board, amount with which sheriff was properly chargeable must first be ascertained by records in county court clerk's office, which must stand as correct, unless impeached in proper manner. (Ky. Statutes, sections 4042a-5, 4141-18, 4115, 4125, 4239a.) Mistake in assessment may be corrected by county court under statute, but if not corrected thereunder, sheriff is responsible for amount for which he receipts to county clerk. (Ky. Statutes, section 4250.) (February 17, 1933.)

Cassady v. Oldham County, et al., 246 Ky. 773. Statute providing that commission allowed sheriff for collection of local school taxes shall not exceed one per cent of total tax collected held not unconstitutional as revenue raising statute because of having originated in Senate. (Ky. Statutes, 1930, Section 4399a-8; Constitution, Sec. 47.) (January 13, 1933.)

Commonwealth for Use and Benefit of McCreary Board of Education, et al. v. Cincinnati, N. O. & T. P. Ry. Co., 246 Ky. 684. Fiscal court's action in levying school tax must be regarded as having been taken on sufficient information authorizing court's exercise of discretion. Board's failure to maintain school standards anticipated by law, or properly spend money, could not affect validity of fiscal court's levy of tax. (Decided December 16, 1932; modified January 24, 1933.)

Commonwealth for Use and Benefit of McCreary County Board of Education, et al. v. Walker, 246 Ky. 679. Was duty of sheriff to collect and account for taxes certified, unless exonerated by proper authority. Sheriff or tax collector is liable for statutory rate of interest on such portion of school taxes collected as he fails to pay to treasurer of county board monthly, without demand by board or treasurer. Fiscal court's order levying school tax exceeding statutory rate, did not relieve sheriff from liability to county board of education for excessive amount collected, including interest. (See 4399a-8.) (December 13, 1932.)

Livingston County, et al. v. Dunn, et al., 244 Ky. 460. Tax books made by county clerk and sheriff's receipt are conclusive against sheriff and county, sheriff must account for taxes shown thereby, unless exonerated as prescribed by law. Former sheriff, who after expiration of term, received money due county on road fund, held chargeable therefor. Sheriff held entitled to only one per cent commission for collecting school taxes. (June 14, 1932.)

Bell County Board of Education v. Lee, 239 Ky. 317. County board had power to employ auditor for sheriff's books to discover money due board on contingent fee basis. Auditor's fee on this basis does not include money which sheriff voluntarily paid. (May 26, 1931.)

Bailey, Ex-Sheriff v. Magoffin County, 238 Ky. 805. Sheriff entitled to only one per cent for collecting school taxes. Suit for adjustment of amount due sheriff for collecting school taxes may be brought by fiscal court; right of action not being exclusively in county board of education. (May 12, 1931.)

Breathitt County Board of Education v. Cockrell, et al., 238 Ky. 694. County board held entitled to recover amount in sheriff's hands after settlement, with interest and penalty. Delivery and receipt of sheriff's check for school taxes constituted no payment of amount in excess of sum paid by bank thereon after treasurer's alteration of amount. (May 5, 1930.)

Gibson, Ex-Sheriff v. Commonwealth for Use of Bracken County, 238 Ky. 540. Sheriff is entitled to only one per cent commission for collecting school taxes. (April 28, 1931.)

Bush, et al. v. Board of Education of Clark County, 238 Ky. 297. Such proceedings may be brought against the sheriff in the collection of school taxes as will bring about a settlement under the statutes governing the matters. March 6, 1931.)

Clarke v. Commonwealth for Use of Rockcastle County Board of Education, 233 Ky. 728. In action by county school board against sheriff to surcharge his settlements because sheriff in settlements was charged nothing for interest on amount of tax money he paid over after December 1 of each year, where there had never been any settlement between school board and sheriff so that he would know what he should pay school board. School board's claim was unliquidated, and sheriff was not liable for interest on money until settlement was made (under Ky. Stat., sections 4146-4148). Interest does not run ordinarily upon unliquidated demands. (February 4, 1930.)

Co. ex rel. Hewlett, et al. vs. Towery, Sheriff, et al.; Same ex rel. Caldwell County Board of Education v. Towery, Sheriff, et al., 232 Ky. 802. In suit by taxpayers to recover school taxes collected by sheriff, where sum due common school fund was never certified to county board and tax books did not show whether taxpayers were in graded or common school districts and they contained many errors growing out of duplicate settlements and erroneous lists, both as to property and polls. Commissioner to whom case was referred held to have properly made settlement by reference to cash books kept by sheriff, where cash books correctly reported every dollar collected from every source due common school fund. (December 17, 1929.)

Board of Education of City of Jackson v. Caudill, et al., 228 Ky. 652. Sheriff is tax collector of school taxes levied by the county, and the city tax collector is the collector of taxes levied in the city, so that duty of sheriff to collect such taxes and liability to school district was unaffected by subsequent extension of the boundaries of a city to include territory comprised within school district. (March 22, 1929.)

Fidelity and Deposit Co. of Maryland v. Christian Co. Bd. of Education, 228 Ky. 362. Fiscal court without authority to release surety on sheriff's bond from liability to school board for amount of commissions retained by sheriff in excess of commission allowed for collection of school taxes. The school tax is separate and distinct from county tax. The members of the county board of education are state officers and not county officers. (February 8, 1929.)

Commonwealth v. Towery, Sheriff of Caldwell County, 215 Ky. 344. Sheriff collected 4% commission, court held entitled only to 1% on the amount actually collected. The settlement with the sheriff should have charged him with all the ad valorem tax assessed upon the property of the county outside the graded school districts and also with one dollar poll upon each male person over the age of 21 years residing in the county outside the graded school districts. He should then have been credited by such exonerations as the county court may have made, if any, allowed by the fiscal court and then he should have been given credit with his commission of one per cent and by any clerical errors found to exist, if any, in the tax books. (June 25, 1926.)

Wright v. Morris, Board of Education of Marion Graded School District, 212 Ky. 403. Sheriff could not collect fee for service not actually rendered. Where board of education and sheriff both overlooked acts of 1922, chapter 55, and board collected taxes in old way, sheriff could not recover commission he would have received if he had collected taxes in view of Ky. Stat., Sec. 1749, prohibiting fees for services not actually rendered. (January 15, 1926.)

Owen County Board of Education v. Kemper, Sheriff, 197 Ky. 407. Fee of sheriff in collection of county school taxes is 1% of the amount collected, this to be retained from the funds collected. Intention of the legislature was to place entire burden of cost of collecting the county school tax upon the proceeds of such tax, and thus to impose the burden of paying for its collection upon the persons and property receiving the benefits of the tax, and to relieve the county as a whole from the burden.

Com. v. Mackey, 168 Ky. 58, 181 S. W. 621. The board of education of a county can recover an amount wrongfully retained by the sheriff as a commission for the amount collected, where his settlement with the fiscal court is invalid.

Fishback v. Trustees of Graded School District No. 47, 152 Ky. 519, 153 S. W. 748. The acts of de facto school trustees in levying a graded common school tax can not be collaterally attacked in a taxpayer's injunction suit to enjoin the collection of the tax on ground that the trutees were not properly elected.

Section 4128-1, Ky. Stat. **Assessments to Be Certified to Annexing Civil Division; Equalization and Collection.**—That all assessments of property heretofore made or hereafter made in territory annexed thereafter to another civil division, prior to such annexation shall be certified by the assessor making the same, to the annexing civil division and by the proper authority thereof, submitted to its board of equalization to be equalized as provided by law; and when so equalized the regular annual tax of the annexing division shall be levied by the proper authority thereof and placed upon its tax bills made therefor and collected as its other taxes; and said taxes if allowed to become delinquent, shall be subject to the same interest and penalty charged and enforced in the manner provided by the law governing such annexing division. (1936, c. 97, Sec. 1.)

Section 4128-2, Ky. Stat. **Taxes Certified Late; Special Equalization and Levy.**—Should the equalization board be about to adjourn when, or have adjourned before said assessment is certified as provided in the preceding section, the time of such board may be extended for a reasonable time or it shall be reconvened for the purpose of passing upon such certified assessment; and should, for any reason, such assessment and equalization be completed after the regular levy of taxes for that year have been levied, a levy may thereafter be made as soon as practicable for that year's tax. (1936, c. 97, Sec. 2.)

Sec. 4399-42, Ky. Stat. **Appointment of Treasurer; Duties and Bond.**—Each board of education shall elect a treasurer for the board; provided that said board may elect the secretary of the board to serve as treasurer also. Said treasurer shall execute a public official bond for the faithful performance of the duties of his office, said bond to be approved by the local board and the State Board of Education. The bond shall be guaranteed by at least three solvent personal sureties, the solvency of whom must exceed the amount of the bond, or by a surety company authorized to do business in the Commonwealth and in an amount to be deter-

mined by the board of education in accordance with the rules and regulations of the State Board of Education. In case the treasurer is required to execute a surety company bond, premium on such bond shall be paid by the board of education. A copy of the bond shall be lodged in the files of the board of education and a copy lodged with the State Board of Education. The treasurer for the board shall receive all funds due the board, except as otherwise provided herein, and deposit them in the designated depository of the board. The bond shall provide that the treasurer of the board of education shall faithfully perform the duties of his office, receive all moneys to which the board is entitled by the Constitution of the Commonwealth or by the Statutes, except as herein provided, or which may in any way come into its possession, and deposit such funds in the properly designated depository; that such funds shall be withdrawn from the depository only upon proper order of the board as herein provided and that he will keep a full and complete account of all funds in such manner and make such reports concerning same as may be required by the board of education or by the State Board of Education, and that he will preserve all records relating to the transaction and duties of the office and turn over same to his successor along with all public funds in his hands and all accounts and records after due and proper audit made by a competent outside agent when he is required to do so by the board of education.

A copy of a list of all items and accounts which the board of education has ordered paid shall be certified to the treasurer by the board and shall be signed by the chairman and secretary of the board, and a certified copy of such list shall be furnished the depository by the secretary of the board. The treasurer shall issue his check on the depository for each item or account on the list certified by the chairman and secretary of the board.

The board of education may remove the treasurer from office at any time for cause by a vote of three members of the board. All treasurer's bond forms shall be prepared by the Superintendent of Public Instruction and approved by the State Board of Education. (1934, c. 65, p. 264.)

Miller, et al. v. Rockcastle County, 248 Ky. 291. County treasurer's bond held valid, as against contention that it was invalid because no penal sum was fixed by fiscal court. Failure of court, board or officer to approve or file official bond will not affect its validity because government is not responsible for laches or wrongful acts of its officers. County treasurer's sureties held not liable for any default occurring during period treasurer held over after expiration of term. (Mach 21, 1933.)

Citizens' Bank of Morehead v. Rowan County Board of Education, 245 Ky. 384. Bank could not apply county school funds held by it as treasurer of county board of education to matured debt of board. As such treasurer bank and its sureties were responsible for all funds of county board of education under Ky. Stats.,

sec. 4399a-3, and had authority to pay out such funds only on appropriations ordered by a majority of board, of record signed by chairman and secretary of board under sections 4399a-3 and 4399a-5, Ky. Stats. (October 11, 1932.)

Edwards, et al. v. Logan County, 244 Ky. 296. "County Treasurer" and his surety held not liable for loss of funds caused solely by failure of depository selected by fiscal court. (March 1, 1932.)

U. S. Fidelity and Guaranty Co. v. Board of Education of City of Maysville, 228 Ky. 426. Not necessary for bond to be signed by principal. When the intention of the company is shown, the instrument is binding. (March 12, 1929.)

Sec. 4399-43, Ky. Stat. **Depository; Duties and Bond.**—Each board of education shall appoint a bank or trust company to serve as its depository; provided that any board of education whose yearly receipts from all sources exceed one hundred thousand dollars ($100,000) per year may designate two depositories. The depository or depositories selected by a board of education shall execute good and sufficient bond for the safekeeping of the board's funds to be approved by the local board of education and the State Board of Education. Said bond shall be guaranteed by at least five solvent personal sureties, the solvency of whom must exceed the amount of the bond, or by a surety company authorized to do business in the Commonwealth or through the execution of a collateral bond consistent with the general banking laws of the Commonwealth and the bonding laws applying to the safeguarding of state funds. The depository may be designated for a period not to exceed two years, and before entering upon its duties shall execute the bond required herein and shall agree with the board of education as to the rate of interest to be paid on average daily or average monthly balances. The penal sum of the depository bond shall be determined by the board of education in accordance with the rules and regulations of the State Board of Education. A board of education may enter into an agreement with its depository whereby the premium on a bond guaranteed by a surety company may be paid by either the board of education or by the bank or trust company acting as depository. In case the board of education pays the premium on the depository bond, the depository shall allow the board of education not less than two per cent (2%) interest on its average daily or average monthly balances. The bond of the depository shall provide that the duties of the office shall be faithfully performed; that all funds deposited by the treasurer of the board of education or its tax collector or its duly authorized agent shall be held by the depository; that all funds so deposited by the treasurer or the tax collector or the board's duly authorized agent will be held for the board subject to its withdrawal at any time; that all funds so deposited will be paid over to such person or persons and in such manner as the board may direct; that full and complete accounts of all the board's funds will be kept; and that reports will be made to the board or its authorized agents upon

request; and that all records relating to the transaction and duties of the office will be kept and turned over to the successor of its office along with all school funds in hand. The board of education may, at any time, require a due and proper audit of the depository's records of the funds of the board of education by a competent outside agent.

A board of education may designate as its depository the authorized and bonded depository of the governing authority of the territory which the school district embraces. In such cases, the bond of the depository shall be made to cover specifically the safekeeping of the school board's funds, and all conditions set out in this section shall be carried out. All depository bond forms shall be prepared by the Superintendent of Public Instruction and approved by the State Board of Education. (1934, c. 65, p. 266.)

Edwards, et al. v. Logan County, 244 Ky. 296. "County Treasurer" and his surety held not liable for loss of funds caused solely by failure of depository selected by fiscal court. (March 1, 1932.)

Harlan County v. Blair, et al., 243 Ky. 777. Court forbid an officer to receive compensation for services which the law had not expressly fixed therefor.

U. S. Fidelity and Guaranty Co. v. Board of Education of City of Maysville, 228 Ky. 426. Not necessary for bond to be signed by principal. When the intention of the company is shown, the instrument is binding. (March 12, 1929.)

Sec. 186d-1, Ky. Stat. **Bonds of Officers and Fiduciaries and Sureties Thereon, Etc.**—That the bond required by law to be executed and given by any state, county, city, school, or other public official, and the bond required by law of any depository of state, county, city, school or other public funds, and the bond of any executor, administrator, guardian, committee, assignee, or other fiduciary, and any other bond required by law for the discharge or performance of any public or fiducial office, trust, or employment, shall be a covenant to the Commonwealth of Kentucky, from the principal and surety or sureties, that the principal will faithfully discharge the duties of the office, trust, or employment, and there shall be no other obligation in such bond; and such bonds shall be limited in a definite penal sum, which shall be determined and fixed by the officer or officers whose duty it is to approve the bond, and the recovery against the surety under any such bond shall be limited to the amount of the penalty named therein: Provided, that the bond of any executor, administrator, guardian, committee, assignee, or other fiduciary, shall be fixed in a penal sum of not less than the estimated value of the estate, and, provided, further, that the officer or officers taking any bond mentioned in this act, may at any time when it may appear to be to the interest of the obligee or obligees, increase the penal sum of such bond or require a renewal thereof with other or additional sureties, and, provided further, that all state, county,

city, school and other public officials and executors, administrators, guardians, committees, assignees and other fiduciaries, and other persons required by law to give bonds for the discharge or performance of any public or fiducial office, trust or employment are hereby expressly relieved from all liability as insurers of funds which come into their hands, or subject to their control after same shall have been deposited in good faith in a bank or banks, a depository, or depositories in the county approved by the fiscal court and "the duties of the office, trust, or employment" shall not include any responsibility for loss of, or delay in payment of, funds deposited in any bank by reason of the failure or suspension of such bank or other depository and the obligors in such bonds are hereby expressly relieved of such responsibility, having complied with this statute. (1934, c. 22, p. 59.)

Sec. 4399-44, Ky. Stat. **Power to Borrow Money in Anticipation of Tax Revenues.**—Any board of education shall have the power and authority to borrow money on the credit of the board and to issue negotiable notes in anticipation of revenues from school taxes for the fiscal year in which the money is borrowed, and the board may pledge the said school taxes for the payment of principal and interest on said loan; provided that in no case shall the rate of interest charged exceed six per cent (6%), and that the principal shall in no case exceed seventy-five per cent (75%) of the anticipated revenue for the fiscal year in which the same is borrowed. In all cases in which such loans are made, they shall be repaid within the fiscal year in which they are borrowed. (1934, c. 65, p. 267.)

Note.—Amended in effect by Sec. 583, Ky. Stat., as amended by chapter 20, 1940, p. 196.

Emmons v. Board of Education of Lewis County, 260 Ky. 17. County board of education has authority to deed property to holding corporation with understanding it will be deeded back when bonds are paid. (June 11, 1935.)

Reneer v. Centertown Eucational Corp., 253 Ky. 328. Educational corporation contract with the board of education held valid. (May 3, 1934.)

Hardin v. Owensboro Educational Association, 244 Ky. 390. Constitutional provision for creating debt by municipal corporation for a particular year cannot be defeated by the form of transaction. Here educational corporation was to assume a debt created beyond constitutional limit. (April 22, 1932.)

Godsey v. Board of Education of Ludlow, et al., 238 Ky. 17. City board of education held authorized to convey lot to holding company and pay school building contractor from funds held by trustee. (March 13, 1931.)

Kirkpatrick v. City Board of Education of Russellville, et al., 234 Ky. 836. Contract to sell school site to corporation with option to lease and re-purchase held valid and not violative of constitutional debt limitation. School building having been condemned by fire marshal, city board of education, to meet emergency, sold school site to corporation which agreed to erect school building thereon and to lease property to board from year to year, not exceeding twenty years, at annual rental within constitutional debt limit of board, which rent should be used to discharge bonds secured by mortgage on property used for construction of building, with option in board to require reconveyance on discharge of mortgages and all other liens and claims and providing that if board should not occupy premises for entire twenty years, property should be sold and proceeds used to pay liens, and to pay surplus to board. (June 17, 1930.)

Boll v. City of Ludlow, 227 Ky. 208. Schools and School Districts.—Raising limit of indebtedness which may be incurred by school district from 2% to 4%, being invalid under Constitution, section 158, limiting issue of bonds for school purposes in excess of 2% of assessed valuation. (December 21, 1928.)

Nelson v. Board of Education of City of Williamsburg, 213 Ky. 714. Burning of schoolhouse held not to create an emergency within Constitution, section 158, validating bond issue for erection of another in excess of two per cent of assessed valuation of property in district. After limiting such indebtedness to two per cent, construes unless in case of emergency the public health or safety should so require. Court says, "Before this exception can be invoked it must plainly appear that the additional expenditure is required for the public health or safety." (March 23, 1926.)

Waller v. Georgetown Board of Education, 209 Ky. 726. Section 3287a-16, investing the board of education with power to borrow money in anticipation of taxes, constitutes a limitation on the actual borrowing of money, and not on the power to incur an indebtedness or obligation. (June 19, 1925.)

City of Dayton v. Bd. of Cy. of Dayton, 201 Ky. 566. Indebtedness of a municipality is not to be taken into account in estimating the indebtedness of the school board of the district which covers the same territory. A municipal taxing district is subject to the imposition of a tax by one sovereignty, a city, while a different sovereignty, the board of education, may upon its own account levy another although the two cover and include the same territory and property. (November 11, 1923.)

Elliott County Fiscal Court v. Elliott County Board of Education, 193 Ky. 66, 234 S. W. 947. The county board of education is a body politic and corporate with perpetual succession, and therefore a debt created by the board is a continuing obligation of the board regardless of any change in its membership, and no question of assumption of indebtedness which an old board contracted can arise. Where the county board of education prepares and submits to the fiscal court a detailed expense budget for the succeeding year, it is incumbent on the fiscal court to make a levy for the amount required unless the board acted corruptly or in bad faith, or embraced in their expenditures items not authorized by law. A budget of the county board of education filed with the fiscal court may include outstanding indebtedness.

Sec. 4399-45, Ky. Stat. **Budget May Not be Exceeded; Penalty.**—Any superintendent who shall recommend and/or any board member who shall vote for an expenditure in excess of the income and revenue of that year, as shown by the budget adopted by the board and approved by the State Board of Education, except for a purpose for which bonds have been voted and except in case of an emergency declared by the State Board of Education, shall be guilty of a violation of this act, and upon conviction shall be fined not less than fifty dollars ($50) nor more than one hundred dollars ($100) and shall be subject to removal from office. (1934, c. 65, p. 268.)

Duke White, Mayor, et al. v. Board of Education of the City of Maysville, 263 Ky. 1. Held that the city council should make the levy requested by the board. (February 28, 1936.)

Downey v. Board of Education of Logan County, et al., 243 Ky. 66. County board of education cannot bond indebtedness incurred in replacing burned school building, even though the indebtedness was validly created after application to fiscal court for levy. (March 11, 1932.)

Sec. 4399-46, Ky. Stat. **Minimum Salary for Teachers.**—Each school district shall pay its teachers according to a salary schedule which shall include training, quality of service, experience, and such other items as the State Board of Education may approve. A copy of the salary schedule prepared by each school board shall be filed with the State Board of Education. In case a district board of education is not able to pay all of its teachers the minimum salary provided herein, the State Board of Education may approve such board's salary schedule, thereby authorizing the payment of salaries below the minimum provided herein. No teacher regularly employed in the public schools of the Commonwealth of Kentucky shall receive a salary of less than seventy-five dollars ($75) per month;

provided that the revenue received by any district from all the state per capita plus one-half of the revenue received from local taxation will produce sufficient revenue to pay a minimum salary of seventy-five dollars ($75) per month for a period of seven months for elementary teachers and a period of eight months for high school teachers, allowing one teacher for each forty census pupils in the district. (1934, c. 65, p. 268.)

Madison County Board of Education v. Madison County Fiscal Court, 249 Ky. 540. Teachers must be paid according to law and amount due them as shown in the budget and not according to temporary salary schedule formerly made and adopted for use as emergency measure. (June 2, 1933.)

BOND ISSUES.

Sec. 4399-47, Ky. Stat. **Bond Issues for School Purposes; Popular Election; Use of Proceeds; Tax Levy.**—Whenever a board of education shall deem it necessary for the proper accommodation of the schools of its district to acquire or enlarge sites for school buildings; to purchase new sites which may be not more than two miles without the boundary lines of independent school districts; to improve, remodel or restore school buildings; or to erect new school buildings or to equip same or for any or all of these purposes; and the annual funds raised from other sources are not sufficient to accomplish said purpose or purposes, said board shall make a careful estimate of the amount of money required for such purpose or purposes, and it shall certify to the proper tax levying authority, as provided in this act, the fact that an election for an issue of bonds for school purposes shall be held together with the amount of money for which bonds shall be issued and the purpose or purposes to which the proceeds shall be applied. It shall thereupon be the duty of said taxing authority to adopt an ordinance or resolution, submitting to the qualified voters of the district at a time to be fixed in such ordinance not less than fifteen nor more than thirty days from the time such certificate is filed with it the question as to whether bonds shall be so issued for the purpose or purposes aforesaid; provided, however, that in independent districts embracing cities of the first, second, third, or fourth class the election upon all school bonds shall be held at the next final election after the aforesaid ordinance or resolution has been adopted, the same to be not less than thirty days after the adoption of the ordinance, and in the said city districts the qualified voters shall vote upon the question of whether or not the aforesaid bonds shall be so issued at a final election only, and in the regular voting booth now established by law, and not in any special election or in any primary election. The bonds so issued shall be designated "School Improvement Bonds" and the ordinance shall fix the time

the bonds shall run and, if a serial issue, then the amount to mature at each time; it shall limit the rate of interest which shall be permitted on said bonds, which shall not exceed six per cent (6%), and it shall specify the total amount of bonds to be issued, and provide for the levy of a tax to pay the interest and either to redeem the bonds as they mature or to provide for the accumulation of a sinking fund to retire them at their maturity.

The bond issue of the district shall not exceed the constitutional limitation provided in Section 157 of the Constitution, such limitation to be estimated upon the assessment next before the last assessment previous to the incurring of the indebtedness. The question to be submitted shall be so framed that the voter may by his vote answer "For" or "Against." If the voters of the district shall determine by a two-thirds majority of those voting that such bonds shall be issued, the bonds shall, when so issued, be placed under the control of the board of education, and said board shall determine when and at what price and how the bonds shall be sold and the date, number of bonds, denomination, whether coupon or registered, the rate of interest and frequency of payment thereof, place of payment of principal and interest, and other details as desired, embodied in the bonds or in the ordinance providing for their issue, and the board shall certify the same to said tax levying authority, and it shall be the duty of said taxing authority at once to adopt an ordinance in conformity therewith and cause the bonds to be at once properly prepared and executed and turned over to the board of education for sale and delivery. Said bonds shall be signed by the chairman and secretary of the board of education and shall not be sold for less than par and accrued interest. As the bonds are sold, their proceeds shall be placed to the credit of the board of education in a depository designated by the board of education, and shall be kept in a separate account and shall be used for only the purposes for which the bonds were issued, and the depository shall be required to execute proper bond covering said funds. It shall be the duty of the tax levying authority of the district, in addition to the levy made for the maintenance of schools, as hereinbefore provided, to levy annually in its tax levy a rate sufficient to raise a sum for the payment of the interest and to create a sinking fund for the payment of the bonds at maturity. The bonds, principal and interest, shall be a charge upon the school district, except in all independent districts embracing cities of the first and second classes where the bonds shall be a charge upon the sinking fund of the city, and the city shall be

entitled to have the annual sinking fund tax provided for in this section.

The bond election, provided for in this act, shall be conducted and carried out in the school district in all respects as required by law for elections in this Commonwealth, and notices thereof shall be given and the election held by the same officers and in all other respects as required by the general election laws of the Commonwealth, and the expense of the election shall be borne by the fiscal court in all cases except those where the bond issue is authorized and the bond levy made for a district by the governing body of a city of the first, second, third, fourth or fifth class, in which cases the cost of the election shall be borne by the governing body of the city.

All of the bonds voted by the various types of school districts and subdistricts prior to the passage of this act shall be retired and interest paid thereon in accordance with the laws under which they were voted, and nothing in this act shall in any way impair any of said bond obligations or the interest thereon. (1934, c. 65, p. 269.)

Runyon v. Simpson, Mayor, et al., 270 Ky. 646. The lapse of eight years between election authorizing bond sale and proposed issue of same did invalidate them if indebtedness is legal. (November 16, 1937.)

Webster County Board of Education v. Hocket, et al., 267 Ky. 498. Where independent districts were merged with county district prior to repeal of statutes authorizing county board to assume liabilities of districts of such merger, county board authorized to issue refunding bonds and not required to make levy on property of these districts to pay off such indebtedness. (March 2, 1937.)

Harris v. Holt, et al., 266 Ky. 576. Taxing district may issue bonds for indebtedness. Legality of debt must be adjudged by court of competent jurisdiction before bonds may be issued. (December 15, 1936.)

Nelson v. Williamsburg Independent Graded School District, et al., 265 Ky. 792. Where bonds have been issued in excess of legal limit of indebtedness additional bonds cannot be issued to take place of those which have been called for payment. (October 27, 1936.)

Mollette v. Board of Education of Van Lear Graded District, 260 Ky. 737. Upholding a bond election and interpreting and clarifying in detail the 1934 statutes in connection with holding bond elections in independent districts. (Oct. 18, 1935.)

Hager, Mayor, et al. v. Cisco, 256 Ky. 708. Acts of 1934, Chapter 65, Article 5, Section 42, provides that all bonds voted by the various types of school districts and subdistricts prior to the passage of this act shall be retired and the interest paid thereon in accordance with the laws under which they were voted.

School bond issue authorized and voted by the city (of second class) in 1929, did not then become indebtedness or obligation of city, nor did it become such until and to the extent that parts of such authorized bond issue were later issued and sold. (November 23, 1934.)

Spaulding v. Campbell County Board of Education, et al., 239 Ky. 277. County board of education has discretion in selecting school site and should not be interfered with, unless it appears board acted arbitrarily or abused discretion.

Judgment sustaining selection of school site by board of education, based on conflicting evidence, should not be reversed. (May 26, 1931.)

Boll v. City of Ludlow, Etc., 234 Ky. 812. 1. Municipal Corporation.—In determining whether municipal bond issue creates indebtedness exceeding constitutional limitation, time bonds were sold is controlling, and not time of election.

2. Where people of municipality vote bond issue exceeding constitutional debt limit, only excess is void, and bonds within limitation may be issued.

3. Schools and School Districts.—Kind and cost of school buildings are matters to be determined by board of education.

4. School board, in submitting to voters question whether indebtedness exceeding revenue provided for shall be incurred for school building, does not surrender its discretion respecting erecting building.

5. If school bond election carries and amount voted is within constitutional limitation, board of education need not expend entire sum, but may provide smaller building. (June 17, 1930.)

City of Louisville v. Board of Education City of Louisville, 229 Ky. 325. Board of education did not have authority to equip school building from proceeds of bonds issued for erection of schools, language used in act, "to erect school houses," not conferring authority to furnish school houses. (May 7, 1929.)

Boll v. City of Ludlow, 227 Ky. 208. Raising limit of indebtedness which may be incurred by school district from 2% to 4%, being invalid under Constitution, section 158, limiting issue of bonds for school purposes in excess of 2% of assessed valuation. (December 21, 1928.)

Wilson v. Bd. of Ed. of City of Russellville, 226 Ky. 476. Ky. Statutes, Supplement 1928, section 3563, authorizing school districts to agree in writing to pay their proportionate part of public improvements in front of their property, held violative of Constitution, section 184, prohibiting appropriation of any part of school fund to other than common school purposes and school board could not issue bonds to pay its part of the cost of street improvements in view of Constitution, section 183. (November 27, 1928.)

Davidson v. Board of Education of City of Pikeville, 225 Ky. 165. Holding of election on question of issuing bonds for school purposes on thirty-third day after filing of certificate with general council was substantial compliance with Kentucky Statutes, section 3587a-20, specifying not less than 15 nor more than 30 days from filing certificate. (June 19, 1928.)

Clere v. Board of Education of City of Ashland, 211 Ky. 130. Act fixing smaller debt limitation than that fixed by Constitution not invalid. The constitutional provision is simply a limitation on the legislative power, and not a grant of power to the municipality. (November 10, 1925.)

Katterjohn v. Board of Education of the City of Paducah, 202 Ky. 690. A board of education in a city of the second class gave a bonus to a contractor for the speedy erection of a school building. By sections 3235a-1 to 3235a-42 the board was not conferred any authority to give such bonus and the provision in the contract allowing it is void under section 162 of the Constitution, which provides that a municipality cannot pay any claim under any agreement or contract made, without express authority of law. (May 22, 1923.)

City of Dayton v. Board of Education, 201 Ky. 566. Indebtedness of a municipality is not to be taken into account in estimating the indebtedness of the school board of the district, which covers the same territory.

A delay of three years by a board of education after bonds were voted before certifying the matter to the city council, abandoned no right and the city may be required to prepare and authorize the bonds, in view of the conditions prevailing in the building trade. (November 13, 1923.)

Shaw v. City of Mayfield, 191 Ky. 389, 230 S. W. 539. Unpaid bonds of the city of Mayfield continued to be its debt, and did not become a debt of the school district created by this statute.

Coppin and the City of Covington v. Board of Education of the City of Covington, 155 Ky. 387. Bonds issued by the board of education of cities of the second class under this act are obligations of the board of education and the amount thereof is not to be considered in determining whether the city has reached its maximum constitutional debt limit.

OTHER PROVISIONS AFFECTING SCHOOL DISTRICTS.

Sec. 4399-48, Ky. Stat. **Contracts for New Buildings; Competitive Bids for Improvements, Repairs, and Supplies and Materials.**—The contracts for the erection of school buildings and additions and repairs to buildings shall be made by the board of education after proper letting to the lowest and best responsible bidder complying with the terms of the letting, but the board may reject any or all bids. All necessary specifications and drawings shall be prepared for all such work, and competitive bids therefor shall be solicited by such advertisement as the board may determine; provided that it shall not be necessary to advertise for competitive bids on repairs not exceeding one hundred and fifty dollars ($150). The board shall advertise in the method set out herein for bids on all supplies and equipment which it desires to purchase and shall accept the bid of the lowest and best bidder for the supplies and materials, but the board may reject any or all bids; provided that it shall not be necessary for the board to advertise for competitive bids for such supplies and materials when the amount of the purchase does not exceed two hundred and fifty dollars ($250). (1934, c. 65, p. 272.)

Sec. 4399-49, Ky. Stat. **Separate Schools for White and Colored Children.**—Each board of education shall maintain separate schools for white and colored children residing in its district; provided that the county board of education shall provide for the education of colored children residing within the territorial limits of an independent graded school district embracing a city of the fifth or sixth class, located in the county. (1934, c. 65, p. 273.)

Board of Education of Woodford County, et al. v. Board of Education of Midway Independent Graded Common School District, et al., 264 Ky. 245. County board of education must provide educational facilities for colored people resident within independent districts cities of fifth class. Amended law now does not so require. (May 15, 1936.)

Sec. 4399-50, Ky. Stat. **Kindergartens; Night Schools.**—The board of education of any school district shall have the power to establish and maintain kindergartens for children from four to six years of age and, subject to the approval of the Superintendent of Public Instruction, may establish such night schools, industrial schools, and other schools for the residents of the district as may be deemed advisable. (1934, c. 65, p. 273.)

Sec. 4399-51, Ky. Stat. **Nonresident Pupils; Tuition.**—Any board of education may charge a reasonable tuition fee per month for each child attending its schools whose parent, guardian, or other legal custodian is not a bona fide resident of the district; provided that in case of controversy as to the fee, the matter shall be submitted to the State Board of Education for final settlement. This fee shall be paid by the board of education of the school district in which the pupil resides, except in those cases where the board makes provision for the child's education within his or her district. In cases where a board of education is required to pay a pupil's tuition fee, the pupil shall be admitted to a school only upon proper certificate of the board of education of the district in which he resides. (1934, c. 65, p. 273.)

Board of Education of Louisville v. County Board of Education for Jefferson County, et al., 265 Ky. 447. When inmate of children's home is placed in a home the child becomes a resident of that district wherein it is placed and such district has right to include child in census and receive school per capita from the Commonwealth. (October 6, 1936.)

Duke White, Mayor, et al. v. Board of Education of the City of Maysville, 263 Ky. 1. Held that the city council should make the levy requested by the board of education because it appeared that the board did nothing which would appear to be corrupt or in bad faith in arriving at the amount of money which should be included in its budget. (February 28, 1936.)

Wirth, et al. v. Board of Education for Jefferson County, et al., 262 Ky. 291. A child in an orphans' home is a resident of the district wherein he was placed and was entitled to attend school while in boarding home without paying tuition. (November 26, 1935.)

Lincoln County Board of Education, et al. v. Carter, 240 Ky. 112. County board of education did not act arbitrarily in refusing to pay tuition where it furnished school and transportation to same which made it convenient for pupil to attend. (May 8, 1931.)

Hellier Graded School District, et al. v. Pike County Board of Education, 233 Ky. 63. Where there was no written or verbal contract, county board of education was not obligated by implied contract to pay graded school district for tuition of pupils within county but outside of district attending such graded school. (February 14, 1930.)

Board of Education of City of Jackson v. Breathitt County Board, 222 Ky. 46. Oral agreement of county school board relative to payment to city of expense for tuitioning and housing pupils in city's colored school held valid and binding on county board. (November 25, 1927.).

Sec. 4399-52, Ky. Stat. **Tuition Contracts Between States and Between Districts.**—When it appears to the board of education of any school district in this Commonwealth that it is convenient for any pupil child or children of any grade or grades residing in such district to attend an approved public school in another district, such board of education may enter into a tuition contract with the public school authorities of such school district whereby such pupils may attend an approved school in such other district; but before such a contract is entered into with public school authorities in another state, the school must have been approved by the state school authorities of such state through the grades in which such pupils belong. When a district undertakes under operation of a tuition contract or of law to provide in its school for pupils residing within another district, the district of their residence shall share the total cost of such school, including transportation when furnished at public expense, in proportion to the number of pupils or in accordance with contract agreement between the two boards. (1934, c. 73, p. 377.)

Sec. 4399-53, Ky. Stat. **Use of School Property for Public Purposes.**—The board of education of any school district may permit the use of the schoolhouse or houses while schools are not in session, by any lawful public assembly of educational, religious, agricultural, political, civic, or social bodies under such rules and regulations as the board may deem proper. (1934, c. 65, p. 274.)

Sec. 4399-54, Ky. Stat. **Reports to the State Board of Education; Other Reports.**—Each board of education shall, on the forms prepared by the Superintendent of Public Instruction and approved by the State Board of Education, prepare and submit to the State Board of Education reports on all phases of its school service. Each board may, in its discretion, prepare and publish for the information of the public a report on the progress of its schools. (1934, c. 65, p. 274.)

Sec. 4399-55, Ky. Stat. **Investigations; Power to Summon Witnesses; Penalty for Failure to Appear.**—A board of education shall have the power in any investigation or proceedings before it, concerning a matter which may be a proper subject of inquiry by it, to summon witnesses by subpoena and to enforce the compulsory attendance of said witnesses and require that they testify under properly administered oath. Should any person so summoned refuse to

attend or to produce a written statement to be used as legal evidence in said investigation or proceeding, or being present, refuse to testify concerning any matter which may be a proper subject of inquiry, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars ($10) and not more than fifty dollars ($50). (1934, c. 65, p. 274.)

Sec. 4399-56, Ky. Stat. **Escheated Property; Acceptance of Gifts and Devises.**—So much property in each school district as from any cause shall escheat to the Commonwealth of Kentucky, shall vest in the board for the use and benefit of the public schools in said district. Said board may, in the name of the Commonwealth, for the use and benefit of the said schools, by its chairman or other officer to be designated by it, enter upon and take possession of said property, or sue for and recover the same by action at law or in equity. The board may sell and convey any of such property by warranty deed or otherwise. (1934, c. 65, p. 275.)

Commonwealth, for Use and Benefit of Board of Education of Louisville, et al. v. Schultz's Unknown Heirs, et al., 268 Ky. 806. When property not disposed of by will of person dying without heirs escheats to Commonwealth and to board of education of district of his residence. (May 28, 1937.)

Sec. 4399-57, Ky. Stat. **Donation, Gift, Grant, Devise; By Whom Held.**—All sums arising from any donation, gift, grant, or devise by any person whatsoever, wherein the intent is expressed that the same is to be designed to aid in the education of white or colored children in any school district of this Commonwealth, shall be held and used for the purposes specified in such donation, gift, grant, or devise. The district board of education shall receive such donation, gift, grant, or devise for the benefit of the white or colored schools of its district and shall hold and use same as requested by donor or devisor, provided that the purpose for which used shall be in harmony with the aims and general program of public education in this Commonwealth. (1934, c. 65, p. 275.)

Sec. 4399-58, Ky. Stat. **Bribery.**—Any person, board of education, board of regents, board of trustees, or other board of control of any public school system, or agent thereof, having authority to employ, vote for employment, or recommend for employment, any teacher or other person, who shall accept either directly or indirectly for the employment of a teacher or other school employee any valuable consideration other than the services of the teacher or other person employed, shall be guilty of bribery, and upon indictment and conviction shall be fined as provided by law for the punishment of bribery. (1934, c. 65, p. 276.)

Sec. 4399-59, Ky. Stat. **Infectious or Communicable Disease; Board May Close School.**—When any family shall have any infectious or communicable disease, no member of such family shall attend any school until the superintendent of the district, upon the advice of the health officer of the county in which the school district is located, shall allow them to do so; and during the prevalence in any district of dangerous epidemics, the board of education of the school district may order such school closed. (1934, c. 65, p. 276.)

Sec. 4399-60, Ky. Stat. **Disposition of Special Funds.**—A board of education of a district owning a fund for which it is to receive only the income may, in its discretion, convert the same to its general school fund and cause it to become a part of said fund; provided that there is no constitutional provision or other lawful provision to the contrary. If two or more districts are entitled to the income of such fund, then, upon concurrent action of the two boards, said fund may be so converted and divided between them in proportion to their census enumeration. (1934, c. 65, p. 276.)

Sec. 4399-61, Ky. Stat. **Passage Way of Pupils to School Building.**—Any board of education may make provision for such roads or passways to its school building or school buildings as will accommodate all pupils who are entitled to attend school, and may apply to the county court or the governing authority of the city, as the case may be, having jurisdiction, to open the same as other roadways and passways are opened for public necessity and convenience; but where there is no road or passway from the residence of any pupil to the school building which he attends, it shall be lawful for such pupil in attending school to walk over the property of any person between the residence of such pupil and the school building. No toll shall be collected of any pupil for travel on any turnpike, bridge, or ferry while attending a public school. (1934, c. 65, p. 277.)

CHAPTER VII.

COMPULSORY ATTENDANCE.

Sec. 4434-1, Ky. Stat. **Responsibility of Parents; Age Limits for Compulsory Attendance.**—Each parent or guardian, or other person residing in the Commonwealth of Kentucky and having in custody or charge any child between the ages of seven and sixteen, not exempted under the provisions of this act, shall be required to send such child to a regular public day school, for the full term for which the public school of the district in which the child resides shall be in session, or to the public school for which the board of education of the district makes provision for the child to attend, except as hereinafter provided; provided that a child's age shall be interpreted as being between seven and sixteen whenever the child has reached his seventh birthday and until he has passed his sixteenth birthday; and provided further that any parent or guardian who elects to send to school a child six years of age shall be required to keep the child in regular attendance. (1934, c. 65, p. 277.)

Sec. 4434-2, Ky. Stat. **Attendance in Case of Transfer.**—Any parent, guardian, or other person having in custody or charge any child between the ages of seven and sixteen, as heretofore defined, who removes such child from the school district before the completion of the then current school term shall enroll such child in a public regular day school in the district to which such child is removed, and the child shall attend school in the district to which he is moved for the full term provided by such district. (1934, c. 65, p. 278.)

Sec. 4434-3, Ky. Stat. **Exemptions from Compulsory Attendance.**—The following classes of children shall be exempted, by the board of education of the district in which the child resides, from the requirements of attendance upon a public regular day school:

a) Children who are enrolled and in regular attendance in a private or parochial regular day school approved by the State Board of Education. Such schools shall be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of the Commonwealth; and the term of school shall not be for a shorter period in each year than the term of the public school provided in the district in which the child

resides. The attendance of such schools shall be kept by the private or parochial school authorities in a register provided by the State Board of Education as in the public schools, and such school authorities shall make attendance and scholarship reports in the same manner as is required by law or by regulation of the State Board of Education of public school officials. Said schools shall at all times be open to inspection by attendance officers and to inspection by the officers of the State Department of Education.

b) Children whose physical or mental condition is such as to prevent or render inadvisable attendance at school or application at study, but the board of education shall require that satisfactory evidence of such condition be furnished by the signed statement of a duly licensed physician or public health officer. Upon the basis of such evidence, the board of education may exclude any such child from school.

c) Children who hold permits to work granted under the provisions of this act; provided that such children shall be subject to compulsory attendance upon part-time classes as provided herein.

d) Children who are blind, deaf, or partially blind and/or partially deaf to an extent which renders them incapable of receiving instruction in the regular elementary or secondary schools, but whose mental condition is such as to permit application to study, shall be exempted from attendance upon a regular day school; provided that in school districts which operate schools for classes for the education of such special groups, such children between the ages of seven and sixteen, as heretofore defined, shall be enrolled in and attend such schools regularly for the full term of such schools or until discharged by the board of education of such district. If no provision for the education of such special groups is made by the school district in which such pupils, or legal parents, guardians, or other persons having custody of such children, reside, then the Superintendent of Public Instruction, on recommendation of the state attendance officer, may cause such children to be enrolled in one of the state institutions for the education of such special groups.

e) Any child of compulsory school age who is a graduate from an accredited or an approved four-year high school. (1934, c. 65, p. 278.)

Sec. 4434-4, Ky. Stat. **Work Permits.**—Any board of education through its superintendent or other authorized agent shall have authority to issue to certain children permits to work as hereinafter provided:

a) A permit to work may, when the issuing officer is convinced that the need is sufficient, be issued to a child who is under the age of sixteen years, but who has passed his fifteenth birthday and who has completed the seventh grade of a public school course or an equivalent course.

b) A permit to work may, when the issuing officer is convinced that the need is sufficient, be issued to a child who is under the age of sixteen years but who has passed his fourteenth birthday who holds a certificate of completion of an eight-year elementary school course or an equivalent course.

c) A child permitted to withdraw from school by the issuance of a work permit shall return to school within five days after the termination of the employment for which the work permit was issued or immediately upon the beginning of the next school term, if school is not then in session.

d) No permit to work may be issued to any child until he, accompanied by his parents, guardian, or other person having control or custody of the child shall appear in person before the proper officer of the board and make application for such permit.

e) No permit to work, hereinbefore described, may be issued until the issuing authority has examined, approved and recorded the following duly executed papers:

(1) The school record of such child, giving age, grade, and attendance for the current term signed by the principal or teacher.

(2) Evidence of age, such as the school record of enrollment, or a certificate of birth, or a baptismal certificate duly attested, or a passport, or affidavit of the parent, guardian, or custodian of such child, such as shall convince the issuing authority that the child is of the age required by law.

(3) The written statement of the prospective employer that work is waiting for the child with a description of the nature of such work.

(4) A certificate signed by a regularly licensed physician or public health officer stating that such child has been thoroughly examined by him and that, in his opinion, the child is physically fit to pursue the work specified. No fee shall be charged for such examination certificate.

f) The parent, guardian, or custodian accompanying the child shall make oath that his statements setting out the name, address, birthplace, and age of the child in question, as entered upon the application for the permit to work, are true and correct to the best of his knowledge and belief.

g) No child under the age of fourteen years shall be employed or permitted to work in any occupation or service whatsoever during any of the hours when the public schools of the school district in which the child resides are in session.

h) All permits to work and all certificates of age granted under the provisions of this act, and certificates of health required under the provisions of this act, shall be issued on forms provided by the State Board of Education.

i) Permits to work and age certificates issued under the provisions of this act shall be open to inspection by attendance or probation officers, by officers of the State Department of Labor, and by the officers of the State Department of Education.

j) All permits to work and all certificates of age issued under the provisions of this act shall be subject to cancellation at any time by the Superintendent of Public Instruction, by the State Labor Inspector, or by the officer issuing the same, whenever any such officer shall find that the conditions for the legal issuance of such permits or certificates do not exist.

k) The officer authorized to issue permits to work shall have authority to administer the oath necessary for carrying out its provisions, but no fee shall be charged for administering such oaths or for issuing such permits

l) Any child who is issued a permit to work under the provisions of this act may be required to attend a part-time school which any school district is hereby authorized to organize.

m) Every person, firm, corporation, or agent or officer of a firm or corporation employing children under the age of sixteen years shall keep a separate register containing the names, ages, and addresses of such employees, and shall post and keep posted in a conspicuous place in every room where such children are employed a written or printed notice stating the working hours per day for each day in the week required of such children and shall keep on file during the term for which issued all permits for children to work required by this act for children under the age of sixteen years. Such records and files shall be open at all times to the inspection of school attendance and probation officers, and the officers of the State Department of Labor, and the officers of the State Department of Education.

n) Within five days after the termination of work permits, notification, on the forms and in the manner prescribed, shall be sent by the employer to the board of education of the district which

authorized such permit. Such notification shall contain the latest correct address of such child known to such employer.

o) No work permit shall in any circumstance be issued or used in violation of the child labor laws of the Commonwealth of Kentucky or the United States. (1934, c. 65, p. 280.)

ATTENDANCE OFFICERS.

Sec. 4434-5, Ky. Stat. **Attendance Districts.**—Each school district shall constitute a separate attendance district; provided that, subject to the approval of the State Board of Education, two or more contiguous school districts may unite to form one attendance district. (1934, c. 65, p. 283.)

Sec. 4434-6, Ky. Stat. **Appointment, Salary, Tenure, Qualifications, and Expenses of Attendance Officers; Date Effective.**—Each board of education shall, upon the nomination and recommendation of the superintendent appoint and fix the salary of an attendance officer and such assistant attendance officers as are deemed necessary. An attendance officer may be appointed for a term of one, two, three, or four years to take office July 1, and shall be responsible to the superintendent of schools, and may be removed for cause at any time by a vote of three members of the board. He shall devote his entire time to the duties of his office and shall be required to take an oath of office. In the case of a vacancy in the office for an unexpired term, the appointment shall be made so the term will end on June 30. Each attendance officer and each assistant attendance officer shall be twenty-five years of age and shall throughout his tenure of service hold a valid certificate issued in accordance with the rules and regulations of the State Board of Education; provided that attendance officers and assistant attendance officers in office at the time this act becomes operative may continue to serve out their respective terms and may be reappointed to succeed themselves.

When the boards of two or more contiguous school districts unite to form one attendance district, there shall be appointed at least one attendance officer or assistant attendance officer for each eight thousand (8,000) children in the combined school census of the districts or for a major fraction of this number. The superintendents of the united districts shall jointly make the nominations and recommendations relating to attendance officers to the boards of education meeting jointly, and the majority vote of each board shall determine all questions. The salary of attendance officers in such united districts shall be borne by the employing boards in the

same proportion as the school census of each school district bears to the total school census of the united district.

Attendance officers and assistant attendance officers shall be allowed their necessary and authorized expenses incurred in the performance of their legal duties. Each board shall bear the expense of its attendance officer and assistant attendance officers incurred in its district.

Controversies arising in attendance districts relating to attendance matters shall be submitted to the State Board of Education for settlement, and in case an agreement suitable to all parties cannot be reached the State Board may dissolve the united attendance district. In case of such dissolution, each school district involved may unite with other contiguous school districts in forming a united attendance district or set up its own attendance system in accordance with the provisions of this act.

The provisions of this act relating to attendance officers shall become effective July 1, 1934. (1934, c. 65, p. 283.)

Bernard v. Sims, et al., 279 Ky. 565. Board of education shall hire an attendance officer upon recommendation and nominatnon of superintendent unless it is shown that the person does not possess the qualifications prescribed by the statutes or other valid reasons. (June 13, 1939.)

Sec. 4434-7, Ky. Stat. **Office to be Provided.**—The office of the superintendent of schools shall be deemed the office of the attendance officer and suitable space shall be provided therein or adjacent thereto for him. (1934, c. 65, p. 285.)

Sec. 4434-8, Ky. Stat. **Records and Reports.**—The attendance officer shall keep such records and make such reports as are required by law, by regulation of the State Board of Education, by the state attendance officer, and by his superintendent and board of education. (1934, c. 65, p. 285.)

Sec. 4434-9, Ky. Stat. **Duties of Attendance Officer.**—The general duties of the attendance officer shall be (a) to enforce the compulsory attendance and census laws in the attendance district which he serves; (b) to acquaint the school with the home conditions of the child, and the home with the work and advantages of the school; (c) to ascertain the causes of irregular attendance and truancy, and seek the elimination of these causes; (d) to secure the enrollment in school of all children who should be enrolled and to keep all enrolled children in reasonably regular attendance; (e) to perform such other duties as may be assigned him by the State Board of Education or the district board. (1934, c. 65, p. 285.)

Sec. 4434-10, Ky. Stat. **Visits; Needs of Indigent Children.**—It shall be the further duty of the attendance officer to visit the

homes of children who are absent from school or who are reported to be in need of books, clothing, or parental care. When an attendance officer is satisfied that any parent, guardian, or other person having control or charge of any child subject to the provisions of this act, does not have sufficient income to furnish such child with the necessary books and school supplies, he shall ascertain the number and cost of books and school supplies needed by the indigent child and shall report the same to the superintendent of schools of the district in which said child resides. (1934, c. 65, p. 285.)

Sec. 4434-11, Ky. Stat. **Purchase of Books and Supplies for Indigent Children.**—It shall be the duty of the superintendent to report these facts to the tax levying authority of the district, and it shall be the duty of such tax levying authority to appropriate a sum of money sufficient for the purchase of textbooks and school supplies for such children; provided that the sum appropriated by said tax levying authority shall not be less than two hundred dollars ($200) annually in any county school district and fifty dollars ($50) in any independent school district. (1934, c. 65, p. 286.)

Sec. 4434-12, Ky. Stat. **Cases of Non-Attendance to be Investigated.**—The attendance officer shall have the power to investigate in his district any case of non-attendance at school of any child under sixteen years of age, or any child suspected of being under sixteen years of age, and he may take such action in accordance with laws as the superintendent of schools may direct or as he himself may deem proper in the absence of specific directions. (1934, c. 65, p. 286.)

Sec. 4434-13, Ky. Stat. **Police Power.**—The attendance officer and assistant attendance officers shall be vested with police powers and the authority to serve warrants, and shall have the power and authority, under the direction of the superintendent of schools and the district board of education, the state attendance officer, or the State Board of Education, to institute proceedings against any officer, parent, guardian, person, partnership, or corporation violating any provisions of the laws relating to compulsory attendance and the employment of children. He shall have authority to enter workshops, factories, stores, and all other places where children are employed and do whatever may be necessary in the way of investigation or otherwise to enforce the laws relating to compulsory attendance and the employment of children of compulsory school age. And any officer, manager, director, or other person who refuses to permit or in any way interferes with the entrance therein of such attendance officer or in any way interferes with any investigation

therein shall be guilty of a violation of this act and punishable as hereinafter provided. (1934, c. 65, p. 286.)

Sec. 4434-14, Ky. Stat. **Definition of Truancy.**—Any child shall be deemed a truant in the meaning of this act who shall have been absent from school without valid excuse for more than three days or tardy on more than three days, any absence for less than half of a school day being regarded as tardy. Any child shall be deemed an habitual truant who shall have been reported as a truant more than three times. (1934, c. 65, p. 287.)

Sec. 4434-15, Ky. Stat. **Reports to Superintendent of Schools.**—The principal or teacher in charge of any school, public, private, or parochial, shall report to the superintendent of schools of the district in which such school is situated the names, ages, and places of residence of all pupils in attendance at their schools together with such other facts as said superintendent may require to facilitate the carrying out of the provisions of the laws relating to compulsory attendance and employment of children. Such reports shall be made within the first two weeks of the beginning of school in each school year. (1934, c. 65, p. 287.)

Hunter, et al. v. Board of Education of Floyd County, 265 Ky. 162. Court not authorized to substitute its judgment for that of board and the variety of evidence and facts it considered. Information furnished does not show that the board of education acted arbitrarily or without creditable, competent and relevant evidence. Held that board acted within its discretion in removing him from office. (June 23, 1936.)

Sec. 4434-16, Ky. Stat. **Teacher to Report Withdrawals; Notices of Transfer.**—Whenever any child of cumpulsory age withdraws from school, the teacher of the child shall ascertain the reason. The fact of the withdrawal and the reason therefor shall be immediately transmitted by the teacher to the superintendent of schools of the district in which the school is situated. If the child who has withdrawn from school has done so because of change of residence, the next residence shall be ascertained and shall be included in the notice thus transmitted. The superintendent shall thereupon forward a card showing the essential facts regarding the child and stating the place of his new residence to the superintendent of schools of the district to which the child has moved. The State Board of Education shall prescribe the forms to be used in the operation of this section. (1934, c. 65, p. 287.)

VIOLATION AND PENALTIES

Sec. 4434-17, Ky. Stat. **Notice of Violation.**—Every parent, guardian, or custodian of any child residing in any school district

in the Commonwealth of Kentucky shall be held legally responsible for any violation of this act by such child. Before any proceedings are instituted against such parent, guardian, or custodian for violation of this act a written notice of such violation shall be served on such person by the attendance officer, and one day shall be given for the termination of such violation. After such one day's notice, if the violation is continued or if the provisions of this act are again violated during the school term by such child or ward, no further notice shall be necessary, and such parent or guardian shall be punishable as hereinafter provided. A notice, under the provisions of this section, by registered mail or by personal service by the attendance officer shall be a legal notice. (1934, c. 65, p. 288.)

Sec. 4434-18, Ky. Stat. **Law Applicable to All Children Residing in the Commonwealth.**—Every child actually resident in the Commonwealth shall be amenable to the laws relating to compulsory attendance and neither he nor the person in charge of him shall be excused from the operation of said laws or the penalties under them on the ground that the child's residence is seasonable or that the parent of the child is a resident of another state. The board of education of any school district shall admit without tuition charge any child actually resident in the district who would otherwise be deprived of school privileges in this Commonwealth. (1934, c. 65. p. 288.)

Sec. 4434-19, Ky. Stat. **Work Permits.**—It shall be unlawful for any person, firm or corporation to hire or employ or permit any child between the ages of seven years and sixteen years as heretofore defined, to work in any gainful occupation until such person, firm, or corporation shall have secured and placed on file in the office of such person, firm, or corporation the work permit for such child as hereinbefore described. (1934, c. 65, p. 289.)

Sec. 4434-20, Ky. Stat. **Penalty for Violation by Parent.**—Any parent, guardian, or custodian who has charge or control of a child between the ages aforesaid and who willfully fails to comply with the foregoing requirements shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not to exceed ten dollars ($10) and costs for the first offense, and not to exceed twenty dollars ($20) and costs for each subsequent offense; but the court trying the case may, in its discretion suspend enforcement of the punishment, if the child be immediately placed in attendance at a school as aforesaid, and may finally remit the same if such attend-

ance has continued regularly for the full school term. School attendance may be proved by an attested certificate of the principal or teacher in charge of the school. (1934, c. 65, p. 289.)

Sec. 4434-21, Ky. Stat. **Penalty for Violation by Employer.**—Any person, corporation, or firm, or agent or officer of a corporation or firm that fails to comply with any or all of the provisions of this act relating to compulsory attendance or that employs or suffers or permits any child to be employed in violation thereof is guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not less than fifty dollars ($50) nor more than two hundred dollars ($200), or by imprisonment in the county jail for not more than sixty (60) days or both such fine and imprisonment for each and every offense. (1934, c. 65, p. 289.)

Sec. 4434-22, Ky. Stat. **Penalty for Violation by School Officer or Teacher.**—Any principal or teacher, or other school officer who shall willfully fail to comply with the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not less than tweny-five dollars ($25) nor more than fifty dollars ($50) and may have his certificate revoked. (1934, c. 65, p. 290.)

Sec. 4434-23, Ky. Stat. **Penalty for Violation by Attendance Officer.**—Any attendance officer or assistant attendance officer who willfully fails to comply with the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars ($25) nor more than fifty dollars ($50), and in addition thereto shall be removed from office and have his certificate revoked. (1934, c. 65, p. 290.)

Sec. 4434-24, Ky. Stat. **Disposal of Fines.**—All fines imposed hereunder and all sums required to be paid as penalties under this act shall, after payments of the costs and prosecution and of recovery thereof, be paid into the treasury of the district board of education and become a part of the school fund of the district. (1934, c. 65, p. 290.)

SCHOOL CENSUS.

Sec. 4434-25, Ky. Stat. **Continuing Census Required.**—Each board of education shall maintain a permanent and continuing school census, of such nature that the number of children therein, the names and ages of such children, the nationality, occupation and post office address of each parent, guardian, or custodian may be determined at any time in each school district. (1934, c. 65, p. 290.)

Sec. 4434-26, Ky. Stat. **Nature of Census.**—It shall be the duty of the attendance officer of each school district working under the direction of the superintendent of schools to institute and maintain a complete and accurate permanent and continuous census of all children between the ages of six and eighteen years that reside in the school district; provided that a child's age shall be interpreted as being six and eighteen whenever the child has reached his sixth birthday and until he has passed his eighteenth birthday. Such school census shall specify the name, date of birth, sex, and the names of parents, guardians, or custodians of each child, the post office address of each parent, guardian, or custodian the school district in which the child resides, the school to which the child belongs, said school to be described by number and name, and such other data as may be required by the Superintendent of Public Instruction. Each board of education shall furnish its attendance officer with such assistance as the board may deem necessary for the institution and maintenance of said permanent and continuing census. (1934, c. 65, p. 291.)

Sec. 4434-27, Ky. Stat. **Report of Census to the Superintendent of Public Instruction.**—It shall be the duty of the attendance officer of each school district on or before the first day of June of each year to prepare and make ready for the district board of education to mail to and cause to be placed in the hands of the Superintendent of Public Instruction a report showing the whole number of children who will be, on the first day of July following, between the ages of six and eighteen years, as heretofore defined, residing in the school district or districts which he serves. The report shall list the children according to the schools to which they belong in each school district. The report shall be made on forms furnished by the State Board of Education and shall contain such other information as required by the Superintendent of Public Instruction. A duplicate copy of the report shall be placed in the office of the district board of education. Such report shall be sworn to before a notary public as being a correct statement as shown by the school census on file in the office of the attendance officer. (1934, c. 65, p. 291.)

Louisville School Board v. Superintendent, 102 Ky. 394, 43 S. W. 718. State superintendent may question in a judicial proceeding the accuracy of reports as to the number of children.

Sec. 4434-28, Ky. Stat. **Penalty for False Report of Census.**—Should any attendance officer or other person willfully or fraudulently report a larger number of children of school age in any district than the actual number, or otherwise make a false report of the census to the Superintendent of Public Instruction, he shall be liable to a fine of not less than fifty dollars ($50) and shall be liable to punishment

for the crime of false swearing, and in addition, he shall be removed from office, and, in the case of an attendance officer, shall have his certificate revoked. (1934, c. 65, p. 292.)

Sec. 4434-29, Ky. Stat. **Distribution of State Per Capita.**—The Superintendent of Public Instruction shall have the power to distribute the state per capita to each school district on the basis of the school census for such school district as shown by the annual report of the attendance officer as provided herein. (1934, c. 65, p. 292.)

Sec. 4434-30, Ky. Stat. **Forms; Rules and Regulations of the State Board of Education.**—The State Board of Education shall provide the forms to be used in the operation of the provisions of this act relating to school census and shall have power to make rules and regulations for the operation of the permanent and continuing school census. (1934, c. 65, p. 292.)

Sec. 4434-31, Ky. Stat. **State Supervisor of Attendance.**—For the purpose of supervising and enforcing the compulsory attendance laws, and the permanent and continuing school census within the several school districts of the Commonwealth, there shall be employed in the State Department of Education at least one person, whose full time shall be devoted to the supervision of the enforcement of the compulsory attendance and school census laws. (1934, c. 65, p. 292.)

SPECIAL SCHOOLS.

Sec 4434-32, Ky. Stat. **Parental or Truant Schools.**—The board of education of any independent school district embracing a city of the first or the second class, is hereby authorized and empowered to equip, maintain, and conduct one or more parental or truant schools for the purpose of affording a place where children of compulsory school age, and coming within the provisions of this act, and of the statutes of this Commonwealth concerning neglected, dependent, and delinquent children, may be enrolled for the purpose of discipline and instruction hereinafter provided.

Such school or schools may be located either within or without the corporate limits of the city; provided, however, that such school or schools shall not be located outside the county in which such city is located, and, provided further, that no such school shall be located at or near any penal institution.

No religious instruction shall be given in such school or schools except as is allowed by law to be given to public schools, but the board of education shall make suitable regulations so that inmates shall receive religious training in accordance with the belief of such children's parents or guardians, either by allowing such religious services

to be held in such institution or by arranging for the attendance of public service elsewhere.

Any child committed to such school or schools, upon an order duly entered by the county court, may be allowed to return home upon probation and to remain while upon probation, subject to the friendly visitation and supervision of a probation officer of said county court, and subject at any time to be returned to such school if said child, in the opinion of the county court, shall violate the terms and conditions of its probation. No child shall be released upon probation in less than four weeks from the time of his or her commitment, nor thereafter, unless the court shall be satisfied that said child who is probationed, will attend regularly some public or private school as herein provided. If any child so released upon probation shall be regular in his or her attendance in school, and his or her conduct as a pupil shall be satisfactory for a period of one year from the date upon which he or she was released upon probation, he or she shall be finally discharged from such parental or truant school, and shall not be recommitted thereto, except in a subsequent proceeding undertaken according to the provisions of this act, and to the statutes of this Commonwealth concerning neglected, dependent, and delinquent children.

Any child released from said school or schools upon probation as herein provided, who shall violate the conditions of his or her probation at any time within one year thereafter shall, upon the order of the county court, be returned to such parental or truant school and shall not again be released upon probation within a period of three months from the date of such reentering; and if such child shall violate the conditions of a second release upon probation he or she shall be recommitted to such school and shall not be released therefrom on probation until he or she shall have remained in such school one year.

The board of education of independent school districts embracing cities of the first or the second class may establish any rules or regulations concerning such schools not inconsistent with this act or the Constitution or laws of this Commonwealth. (1934, c. 65, p. 293.)

Sec. 4434-33, Ky. Stat. **District Boards of Education May Provide for Special Education.**—Any district board of education in this Commonwealth is hereby authorized, subject to the approval of the State Board of Education, to provide for the instruction of children of proper school age by reason of defective eyesight and/or hearing or because of physical or mental handicap require special books or special instruction, or both, in order to profitably or safely

attend the public schools in such district, and any district board of education may, subject to the approval and direction of the State Board of Education, select and furnish suitable books and equipment for use in such schools, elect qualified teachers, and provide services in the same manner as for other schools. Nothing in this act shall be so construed as to annul any law or regulations that may preclude from attendance upon the schools children afflicted with communicable eye disease, or any other communicable disease. Any board of education providing such special instruction may, in its discretion, transport any or all of such children to and from school and pay for such transportation from its general funds. (1934, c. 65, p. 295.)

CHAPTER VIII.

CERTIFICATION OF SCHOOL EMPLOYEES

Sec. 4502-1, Ky. Stat. **Certification Authority.**—The certification of all superintendents, principals, teachers, supervisors, attendance officers, and other administrative, supervisory, or instructional employees shall be vested in the State Board of Education. All certificates provided for by this act and that may be issued under this act shall be issued in accordance with the published rules and regulations of the State Board of Education through its executive officer, the Superintendent of Public Instruction. Certificates shall be issued, reissued, and renewed to former students, students and graduates of the state teachers' colleges of Kentucky for white persons and of the College of Education of the University of Kentucky upon the basis of the completion of curricula prescribed by the Council on Public Higher Education for each or any of the certificates provided for herein or as may hereafter be provided by law, and the curricula when so prescribed may be approved by the State Board of Education.

Certificates shall be issued to the former students, students and graduates of the two state institutions for colored persons in accordance with law and in accordance with the rules and regulations of the State Board of Education.

The State Board of Education is hereby authorized and directed to approve the curricula of any standard college or university, or of any department thereof for the training of teachers, when the curricula comply with the rules and regulations of the State Board of Education and when the institution shall have curricula equivalent to any or all the curricula prescribed for the state institutions for any of the certificates for teaching issued to students of such schools and as shall have otherwise met the terms and conditions as hereinafter provided. Any student of such institution who shall have completed any of these curricula or the equivalent thereof, as approved by the State Board of Education, and who in addition thereto shall have completed the prescribed requirements for the issuance of certificates for teaching to students of the state institutions may, by the State Board of Education, be granted a certificate for teaching of the same validity and tenure as certificates which are issued to students completing like requirements in the state institutions. (1934, c. 65, p. 295.)

Daviess County Board of Education v. Vanover, 219 Ky. 565; and McLeod v. State, 122 S. W. 737. When a teacher has completed the qualifications required by the Commonwealth of Kentucky and is not otherwise unfit morally or in ill health, and meets the educational standards fixed by the county board of education, he has a right to teach in the common schools and that an attempt of the county board to prevent married women who meet the above qualifications from teaching in the county schools is unauthorized, unreasonable, and an abuse of discretion. (April 29, 1927.)

Sec. 4502-2, Ky. Stat. **Definition of Standard College or University; Standard Gradaute Work; Semester and Semester Hour.**—An institution which is a member of the Association of Colleges and Universities of the Southern States or the American Association of Teachers Colleges or the Kentucky Association of Colleges and Universities or which may be recognized as an accredited four-year institution by the University of Kentucky shall be deemed a standard college or university in the meaning of this act.

Standard college or university work of graduate grade shall be interpreted to mean approved work in an institution belonging to any of the accrediting agencies set out herein and which institution has a program of work extending beyond four years of college or university work.

Within the meaning of this act, a semester shall consist of eighteen weeks (one-half year) of standard college or university work, and a semester hour shall consist of one academic or college hour per week for one semester. (1934, c. 65, p. 297.)

Note.—Effective date of Sec. 4502-3 is September 1, 1935.

Sec. 4502-3, Ky. Stat. **Kinds of Certificates Issued.**—There shall be issued the following kinds of certificates, namely, elementary certificate, high school certificate, and certificate in administration and supervision. Attendance officer certificates and emergency certificates may be issued as hereinafter provided.

(a) **Elementary Certificates.**—An elementary certificate shall be valid for use in any elementary school in this Commonwealth.

(1) **Provisional elementary certificate.**—The provisional elementary certificate, valid for three years, shall be issued to a person who has completed a curriculum of two years (64 semester hours) for the training of elementary teachers in a standard college or university, and which curriculum meets the minimum standards prescribed by the State Board of Education for the issuance of such certificate. This certificate may be reissued or renewed after two years' teaching experience during the life of the certificate or upon the presentation of one-half year (16 semester hours) of additional standard college or university work earned during the life of the certificate and prescribed in the same manner as for the original issue, and may be renewed thereafter upon the presentation of one-half year (16 semes-

ter hours) of additional standard college or university work earned during the life of the certificate and prescribed in the same manner as for the original issue.

(2) **Standard elementary certificate.**—The standard elementary certificate, valid for four years, shall be issued to a person who is a graduate of a standard four-year college or university and who has completed a curriculum of four years (at least 120 semester hours) for the training of elementary teachers, which curriculum meets the minimum standards prescribed by the State Board of Education for the issuance of such certificate. This certificate may be reissued or renewed every four years after three years' teaching experience during the life of the certificate or upon the presentation of one-half year of standard college or university work of graduate grade prescribed in the same manner as for the original issue.

The standard elementary certificate may be extended for life upon the presentation of evidence of the holder having completed a standard four-year college or university curriculum (at least 120 semester hours) for the training of elementary teachers and in addition thereto one year of standard college or university work of graduate grade, prescribed in the same manner as for the original issue, and three years' teaching experience in the elementary field during the life of the certificate.

Each elementary certificate shall show on its face the curriculum the holder has completed for its issuance.

(b) **High School Certificate.**—The high school certificate shall be valid for use in any high school in this Commonwealth.

(1) **Provisional High School Certificate.**—The provisional high school certificate, valid for four years, shall be issued to a person who is a graduate of a standard four-year college or university and who has completed a curriculum of four years (at least 120 semester hours) for the training of high school teachers, which curriculum meets the minimum standards prescribed by the State Board of Education for the issuance of such certificate. This certificate may be reissued or renewed every four years after three years' teaching experience during the life of the certificate or upon the presentation of one-half year of standard college or university work of graduate grade earned during the life of the certificate and prescribed in the same manner as for the original issue.

(2) **Standard High School Certificate.**—The standard high school certificate, valid for five years, shall be issued to a person who is a graduate of a standard four-year college or university and who

has completed a standard four-year college or university curriculum for the training of high school teachers and who, in addition thereto, has completed one year of standard college or university work of graduate grade, all of which work meets the minimum standards prescribed by the State Board of Education for the issuance of such certificate.

The standard high school certificate may be extended for life upon presentation of evidence that the holder has had three years' teaching experience in the high school field during the life of the certificate.

Each high school certificate shall show on its face the curriculum the holder has completed for its issuance.

(c) **Certificates in Administration and Supervision.**—Certificates in administration and supervision shall be valid for use in any position of superintendent, principal, supervisor, teacher, or attendance officer.

(1) **Provisional Certificate in Administration and Supervision.**—The provisional certificate in administration and supervision, valid for four years, shall be issued to a person who has had at least two years' successful teaching experience and who is a graduate of a standard four-year college or university and who has completed a standard four-year college or university curriculum (at least 120 semester hours) for the training of administrators and supervisors, which curriculum meets the minimum standards prescribed by the State Board of Education for the issuance of such certificate. This certificate may be reissued or renewed every four years after three years' experience during the life of the certificate or upon presentation of one-half year of standard college or university work of graduate grade, prescribed in the same manner as for the original issue.

(2) **Standard Certificate in Administration and Supervision.**—The standard certificate in administration and supervision, valid for five years, shall be issued to a person who has had at least two years' successful teaching experience and who is a graduate of a standard four-year college or university and who has completed a standard four-year college or university curriculum for the training of administrators or supervisors, and who, in addition thereto, has completed one year of standard college or university work of graduate grade, all of which work meets the minimum standards prescribed by the State Board of Education for the issuance of such certificate.

The standard certificate in administration and supervision may be extended for life upon presentation of evidence that the holder has had three years of successful experience during the life of the certificate.

Each certificate in administration and supervision shall show on its face the curriculum the holder has completed for its issuance. (1934, c. 65, p. 297.)

Simpson County Board of Education, et al. v. Bradley, et al., 246 Ky. 822. Holder of life certificate is entitled to teach without further examination and without requirements of scholastic training. (January 17, 1933.)

Sec. 4502-4, Ky. Stat. **Attendance Officer's Certificate.**—The State Board of Education, upon the recommendation of the Superintendent of Public Instruction, shall prepare rules and regulations providing for the certification of attendance officers. (1934, c. 65, p. 301.)

Sec. 4502-5, Ky. Stat. **Emergency Certificates.**—When a district board of education shall satisfy the State Board of Education that it is impossible to secure qualified teachers for a position or positions in the school under the control of such district board of education, the State Board of Education may, on approval of the Superintendent of Public Instruction, issue emergency certificates to persons who meet the qualifications which the State Board of Education shall determine for emergency certificates. An emergency certificate shall be valid only for the specific job for which issued and for the current school term.

The State Board of Education, may at its discretion, require the passing of a written examination before such emergency certificate shall be issued. In case an examination is used, it shall be prepared and administered and the papers graded in the State Department of Education under the direction of the Superintendent of Public Instruction, in accordance with rules and regulations approved by the State Board of Education for such examinations. (1934, c. 65, p. 301.)

Sec. 4502-6, Ky. Stat. **Certificates of Former Issue.**—The validity of any certificate or license in force at the time this act goes into effect shall not be impaired by this act, and such certificate or license shall be reissued or renewed in accordance with the terms of the law applying at the date of issue. (1934, c. 65, p. 302.)

Sec. 4502-7, Ky. Stat. **Renewal of Certificates.**—Certificates lower than the standard provided for in this act may be raised to a higher grade only by completing in a standard college or university

the amount of academic and professional work prescribed for such renewal or such higher grade certificate. (1934, c. 65, p. 302.)

Conley, et al. v. Ousley, 251 Ky. 583. Teacher whose certificate expired before acquisition of second of two additional high school units necessary for renewal could not obtain renewal on subsequent acquisition of necessary unit. (Sec. 4501-3, Ky. Statutes.) (December 5, 1933.)

Fugate v. Fields, 247 Ky. 603. Teacher, whose certificate expired before acquisition of additional scholarship necessary for renewal, could not obtain renewal on subsequent acquisition of necessary scholarship. (Sec. 4501-3, Ky. Statutes.) (January 13, 1933.)

Sec. 4502-8, Ky. Stat. **Fees.**—A fee of two dollars ($2) shall be paid for each issuance of a certificate and a fee of one dollar ($1) for each renewal or conversion from lower to higher grade. Fees thus collected shall be used toward defraying operating expenses of the Division of Teacher Training and Certification of the State Department of Education. (1934, c. 65, p. 302.)

Sec. 4502-9, Ky. Stat. **Power to Revoke Certificates.**—The State Board of Education may, on the written recommendation of the Superintendent of Public Instruction, revoke, for immorality, misconduct in office, incompetency, or willful neglect of duty, any certificate issued under this act, or any certificate or license issued under any previous act, to superintendents, principals, teachers, supervisors, attendance officers, or other administrative, supervisory, or instructional employees, after giving the defendant a copy of the charges against him and an opportunity, upon not less than ten days' notice, of being heard in person or by counsel. (1934, c. 65, p. 302.)

Sec. 4502-10, Ky. Stat. **All Regular School Officials and Employees Shall Hold Certificates.**—Each superintendent, principal, teacher, supervisor, attendance officer, or other administrative, supervisory, or instructional employee of a public or common school shall hold the kind and grade of certificate provided by law, for qualifying such person to hold such position. (1934, c. 65, p. 303.)

Sec. 4502-11, Ky. Stat. **General Qualifications for Certificates; Certificates Required.**—No person shall receive or hold any certificate provided for in this act who does not present evidence of a good moral character, or who is under eighteen years of age; and no one shall be eligible to hold any public school position for which certificates may be issued, or receive salary for services rendered in such position, who does not hold a certificate of legal qualifications for such position. (1934, c. 65, p. 303.)

Sec. 4502-12, Ky. Stat. **State Board of Education to Publish Rules and Regulations and Information about Certificates.**—The State Board of Education, upon the recommendation of the Super-

intendent of Public Instruction, shall from time to time publish bulletins containing information on the kinds and grades of certificates issued, the rules and regulations governing the issuance of each kind and grade of certificate issued, schools offering teacher-training courses, the renewal of certificates, the transfer of certificates to and from other states, the acceptance of credentials from institutions of other states, and such other information relating to the training and certification of teachers as it deems advisable. (1934, c. 65, p. 303.)

Sec. 4502-13, Ky. Stat. **Power to Renew Certificate.**—That the State Board of Education shall have authority to renew any certificate for teaching or for holding administrative position which expires on June 30 of any year provided renewal requirements have been completed and filed with the Superintendent of Public Instruction before September 1 of the year in which the certificate expires. (1938, c. 65, p. 402.)

CHAPTER IX.

TEACHERS.

Sec. 4503-1, Ky. Stat. **Prescribed Duties.**—Each board of education shall have the power and it shall be its duty to fix and prescribe the duties to be performed by all persons in public school service in the district. (1934, c. 65, p. 304.)

Abrams v. Jackson Co. Board of Education, 230 Ky. 151. Under contract for employment of school teacher for seven months, it was duty of school board to furnish house in which to teach and in absence of stipulation in contract for cessation of teacher's salary during such period failure of board to furnish a suitable house in which to teach constituted a breach of contract. School teacher held not entitled to recover for breach of employment contract to teach for seven months on destruction of school building by fire, in absence of evidence showing that she attempted to find similar employment in locality. (June 21, 1929.)

County Board of Education v. Dudley, 154 Ky. 426. To be enforceable a contract for teachers' services must be executed in writing.

Mock v. County Board of Education of Nelson County, 145 Ky. 715, 141 S. W. 38. A county board of education is liable to a teacher for salary due under the teachers' contract; it is not liable for the wrongful acts of individual trustees in unlawfully dismissing the teacher.

Vaughan v. Hindman, 145 Ky. 507, 140 S. W. 641. A teacher had a contract with a board of trustees to teach a public school for a term of six months; the school building was destroyed by fire before expiration of the six months and no other building was provided. The teacher had no right of recovery for the salary for the remainder of the term

Noble, Etc. v. Williams, Etc., 50 Ky. 439. Supplies voluntarily furnished by teacher cannot be recovered from the school board.

Sec. 4503-2, Ky. Stat. **Certificate to be Filed.**—No teacher or other person shall enter upon the duties of a position requiring certification qualifications until his or her certificate has been filed or credentials registered with the board of education employing such person. (1934, c. 65, p. 304.)

Martin v. Knott County Board of Education, 275 Ky. 483. Qualifications of applicant as teacher must be determined at the time he begins to fulfill contract and not at the time that application is made. (November 22, 1938.)

Bullock v. Brown, 258 Ky. 522. Law requires written contract with a teacher. Petition fails to state that employment was evidenced by written contract. It, therefore, fails to state a course of action. (March 22, 1935.)

Bracken County Board of Education, et al. v. Nickoson, 249 Ky. 419. Teacher must be designated as principal when employed in order for rule and law to apply to that party. (May 26, 1933.)

Sec. 4503-3, Ky. Stat. **Enforcement of Course of Study, Use of Textbooks, and Regulations.**—Each teacher in the public schools must enforce the course of study, the use of the legally authorized textbooks, and the rules and regulations prescribed for the schools, and if any teacher shall willfully refuse or neglect to comply with the law or such rules and regulations the board of education, upon recommendation of the superintendent, may remove him or her at any time; and in case of such dismissal or removal, the said teacher shall receive payment only for the time taught. (1934, c. 65, p. 304.)

Sec. 4503-4, Ky. Stat. **Responsibility for Pupils' Conduct.**—Each teacher in the public schools is authorized and directed to hold pupils to a strict account for their conduct in school, on the way to and from school, on the playgrounds, or during intermission or recess; and for good cause said teacher may, as hereinbefore set out, cause to be suspended any pupil. (1934, c. 65, p. 304.)

City Board of Education v. Dudley, et al., 154 Ky. 426. Teachers; rights and liabilities of.

Cross v. Trustees, 129 Ky. 35. It was held that a pupil's conduct in refusing to take part in a dialogue in the annual commencement exercises constituted insubordination and was good cause for suspension.

Trustees of a graded school district have no right to arbitrarily expel a pupil from a school which he has attended, nor to arbitrarily refuse him the privilege of attending the school in the future.

Board of Education v. Booth, 110 Ky. 807, 62 S. W. 872. Pupils may be expelled for violation of rules of school, and courts will not interfere with or control the action of trustees unless they acted arbitrarily or maliciously.

Sec. 4503-5, Ky. Stat. **Teacher to Keep Records.**—Each teacher in the public schools must keep an approved record which shall be left with the superintendent or as he may direct at the close of the term and which shall show the program of recitations, classification, attendance, and grading of all pupils who have attended school at any time during the school year and such other facts as may be required. (1934, c. 65, p. 305.)

Sec. 4503-6, Ky. Stat. **Teacher to Make Reports.**—Each teacher or other person in the public schools shall make such monthly, annual, and special reports and inventories to the district superintendent at the time and in the manner and on the blanks prescribed by the district board of education and the State Board of Education. Any teacher who shall willfully make a false monthly or term report of time taught or other item or shall willfully fail to make a required report shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of fifty dollars ($50) and shall have his certificate revoked. (1934, c. 65, p. 305.)

Sec. 4503-7, Ky. Stat. **Term Covered by Report.**—Any teacher who shall end any school term before the close of the school year shall make a report to the superintendent immediately after the close of the term; and any teacher who may be teaching any school at the end of the school year shall in his or her annual report include all statistics for the entire school year, notwithstanding any previous report for a part of the year. (1934, c. 65, p. 305.)

Sec. 4503-8, Ky. Stat. **Penalty for Abuse of Teacher.**—Any parent, guardian, or other person who upbraids, insults, or abuses any teacher of the public schools in the presence of the school or in the presence of a pupil thereof shall be guilty of a misdemeanor and

shall be liable to a fine of not less than ten dollars ($10) nor more than one hundred dollars ($100). (1934, c. 65, p. 305.)

Sec. 4503-9, Ky. Stat. **Exemption from Jury Service.**—Superintendents, principals, teachers, and other employees of boards of education in the several school districts of this Commonwealth shall be exempt from service on any grand or petit jury and from serving as an election officer during the term of his contract with a board of education. (1934, c. 65, p. 306.)

Sec. 1701b, Ky. Stat. **Salaries of Public Officers and Employees May be Attached or Garnished.**—(1) Salaries or sums due state, county, school board, and city officers and employees shall be subject to attachment or garnishment the same as if such sums were due from an individual.

(2) Actions authorized by subsection (1) shall be brought in any court having jurisdiction of the subject matter as is now provided by law. (1940, c. 92, p. 374.)

Sec. 4503-11, Ky. Stat. **Restraint of Marriage Prohibited.**—That the Board of Education or the Superintendent of Public Schools of any city within this State shall be prohibited from having, adopting or making any rules, regulations, laws or policy in the restraint of marriage of any public school teacher who has had five (5) years or more teaching experience within the public schools of this State, and that marriage shall not be grounds for the dismissal of any public school teacher or the cancellation of any teachers' contract.

That all rules, regulations, laws or policies in conflict with this Act and the purpose thereof shall be of no effect; and it is hereby declared as the public policy of this State. (1938, c. 12, p. 152.)

CHAPTER X.

TEACHER RETIREMENT
CITIES 1ST, 2ND AND 3RD CLASSES

Sec. 4506-1, Ky. Stat. **Power to Establish.**—Boards of education of independent school districts embracing cities of the first and second classes may and are hereby empowered to establish retirement sytems for the purpose of providing retirement allowances and other benefits for teachers and other school employees. A retirement system so created shall have the powers and privileges of a corporation and shall be known as "The Teachers' Retirement System of the Schools of ————————, Kentucky," and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and securities and other property held. (1934, c. 65, p. 306.)

Sec. 4506-2, Ky. Stat. **Power to Modify Existing System.**—In independent school districts embracing cities of the first and second classes which are already operating insurance and annuity systems for teachers or for teachers and other employees, full authority to adopt, modify, change, or revise the present systems, including pensions already granted, is by this act conferred upon the boards of education of such school districts, subject to the approval of the board or governing body of the existing system and subject also to the provisions hereinafter stated. (1934, c. 65, p. 306.)

Sec. 4506-3, Ky. Stat. **Board of Trustees.**—A teachers' retirement system continued, reorganized or established under the provisions of this act shall have a board of trustees selected according to regulations established by the board of education of the district; provided that a majority of the membership of the board of trustees of the retirement system shall be classroom teachers or school principals; and provided further that the superintendent of schools shall be a member of such board of trustees. The board of trustees of the retirement system shall elect officers and carry on the business of the system. It shall have power, subject to the approval of the board of education, to make definite by-laws and regulations for the holding of meetings, the collection and disbursement of money securities and property of the retirement system continued, reorganized or established under the provisions of this act. (1934, c. 65, p. 307.)

Sec. 4506-4, Ky. Stat. **Regulations Not Necessarily Uniform.**—Each board of trustees of retirement systems in independent school districts embracing cities of the first and second classes may adopt, subject to the provisions of this act, such regulations as are necessary to the effective operation of the retirement system without regard to regulations adopted by any other such board of trustees. (1934, c. 65, p. 307.)

Sec. 4506-5, Ky. Stat. **Holding and Investment of Funds.**—The funds of a retirement system continued, reorganized, or established under this act shall be held independently of the funds of the employer. The investment of such funds shall be limited to bonds of the United States government or of any state, county, city, or other municipal corporation, first mortgages to fifty (50) per cent of appraised value, and interest bearing deposits at not less than three (3) per cent in banks and trust companies, where secured, of the city in which the retirement system operates. (1934, c. 65, p. 307.)

Sec. 4506-6, Ky. Stat. **Contributions of Teachers and the Board of Education; Limitations.**—The participating teachers and other employees, and the board of education in districts in which such retirement system is continued, reorganized or established may contribute to the retirement fund and the rates of the contribution shall be fixed by the board of trustees of the retirement system on the basis of careful actuarial investigations, and shall be adequate and sufficient to support the benefits granted in the system set up; provided that the total contribution of the board of education shall be at least the equal of the total contributions of the members of the system. The board of trustees of the retirement system may increase or decrease the rates of contribution whenever such action is deemed by them to be necessary to preserve the solvency and equity of the system as determined by actuarial studies; provided that the contribution of the board of education of a city of the first class shall in no case exceed the returns from a tax rate of four and one-half cents (4½¢) on each one hundred dollars ($100) of assessed valuation subject to local school tax in said district, and that the contribution of a board of education of a city of the second class shall in no case exceed the returns from a tax rate of four cents (4¢) on each one hundred dollars ($100) of assessed valuation subject to local school tax in said district. (1934, c. 65, p. 308.)

Sec. 4506-7, Ky. Stat. **Duty of Tax Levying Authority.**—It shall be the duty of the board of education in cities of the second class, the board of aldermen in cities of the first class, or such other

agency to which the General Assembly may in the future delegate the function of levying taxes for local school purposes in independent school districts embracing cities of the first and second classes, to levy the tax rate recommended by the board of trustees of the retirement system; provided that the rate of taxation in a city of the first class shall not exceed four and one-half cents (4½¢) on each one hundred dollars ($100) of assessed valuation subject to local school tax in said district, and provided the rate of taxation in a city of the second class shall not exceed four cents (4¢) on each one hundred dollars ($100) of assessed valuation subject to local school tax in said district. (1934, c. 65, p. 308.)

Sec. 4506-8, Ky. Stat. **Necessary Reserves to Be Created.**—A retirement system continued, reorganized, or established under the provisions of this act shall create and maintain reserves on the basis of an interest rate not in excess of four per cent (4%) per year and on the basis of mortality, disability, and other experience tables derived from reliable experience for such or a similar group of employees and approved by the board of education, which reserves shall be calculated to be adequate to cover the liabilities on account of benefits payable under the contracts or by-laws; provided, however, that the reserves required in respect to service rendered or benefits granted prior to the date of organization or reorganization of such system under the provisions of this act may be accumulated on a basis calculated to produce a balance between the actuarial present value of the assets and of the liabilities of the system within a period agreed upon by the boards of trustees of the retirement system and the board of education. (1934, c. 65, p. 309.)

Sec. 4506-9, Ky. Stat. **Exemption from Taxation and Attachment.**—The property of a retirement system for teachers and other employees of boards of education, the portion of wages or salary of a teacher deducted or to be deducted, the right of an employee to a retirement benefit, and all his rights in the funds of the system shall be exempt from taxation and shall not be attached or taken on execution or other process to satisfy any debt or liability of the employee or of any member of the system. (1934, c. 65, p. 309.)

Sec. 4506-10, Ky. Stat. **Records and Reports.**—The board of trustees of a retirement system continued, reorganized, or established under this act shall keep in convenient form such data as shall be necessary for actuarial valuation of the various funds of the system, and for checking the experience of the participants in such funds. The board of trustees of the retirement system shall keep a

record of all its proceedings which shall be open to inspection. It shall publish annually a report showing the fiscal transactions of the retirement system for the preceding year, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities. (1934, c. 65, p. 310.)

Sec. 4506-11, Ky. Stat. **Appointment of an Actuary; Duties.**—The board of trustees of the retirement system shall designate an actuary or other competent accountant or expert who shall be the technical adviser of the board of trustees on matters regarding the operation of a retirement system created by the provisions of this act and who shall perform such other duties as are required in connection therewith. In connection with the continuation, reorganization, or establishment of a retirement system under the provisions of this act, the actuary shall make such investigation of the mortality, service, and compensation experience of the members of the system as he shall recommend and the board of trustees of the retirement system shall authorize and, on the basis of such investigation, he shall recommend for adoption by the board of trustees of the retirement system such tables and such rates as are necessary. The board of trustees of the retirement system shall adopt such tables and certify such rates, and as soon as practicable thereafter the actuary shall make a valuation on the basis of such tables and rates of the assets and liabilities of the system. (1934, c. 65, p. 310.)

Sec. 4506-12, Ky. Stat. **Periodic Investigation.**—At the time a teachers' retirement system is reorganized or established under the provisions of this act, and at least once in each five-year period thereafter the actuary or other competent accountant or expert shall make an actuarial investigation into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system, and shall make a valuation of the assets and liabilities of the funds of the system, and taking into account the result of such investigation and valuation which shall be by him duly reported to the board of trustees of the retirement system, shall adopt for the retirement system such mortality, service, and other tables as shall be deemed necessary, shall certify the rates of contribution payable by members, and shall certify the rates of contribution payable by the board of education. (1934, c. 65, p. 311.)

Sec. 4506-13, Ky. Stat. **Annual Report by Actuary.**—On the basis of such tables as the board of trustees of the retirement system shall adopt, the actuary or other competent accountant or expert

shall make and report to the board of trustees an annual valuation of the assets and liabilities of the funds of a retirement system established under the provisions of this act. (1934, c. 65, p. 311.)

Sec. 4506-14, Ky. Stat. **Obligations of the Board of Trustees of the System.**—The creation and maintenance of reserves in all funds, and the payment of all pensions, annuities, retirement and disability allowances, refunds and other benefits contracted for under the provisions of a retirement system which is reorganized or newly established under the provisions of this act are hereby made obligations of the board of trustees of the system. (1934, c. 65, p. 311.)

Sec. 4506-15, Ky. Stat. **Penalty for Fraud; Correction of Errors.**—Any person who shall knowingly make any false statement or shall falsify or permit to be falsified any record or records of the retirement system in any attempt to defraud such system as a result of such act shall be guilty of a felony, and shall be punishable under the laws of the Commonwealth of Kentucky. Should any change or error in the records result in any member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, the board of trustees of the retirement system shall correct such error, and as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which such member or beneficiary was correctly entitled shall be paid. (1934, c. 65, p. 312.)

Sec. 4506-16, Ky. Stat. **Special Limitations.**—A retirement system continued or established under the provisions of this act shall be subject to rules and regulations adopted by the board of trustees of the system, but shall conform to the following provisions:

a) The board of trustees of any retirement system established under the provisions of this act shall maintain for each member a separate account of all deposits made.

b) Membership shall be compulsory for all individuals who are employed by the board of education after the reorganization or establishment of a retirement system under the provisions of this act; provided, they are in one of the classes of employees included in the retirement system.

c) The reorganization or establishment of a retirement system under the provisions of this act shall in no manner cause a member of a previously existing insurance or annuity system to suffer a loss of any part of the actual deposits to which the member may have been entitled under the previous system.

d) A retirement system adopted under the provisions of this act shall guarantee the member who leaves the system before retirement under any of its provisions, the part of the actual deposits to which the member may have been entitled under the previous system, and the full amount of his individual deposits under a reorganized or newly established system and, at the option of the board of trustees of the retirement system, the accrued interest thereon.

e) In the case of the death of a member prior to retirement under any of the provisions of the system, the part of the actual deposits to which the member may have been entitled under the previous system, and the full amount of his individual deposits under a reorganized or newly established system, and at the option of the board of trustees of the retirement system, the accrued interest thereon shall be owing and payable to his estate.

f) Each retirement system established under the provisions of this act shall provide for the compulsory retirement from service of all members at an age to be determined by the board of trustees of the system; provided, the age of compulsory retirement shall not be in excess of seventy (70) years. (1934, c. 65, p. 312.)

STATE SYSTEM

Sec. 4506b-1, Ky. Stat. **State Teachers' Retirement System Established.**—A state teachers' retirement system is hereby established for the teachers of the public schools of the State of Kentucky for the purpose of providing retirement allowances and other benefits under the provisions of this Act. The retirement system herein created shall be established as of July 1, 1940. It shall have the powers and the privileges of a corporation and shall be known as the "Teachers' Retirement System of the State of Kentucky", and by such name all of its business shall be transacted, all of its funds invested, and all of its cash and other securities held.

Sec. 4506b-2, Ky. Stat. **Definitions.**—The following words and phrases, as used in this Act, unless different meanings are plainly required by the context, shall have the following meanings:

1. "**Retirement System**" shall mean the arrangement provided for in this Act for the payment of retirement allowances or disability allowances to teachers, officially known as the Teachers' Retirement System of the State of Kentucky.

2. "**Retirement Allowance**" shall mean the amount annually payable during the course of his natural life to the member who has been retired by reason of super-annuation.

3. "**Disability Allowance**" shall mean the amount annually payable before the deductions authorized in Section 45* during the course of his natural life to a member who has been retired by reason of disability before reaching the age of sixty (60) years. (1938, 1st ex. s. c. 1, Sec. 1.)

4. "**Teacher**" shall mean (a) any fulltime regular or special teacher, principal, supervisor, superintendent, assistant superintendent, librarian, attendance officer, or other full-time member of the teaching or professional staff engaged in the service of the public elementary and second schools for whom certification is required as a condition of employment, (b) all members of the instructional and administrative staffs of Eastern Kentucky State Teachers College at Richmond, Kentucky; Western Kentucky State Teachers College at Bowling Green, Kentucky; Murray State Teachers College at Murray, Kentucky; Morehead State Teachers College at Morehead, Kentucky; Kentucky School for the Deaf at Danville, Kentucky; Kentucky School for the Blind at Louisville, Kentucky; Kentucky State College for Negroes at Frankfort, Kentucky; West Kentucky Vocational Training School at Paducah, Kentucky; and Mayo State Vocational School at Paintsville, Kentucky, who are regularly employed by a board of education, a board of regents, or a board of trustees for a full term for which school is maintained, (c) the Superintendent of Public Instruction of the Commonwealth of Kentucky and the division heads and other professional staff members of the State Department of Education, appointed in accordance with Section 4384-7, Kentucky Statutes, and (d) any member of a local retirement system who becomes a member of the state retirement system according to the provisions of Section 49** of this Act. (1940, c. 192, p. 742.)

5. "**Present Teacher**" shall mean any teacher as defined in this Act, (a) who was a teacher on or before the first day of July, 1940, and who became a member of the retirement system created by this Act on the date of the inauguration of the system or within one year after said date, (b) any teacher who was a member of a local teacher retirement system in the public elementary or secondary schools of the state on or before July 1, 1940, and who continued to be a member of such system until he, with the membership of the local retirement system, became a member of the state retirement system. (1938, 1st ex. s., c. 1.)

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* Section 4506b-45.
** Section 4506b-49.

6. "**New Teacher**" shall include any teacher not a present teacher. (1938, 1st ex. s., c. 1.)

7. "**Prior Service**" shall mean the number of years during which the member was a "Teacher" in Kentucky prior to July 1, 1941, as allowed in his prior service certificate, except that not more than thirty years prior service shall be allowed or credited to any teacher. (1940, c. 192, p. 742.)

8. "**Subsequent Service**" shall mean the number of years, after July 1, 1941, during which the teacher is a member of the state retirement system. (1940, c. 192, p. 742.)

9. "**Prior Service Certificate**" shall mean the certificate issued by the Board of Trustees of the State Teachers' Retirement System designating the amount of accredited service, not to exceed thirty years of a member prior to July 1, 1941. (1940, c. 192, p. 742.)

10. "**Annual Salary**" shall mean the average annual salary which the member has received for his services as a teacher in the public schools of Kentucky during the five years immediately preceding retirement by reason of superannuation or disability, except that any salary which exceeds $2,000 in any year shall be considered as $2,000 only. (1938, 1st ex. s. c. 1.)

11. "**Age of Retirement**" shall mean the age attained at the last birthday of the member preceding the date of retirement. (1938, 1st ex. s. c. 1.)

12. "**Regular Interest**" shall mean interest at 3 per cent per annum compounded annually. (1938, 1st ex. s. c. 1.)

13. "**Accumulated Contributions**" shall mean the contributions of a member plus interest at 3 per cent compounded annually. (1938, 1st ex. s., c. 1.)

14. "**Annual Compensation**" shall mean the contractual salary and additions thereto received by a member as compensation for his services as a teacher in the public schools of the state during a given fiscal year before any deductions whatever, except that any such compensation which exceeds $2,000 shall for the purpose of this act be considered at $2,000 only. (1938, 1st ex. s. c. 1.)

15. "**Age of Entrance**" shall mean the age attained at the last birthday of any member at the time of the establishment of this system, if such member is a teacher subject to this act at that time. Otherwise, it shall mean the age attained at the last birthday of any member at the time he first becomes a member of the state retirement system. (1938, 1st ex. s. c. 1.)

16. **Any Birthday** occurring on the 29th day of February shall be considered as of February 28th. (1938, 1st ex. s. c. 1.)

17. "**Annuitant**" shall mean a person who receives a retirement allowance or a disability allowance. (1938, 1st ex. s. c. 1.)

18. "**Local Retirement System**" shall mean any teacher retirement or annuity system created in any public school district in the State of Kentucky in accordance with the laws of the state. (1938, 1st ex. s. c. 1.)

19. "**Fiscal Year**" shall mean the twelve-month period from July 1 to June 30. (1938, 1st ex. s., c. 1.)

20. "**Public Schools**" as used in this Act shall refer to the schools and other institutions covered in subsection 4 of this section. (1940, c. 192, p. 742.)

Sec. 4506b-3, Ky. Stat. **School Districts and Institutions Included.**—The retirement system herein created shall embrace (a) all of the public elementary and secondary schools of the state, except those in school districts which previous to the establishment of this retirement system have established and maintained local teacher retirement or annuity systems, provided that school districts in which local teacher retirement systems are in operation at the time of the establishment of the retirement system created by this act may be included in the state retirement system according to the provisions of Section 49* of this act, (b) institutions and officers in Section 2** of this act. (1938, 1st ex. s., c. 1.)

Sec. 4506b-4, Ky. Stat. **No District Retirement Systems May Hereafter be Established.**—No school district shall hereafter establish a teacher retirement system under the provisions of Sections 4506-1 to 4506-16 of the Kentucky Statutes inclusive. (1938, 1st ex. s. c. 1.)

Sec. 4506b-5, Ky. Stat. **Administration and Management Vested in Board.**—The general administration and management of the retirement system, and the responsibility for its proper operation and for making effective the provisions of this act are hereby vested in a board of trustees, which shall be known as the "Board of Trustees of the Teachers' Retirement System of the State of Kentucky." The members of the board of trustees shall be the Superintendent of Public Instruction, the Attorney General, and the State Treasurer, ex officio, and four other members elected as hereinafter provided, three of whom shall be members of the retirement system,

* Section 4506b-49.
** Section 4506b-2.

hereinafter known as teacher members, and one of whom shall be a person who is not a member of the teaching profession, hereinafter known as the lay member, provided that the first board of trustees elected after the enactment of this act shall consist of the above named ex offcio members; and four other members, three of whom shall be teachers as defined in this act, and one of whom shall be a person who is not a member of the teaching profession. (1938, 1st ex. s. c. 1.)

Sec. 4506b-6, Ky. Stat. **Election of Members.**—The first election of the elective members of the board of trustees shall be conducted by ballot under the supervision of the Superintendent of Public Instruction within sixty (60) days after the passage of this act. At the first election each teacher in the schools embraced by this act shall be deemed to be a member of the retirement system and shall have the right to vote for four candidates for membership on the board of trustees. Nominations for membership on the board of trustees shall be made by a nominating committee consisting of one delegate elected by the membership of each of the districts of the Kentucky Educational Association, the president of the Kentucky Negro Education Association and one member appointed by him from the membership of the Kentucky Negro Education Association. The president of the Kentucky Education Association shall preside over the meetings of the nominating committee. Two nominations shall be made by the nominating committee for each position to be filled on the board of trustees and provision shall be made on the ballot for additional nominations by members of the retirement system. At the first election the members of the retirement system shall elect three teacher-members, at least one of whom shall be a classroom teacher, and one lay member. The members so elected, together with the ex officio members shall assume office on July 1, 1939. The lay members so elected shall serve for a term of four years. The three teacher members so elected shall serve for terms of one, two, and three years, the length of term of the individual member to be determined by lot.

Subsequent elections shall be held on or before June 1 of each year. After the first election the length of term of all elective members shall be for a period of four years, one member to be elected annually. Members so elected shall assume office on July 1 following election. Subsequent to the first election, members of the nominating committee shall be members of the retirement system and only members of the retirement system shall be entitled to vote for

members of the board of trustees. Should the president of the Kentucky Negro Education Association be ineligible to serve on the nominating committee, he shall appoint a qualified member to serve in his stead from the membership of the retirement system. (1938, 1st ex. s. c. 1.)

Sec. 4506b-6a, Ky. Stat. **Election of Members in 1940; Expenses.**—The election of members of the Board of Trustees in 1940 shall be held on or before June 1, and shall be conducted by ballot under the supervision of the Superintendent of Public Instruction. At this election, each teacher in the schools embraced by this Act shall be deemed to be a member of the retirement system and shall have the right to vote. Nomination for membership on the Board of Trustees shall be made by a nominating committee consisting of one delegate from the membership of each of the districts of the Kentucky Education Association, the President of the Kentucky Negro Education Association and one member appointed by him from the membership of the Kentucky Negro Education Association. The President of the Kentucky Education Association shall preside over the meeting of the nominating committee. Two nominations shall be made by the nominating committee for the vacancies which will exist as the result of the election held by terms of Section 7* of Chapter 1 of the First Special Session of the 1938 General Assembly of the Commonwealth of Kentucky. Subsequent elections of members of the Board of Trustees shall be held by ballot under the supervision of the Superintendent of Public Instruction and nominations for the Board of Trustees shall be made as provided herein. All expenses for the election to be held in 1940, as well as for all subsequent elections, shall be paid by the Board of Trustees of the Teacher Retirement System out of its general expense fund. (1940, c. 192, p. 742.)

Sec. 4506b-7, Ky. Stat. **Vacancies.**—Vacancies occurring during the terms of the elective members shall be filled by the remaining members of the board of trustees by election for the unexpired terms. (1938, 1st ex. s. c. 1.)

Sec. 4506b-8, Ky. Stat. **Compensation and Expenses.**—The members of the board of trustees shall serve without compensation, but they shall be reimbursed from the expense fund for all necessary expenses which they may incur through services on the board. (1938, 1st ex. s., c. 1.)

Sec. 4506b-9, Ky. Stat. **Oath of Office.**—Each member of the board of trustees shall within ten (10) days after his appointment

* Sec. 4506b-6.

or election take an oath of office that he will support the Constitution of the United States and the Constitution of the State of Kentucky, and that he will diligently and honestly administer the affairs of said board and that he will not knowingly violate or willingly permit to be violated any provisions of the law applicable to the retirement system. Such oath of office shall be subscribed to by the members making it and certified to by the officer before whom it is taken, and shall be immediately filed in the office of the Secretary of State. (1938, 1st ex. s. c. 1.)

Sec. 4506b-10, Ky. Stat. **Quorum.**—A majority of the board of trustees shall constitute a quorum. Each trustee shall be entitled to one (1) vote. Four (4) votes shall be necessary for a decision by the trustees at any meeting of the board. (1938, 1st ex. s. c. 1.)

Sec. 4506b-11, Ky. Stat. **Rules and Regulations.**—Subject to the limitations of this act, the board of trustees shall from time to time establish rules and regulations for the administration of the funds created by this act and for the transaction of business. (1938, 1st ex. s. c. 1.)

Sec. 4506b-12, Ky. Stat. **Chairman, Secretary and Personnel.**—The Board of Trustees shall elect from its membership a chairman and shall by a majority vote of all its members appoint a secretary who shall not be a member of the Board and who shall at the time of appointment: be a graduate of a standard four year college; be at least thirty-five years of age; have had at least ten years' experience as a teacher as defined in this Act; be eligible for membership in the Retirement System as defined herein; and who shall not have held, by appointment or election, an elective office within the five-year period next preceding the date of appointment. It shall engage such actuarial, legal, medical and other technical services and such clerical or other services as shall be required to transact the business of the Retirement System. The compensation of all persons engaged by the Board of Trustees and all other expenses of the Board necessary for the operation of the Retirement System shall be paid at such rates and in such amounts as the Board of Trustees shall approve. (1940, c. 192, p. 742.)

Sec. 4506b-13, Ky. Stat. **Bonds of Employees of Board.**—The Secretary of the State Teachers' Retirement System shall give a surety bond in such amount as the board of trustees shall designate. The board of trustees may require surety bonds of any other of its employees, and in such amounts, as it may deem necessary for the protection of the retirement funds. (1938, 1st ex. s. c. 1.)

Sec. 4506b-14, Ky. Stat. **Cost of Administration.**—The cost of administration of the retirement system shall be paid out of an expense fund established for that purpose by the board of trustees of the retirement system. (1938, 1st ex. s. c. 1.)

Sec. 4506b-15, Ky. Stat. **Office at State Capital.**—Suitable office quarters shall be provided by the State of Kentucky for the operation of the retirement system, such quarters to be located at the state capital. (1938, 1st ex. s. c. 1.)

Sec. 4506b-16, Ky. Stat. **Data for Actuarial Valuation.**—The board of trustees shall keep in convenient form such data as shall be necessary for the actuarial valuation of the various funds of the retirement system and for determining the administrative costs of the retirement system. (1938, 1st ex. s. c. 1.)

Sec. 4506b-17, Ky. Stat. **Record of Proceedings; Annual Report.**—The board of trustees shall keep a record of all its proceedings which shall be open to public inspection. It shall publish on or before the first day of January of each year a report showing the fiscal transactions of the retirement system for the preceding year, the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of its assets and liabilities, and giving an account of the operation of the system. (1938, 1st ex. s. c. 1.)

Sec. 4506b-18, Ky. Stat. **Ex Officio Officers.**—The State Treasurer, the State Auditor and the Attorney General shall be ex officio treasurer, auditor and legal adviser, respectively, of the board of trustees and shall be liable, respectively, upon their official bonds for the faithful performance of their duties under the provisions of this act and shall serve without compensation; provided that in case of emergency or whenever they shall deem it for the best interests of the retirement system the board of trustees may employ attorneys and auditors and pay reasonable fees for the services rendered. (1938, 1st ex. s. c. 1.)

Sec. 4506b-19, Ky. Stat. **Medical Director.**—The board of trustees shall designate a medical director. The medical director shall arrange for and pass upon all medical examinations required under the provisions of this act; shall investigate all essential statements and certificates by or on behalf of a member in connection with an application for disability allowance; and shall report in writing to the board of trustees his conclusions and recommendations upon all

such matters referred to him; provided that nothing in this act shall prevent the board of trustees from acquiring such additional medical advice and information as it shall deem necessary. (1938, 1st ex. s. c. 1.)

Sec. 4506b-20, Ky. Stat. **Actuary.**—The board of trustees shall designate as an actuary a competent person who shall be the technical adviser of the board on matters regarding the operation of the funds created by the provisions of this act and who shall perform such other duties as are required in connection therewith.

During the first year of operation of the retirement system and at least once in each five (5) year period thereafter the actuary shall make an actuarial investigation into the mortality, earnable interest, and service and compensation of the members and beneficiaries of the retirement system, and shall make a valuation of the assets and liabilities of the funds of the system, and shall recommend to the board of trustees such changes as may be deemed necessary to keep the retirement system on a sound financial basis. On the basis of the results of such investigations the board of trustees shall make such necessary changes in the retirement system within the provisions of this act and shall recommend the contributions payable by the state, provided that such contributions may not be in excess of those specified in Section 38* of this act. (1938, 1st ex. s. c. 1.)

Sec. 4506b-21, Ky. Stat. **Board to be Trustee of the Funds; Investment; Collection of Interest.**—The board of trustees shall be the trustee of the several funds created by this Act, and such board shall have full power and responsibility for the investment and disbursement of the funds of the system according to the provisions of this Act. No investment shall be made of such funds except in obligations of or guaranteed by the United States Government, or obligations of any State, or of any city in Kentucky of the first, second, or third classes, or in first mortgages on real estate in Kentucky, not to exceed fifty per cent of the appraised value thereof, or in the form of deposits in banks or trust companies of the State of Kentucky organized under the laws of the State of Kentucky or of the United States, when such deposits are interest bearing at a rate not to be lower than three per cent per annum, and when such deposits are secured by the deposit of security approved by the State Treasurer and the board of trustees. No investment or disbursement of such funds shall be made unless authorized by a resolution adopted by the board of trustees. (1940, c. 192, p. 742.)

* Section 4506b-37.

Sec. 4506b-22, Ky. Stat. **The State Treasurer the Custodian of Funds.**—The State Treasurer is hereby designated as the custodian of all funds of the retirement system. He shall honor and pay all vouchers drawn on the retirement funds for all purposes when there is attached to such vouchers certified copies of resolutions of the board authorizing the respective payments. All securities purchased by order of the board of trustees shall be forthwith placed in the hands of the treasurer and it shall be his duty to collect the interest thereon as the same becomes due and payable and also the principal thereof and place the same when so collected into the guarantee fund herein provided for. The Treasurer of the state shall honor and pay all vouchers drawn on the retirement funds for the payment of securities purchased upon order of the board, upon delivery of such securities to him, when there is attached to such vouchers certified copies of resolutions of the board authorizing the purchases; and the board may sell any of said securities upon like resolution, and the proceeds thereof shall be paid by the purchaser to the Treasurer of the state upon delivery to him of said securities by the Treasurer. All payments from the several funds of the retirement system shall be made only upon vouchers signed by the secretary of the retirement system. (1938, 1st ex. s. c. 1.)

Sec. 4506b-23, Ky. Stat. **Interest on Funds.**—At the end of each fiscal year the board of trustees shall assign from the guarantee fund to each of the funds, with the exception of the expense fund, interest at a rate of three per cent (3%) on the average amount of such funds during that fiscal year. The amounts so allowed shall be due and payable to said funds, and shall be annually credited thereto by the board of trustees from interest and other earnings on moneys of the retirement system. (1938, 1st ex. s. c. 1.)

Sec. 4506b-24, Ky. Stat. **Cash on Deposit.**—For the purpose of meeting disbursements for allowance and other payments there may be left available cash on deposit in such sums as the board of trustees may direct in one or more banks or trust companies of the State of Kentucky organized under the laws of the State of Kentucky or the United States, provided that the total amount of cash on hand and unsecured deposits at any time shall not exceed the receipts of the retirement system from all sources during the previous twelve months. (1940, c. 192, p. 742.)

Sec. 4506b-25, Ky. Stat. **Beneficial Interest in Investments Prohibited to Officers.**—Except as otherwise provided in this act, no trustees and no employees of the board of trustees shall have any

direct or indirect interest in the gain or profits of any investment made by the board of trustees. No trustee or employee of the board shall directly or indirectly for himself or as an agent in any manner use any of the assets of the retirement system, except to make such current and necessary payments as are authorized by the board of trustees; nor shall any trustee or employee of the board of trustees become an endorser or surety, or in any manner an obligor for moneys loaned to or borrowed from the board of trustees, or otherwise profit from any transaction of the board. (1938, 1st ex. s. c. 1.)

Sec. 4506b-26, Ky. Stat. **Merging of State and Local Systems.**—The teachers of a local school district in which a teachers' retirement or annuity system is maintained under the provisions of the laws of Kentucky are hereby excluded from membership in the state retirement system; but should a majority of all the teachers participating in any such local retirement system apply for membership in the state retirement system created by this act by a petition duly signed and verified, approved by their local board of education, and filed with the board of trustees, all the members of such local retirement system may become members of the state retirement system created by this act at such time within three (3) months after the filing of such petition and after compliance with other provisions of this act relative to the dissolution and discontinuance of local retirement systems, as the board of trustees shall designate. (1938, 1st ex. s., c. 1.)

Sec. 4506b-27, Ky. Stat. **Membership a Condition of Employment; Exemptions.**—The membership of the retirement system shall consist of the following: (a) All present teachers except those who have filed with the chief school officers of the district or institution in which they are employed, statements declining membership, as provided in Section 29* of Chapter 1 of the First Special Session of the 1938 General Assembly of the Commonwealth of Kentucky, or teachers who are excluded by the provisions of this Act, and (b) all new teachers as defined in this Act. (1940, c. 192, p. 742.)

Sec. 4506b-28, Ky. Stat. **Present Teachers May Decline Membership.**—Any present teacher, as defined in this act, may decline membership in the state teachers' retirement system who on or before July 1, 1940 files with the chief school officer of the district or institution in which he is employed a statement that he does not wish to be a member of the system and waives all advantages in the

* Section 4506b-28.

retirement system which would accrue to him by reason of prior service, provided such statement may be withdrawn by the teacher within one year from the date of the establishment of the system and all prior-service rights restored upon payment of the contributions with regular interest thereon which he would have paid, if he had entered the system at its inauguration. (1938 1st ex. s. c. 1.)

Sec. 4506b-29, Ky. Stat. **Statement upon Becoming Member.**—Each public school employee, upon becoming a member of the retirement system, shall file a detailed statement of all of his previous service as a public school employee, his date of birth and age at entrance into the system, salary received as a public school employee in Kentucky, and such other facts as the board of trustees may require for the proper operation of the retirement system. (1938 1st ex. s. c. 1.)

Sec. 4506b-30, Ky. Stat. **Verification of Statement.**—To the extent to which it is used in determining the liability of any fund created by this act, the board of trustees shall verify such statement by the best evidence it shall be able to obtain. If official records are not available as to length of service, age, salary, or other information required for the administration of this act, the board of trustees is hereby empowered to use its discretion as to the evidence to be accepted.

When all the statements have been properly verified and recorded, the secretary of the retirement system shall issue to each member a certificate of membership in the retirement system. (1938 1st ex. s. c. 1.)

Sec. 4506b-31, Ky. Stat. **Prior Service.**—Under such rules and regulations as the board of trustees shall adopt each member who was a teacher at any time during the school year immediately preceding the establishment of the system or its extension to the district where the member is teaching, and who becomes a member during the first year of operation of the retirement system, shall file a detailed statement of all service as a teacher rendered by him prior to the date of establishment for which he claims credit.

The board of trustees shall fix and determine by appropriate rules and regulations how much service in any year is equivalent to one year of service but in no case shall more than one year of service be creditable for all service in one calendar year. Service rendered for the regular school year in any district or institution shall be equivalent to one year's service.

Subject to the above restrictions and to such other rules and regulations as the board of trustees may adopt, the board of trustees shall verify as soon as practicable after the filing of such statements of service, the service therein claimed, and in addition the salary for each of the last five years of service preceding the inauguration of the system.

Upon verification of the statements of service the board of trustees shall issue prior service certificates certifying to each member the length of prior service rendered with which he is credited on the basis of his statement of service. So long as membership continues a prior-service certificate shall be final and conclusive evidence of such service, provided, however, that on evidence of error any member may, within one year from the date of issuance or modification of such certificate, request the board of trustees to modify or correct his prior-service certificate.

When membership ceases, the prior-service certificate shall become void. Should the teacher again become a member, such teacher shall enter the system as a member not entitled to prior-service credit except as provided under Section 34.* (1938 1st ex. s. c. 1.)

Sec. 4506b-32, Ky. Stat. **Prior Service for New Entrants Employed Prior to 1940-41.**—A teacher who is not employed for the 1940-41 school year but who has been employed as a teacher in Kentucky prior to the 1940-41 school year, shall when again re-employed, be considered as a new teacher, and membership in the retirement system shall be compulsory for him provided that he may receive credit for prior service when he produces evidence that he was regularly employed as a teacher in Kentucky for full terms in three (3) of the six (6) school years preceding July 1, 1940. (1940 c. 192, p. 742.)

Sec. 4506b-33, Ky. Stat. **Termination of Membership.**—Membership in the retirement system shall be terminated by retirement for disability or super-annuation, by death, and by withdrawal. Membership in the retirement system shall be terminated whenever a teacher who is absent from service withdraws his deposits in the fund or automatically whenever a teacher is absent from the service three 3) out of six (6) consecutive years, unless the board of trustees, in accordance with its rules and regulations shall grant a longer period of absence, not in excess of six (6) years, from active service as a teacher without the loss of his status as a member. Prior service rights shall be forfeited upon withdrawal and should

* Section 4506b-33.

the teacher re-enter the service, it shall be as a new teacher, provided that any teacher who withdraws by claiming his deposits may, before he is absent from the service three (3) school years, repay to the system the sums he received from it upon his withdrawal with regular interest and by so doing re-establish his prior service rights.

In case of withdrawal from service prior to retirement, the board of trustees shall return to the teacher all of his accumulated contributions, including interest at regular interest, but the teacher shall have no claim upon any contributions made by the state with a view to his retirement.

In case of death prior to retirement the board of trustees shall pay to the estate of the deceased member, or to his assigns, all of his accumulated contributions, including regular interest, but the estate shall have no claim on any contributions made by the state with a view to the retirement of the teacher. The board of trustees shall determine the number of installments in which the return of the accumulated contributions shall be made in case of death or withdrawal, provided that in no case shall the number of installments be greater than four (4) or the expired time longer than one (1) year from the date of the establishment of the claim. (1938 1st ex. s. c. 1.)

Sec. 4506b-34, Ky. Stat. **When Claim Shall be Forfeited.**—After a lapse of ten years from the date of termination of membership in the retirement system, if no previous request has been made for the return of the member's contribution, said member's accumulated contribution shall be forfeited and shall be converted to the guarantee fund of the retirement system. (1938 1st ex. s. c. 1.)

Sec. 4506b-35, Ky. Stat. **Funds of the Retirement System.**—All the assets of the retirement system shall be credited according to the purpose for which they are held to one (1) of five (5) funds; the expense fund, the teachers' savings fund, the state accumulation fund, the allowance reserve fund, and the guarantee fund. (1938 1st ex. s. c. 1.)

(a) The expense fund shall consist of such funds as shall be set aside from year to year by the board of trustees to defray the expenses of the administration of this Act. During any fiscal year, with the exception of the fiscal year 1940-41, an amount which shall not be greater than four (4) per centum of the receipts of the state accumulation fund shall be set aside into the expense fund or expended for the administration of this Act. The board of trustees may elect coverage for its employees under the Workmen's Compensation Act of this State, and under the Unemployment Compensation Act of this

State, and any contributions required under such Acts shall be considered proper expense payable from the expense fund. (1940 c. 192, p. 742.)

(b) The teachers' savings fund shall consist of the assessments paid by members of the retirement system and interest assigned by the board of trustees from the guarantee fund. The accumulated contributions of a member returned to him upon his withdrawal or paid to his estate or designated beneficiary in the event of his death, as provided in this act, shall be paid from the teachers' savings fund. Any accumulated contributions forfeited by a failure of a teacher or his estate to claim the same, as provided in this act shall be transferred from the teachers' savings fund to the guarantee fund. The accumulated contributions of a member shall be transferred from the teachers' savings fund to the allowance reserve fund in the event of retirement by reason of superannuation or disability. 1938 1st ex. s. c. 1.)

(c) The state accumulation fund shall consist of the state's appropriations to the retirement system, (excluding moneys assigned to the expense fund) together with interest assigned by the board of trustees from the guarantee fund. At the time of the retirement of a member by reason of superannuation or disability there shall be transferred from the state accumulation fund an amount which together with the sum transferred from the teachers' savings fund shall be sufficient to provide the members the allowance granted in Sections 43 and 44.* (1938 1st ex. s. c. 1.)

(d) The allowance reserve fund shall be the fund from which shall be paid all allowances, or benefits in lieu thereof, on account of which moneys have been transferred from the teachers' savings fund, the state accumulation fund, or the guarantee fund, as provided in this act. (1938 1st ex. s. c. 1.)

(e) The guarantee fund shall be established to facilitate the crediting of uniform interests on the amounts of the various other funds, with the exception of the expense fund, and to provide a contingent fund out of which special requirements of any of the other funds may be covered. All income, interest, and dividends derived from the deposits and investments authorized by this act shall be paid into the guarantee fund. (1938 1st ex. s. c. 1.)

The board of trustees is hereby authorized to accept gifts and bequests. Any funds which may come into the possession of the retirement system in this manner or which may be transferred from the teachers' savings fund by reason of lack of claimant or because

* Sections 4506b-43 and 4506b-44.

of a surplus in any fund created by this act or any other moneys whose disposition is not otherwise provided for herein shall be credited to the guarantee fund.

The interest allowed by the board of trustees to each of the funds as provided in this act shall be paid to such funds from the guarantee fund. Any deficit occurring in any fund which would not be automatically covered shall be met by the payments from the guarantee fund to such fund. (1938, 1st ex. s. c. 1.)

Sec. 4506b-36, Ky. Stat. **Member's Contribution.**—Each member whose age of entrance is less than thirty (30) years shall contribute to the retirement system 2 per cent of his annual compensation. Each member whose age of entrance is thirty (30) and less than forty (40) shall contribute to the retirement system 3 per cent of his annual compensation. Each member whose age of entrance is forty (40) years and over shall contribute to the retirement system 4 per cent of his annual compensation. The contribution of no member shall exceed $80 per year. (1938 1st ex. s. c. 1.)

Sec. 4506b-37, Ky. Stat. **The State's Contribution.**—Beginning with July 1, 1942, the State shall make annually two contributions into the fund, (a) a permanent amount equal to that contributed by all members, and (b) a temporary amount equal to two per centum of the salaries of all present teachers, in order to cover the obligation assumed by the State for prior service credit. With respect to the fiscal years from July 1, 1940, to June 30, 1942, the State shall make a contribution equal to the contribution of the teachers with respect to such period, but not exceeding $500,000 for each year. (1940 c. 192, p. 742.)

Sec. 4506b-38, Ky. Stat. **Local Board of Education to Collect Teachers' Contributions: Reports.**—The local board of education of each school district or the board of regents or board of trustees of each institution included in the state teachers' retirement system shall deduct from the compensation of each member for each and every payroll period subsequent to the date upon which the teacher became a member such percentage of his earnable compensation as is due under the rates herein prescribed and shall certify the amounts so deducted to the treasurer of the local board of education together with a list of all members contributing and the amounts contributed by each. Upon receipt of such certificate for the deductions from the salaries of the teachers the treasurer of such local board of education shall transmit the collections immediately to the secretary of the retirement system together with a list of all members contributing and the amounts contributed by each. The secre-

tary of the retirement system, after making a record of all such receipts, shall pay them to the Treasurer of the State of Kentucky for use according to the provisions of this act.

The deductions provided herein shall be made notwithstanding the fact that the pay resulting therefrom may be less than the minimum compensation provided for by law for teachers. Every member shall be deemed to consent and agree to the deductions made and provided for herein and said deductions shall be considered as having been paid to said member.

Each local board of education of a school district or the board of regents or board of trustees of any institution included in the retirement system shall during the month of July of each year, or at such other time as the board of trustees shall approve, certify to the board of trustees the names and salaries of all teachers to whom this act applies and shall on the first day of each calendar year, or at such less frequent intervals as the board of trustees may approve, notify the board of trustees of the employment of new teachers, removals, withdrawals, and changes in salaries of teachers that shall have occurred during the month preceding or the period since the period covered by the last notification.

Each local board of education of a school district or the board of regents or board of trustees of any institution included in the retirement system shall keep such other records and shall furnish such other information and assistance to the board of trustees as it may require in the discharge of its duties. (1938 1st ex. s. c. 1.)

Sec. 4506b-39. **Individual Accounts Shall Be Kept; Other Data.**—The board of trustees shall provide for the maintenance of an individual account with each member showing the amount of the member's contribution and interest accumulations thereon. It shall collect and keep in convenient form such data as shall be necessary for the preparation of the required mortality and service tables and for the compilation of such other information as shall be required for the actuarial valuation of the assets and liabilities of the various funds created by this act. (1938 1st ex. s. c. 1.)

Sec. 4506b-40, Ky. Stat. **Total Service Credited at Retirement.**—At retirement the total service credited to a teacher shall consist of the membership service rendered by him for which credit has been allowed and, if his prior-service certificate is in full force and effect, all service certified on such prior-service certificate. (1938 1st ex. s. c. 1.)

Sec. 4506b-41, Ky. Stat. **Conditions of Retirement.**—Any member who has attained the age of sixty (60) years and who has com-

pleted twenty (20) years of service as a teacher in Kentucky, five (5) years of which must have immediately preceded retirement, may retire upon written application (filed after the effective date of this Act) to the board of trustees of the retirement system. The filing of such application shall, unless it is withdrawn, retire such member at the end of the fiscal year then current. All members shall be automatically retired at the end of the fiscal year during which they attain the age of seventy (70) years. Members who are seventy (70) years of age or older on July 1, 1942, shall be automatically retired on that date. (1940 c. 192, p. 742.)

Sec. 4506b-42, Ky. Stat. **Continuation of Contributions and Retention of Benefit Rights in the Event of Early Withdrawal.**—Any person who has been a teacher in Kentucky for thirty (30) years or more and who withdraws from teaching after the effective date of this Act and before reaching the age of sixty (60) years shall have the option of refusing to withdraw his deposits and of continuing to pay into the fund each year until the end of the fiscal year in which he reaches the age of sixty (60) years the same amount which he was required to contribute during his last full year as a teacher. If he elects to refuse to withdraw his deposits and to continue such payments as specified in this paragraph he shall, at the end of the fiscal year in which he attained the age of sixty (60) years and thereafter, be entitled to receive the same retirement allowance as is provided for a teacher who retires at the age of sixty (60) years. (1940 c. 192, p. 742.)

Sec. 4506b-43, Ky. Stat. **Retirement Allowances.**—The retirement allowance of a member whose age of retirement is sixty (60) and less than sixty-five (65) years shall be one-half of one per cent of his annual salary for each year of prior service, plus three-quarters of one per cent of his annual salary for each year of subsequent service. The retirement allowance of a member whose age of retirement is sixty-five (65) and less than seventy (70) years shall be three-quarters of one per cent of his annual salary for each year of prior service, plus one and one-eighth per cent of his annual salary for each year of subsequent service. The retirement allowance of each member whose age of retirement is seventy (70) years of age or over shall be one per cent of his annual salary for each year of prior service, plus one and one-half per cent of his annual salary for each year of subsequent service. No retirement allowance shall be greater than one-half of the member's annual salary, nor greater than $1,000. No retirement allowance shall be less than $100, and any allowance which is computed at less than $100 shall be $100.

No retirement allowance shall be granted with respect to any period beginning before July 1, 1942. (1940 c. 192, p. 742.)

Sec. 4506b-44, Ky. Stat. **Disability Allowance.**—Any member, after he has attained the age of fifty (50), but before he has attained the age of sixty (60) years, who has completed twenty (20) years of accredited service in the public schools of the state of Kentucky, five (5) of which immediately preceded retirement, may retire for disability and shall be granted a disability allowance to be paid from the funds of the retirement system. The disability allowance of each such member shall be one-half of 1 per cent of his annual salary for each year of prior service, plus three-quarters of 1 per cent of his annual salary for each year of subsequent service. No disability allowance shall be greater than one-half of the member's annual salary, nor greater than $1,000. No disability allowance shall be, or shall be reduced to, less than $100, and any allowance which is computed to be less than $100 shall be $100. No disability allowance shall be granted with respect to any period beginning before July 1, 1942. (1940 c. 192, p. 742.)

Sec. 4506b-45, Ky. Stat. **Medical Examination for Disability.**—Retirement for disability shall be granted only after the applicant has definitely established his claim through medical examination. The medical examination of a member for disability retirement shall be made upon the application of the member or of a person acting in his behalf, or the local board of education of the school district, or the board of regents or board of trustees of any institution in which the member is employed, stating that said member is physically or mentally incapacitated for the performance of duty and ought to be retired. If such medical examination conducted by physician or physicians selected by the board of trustees shows that said member is physically or mentally incapacitated for the performance of duty and ought to be retired, the examining physician or physicians shall so report to the board of trustees and the board of trustees shall retire said member for disability, forthwith.

A member retired for disability shall, until reaching the age of sixty (60) years, be required to undergo periodic examinations at the discretion of the board of trustees in order to determine whether the disability allowance shall be continued. When an examination shows that the disability has been removed, the allowance shall cease. If the beneficiary of a disability allowance is able to engage in a gainful occupation other than teaching, the benefit shall be reduced until the beneficiary reaches the age of sixty (60) years, to an amount which with the earned income shall not exceed the average salary for the

five (5) years preceding retirement, provided that in no case shall the disability allowance be reduced to less than $100. (1938 1st ex. s. c. 1.)

Sec. 4506b-46, Ky. Stat. **Payment of Annuities.**—The first payment to an annuitant shall be made at the payment date at the end of one full payment period after his retirement and shall consist of one regular quarterly payment. (1938 1st ex. s. c. 1.)

Sec. 4506b-47, Ky. Stat. **Refund Upon Death of Beneficiary.**—In case of death of a member who has retired by reason of superannuation or disability, any portion of the member's contributions including regular interest to the date of retirement, that has not been paid as an allowance or benefit in lieu thereof, shall be paid to the member's estate in such manner as the board of trustees may elect. 1938 1st ex. s. c. 1.)

Sec. 4506b-48, Ky. Stat. **Benefit Options.**—Until the first payment of a retirement allowance is made, the beneficiary may elect to receive retirement allowances in the form of a life annuity, as provided in Section 43, or equivalent benefits under such options as the board of trustees may approve. No such option shall provide for a benefit whose actuarial value at the age of retirement is greater than that provided in Section 43.* No payment during any year on account of one beneficiary shall be greater than $1,000 under such options. This section shall not apply to disability allowances. (1938 1st ex. s. c. 1.)

Sec. 4506b-49, Ky. Stat. **Provisions for Existing Systems.**—A local teachers' retirement system may be merged with the state retirement system whenever a majority of all members participating in a local retirement system shall apply for membership in the state teachers' retirement system created by this act by a petition duly signed and verified, approved by the local board of education, and filed with the board of trustees of the state retirement system. All the members included in the membership of such local teacher retirement system shall become members of the state retirement system created by this act at such time, within three (3) months after the filing of such petition and after compliance with the other provisions of this act relative to the dissolution and discontinuance of such local retirement systems, as the board of trustees shall designate.

If a local retirement system votes to merge with the state retirement system as provided in this act, the local system shall be discontinued; the payment of all benefits to members on the retired roll

* Section 4506b-43.

at the time of discontinuance shall become the obligation of the school district in which the local system was operated prior to its discontinuance; and all of the members of the dissolved retirement system may become members of the state system on the same basis as other present teachers in the state and shall receive the state's contribution for prior service the same as other present teachers of the state system.

Prior to voting upon merging with the state retirement system, or within thirty (30) days after a local retirement system votes to merge with the state retirement system, the board of directors of the local retirement system shall employ an expert approved by the local board of education in which the local system is operated to evaluate all of the funds of the local retirement system and compute the present value of liabilities on account of annuitants on the roll of local retirement system at the time the local system is discontinued, and the expenses of such evaluation shall be borne by the local retirement system. The expert employed shall present a complete report of his findings to the local board of education and to the local retirement system.

After the report of the evaluation is filed with the local board of education and the local retirement system and after a majority of the members of the local retirement system shall have voted to merge with the state retirement system, the secretary of the local retirement system shall certify to the board of trustees of the local retirement system the names of all members of the local retirement system and the amount of refundable deposits due each member in accordance with the laws and regulations of the local retirement system. Upon approval by the board of trustees of the local retirement system of the names and amounts listed in the secretary's report it shall be transmitted to the secretary of the local board of education.

All funds of the local retirement system shall then be transferred to the local board of education, which within a period of twelve months after the funds are transferred to the local board of education, shall pay to members of the local retirement system the refundable deposits certified to the secretary of the local board of education by the board of trustees of the local retirement system. If the remaining sum is less than the present value of liabilities on account of annuitants on the rolls of the local system at the time the local system is discontinued, the local board of education or the taxing authority which levies school taxes for the local board of education upon recommendation of said board of education shall annually levy a tax rate sufficient to discharge in full the obligation to annuitants, provided that in cities of the first class such levy shall not exceed (1) one cent

on each $100.00 of assessed value of property made by such taxing authority. The levy of such tax shall be mandatory. Payments to annuitants in cities of the first class shall not exceed the amount being received by them at the time such local retirement system is discontinued. Whatever sum may remain after the death of all annuitants shall be used by the local board of education for general school purposes.

In the case of recently inaugurated local retirement systems where there are no annuitants at the time of the merger of the local and state systems, all refundable deposits shall be returned to the individual members by the local retirement system, any proper expense items paid, and the sum remaining shall be paid to the local board of education to be used for general public school purposes.

If the merger of the local with the state retirement system takes place more than a year after the state system becomes operative, the board of directors of the local retirement system, prior to transferring their funds to the local board of education, shall turn over to the state retirement fund such portion of the local fund as will equal the accumulated contributions of the local system from July 1, 1940, to the date of the merger, and the necessary amount shall be deducted from the refundable deposits as certified by the local retirement board. Should the refundable deposit of any member be less than the accumulated contributions since July 1, 1940, this member shall be assessed the difference which shall be collected by the local retirement system and turned over to the state retirement system at the time of the merger of the two systems.

The local board of education shall continue to invest the funds transferred to it for the benefit of the existing annuitants as long as such annuitants shall live. Such investment shall be governed by the present law dealing with the local retirement systems, except that the local board of education is substituted for the board of trustees of the local retirement system. The local board of education shall keep all funds transferred to it by the local retirement system and all income from the investment of such funds in a separate fund to be known as the Annuity Fund. The local board of education is authorized to pay from the Annuity Fund any reasonable expenses necessary for the fund's administration and general management. The local board of education shall safeguard the Annuity Fund by requiring such additional surety bond of the treasurer as seems necessary to them, by providing for an annual audit by a reputable auditing firm, by spreading on the minutes of the board of education at least annually, a report of investments, assets and liabilities, and the names, ad-

dresses, and annuities of annuitants, and by levying such a tax rate or making such an appropriation to the Annuity Fund from local school revenues as will guarantee the full and complete discharge of all obligations to annuitants. (1938 1st ex. s. c. 1.)

Sec. 4506b-50, Ky. Stat. **Protection Against Fraud.**—Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud such system as a result of such act, shall be guilty of a misdemeanor, and shall be punishable therefor under the laws of the state of Kentucky. Should any change or error in record result in any employee or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, then on discovery of any such error, the board of trustees shall correct such error, and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which he was correctly entitled shall be paid. (1938 1st ex. s. c. 1.)

Sec. 4506b-51, Ky. Stat. **Exemption From Taxation and Attachment.**—The right of a teacher to a retirement allowance, to the return of contributions, any benefit or right accrued or accruing to any person under the provisions of this article, and the moneys in the various funds created hereunder, are hereby exempt from any state or municipal tax, and shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as in this article specifically provided. (1938 1st ex. s. c. 1.)

CHAPTER XI

VOCATIONAL EDUCATION AND VOCATIONAL REHABILITATION.

Sec. 4526-1, Ky. Stat. **Federal Acts Accepted by the Commonwealth.**—The Commonwealth of Kentucky hereby accepts all the provisions of an act of Congress of the United States entitled, "An Act to provide for the promotion of vocational education; to provide for cooperation with the states for the promotion of such education in agriculture and the trades and industries; to provide for the cooperation with the states in the preparing of teachers of vocational subjects, and to appropriate money and regulate its expenditure," approved February twenty-third, one thousand nine hundred and seventeen. The Commonwealth of Kentucky also hereby accepts the provisions and benefits of the act of Congress, entitled, "An act to provide for the promotion of vocational rehabilitation of persons disabled in industry or otherwise and their return to civil employment," approved June second, one thousand nine hundred and twenty. And the said Commonwealth also hereby accepts the provisions and benefits of an act of Congress to provide for the further development of vocational education in the several States and Territories, approved February fifth, one thousand nine hundred and twenty-nine. In accepting the benefits of said acts of Congress, the Commonwealth of Kentucky hereby agrees to comply with all of their provisions and to observe all of their requirements. (1934, c. 65, p. 314.)

Sec. 4526-2, Ky. Stat. **State Board of Education to Administer Vocational Education and Vocational Rehabilitation.**—The State Board of Education is hereby vested with authority to carry out the purposes and provisions of said acts of Congress and is hereby given all necessary power and authority to cooperate with the federal agencies administering vocational education and vocational rehabilitation in the carrying out of the provisions of the federal acts under this article, and all officers or other employees of the State Board for Vocational Education in office or under contract at the time this act goes into effect shall serve out the terms for which elected, unless removed for cause. (1934, c. 65, p. 314.)

Sec. 4526-3, Ky. Stat. **Appropriations for Vocational Education and Vocational Rehabilitation.**—The necessary funds for carrying out the provisions of this act relating to vocational education and vocational rehabilitation shall be appropriated out of the general fund of the state treasury by the General Assembly. The

money so appropriated shall be payable to such institutions and in such amounts as may be designated by the State Board of Education in accordance with federal rules and regulations. (1934, c. 65, p. 315.)

Sec. 4526-4, Ky. Stat. **Powers and Duties.**—The State Board of Education shall appoint, fix the duties, compensation, and tenure of all necessary administrative, supervisory, and clerical assistants as it deems necessary to carry out the provisions of this act relating to vocational education and vocational rehabilitation and the appointments shall be made in the same manner as provided in this act for the appointments of administrative, supervisory, and clerical assistants in the State Department of Education, and all employees of said board shall be reimbursed for all necessary traveling expenses incurred in the performance of their official duties.

The State Board, on the recommendation of the Superintendent of Public Instruction, is hereby empowered to make such rules and regulations as it may deem necessary for the effective carrying out of the provisions of this act relating to vocational education and vocational rehabilitation, which rules and regulations shall be published and said board may prepare and print such courses of study and make such reports as it deems necessary for carrying out the provisions of the federal acts. (1934, c. 65, p. 315.)

Sec. 4526-5, Ky. Stat. **Definitions.**—For the purpose of this act the term "persons disabled" shall be construed to mean any person who, by reason of a physical defect, or infirmity, whether acquired by accident, injury, or disease, is or may be expected to be totally or partially incapacitated for remunerative occupation; the term "rehabilitation" shall be construed to mean the rendering of a disabled person fit to engage in a remunerative occupation. (1934, c. 65, p. 316.)

Sec. 4526-6, Ky. Stat. **Eligibility for Rehabilitation.**—To be eligible to receive vocational rehabilitation from the State Board, disabled persons must have been domiciled within the state for one year or more, or reside in the state at the time of sustaining disability. (1934, c. 65, p. 316.)

Sec. 4526-7, Ky. Stat. **State Treasurer Designated Custodian of Funds.**—The State Treasurer is hereby made the custodian of any and all moneys received by the Commonwealth from the federal government under the vocational education and vocational rehabilitation acts, and it shall be his duty to collect said money and to pay out same upon the order of the State Board of Education. (1934, c. 65, p. 316.)

Sec. 4526-8, Ky. Stat. **State Board Authorized to Receive Gifts and Donations.**—The State Board of Education is hereby authorized and empowered to receive such gifts and donations, either from public or private sources, as may be authorized unconditionally or under such conditions related to vocational rehabilitation of persons disabled in industry or otherwise as in the proper judgment of the State Board of Education are proper and consistent with the provisions of this act. All moneys received or gifts, or donations shall be deposited in the state treasury and shall constitute a permanent fund to be called the special fund for the vocational rehabilitation of disabled persons. A full report of all gifts and donations offered and accepted, together with the names of the donors and the respective amounts contributed by each, and all disbursements therefrom shall be submitted annually to the Governor by the State Board of Education. (1934, c. 65, p. 316.)

Note.—It does not appear that Chapter 65 of the Acts of 1934 directly repeal Chapter 66 of the Acts of 1922, which are Sections 2175b-1 to 2175b-6, inclusive, Kentucky Statutes. It does seem, however, that these sections are impliedly repealed by the Acts of 1934, because essentially the same laws are contained in Article X, subsections 1 to 8, inclusive, of the Acts of 1934, which are now Sections 4526-1 to 4526-8, inclusive, Kentucky Statutes.—Ed.

Sec. 4526-9, Ky. Stat. **Purchase of Mayo College Property Authorized.**—The Kentucky Real Estate Board is hereby authorized and empowered, in accordance with the Governmental Re-organization Act, (Secs. 4618-68 to 4618-165) to purchase certain properties in Paintsville, Kentucky, known as the "Mayo College Property," for the purpose of establishing thereon a State Vocational School, known as the Mayo State Vocational School. (1938 1st ex. s., c. 15, Sec. 1.)

Sec. 4526-10, Ky. Stat. **Management.**—There is hereby recognized as established and maintained the Mayo State Vocational School for white persons, to be located at Paintsville, Kentucky, and to begin operations on and after the 1st day of July, 1938. The management and control of the said Mayo State Vocational School shall be vested in the State Board of Education, which is hereby vested with all the duties, rights, powers, purposes and responsibilities of the institution, and shall be in possession and control, in accordance with the Governmental Re-organization Act of 1936, (Secs. 4618-68 to 4618-165) of all properties, moneys, funds, appropriations, lands and other properties, real or personal, and all records, equipment and supplies that now, or may be hereafter provided for the benefit of said institution. (1938 1st ex. s., c. 15, Sec. 2.)

Sec. 4526-11, Ky. Stat. **State Vocational School.**—The said Mayo State Vocational School is hereby authorized to conduct, maintain and operate, under the control and supervision of the State Board

of Education, a State Vocational School, the purpose of which shall be to make available facilities for vocational training for white persons, to be carried on in accordance with State plans for vocational education. The curriculum shall be established and approved by the State Board of Education. (1938 1st ex. s., c. 15, Sec. 3.)

Sec. 4527-62a, Ky. Stat. **West Kentucky Vocational Training School Established.**—There is hereby recognized as established and maintained the West Kentucky Vocational Training School for Negroes, located at Paducah, which shall succeed on the 1st day of July, 1938, to all the buildings, properties and funds now owned and used by the West Kentucky Industrial College, except as hereinafter provided. The management and control of West Kentucky Vocational Training School for Negroes shall be vested in the State Board of Education, which is hereby invested with all the duties, rights, powers, purposes and responsibilities of the institution, and shall be in possession and control of all records, books, papers, offices, equipment, supplies, moneys, funds, appropriations, lands and other property real or personal, now or hereafter held for the benefit of the said institution. (1938, 1st ex. s., c. 29, Sec. 5.)

Sec. 4527-62b, Ky. Stat. **Transfer of Records.**—All records, papers, transcripts of credit, files, reports and books of every kind, except library books, of West Kentucky Industrial College are hereby transferred to Kentucky State College for Negroes. (1938, 1st ex. s., c. 29, Sec. 6.)

Sec. 4527-62c, Ky. Stat. **Purpose; Curriculum.**—The West Kentucky Vocational Training School for Negroes is hereby authorized to conduct, maintain and operate under the control and supervision of the State Board of Education a State Vocational Training School, the purpose of which shall be to make available facilities for vocational training for colored children to be carried on in accordance with the State plans for vocational education. The curriculum shall be established by the State Board of Education and shall be of the character and rank given by approved schools of this type. (1938, 1st ex. s., c. 29, Sec. 7.)

CHAPTER XII

HIGHER EDUCATION.

COUNCIL ON PUBLIC HIGHER EDUCATION.

Sec. 4527-1, Ky. Stat. **Council Created.**—For the purpose of coordinating the work of public higher education in this Commonwealth, there is hereby created a Council on Public Higher Education in Kentucky. (1934, c. 65, p. 317.)

Sec. 4527-2, Ky. Stat. **Membership of Council.**—The Council on Public Higher Education shall be composed of the following members: The president or chief executive officer of each of the following institutions of higher learning for white persons—the University of Kentucky, Eastern Kentucky State Teachers College, Western Kentucky State Teachers College, Murray State Teachers College, and Morehead State Teachers College; a member, other than the Superintendent of Public Instruction, of the board of regents of each of the four above mentioned state teachers' colleges, said member to be selected by the board of regents of each teachers' college; three appointive members of the board of trustees of the University of Kentucky to be selected by the board of trustees of said University; two lay members of the State Board of Education to be selected by the State Board of Education; the dean of the College of Education of the University of Kentucky; and the Superintendent of Public Instruction of the Commonwealth, who shall be ex officio chairman of the Council. When the Council shall meet to consider curricula for teacher training, three persons who are from accredited institutions of higher learning, who are not members of the Council, and who have been appointed by the Executive Committee of the Association of Kentucky Colleges and Universities, shall be invited to meet with the Council in an advisory capacity. (1934, c. 65, p. 317.)

Sec. 4527-3, Ky. Stat. **Powers, Duties, and Functions.**—This council of sixteen members shall be known as the Council on Public Higher Education in Kentucky. It shall be the duty of the Council on Public Higher Education in Kentucky, and it shall have power:

a) To coordinate the work and determine the curricular offerings of the five public institutions of higher learning, for white persons in Kentucky, namely, the University of Kentucky, Eastern Kentucky State Teachers College, Western Kentucky State Teachers College, Murray State Teachers College, and Morehead State Teachers College, on the basis of efficiency and economy.

b) To determine the amount of entrance fees and the qualifications for admission to each of the above mentioned institutions of higher learning for white persons.

c) To consider the budgetary requirements of each of the above mentioned institutions of higher learning in Kentucky and, on the basis of the needs of the various institutions, as indicated by the individual budget submitted, to recommend to the state budget committee or other proper authority a budget covering the needs of the five institutions.

d) To require such reports from the executive officers of each of the above mentioned institutions of higher learning as it may deem necessary for the effectual performance of its duties.

e) To publish at least biennially a report of the educational and financial affairs of the five institutions of higher learning for white persons maintained by the Commonwealth.

f) To elect, if it deems necessary, a part-time or a full-time secretary. (1934, c. 65, p. 318.)

Sec. 4527-4, Ky. Stat. **Duties of the Boards.**—It shall be a duty of the board of regents of each of the above mentioned teachers' colleges and the board of trustees of the University of Kentucky to make such changes or adjustments in the curricula and such rules and regulations affecting their schools as will be necessary to carry out and put into effect the rulings of the Council on Public Higher Education in regard to curricular offerings, entrance fees, and qualifications for admission to, and reports from their respective institutions of higher learning. (1934, c. 65, p. 319.)

Sec. 4527-5, Ky. Stat. **Expenses of Council.**—All expenses, other than the expenses of the individual members, incurred by the Council on Public Higher Education in the performance of its duties, in the employment of a secretary, or in the publishing of reports shall be borne by each of the five institutions represented on the Council in proportion to its number of representatives on the Council. It shall be the further duty of the governing board of each institution to pay such expenses out of the funds of the institution. (1934, c. 65, p. 319.)

Sec. 4527-6, Ky. Stat. **Expenses of Members.**—The members of the Council shall serve without pay, but they shall be reimbursed for their necessary traveling and other expenses while attending the meetings of the Council. Each institution shall pay the traveling and other necessary expenses of its own representatives. The expenses of the members of the State Board of Education and of the Superintendent of Public Instruction shall be paid by the Common-

wealth in the same manner as their other traveling expenses are paid. (1934, c. 65, p. 319.)

Sec. 4527-7, Ky. Stat. **Number of Meetings.**—The Council on Public Higher Education in Kentucky shall meet at least twice each year at such times as it may by resolution determine. Special meetings may be called by the chairman; and, upon request of three institutions represented on the Council, the chairman shall call a special meeting of the Council. (1934, c. 65, p. 320.)

Sec. 4527-8, Ky. Stat. **Place of Meeting.**—The Council shall meet in the office of the Superintendent of Public Instruction or such other place as the Council may designate. (1934, c. 65, p. 320.)

Sec. 4527-9, Ky. Stat. **Notice of Meeting.**—Notice of each meeting shall be given by the chairman at least ten days prior to the time of the meeting, unless notice of the meeting is waived by all members of the Council. (1934, c. 65, p. 320.)

Sec. 4527-10, Ky. Stat. **Quorum.**—A majority of the entire Council shall constitute a quorum for the transaction of business, but no business shall be transacted and no proposition declared carried unless a majority of the entire Council shall vote for the same. (1934, c. 65, p. 320.)

UNIVERSITY OF KENTUCKY.

Sec. 4527-11, Ky. Stat. **Recognition of Establishment.**—There is hereby recognized as established and maintained the University of Kentucky, located at Lexington, being the same institution founded under the land grant of 1862 by the Congress of the United States under the corporate designation and title of "Agricultural and Mechanical College of Kentucky." The said state university shall be maintained by the Commonwealth with such endowments, incomes, buildings, and equipments as shall enable it to do work such as is done in other institutions of corresponding rank, both undergraduate and post-graduate, and embracing the work of instruction as well as research. (1934, c. 65, p. 320.)

Sec. 4527-12, Ky. Stat. **Colleges Maintained.**—The University of Kentucky as now established and maintained includes the following colleges and schools: The College of Arts and Science, The College of Agriculture, the College of Engineering, The College of Law, The College of Education, The College of Commerce, and The Graduate School. The colleges, schools, divisions, departments, bureaus, and/or offices now established and maintained or which in the future may be established by the board of trustees of the University shall constitute the University of Kentucky. (1934, c. 65, p. 321.)

Sec. 4527-13, Ky. Stat. **Government of the University.**—The government, administration, and control of the University of Kentucky is hereby vested in a board of trustees, constituted and appointed as follows: The Governor of Kentucky, who shall be chairman of the board; the Superintendent of Public Instruction, and the Commissioner of Agriculture, Labor and Statistics, who shall be ex officio members; and twelve citizens of Kentucky, discreet, intelligent and prudent, who shall be appointed by the Governor of Kentucky according to the following manner: Four members shall be appointed each biennium for a term of six years, and until their successors are appointed and qualified. One of the four so appointed shall be a member of the State Board of Agriculture, one shall be from the alumni of the University, and the other two shall be distinguished citizens of the Commonwealth. The board of trustees shall be bipartisan and the Governor, in making the appointments of the trustees, shall make them so as to divide the representation upon said board equally between the two leading political parties of this Commonwealth, including the ex officio members.

With the exception of the members of the board of trustees appointed from the alumni of the University, no two members of the board of trustees who are appointed by the Governor shall be residents of any one county in Kentucky.

All appointments as members of the board of trustees by the Governor shall be made during the month of January in even years.

The board of trustees of the University shall prescribe the method by which the alumni may, at its annual meeting or at a special meeting called for that purpose, nominate to the Governor three persons from whom the alumni members shall be appointed; provided that no alumnus shall be permitted to vote for the nomination of alumni trustees in the year in which such alumnus has secured his or her degree; and provided further, that if the alumni should fail to make nominations to the Governor for any year in which nominations are to be made, the Governor shall for that year appoint the alumni trustees from the entire alumni, a list of which shall be provided by the secretary of the Alumni Association.

No member of the board of trustees shall be held to be a public officer by reason of his or her membership on said board.

The Governor shall make all regular appointments under this act upon the expiration of the terms of office of the present board members of the University provided, that all members of the board of trustees of the University of Kentucky, of Kentucky, in office

when this act goes into effect shall be permitted to serve out the term for which appointed.

In case of vacancies by resignation, removal, or death, the Governor shall fill such vacancies by appointment for the unexpired term. Such appointments shall be made in the same manner as provided for regular appointment of members of the board of trustees. (1934, c. 65, p. 321.)

McDonald v. University of Kentucky, 225 Ky. 205. Subject to limitations prescribed by Constitution, legislature has complete control of any property belonging to any of institutions of state. Act June 13, 1928, providing method of financing erection of new buildings by educational institutions of state held not unconstitutional as violating sections 51 and 157 of Constitution. (June 22, 1928.)

Sec. 4527-14, Ky. Stat. **Regular and Special Meetings.**—The board of trustees of the University shall meet at least four times a year as follows: On Tuesday preceding the regular annual commencement of the University, on the third Tuesday in September, on the second Tuesday in December, and on the first Tuesday in April of Each year.

Special meetings of the board may be called by the chairman or by any three members of the board upon giving ten days' notice of the meeting in writing to each member of the board, but at such special meetings the business to be transacted shall be specified in the notice of the meeting. All meetings shall be held on the campus of the University, unless otherwise specified by the majority vote of the board. (1934, c. 65, p. 323.)

Sec. 4527-15, Ky. Stat. **Majority of Board a Quorum.**—A majority of the whole board shall constitute a quorum for the transaction of business. (1934, c. 65, p. 323.)

Sec. 4527-16, Ky. Stat. **Expenses of Trustees Paid.**—All necessary expenses incurred by the trustees in going to, returning from, or while attending the meetings of the board, shall be met and discharged out of the funds of the institution. (1934, c. 65, p. 323.)

Sec. 4527-17, Ky. Stat. **Vice-Chairman; Officers; By-Laws.**—The board of trustees shall have the power to elect a vice-chairman and such other officers as it may deem wise, and shall have power to make such by-laws, rules, and regulations not inconsistent herewith as it may deem proper. (1934, c. 65, p. 323.)

Sec. 4527-18, Ky. Stat. **Powers and Duties of the Board of Trustees.**—The board of trustees, when appointed and qualified, shall be a body corporate, under the corporate name of the University of Kentucky, and as a corporation shall have the power to sue and be sued, implead and be impleaded, contract and be contracted with, and possess all the immunities, rights, privileges, and franchises usually attaching to the governing bodies of educational institutions.

They shall have power to receive, hold and administer, on behalf of the institution whose government, administration and control is committed to them, all revenues accruing from all existing or future endowments, appropriations, allotments, grants, or bequests by whomsoever made, subject to the conditions attaching thereto; to receive, administer and apply, for and on behalf of said University, all moneys, devises, stocks, bonds, buildings, museums, lands, apparatus, and so forth, under the conditions attaching thereto. (1934, c. 65, p. 324.)

Sec. 4527-19, Ky. Stat. **Purchase of Real Estate; Condemnation.**—The board of trustees shall have the power to acquire additional lands, or other property or material for the purpose of expanding its plant and extending its usefulness, and when unable to contract or agree with the owner or owners of such land, other property or material necessary for the purposes of such University, may proceed to condemn and acquire such land, or other property or material, or so much thereof as may be necessary for the purposes of such University. All condemnation proceedings herein provided for shall be conducted in the same manner as provided by law for condemning land for railroad purposes. (1934, c. 65, p. 324.)

Sec. 4527-20, Ky. Stat. **Government of University; Trustees to Establish Rules for.**—The board of trustees shall have power to establish proper regulations for the government of the University and the physical training, military or otherwise, of the students, and to authorize the suspension and dismissal of students for neglect or violation of the regulations, or for other conduct prejudicial to the character and welfare of the institution. (1934, c. 65, p. 324.)

Sec. 4527-21 Ky. Stat. **Power to Determine Colleges, Departments, Bureaus, and Offices.**—Said trustees shall have power to determine from time to time the colleges, schools, divisions, departments, bureaus, and/or offices which the University shall comprise within the scope of the organic act of Congress, or acts supplementary thereto, donating land scrip for the endowment of agricultural and mechanical colleges; the relation which each division shall sustain to each other division and to the whole; to devise, allot, and arrange the distribution of divisions with designation appropriate for each; and to devise the means required for their effective instruction, administration, and government.

Said board of trustees shall have the power to appoint a president, professors, assistants, tutors, and other officers, and to determine their salaries, duties, and official relations of each; and shall provide for a definite salary in money attached to all positions created and

filled by the board of trustees; and there shall be no additions thereto in the form of fees, prerequisites or emoluments of any kind whatever. They shall have full power to suspend or remove any of the officers, teachers, professors, or agents whom they are authorized by law to appoint, and to do all other acts which may be needful for the welfare of the institution. (1934, c. 65, p. 325.)

Sec. 4527-22, Ky. Stat. **Grounds for Removal.**—No president, professor, or teacher shall be removed except for incompetency, neglect of or refusal to perform his duty, or for immoral conduct, nor shall such president, professor, or teacher be removed until after ten days' notice in writing, stating the nature of the charges preferred; and such person shall have an opportunity to make defense before the board by counsel or otherwise, and shall be allowed to introduce testimony which shall be heard and determined by the board. (1934, c. 65, p. 325.)

Sec. 4527-23, Ky. Stat. **No Contract Unless Funds Appropriated; Penalty.**—It shall be illegal for an officer, trustee, or any person in any way connected with the University of Kentucky to contract any obligations for or on behalf of the said University, where there is no money, or insufficient money, in the treasury or has been no money appropriated for the purposes for which said contract or obligation was made, and any of said persons who fail to comply with this law shall be fined in each case not less than two hundred and fifty dollars ($250) nor more than two thousand dollars ($2,000) or confined not less than ten days in jail nor more than six months, or both so fined or imprisoned. (1934, c. 65, p. 326.)

Sec. 4527-24, Ky. Stat. **Preference Not to be Shown to Any Religion.**—In the appointment of presidents, professors, or instructors no preference shall be shown to any religious denominations. (1934, c. 65, p. 326.)

Sec. 4527-25, Ky. Stat. **Degrees May be Granted by Trustees.**—Said board of trustees shall have power to grant degrees to its graduates, to prescribe conditions upon which postgraduate honors shall be obtained by its alumni and others, and confer such honorary degrees, upon the recommendation of the faculty of the institution, as they may think proper. (1934, c. 65, p. 326.)

Sec. 4527-26, Ky. Stat. **Report to General Assembly.**—The board of trustees shall make to the General Assembly, within the first month of each regular session, a full report of the condition and operation of the University since the date of the presiding report, with such recommendations concerning the University as may be deemed necessary. (1934, c. 65, p. 326.)

Sec. 4527-27, Ky. Stat. **Executive Committee; Powers.**—The board of trustees shall annually elect an executive committee of five, which executive committee shall have such powers as may be delegated to it by the board of trustees. The executive committee shall submit to the board of trustees at each meeting, for its consideration and approval, a complete record of its proceedings; provided, however, that the authority of the board to revise the acts of the executive committee shall not extend to the rejection of any valid or any authenticated expenditure of money by said executive committee. (1934, c. 65, p. 327.)

Sec. 4527-28, Ky. Stat. **Treasurer; Bond; Accounts and Statements; Action Against.**—The treasurer of the University shall enter into covenant with the Commonwealth of Kentucky, with one or more good securities bound therein, to be approved by the board of trustees, conditioned for the faithful performance of his duties, and the payment of all moneys that shall come to his hands, to his successors in office, or to such person or persons as may be lawfully entitled to receive the same. Any person or persons, including the board of trustees, injured by any breach of this bond, may maintain in the Fayette Circuit Court appropriate action thereon. The said treasurer shall keep an itemized account of receipts and expenditures, and shall pay out no money except on authorization of the board of trustees given directly or through its executive committee. He shall render to the executive committee monthly statements of receipts and expenditures, and amount on hand, and a full detailed statement, with vouchers, for the information and action of the board of trustees at its regular annual meeting, and at other periods when required. (1934, c. 65, p. 327.)

Sec. 4527-29, Ky. Stat. **All Acts Relating to the A. & M. College Continued in Force.**—All acts of the General Assembly of the Commonwealth of Kentucky, making provision for the establishment, support, and maintenance of the Agricultural and Mechanical College of Kentucky, hitherto enacted, viz.: An Act appointing a commission for the location of the Agricultural and Mechanical College, approved March 13, 1878; an act locating and establishing the Agricultural and Mechanical College, approved February 6, 1880; an act incorporating the Agricultural and Mechanical College approved March 4, 1880; an act amending the act of incorporation, approved April 23, 1880; an act of the General Assembly, approved April 29, 1880, and Section 184 of the Constitution of Kentucky, guaranteeing the validity of the tax levied for the benefit of the Agricultural and Mechanical College by said act, approved April 29,

1880; an act of incorporation amending the acts of March 4, 1880, and April 23, 1880, approved May 9, 1893; an act for the maintenance of the girls' dormitory, approved March 21, 1900, and an act making an annual appropriation for the maintenance and support of the University, which became a law March 26, 1904; and that all the acts of the Congress of the United States, creating and endowing colleges under the land grant of 1862, viz.: The act providing for the establishing of the college for the benefit of agricultural and mechanical arts, approved July 2, 1862; the act of establishing experiment stations as departments of agricultural colleges, approved March 2, 1887; the act for applying a portion of the proceeds of the public lands to the more complete endowment of the colleges established under the act of July 2, 1862, which passed the Senate June 23, 1890; the act known as the "Adams Act," further endowing experiment stations, passed by Congress March 16, 1906; an act known as the "Nelson Act" for the further endowment of agricultural and mechanical colleges passed by Congress March 4, 1907, shall not be affected by this act unless specifically repealed, and the revenue accruing from these and from all other sources, state and federal, shall continue to be paid over by the state and federal authorities to the treasurer of the University of Kentucky, Lexington, Kentucky, for its use and maintenance, in accordance with the provisions of said acts of Congress and of the General Assembly of Kentucky. All other acts passed by the General Assembly of Kentucky, and all regulations made by the board of trustees in pursuance thereof, for the government of the Agricultural and Mechanical College, shall continue in effect and apply to the government of the University of Kentucky, Lexington, Kentucky, except to the extent herein set out or specifically repealed. (1934, c. 65, p. 328.)

Sec. 4527-30, Ky. Stat. **An Act of Congress to be Carried Out.**—That the requirements of the law of Congress, approved July 2, 1862, for the instruction in these branches of learning, relating to agriculture and the mechanic arts and to military tactics, shall be carried out fully and that those branches shall continue to be integral and indispensable courses of instruction in the University of Kentucky; and that in addition to the other colleges of the said university, one of the colleges shall be denominated the College of Agriculture, and another the College of Engineering of the University of Kentucky. (1934, c. 65, p. 329.)

Sec. 4636b-7, Ky. Stat. **Sixty-Two Thousand Dollars ($62,000.00) Annual Appropriation for Agricultural Extension Work; Offset Against Funds Necessary to Receive Benefit of Federal Ap-**

propriation.—In order to continue agricultural extension work in the State of Kentucky there is hereby appropriated to the University of Kentucky for the year ending June 30, 1918, sixty-two thousand dollars ($62,000.00), and a like sum is hereby appropriated annually thereafter, which shall be used by the Agricultural College of the University of Kentucky to offset funds appropriated by an act of Congress, approved May 8, 1914, entitled "An act to provide for cooperative agricultural extension work between the agricultural colleges in the several states receiving the benefits of an act of Congress approved July second, eighteen hundred and sixty-two, and of acts supplementary thereto, and the United States Department of Agriculture." Any portion of the appropriations herein authorized remaining unused at the close of any fiscal year may be used to offset federal funds of any succeeding fiscal year. (1918, c. 127, p. 554.)

Sec. 4636f-1, Ky. Stat. **Agricultural Experiment Station; Appropriation for.**—That there is hereby appropriated to the Agricultural Experiment Station of the State University, Lexington, Ky., for the current fiscal year, and for each succeeding year thereafter, fifty thousand dollars ($50,000.00), for the purpose of making field experiments in the several sections of the state in order to ascertain by chemical and physical examination of our soils and by direct experiments in laboratory and fields what crops and treatment are best suited to each, whether the present methods are tending to best results and whether to the preservation or reduction of fertility, and what rotation and treatment will be most effective in retaining productive capacities of the soils of the various sections of the state; to discover and demonstrate the best methods of orchard treatment, the culture and marketing of fruits and vegetables and the most effective remedies for insects and diseases of fruits and vegetables, and to make a systematic study of plant breeding and development by means of crossing and selection of new and improved varieties of fruits and vegetables, to enable said station to conduct investigations calculated to develop the beef, pork and mutton producing interests of the state, and especially to devise and conduct feeding experiments intended to demonstrate the most successful combination of stock foods, and to discover, if possible, the most economical and successful methods of maintaining animals and fitting them for the market, for pathological investigations, and to investigate live stock conditions both at home and abroad, in so far as they affect market values; to enable the said station to conduct investigations for the purpose of developing the dairy interests of the state, and including feeding experiments for the production of milk and butter, and the rearing of

calves, and the study of contagious diseases for the purpose of finding remedies therefor; to enable the said station to conduct investigations for the purpose of developing the horse interests of the state, including the best methods of feeding and breeding, the study of diseases, and thorough scientific investigations for the benefit of the horse industry of the state; for the advancement of the poultry interests of the state, including experiments in breeding for egg production and methods best adapted for hatching and raising of chicks and feeding experiments and other investigations tending to the economical production of poultry and eggs; for providing for necessary equipment and paying the expenses of the extension work of said experiment station in order to bring the scientific knowledge already obtained, and that hereafter obtained, in the lines of agriculture and home economics, direct to the farm and home, by means of personal visitation, correspondence, cooperative demonstrations and experiments and the solution of local problems by station experts visiting the locality and studying the problems of the farm; towards the maintenance of said station, and for the purpose of enlarging the hog cholera serum plant now at said station, and for the production of hog cholera serum and virus in large quantities for the benefit of the farmers of the state. Said serum and virus to be furnished the farmers of the state at partial cost of production, and not to exceed one cent (1c) per cubic centimeter, and to be distributed through such channels as the director of the said experiment station may deem advisable for the protection of the swine interests of the state. (1912, c. 26, p. 135.)

Sec. 4636f-2, Ky. Stat. **Disposition of Appropriation.**—The sums appropriated under this act are to be payable quarterly to the treasurer of said experiment station out of moneys in the treasury of the Commonwealth of Kentucky, and the auditor for the payment of same is directed to draw his warrant upon the treasurer as in all other claims against the Commonwealth. The board of control of said experiment station shall furnish to the Auditor of Public Accounts, yearly, an itemized statement of the money expended under this act. (1912, c. 26, p. 137.)

Sec. 4636f-3, Ky. Stat. **Substation Established.**—There is hereby established on and in connection with the lands donated to the University of Kentucky by the E. O. Robinson Mountain Fund, a sub-experiment station to be known as the Robinson Sub-Experiment Station. Said sub-experiment station is to be a division of and to be directed and operated by the Agricultural Experiment Station of

the University of Kentucky, heretofore established by an act of the General Assembly. (1924, c. 2, p. 3.)

Sec. 4636f-4, Ky. Stat. **Objects and Duties.**—It shall be the object and duty of the said sub-experiment station to conduct experimental work and carry on investigations in timber production, forest growth, forest renewal and the utilization of forest products, and it shall make such experiments as may determine the practicability of reforestation and the development of a permanent forest industry. The said sub-experiment station shall also conduct experimental work, investigations and demonstrations in the various phases of horticulture, animal husbandry and agriculture and such other investigations and demonstrations as bear directly upon the development of the agricultural industry of eastern Kentucky. (1924, c. 2, p. 3.)

Sec. 4636f-5, Ky. Stat. **Annual Appropriation.**—For the purpose of providing the necessary funds for the payment of salaries, cost of maintenance and operation of the said sub-expermiental station and for the carrying out of the provisions of this act, there is hereby appropriated to the Kentucky Agricultural Experimental Station out of the funds of the state not otherwise appropriated, the sum of twenty-five thousand dollars ($25,000.00) annually. Such salaries and expenses of operation and maintenance as may be necessary for the carrying out of the provisions of this act shall be paid from said sum herein appropriated, by warrant on the Auditor of Public Accounts drawn by the director of the Kentucky Agriculture Experiment Station and countersigned by the business agent of the University of Kentucky, and said business agent shall keep proper vouchers on file in his office for all expenditures. (1924, c. 2, p. 3.)

Sec. 4636f-6, Ky. Stat. **Substation Established; Purpose; Control.**—That a sub-experiment station of the agricultural experiment station of the University of Kentucky, to be known as the Western Kentucky Sub-Experiment Station, be and the same is hereby established near Princeton, in Caldwell County, on a tract of four hundred (400) acres of land to be donated by the citizens of said county, for the purpose of advancing, fostering and promoting agricultural interest, and conducting experiment work, investigation and demonstrations in the various phases of agriculture, horticulture, animal husbandry and such other investigations and demonstrations as bear directly upon the development of the agricultural interests of Kentucky, and to be under the control and supervision of the director of the Kentucky Agricultural Experiment Station. (1924, c. 3, p. 4.)

Sec. 4636f-7, Ky. Stat. **Annual Appropriation.**—For the purpose of providing the necessary funds for the payment of salaries,

cost of maintenance and operation of the said sub-experiment station and for carrying out the provisions of this act, there is hereby appropriated to the Kentucky Agricultural Experiment Station, out of the funds of the state not otherwise appropriated, the sum of twenty thousand dollars ($20,000.00) annually. Such salaries and expenses of operation and maintenance as may be necessary for the carrying out of the provisions of this act shall be paid out of said sum herein appropriated, by warrants on the Auditor of Public Accounts drawn by the director of the Kentucky Agriculutral Experiment Station and countersigned by the business agent of the University of Kentucky, and said business agent shall keep proper vouchers on file in his office for all expenditures. (1924, c. 3, p. 5.)

Sec. 4636g-1, Ky. Stat. **Cooperative Marketing.**—The University of Kentucky shall establish in connection with its agricultural extension work a cooperative bureau for fostering marketing. (1916, c. 20, p. 155.)

Sec. 4636g-2, Ky. Stat. **Fiscal Courts and County Boards of Education May Aid Agricultural Extension Work.**—The various fiscal courts and boards of education of the counties in this state are hereby authorized and empowered to appropriate such sums of money out of their annual funds as in their wisdom is necessary to aid in carrying on extension work in agriculture and home economics in their respective counties, and in connection with the University of Kentucky. (1916, c. 20, p. 156.)

Sec. 4636h-1, Ky. Stat. **Federal Act Concerning Agricultural Extension Work Accepted.**—The Commonwealth of Kentucky accepts and assents to the provisions of the act of Congress entitled "An act to provide for a cooperative agricultural extension work between the agricultural colleges in the several states receiving the benefits of an act of Congress approved July two, eighteen hundred and sixty-one, and of the acts supplementary thereto, and the United States Department of Agriculture, which was approved by the President of the United States, May eight, nineteen hundred and fourteen," in all of its terms and conditions, and the University of Kentucky is authorized and empowered to receive the grants of money appropriated under its provisions. (1916, c. 20, p. 156.)

Sec. 4636h-2, Ky. Stat. **Federal "Smith-Lever Act" Accepted.**—That the state of Kentucky accepts the provisions and terms of the Smith-Lever bill, and the trustees of the State University of Kentucky, Lexington, Kentucky, are hereby authorized to receive whatever funds accrue to the state of Kentucky under said Act and to apply them to the promotion of extension work in agriculture and

home economics in this state as by the terms of the national act required, and for no other purpose whatever. (1916, c. 144, p. 734.)

WORLD WAR VETERANS' SCHOLARSHIPS.

Sec. 4527-31, Ky. Stat. **Persons Engaged in Military and Naval Service During World War Entitled to Scholarships; Privileges Included.**—Every person who was engaged in the military or naval service of the United States of America during the war with Germany and her allies, which war was declared April 6, 1917, and who was at the time of his enlistment a resident of the Commonwealth of Kentucky, shall be entitled to a free scholarship in either the University of Kentucky, Eastern Kentucky State Teachers College, Western Kentucky State Teachers College, Murray State Teachers College, Morehead State Teachers College, the Kentucky State Industrial College, and the West Kentucky Industrial College, as he or she may choose for a period required for the completion of the course of study selected by such person. Said scholarship shall include free tuition, matriculation, and other fees, room rent, fuel and lights, and the advantages and privileges of the University or either of said normal schools, but same does not include free board. (1934, c. 65, p. 330.)

Sec. 4527-32, Ky. Stat. **Persons Entitled to Privileges.**—Military or naval service as used herein shall mean and include all the branches of the service prescribed and classified by the United States War Department as a part of either of said services. (1934, c. 65, p. 330.)

Sec. 4527-33, Ky. Stat. **Scholastic Requirements.**—All persons eligible to said scholarship shall meet the scholastic entrance requirements prescribed by the University or college for the course of study chosen by the applicant. (1934, c. 65, p. 330.)

Sec. 4527-34. Ky. Stat. **Application.**—The applicant shall file his application for admission at least thirty days prior to the beginning of the semester of the school year at which he desires to enter, which application shall be accompanied by his certificate of honorable discharge from his or her branch of the service, which shall be returned to him or her upon admittance. (1934, c. 65, p. 330.)

Sec. 4527-35, Ky. Stat. **Traveling Expenses.**—All the beneficiaries of the scholarship herein granted, who continue their studies for a consecutive school year of ten months, unless unavoidably prevented, shall also be entitled to their actual traveling expenses in going to and returning from the University or college once each way during said year. (1934, c. 65, p. 331.)

Sec. 4527-36, Ky. Stat. **Traveling Expenses; Payment.**—The cost of said traveling expenses shall be paid at the end of the year to

said students complying with the requirements herein by the proper authority of the institution attended, who shall, at the close of the scholastic year, file with the State Auditor an itemized statement of all money so expended, giving the name of the student, and the points of starting and destination, and the Auditor shall thereupon, if said statement is correct, draw upon the State Treasurer for said amount, which shall be paid out of any funds in the treasury not appropriated. (1934, c. 65, p. 331.)

Sec. 4527-36a, Ky. Stat. **Payment of Fees for Orphans of World War Veterans.**—The sum appropriated under the provisions of the act shall be used for the sole purpose of providing for matriculation fees, board and room rent and books and supplies for the use and benefit of the children not under sixteen and not over twenty-two years of age; and who have for twelve months had their domicile in the State of Kentucky, of those World War veterans who were killed in action or died from other causes in the World War, from April 6, 1917, to July 2, 1921, while serving in the army, navy or marine corps of the United States as a result of such service; which orphans are attending or may attend a state educational institution of a secondary or college grade. Said children shall be admitted to state institutions of secondary or college grade free of tuition. (1938, c. 159, p. 756, sec. 1.)

Sec. 4527-36b, Ky. Stat. **Board of Education; Duties.**—The amounts that may be or may become due at any educational or training institution, not in excess of the amount specified in section three thereof, shall be payable to such institution or school from the funds hereby created on vouchers approved by the State Board of Education. Said Board shall determine the eligibility of the children who make application for the benefits provided for in this act; satisfy itself of the attendance of such children at any such institution or school and of the accuracy and reasonableness of the charge or charges submitted to said Board by the authorities of any such institution, on account of the attendance thereat of any such children; provided no member of said Board or its Secretary shall receive any compensation for such services. (1938 c. 159 p. 756.)

Sec. 4527-36c, Ky. Stat. **Appropriation; Surplus; Use.**—The sum of one thousand four hundred dollars, or so much thereof as may be necessary, is hereby appropriated from the general fund for each of the fiscal years ending June 30, 1939, and June 30, 1940, for carrying out the provisions of this act; provided not more than one hundred fifty dollars shall be paid under said provisions for any one child for any one school year. And provided further that in the event all of

said fund is not consumed in providing scholarships for war orphans attending state owned institutions of learning, then and in the event the State Board of Education, in the exercise of a wise and sound discretion and on recommendation of the Commander of the American Legion, Department of Kentucky, may appropriate said balance, if any, to eligible war orphans who desire to enroll in vocational, technical or business schools; provided further that not more than six scholarships in such schools may be so awarded in any one year. (1938, c. 159, p. 756.)

Sec. 4376b-11, Ky. Stat. **Scholarship for Children of World War Veterans.**—The sum appropriated under the provisions of the act shall be used for the sole purpose of providing for matriculation fees, board and room rent and books and supplies for the use and benefit of the children not under sixteen and not over twenty-two years of age; and who have for twelve months had their domicile in the State of Kentucky, of those World War Veterans who were killed in action or died from other causes in the World War, from April 6, 1917, to July 2, 1921, while serving in the army, navy or marine corps of the United States as a result of such service; which orphans are attending or may attend a state educational institution of a secondary or college grade. Said children may be admitted to state institutions of secondary or college grade free of tuition. (1934, c. 66, p. 348.)

Sec. 4376b-12, Ky. Stat. **Eligibility; Attendance; Compensation.**—The amounts that may be or may become due to any educational or training institution, not in excess of the amount specified in section three hereof, shall be payable to such institution or school from the fund hereby created on vouchers approved by the State Board of Education. Said Board shall determine the eligibility of the children who make application for the benefits provided for in this act; satisfy itself of the attendance of such children at any such institution or school and of the accuracy and reasonableness of the charge or charges submitted to said Board by the authorities of any such institution, on account of the attendance thereat of any such children; provided no member of said Board or its secretary shall receive any compensation for services. (1934, c. 66, p. 348.)

Sec. 4376b-13, Ky. Stat. **Appropriation.**—The sum of two thousand four hundred dollars, or so much thereof as may be necessary, is hereby appropriated from the general fund for each of the fiscal years ending June 30, 1935, and June 30, 1936, for carrying out the provisions of this act; provided not more than one hundred and fifty dollars shall be paid under said provisions for any one child for any

one school year. And provided further that in the event all of said fund is not consumed in providing scholarships for war orphans attending state institutions of learning, then and in the event of the State Board of Education, in the exercise of a wise and sound discretion and on recommendation of the Commander of the American Legion, Department of Kentucky, may appropriate said balance, if any, to eligible war orphans who desire to enroll in vocational, technical, or business schools; provided further that not more than six scholarships in such schools may be so awarded in any one year. (1934, c. 66, p. 349.)

STATE TEACHERS COLLEGES

Sec. 4527-37, Ky. Stat. **State Teachers' Colleges Established at Richmond, Bowling Green, Murray and Morehead.**—That there are hereby recognized as established and maintained four state teachers' colleges in this Commonwealth to be designated and known as the Eastern Kentucky State Teachers College, located at Richmond, Kentucky; the Western Kentucky State Teachers College, located at Bowling Green, Kentucky; the Murray State Teachers College, located at Murray, Kentucky; and the Morehead State Teachers College, located at Morehead, Kentucky. (1934, c. 65, p. 331.)

Sec. 4527-38, Ky. Stat. **Purpose.**—The purpose of the said teachers' colleges shall be to carry into effect more fully the provisions of Section 183 of the Constitution of Kentucky by giving instruction at the college level, in residence and through extension study, in academic, vocational and professional subjects and in the science and art of teaching, including professional ethics, to conduct training schools, field service, research, and, in addition thereto, render such supplemental services as conducting libraries and museums, dormitories, farms, recreational facilities and offering instruction in such general and cultural subjects as constitute a part of their curricula. (1934, c. 65, p. 332.)

Sec. 4527-39, Ky. Stat. **Boards of Regents Created.**—There is hereby created a board of regents for each of the said teachers' colleges to be designated and known as the Board of Regents of the Eastern Kentucky State Teachers College, the Board of Regents of the Western Kentucky State Teachers College, the Board of Regents of the Murray State Teachers College, and the Board of Regents of the Morehead State Teachers College. (1934, c. 65, p. 332.)

Sec. 4527-40, Ky. Stat. **Members and Terms of Office.**—The board of regents for each of the four teachers' colleges shall be composed of five members, including the Superintendent of Public In-

struction, who shall be a member and chairman of each of said boards. The appointive members shall hold their office for a term of four years from the first day of April next succeeding their appointment and until their successors are duly appointed and qualified, except, that in case of vacancy, appointments shall be made in like manner as regular appointments, but such appointees shall hold office for the unexpired terms only. (1934, c. 65, p. 332.)

Sec. 4527-41, Ky. Stat. **Members Appointed by Governor; Tenure; Qualifications; Vacancies.**—The Governor shall appoint four regents for each of the four teachers' colleges for terms of four years each. Said appointments shall be made at the expiration of the terms of the present members. Not more than two appointive members of any of the said boards shall be residents of any one county, and not more than three members of any of said boards, including the Superintendent of Public Instruction, shall belong to the same political party. No member of any board shall be held to be a public officer by reason of his membership on said board, nor shall a membership on said board be incompatible with any public office. Whenever any vacancy or vacancies occur in any of said boards, by death, resignation, removal from the state, or otherwise, the Governor shall in like manner as for regular appointments, immediately appoint some competent person or persons to fill such vacancy or vacancies. The person or persons so appointed shall hold their positions for the unexpired term. (1934, c. 65, p. 333.)

Sec. 4527-42, Ky. Stat. **Organization; Officers.**—Each board of regents shall hold its first meeting within thirty (30) days after each appointment of new members, the place of meeting to be designated by the Superintendent of Public Instruction, and each newly appointed member shall take an oath to faithfully discharge his duties. At this meeting there shall be elected a vice-chairman and a secretary for each of said boards. Each of said boards shall appoint a treasurer, and such officers as it may deem necessary, but no member of any of said boards shall be selected as treasurer. No member of the board of regents shall draw any salary for services, as such, but shall be reimbursed for necessary expenditures made in going to and from each meeting of the board and for other legitimate expenses. Such expenses shall be paid out of the funds of the school. (1934, c. 65, p. 333.)

Sec. 4527-43, Ky. Stat. **Meetings; Quorum.**—Each board of regents shall meet quarterly at the college or at such other places as may be agreed upon. Upon written request of any two members of the board of regents and/or the president, the chairman of the board

of regents shall call a special meeting at a place designated by him, and the board may at such special meeting transact any or all business that it may transact at a regular meeting. A majority of the members of such board shall constitute a quorum for the transaction of business, but no appropriation of money nor any other contract which shall require an appropriation or disbursement of money shall be made, and no teacher employed or dismissed unless a majority of all the members of the board shall vote for the same. (1934, c. 65, p. 334.)

Sec. 4527-44, Ky. Stat. **Government of Teachers Colleges; powers of Boards of Regents; Employees.**—The government, administration, and control of each of the said State teachers' colleges is hereby vested in its respective board of regents which when its members have been appointed and qualified, shall constitute a body corporate and shall have perpetual succession with power to contract and be contracted with, to sue and be sued, to plead and be impleaded, to receive by any legal mode of conveyance property of any description, and to have and to hold and enjoy the same; to receive grants of money and to expend the same for the use and benefit of the said college; also, to sell and convey any real estate, buildings, or equipment belonging to it, but the proceeds from such sale shall be reinvested in other real estate and/or buildings and equipment for the use and benefit of the said college; to make and use a corporate seal with power to alter and enjoy the same; to adopt by-laws, rules and regulations for the government of their members, officers, agents, and employees, and to enforce obedience to such rules; to elect a secretary and a treasurer and to fix the bond of the treasurer which shall not be less than ten thousand dollars ($10,000), and the treasurer shall not be a member of the board of regents; to designate a depository or depositories for its funds and to fix the bond thereof; to require such reports from the president, officers, faculties, and employees as it deems necessary and proper from time to time; to determine the number of divisions, departments, bureaus, offices, and agencies needed for the successful conduct of the affairs of the said college; to invest the faculty or a committee of the faculty with the power to suspend or expel any student for disobedience to its rules, or for any other contumacy, insubordination, or immoral conduct; to appoint a president and, on the recommendation of the president, appoint in its discretion, all officers, teachers and employees and fix their compensation and tenure of service, provided no person shall be employed for a longer period than four years; and provided further that no person shall be employed who is related to any member of said Board of

Regents, as father, mother, brother, sister, husband, wife, son, daughter, aunt, uncle, sister-in-law or daughter-in-law, except that upon written recommendation of the president of the respective institution, one such relative of each member of the Board of Regents may be appointed upon confirmation by the remaining three members of the said board; to dismiss any president, and upon the recommendation of the president, any officer, teacher, or employee for cause as hereinafter provided; to grant diplomas and confer degrees upon the recommendation of the president and the faculty, and to possess all other immunities, rights, privileges, and franchises usually attaching to the governing bodies of educational institutions. (1936, c. 44; 1934, c. 65, Art. XI, Sec. 44.)

Sec. 4527-46, Ky. Stat. **Grounds for Removal.**—No president, professor, or teacher shall be removed except for incompetency, neglect of or refusal to perform his duty, or for immoral conduct, nor shall such president, professor, or teacher be removed until after ten days' notice in writing, stating the nature of the charges preferred; and such person shall have an opportunity to make defense before the board by counsel or otherwise, and shall be allowed to introduce testimony which shall be heard and determined by the board. Any charge against the president shall be preferred by the chairman of the board upon written information furnished to him, and any charge preferred against a professor or teacher shall be preferred in writing by the president unless the offense is committed in his presence. (1934, c. 65, p. 336.)

Sec. 4527-47, Ky. Stat. **Expulsion of Students.**—In every case of suspension or expulsion of a student by the faculty or committee of the faculty, the person so suspended or expelled shall be allowed to appeal from the decision of the faculty to the board of regents, and it shall be the duty of the board of regents to prescribe the manner and the mode of procedure in the matter of such appeal, but the decision of the board of regents shall be final. (1934, c. 65, p. 336.)

Sec. 4527-48, Ky. Stat. **Teachers and Contracts.**—No president, professor, teacher, regent, or member of the executive council or other officer or employee shall keep for sale or be interested, directly or indirectly, in any contract or purchase for the building or repairing of any structure or for fencing or ornamenting the grounds or furnishing any supplies for the use of said teachers' college. (1934, c. 65, p. 336.)

Sec. 4527-49, Ky. Stat. **Incidental Expenses.**—All incidental expenses of each of the above mentioned teachers' colleges shall be paid for out of moneys derived from tuition charged non-resident

students or other fees paid by the students of such institutions and the respective boards of regents shall establish such non-resident tuition fees and incidental fees as will be sufficient for the purpose and as are consistent with the recommendations of the Council on Public Higher Education; and no moneys derived from non-resident tuition or other fees paid by students shall be used for any other purposes whatsoever except such amount as is over and above that needed to defray such incidental expenses, and the board of regents of each of the said teachers' colleges is hereby authorized to establish such non-resident tuition fees and incidental fees as are consistent with the Council on Public Higher Education. (1934, c. 65, p. 337.)

Sec. 4527-50, Ky. Stat. **Maintenance of Practice Schools.**—The board of regents of each of the four state teachers' colleges may maintain in connection with the said teachers' colleges, a model and practice school, under the supervision of thoroughly trained teachers for the purpose of giving observation and practice work to the student teachers. (1934, c. 65, p. 337.)

Sec. 4527-51, Ky. Stat. **Purchase and Sale of Property.**—The board of regents of each of the four teachers' colleges is vested with power to purchase additional real estate or other property or material when in its judgment the same is necessary for the purposes of the school. If a board of regents be unable to agree with the owner or owners of such real estate as to its value, or to purchase of same it may proceed in its own name, in any court having jurisdiction, to condemn such real estate in the same manner as in the condemnation of lands for railroad purposes. Real estate acquired by purchase or condemnation shall be paid for out of moneys appropriated to said school. Each board of regents may on such terms as it may regard best for the school, purchase or lease land for the purpose of securing the erection of buildings, and it shall have power to purchase and hold all property, real and personal, deemed by it necessary for the purposes of the school, and to build and construct improvements for such purposes and hold or sell the same. Each board of regents may, when it regards the same best for the school, sell and convey any real estate or buildings now owned by it, but the proceeds arising from the sale of any real estate must be reinvested in other real estate and buildings for the use of the school. (1934, c. 65, p. 337.)

Sec. 4527-52, Ky. Stat. **Duties of Secretary.**—It shall be the duty of the secretary of the board of regents to keep and prepare all records, books, and papers belonging to the board. He shall keep

a journal of the proceedings of the board, in which if requested by any member of the board of regents, the "yeas" and "nays" on all questions shall be entered. He shall prepare, under the direction of the board, all reports and estimates, and shall execute all such matters belonging to his office. His compensation shall be fixed by the board. (1934, c. 65, p. 338.)

Sec. 4527-53, Ky. Stat. **Report of President of School.**—The president of each teachers' college shall make to his board of regents written reports in duplicate during the month of August of each year, which shall contain a full account of all receipts of money from appropriations, tuition, fees, and all other sources, and the disbursement thereof, and for what purpose, and the condition of said teachers' college. (1934, c. 65, p. 338.)

Sec. 4527-54, Ky. Stat. **Bond of Treasurer.**—The treasurer of the respective boards of regents before he enters upon the duties of his office, shall enter into a bond to the Commonwealth of Kentucky, with not less than two solvent sureties or a surety company authorized to do business in Kentucky, in a sum of not less than ten thousand dollars ($10,000.00) to be approved by the board, conditioned that he will faithfully perform all the duties required of him by law as such treasurer, which bond shall be filed with the secretary of the board. (1934, c. 65, p. 339.)

Sec. 4527-55, Ky. Stat. **Depository; Duties and Bond.**—Each board of regents shall appoint a bank or banks or trust companies to serve as its depository. The depository selected by the board of regents shall execute good and sufficient bond for the safekeeping of the board's funds, said bond to be approved by the board of regents. Said bond shall be guaranteed by at least five solvent personal sureties whose solvency shall exceed the amount of the bond, or a surety company authorized to do business in the Commonwealth or through the execution of a collateral bond consistent with the general banking laws of the Commonwealth and the bonding laws applying to the safeguarding of state funds. The depository shall be designated for a period of one year or any part thereof, and before entering upon its duties shall execute the bond required herein and shall agree with the board of regents as to the amount of interest to be paid on average daily or average monthly balances. Said interest shall not be less than two per cent (2%) in case the board pays the premium on a surety depository bond. The penal sum of the depository bond shall be determined by the board of regents and shall as nearly as possible cover the maximum amount of money which the board might have on hand in its depository at any one

time. The bond of the depository shall provide that the duties of the office shall be faithfully performed, that all funds deposited by the treasurer of the board of regents, or any agent of the board, will be held for the board subject to its withdrawal at any time, that all funds so deposited will be paid over to such person or persons and in such manner as the board may direct; that full and complete accounts of all the board's funds will be kept and such reports made to the board or its authorized agents as the board may direct, and that all records relating to the transaction and duties of the office will be kept and turned over to the successor of its office along with all public funds in hand. (1934, c. 65, p. 339.)

Sec. 4527-56, Ky. Stat. **Duties of Treasurer.**—It shall be the duty of the treasurer of the board to receive and disburse all money under the control of the board of regents and to perform all such acts as pertain to his office under the direction of the board of regents, and to make a report of the same to the board at its quarterly meeting. In the month of August of each year the treasurer of said board shall also make and furnish to the board of regents to be by it transmitted to the Superintendent of Public Instruction, an abstract which shall contain full accounts of all money received and disbursed by the school during the preceding year, stating from what source received and on what account paid out and the amount paid to each professor, teacher, or official of the school. (1934, c. 65, p. 340.)

Sec. 4527-57, Ky. Stat. **Funds Not to be Diverted.**—All appropriations made by the General Assembly for the support of teachers' colleges, or for the benefit thereof, and all grants, gifts, bequests, or donations by an individual or corporation for specified use shall be applied to such use or uses and no other. (1934, c. 65, p. 341.)

Sec. 4527-58, Ky. Stat. **No Contract Unless Funds Appropriated; Penalty.**—It shall be illegal for any officer, regent, or any person in any way connected with any of the state teachers' colleges to contract any obligation for or on behalf of any of said institutions, where there is no money or insufficient money, in their respective treasuries or has been no money appropriated for the purpose for which said contract or obligation was made, and any of said persons who fail to comply with this law shall be fined in each case not less than two hundred and fifty dollars ($250.00) nor more than two thousand dollars ($2,000.00) or confined not less than ten days in jail nor more than six months, or both so fined or imprisoned. (1934, c. 65, p. 341.)

Sec. 4527-59, Ky. Stat. **Recognition of Establishment.**—There is hereby recognized as established and maintained Kentucky State

College for Negroes, located at Frankfort. The said college for colored persons shall be maintained by the Commonwealth with such endowments, incomes, buildings, and equipment as shall enable them to do work such as is done in other institutions of corresponding rank and kind. (1938, 1st ex. s. c. 29, Sec. 1.)

Sec. 4527-60, Ky. Stat. **Purpose.**—It shall be the purpose of the Kentucky State College for Negroes to train teachers for schools for colored children, and to give such industrial and general college training to young men and women of the negro race as the State Board of Education deems necessary or advisable. (1938, 1st ex. s. c. 29, Sec. 2.)

Sec. 4527-61, Ky. Stat. **Department of Agriculture and Mechanics; Fund for.**—There shall be maintained in the Kentucky State College for Negroes a department for the education of colored students in agriculture and the mechanic arts, and for said purpose said board shall be entitled to receive an equitable division of the moneys arising from the sale of public lands and appropriated to the Commonwealth of Kentucky by an Act of Congress approved August 30, 1890, entitled "An Act to apply a portion of the proceeds of public lands to the more complete endowment and support of the college for the benefit of agriculture and the mechanic arts established under the provisions of the Act of Congress approved July 2, 1862." (1938, 1st ex. s. c. 29, Sec. 3.)

Sec. 4527-62, Ky. Stat. **Government and Control.**—The management and control of Kentucky State College for Negroes shall be vested in the State Board of Education. Said Board of Education shall succeed to and is hereby invested with all the duties, rights, powers, purposes, responsibilities and jurisdiction of the present Board of Trustees of said College, not inconsistent with this Act, and shall be in possession and control of all records, books, papers, offices, equipment, supplies, moneys, funds, appropriations, lands and other property, real or personal now or hereafter held for the benefit of said institution. (1938, 1st ex. s. c. 29, Sec. 4.)

Sec. 4527-63, Ky. Stat. **Powers and Duties of Board.**—The State Board of Education acting as a board of control for Kentucky State College for Negroes and West Kentucky Vocational Training School for Negroes shall be a body corporate, shall have perpetual succession, with power to contract and be contracted with, to sue and to be sued, to plead and to be impleaded, to receive by any legal mode of conveyance property of any description and to have and to hold and to enjoy the same, also to make and use a corporate seal with power to alter the same; to adopt by-laws, rules and regulations for

the government of said schools, their officers, agents and employees; provided such by-laws shall not conflict with the Constitution of the United States and with the Constitution of Kentucky and the laws of Kentucky. (1938, 1st ex. s. c. 29, Sec. 8.)

Sec. 4527-64, Ky. Stat. **Power to Purchase or Condem Property.**—Said board of education shall have power to purchase, sell and hold real and personal property in the name of the Commonwealth of Kentucky for the use and benefit of each of said schools, and to condemn real estate in the manner provided by law for condemnation of land for railroad purposes. It shall have the power to build and construct improvements and to do all things deemed by it necessary in carrying out the purposes for which said schools are maintained. Any revenue accruing by reason of the sale or conveyance of any real estate or building now owned by it, shall be reinvested in other real estate and buildings for use of said school. (1938, 1st ex. s. c. 29, Sec. 9.)

Sec. 4527-65, Ky. Stat. **No Contract Unless Funds Appropriated; Penalty.**—It shall be illegal for any officer, board member or any other person in any way connected with either of the schools for colored persons to contract any obligations for or on behalf of either institution, where there is no money or insufficient money, in the treasury or has been no money appropriated for the purpose for which said contract or obligation was made, and any of said persons who fail to comply with this law shall be fined in each case not less than two hundred and fifty dollars ($250) nor more than two thousand dollars ($2,000) or confined not less than ten days in jail nor more than six months, or both so fined and imprisoned. (1938, 1st ex. s. c. 29, Sec. 10.)

Sec. 4527-66, Ky. Stat. **Appointment of President.**—The board shall appoint a president for Kentucky State College for Negroes and West Kentucky Vocational Training School for Negroes, and determine his salary and the tenure of office, the term of which is not to exceed four years. The president may be removed for cause. (1938, 1st ex. s. c. 29, Sec. 11.)

Sec. 4527-67, Ky. Stat. **President the Executive Agent of the Board.**—The president shall be the executive agent of the State Board of Education in its administration of the affairs of the institutions and shall have general supervision, subject to the control of the board, of all educational and business affairs of the institutions and of all disciplinary problems which may arise. (1938, 1st ex. s. c. 29, Sec. 12.)

Sec. 4527-68, Ky. Stat. **Appointment, Compensation, Removal of Teachers.**—The State Board of Education shall, upon recommendation of the president, appoint and remove all officers, teachers and such other employees as are needed for the successful operation of the said schools and shall determine their salaries, duties, and official relations; provided that all executive officers, teachers, or other employees of the board of trustees in office or under contract at the time this act goes into effect shall serve out the terms for which elected, unless removed for cause. (1938, 1st ex. s. c. 29, Sec. 13.)

Sec. 4527-69, Ky. Stat. **Grounds for Removal.**—No president, officer, or teacher shall be removed except for incompetency, neglect of or refusal to perform his duty, or for immoral conduct, nor shall such president, officer, or teacher be removed until after ten days' notice in writing stating the nature of the charges preferred; and such person shall have an opportunity to make defense before the board by counsel or otherwise, and shall be allowed to introduce testimony which shall be heard and determined by the board. (1938, 1st ex. s. c. 29, Sec. 14,

Sec. 4527-70, Ky. Stat. **Shall Adopt Rules and Regulations.**—The State Board of Education shall adopt such rules and regulations for the government of said schools and for the guidance of the employees and students of each of the said schools for colored persons as it may deem proper. It may require of the president, the teachers, or other officers such reports as it may deem necessary; provided, that all existing rules and regulations made by the preceding boards shall remain in force until repealed by order of the State Board of Education. (1938, 1st ex. s. c. 29, Sec. 15.)

Sec. 4527-71, Ky. Stat. **Expulsion of Students.**—The State Board of Education shall have the power to invest the faculty or a committee of the faculty with power to suspend or expel any pupil for disobedience of the rules and regulations of the schools, for insubordination, or immoral conduct. In every case of suspension or expulsion of a student by the faculty or committee of the faculty, the person so suspended or expelled shall be allowed an appeal from the decision of the faculty to the State Board of Education, but the decision of the State Board of Education shall be final. (1938, 1st ex. s. c. 29, Sec. 16.)

Sec. 4527-72, Ky. Stat. **Shall Determine Curricula and Departments of Study.**—The State Board of Education shall have power to determine from time to time the number of departments of study of each school, and shall prescribe the curricula for each of the said

schools for colored persons. It shall have the power to issue certificates or diplomas, of graduation to students completing such curricula as may be provided for. 1938, 1st ex. s. c. 29, Sec. 17.)

Sec. 4527-73, Ky. Stat. **Maintenance of Practice Schools.**—The State Board of Education shall have power to maintain in connection with the Kentucky State College for Negroes a model and practice school under the supervision of trained teachers for the purpose of giving observation and practice work to the student teachers. (1938, 1st ex. s. c. 29, Sec. 18.)

Sec. 4527-74, Ky. Stat. **Tuition; Incidental Fees.**—Tuition in said schools for colored students shall be free to all colored residents of Kentucky. The board shall fix the rate of tuition and the conditions on which pupils who are not residents of Kentucky may be admitted. The board shall fix such incidental fees as it deems necessary to meet such incidental expenses as may be incurred. (1938, 1st ex. s. c. 29, Sec. 19.)

Sec. 4527-75, Ky. Stat. **Secretary of Board.**—The secretary of the State Board of Education shall serve as secretary of the board in its administration of the two schools for colored persons. It shall be the duty of the secretary to keep and prepare all records, books, and papers belonging to the board in its administration of said schools. He shall keep a journal of the proceedings of the board, in which if requested by any member of the board of education, the "ayes" and "nays" of all questions shall be entered. He shall prepare, under the direction of the board, all reports and estimates. (1938, 1st ex. s. c. 29, Sec. 20.)

Sec. 4527-76, Ky. Stat. **Report of President of School.**—The president of Kentucky State College for Negroes and the president of West Kentucky Vocational Training School for Negroes shall make to the State Board of Education written reports during the month of August of each year, which shall contain a full account of all receipts of money from appropriations, tuitions, fees, and other sources, and the disbursement thereof, and for what purpose, and the condition of said school. (1938, 1st ex. s. c. 29, Sec. 21.)

Sec. 4527-77, Ky. Stat. **Treasurer.**—The State Treasurer shall be the treasurer of the State Board of Education in its administration of Kentucky State College for Negroes and West Kentucky Vocational Training School for Negroes. (1938, 1st ex. s. c. 29, Sec. 22.)

Sec. 4527-78, Ky. Stat. **Meetings at Institutions.**—The State Board of Education shall meet at least once each year at the school plant of each of the schools herewith placed under its management

and control for the purpose of inspecting the plan and observing the work and the needs of the school. (1938, 1st ex. s. c. 29, Sec. 23.)

Sec. 4527-79, Ky. Stat. **Funds Not to be Diverted.**—All appropriations made by the General Assembly for the support of the said schools for colored persons or for the benefit thereof, and all grants, bequests, or donations by any individual or corporation for specified use shall be applied to such use or uses and no other. (1938, 1st ex. s. c. 29, Sec. 24.)

Sec. 4527-80, Ky. Stat. **Administration to be Consistent With Other Legislation.**—In respects other than those specifically mentioned herein, the State Board of Education, in its administration of the said schools for colored persons, shall be guided by existing legislation respecting its organization, duties, powers and activities. (1938, 1st ex. s. c. 29, Sec. 25.)

Sec. 4527-81, Ky. Stat. **State to Pay Tuition and Fees for Students in Institutions Outside State, When.**—That pending the full development of the educational institutions of the Commonwealth of Kentucky, all bona fide residents of this State at the time of making written application for the benefits provided in this Act and have been such residents continuously for five (5) years next preceding the time of filing said application, and who are duly qualified for matriculation in courses of study offered at the University of Kentucky, but who, because of Section one hundred eighty-seven (187) of the Constitution of Kentucky cannot pursue such courses at the University of Kentucky or other State institutions at which such courses are offered, or who have otherwise qualified to pursue such courses therein, and who are now pursuing or may hereafter pursue such courses in educational institutions outside of the State whereof no courses of study are provided for such persons within this State, shall have their tuition and fees paid at such institutions by the Commonwealth of Kentucky. (1936, c. 43, Sec. 1.)

Sec. 4527-82, Ky. Stat. **Payments, How Made.**—That such tuition and fees be ascertained by the State Superintendent of Public Instruction and paid upon requisition of him out of funds not otherwise appropriated. (1936, c. 43, Sec. 2.)

Sec. 4527-83, Ky. Stat. **State Board to Make Rules; Funds prorated; Maximum Allowance.**—That the State Board of Education shall prescribe the rules and regulations governing the granting of State aid under this Act. In event the funds appropriated for the purpose of carrying out the provisions of this Act are insufficient for the purpose in any year, said Board of Education shall have the

right to prorate the same among such persons whose applications are approved therefor pursuant to the provisions of this Act; and provided further that not more than one hundred and seventy-five ($175.00) dollars shall be allowed to any such person for the purposes and under the provisions of this Act during any one school year of nine (9) months. (1936, c. 43, Sec. 3.)

CHAPTER XIII.

STATE TEXTBOOK COMMISSION

Sec. 4421a-36, Ky. Stat. **State Textbook Commission; Members; Term; Organization.**—There is hereby created a State Textbook Commission of nine members, eight of whom are to be appointed by the State Board of Education within ten days from the effective date of this act, together with the Superintendent of Public Instruction who shall be ex officio secretary of the Commission, but in no event shall any member of the Department of Education be appointed a member of the Commission, except as provided above. The appointive members shall be educators of high qualifications who are actually engaged in educational work in the state, and whose educational qualifications shall not be less than graduation from a standard senior college.

Two of the appointive members shall be appointed for a term beginning with the date of appointment and expiring June 30, 1930; two for a term beginning with the date of appointment and expiring June 30, 1931; two for a term beginning with the date of appointment and expiring June 30, 1932; and two for a term beginning on the date of appointment and expiring June 30, 1933. At the expirations of the terms of the first appointees, and thereafter, the terms of the appointed members of the Textbook Commission shall be for a term of four school years.

The members of the State Textbook Commission shall have their organization meeting within ten days after the date of appointment. They shall elect one of their members as chairman and adopt rules and regulations for the procedure of the Commission, which shall not be in conflict with the laws of the State of Kentucky. (1930, c. 35, p. 89.)

McChesney v. Sampson, Governor, et al., 232 Ky. 395. Power flowing from act of Governor in making appointments to office is vested in appointee and may not thereafter be recalled or bestowed on another unless consent of senate is withheld. No valid appointment can be made to office in possession of incumbent whose tenure has not terminated. (January 17, 1930.)

Bell v. Sampson, et al., 232 Ky. 376. Where senate failed to act on appointments by Governor to State Textbook Commission, created by acts of 1926, as required by Kentucky Statutes, section 3750, power of Governor to make other appointments for vacancies created by non-action of Senate was as comprehensive as it would have been after actual vote of rejection by senate. (January 17, 1930.)

Sec. 4421a-37, Ky. Stat. **Conditions to be Complied With Before Adoption.**—Any person, firm or corporation desiring to offer textbooks for adoption and use in the public schools of Kentucky, shall, before such textbooks may be lawfully adopted by the State

Textbook Commission or purchased by any board of education, comply with the following conditions: Such person, firm or corporation shall file with the Superintendent of Public Instruction:

Section (a). Copies of all textbooks which such person, firm or corporation desires to offer for adoption and use, together with a sworn statement of the list price, the lowest net wholesale price and the lowest net exchange price at which each of such books is sold in any adopting unit.

Section (b). Copies of any revision or special editions of any such textbooks and the statement describing exactly and in detail each and every point of difference from the regular edition filed and the list price, the lowest wholesale price and the lowest net exchange price at which such revision or special edition is sold anywhere in the United States.

Section (c). A fee of five dollars ($5.00) for each book filed except where a series of books is filed, in which case he shall pay five dollars ($5.00) for the first book of the series and one dollar ($1.00) for each additional book of the series. A fee provided by this section shall be paid at each and every adoption or readoption period. The fund created by the provision of this section shall be used to cover the cost of compiling and publishing lists of books, for necessary expenses of the Textbook Commission and for other costs of administering the provisions of this act. If, and when, the balance of this fund, in the judgment of the State Board of Education, exceeds that which is necessary for the aforesaid purposes, the excess, upon the action of the State Board of Education, shall be transferred to the general school fund of the state.

Section (d). A bond, running to the people of the Commonwealth of Kentucky with a responsible surety company authorized to do business in the Commonwealth of Kentucky as surety thereon, in a sum to be determined by the State Board of Education, but not less than two thousand dollars ($2,000.00) nor more than ten thousand dollars ($10,000.00) conditioned as follows:

(1) That such person, firm or corporation will furnish any of the books listed in such statement for a period of five years from the date of the bond to any school district in the State of Kentucky or to any dealer appointed by such district, at the lowest net wholesale price contained in said statement, f. o. b. the publisher's nearest shipping point.

(2) That such person, firm or corporation will automatically reduce such prices in Kentucky whenever reductions are made anywhere in the United States, so that at no time shall any book so filed

and listed as above provided be sold in the Commonwealth of Kentucky at a higher net wholesale price than is received for such book elsewhere in the United States.

(3) That in case such person, firm or corporation prepares an abridged or special edition of any book so listed by him and sells such special edition elsewhere at a lower net wholesale price than the net wholesale price set out in the above statement, such person, firm or corporation shall file a copy of such special edition, together with the price thereof, in a supplemental statement with the Superintendent of Public Instruction.

(4) That all books sold in the Commonwealth of Kentucky shall be equal to and identical with the specimen books deposited in the office of the Superintendent of Public Instruction, as above provided, as regards size, paper, binding, print, illustrations, subject matter, and other particulars which may affect the value of textbooks.

(5) That such person, firm or corporation shall not enter into any agreement, understanding or combination to control the price of textbooks or to restrict competition in their sale in the Commonwealth of Kentucky.

The form of such sworn statement and such bond shall be prescribed by the Attorney General. Such bond shall be in force for the adoption period of five years for which a book is offered. Such person, firm or corporation may at any time while such bond is in effect, file a supplemental statement covering additional books or special editions of books already filed, which supplemental statement shall expire at the date of expiration of the original statement and bond. Prior to the expiration of any statement and bond, such person, firm or corporation may file a new statement and bond for a further period of five years, but if he fails to do so, his right to offer textbooks for adoption and use in the public schools of Kentucky shall expire on the date of expiration of the former bond. (1930, c. 35, p. 90.)

Sec. 4421a-38, Ky. Stat. **Commission to Select and Publish List of Books; Books to be Selected from this List by Boards of Education in Independent School Units Embracing a City of First, Second, Third or Fourth Class; Exceptions.**—The Textbook Commission created by this act shall select and publish not later than May 1, 1930, and not later than March 1, in any subsequent adoption year, a list of ten books in each subject, taking into account the needs of the various types of school organizations. One of the books for each subject and grade so listed shall be the one on the uniform list of counties and graded school districts as provided by this act. Not more

than two books for any subject and grade shall be from the same person, firm or corporation. If there are not submitted to the commission as many as ten books in any subject and grade of sufficient merit to warrant their being listed, the Commission may list fewer than ten, but in such event it may not list more than one book for the same subject and grade from the same person, firm or corporation. Such list as soon as prepared shall be sent to the chief administrative officer of the various school units of the State. The list of books prepared by the State Textbook Commission as set out in this section shall remain unchanged for a period of five years and not more than 33⅓% of the list of books now in use shall be changed at any one adoption period of five years. From this list the board of education in an independent school unit embracing a city of the first, second, third, or fourth class, upon the recommendation of its superintendent, shall, not later than June 1, 1930, and not later than May 1st of any subsequent adoption year, select and adopt for use for a period of five years in its school system one book for each subject and grade to be used as a basal text in its city school system. If any board of education, county or city, finds that any book in use in its system at the time this act becomes operative is not on its list approved or adopted by the State Textbook Commission as provided in this act, it shall have the privilege of readopting such book for a five-year period. Provided, the board of education of any independent school unit embracing a city of the first, second, third, or fourth class, upon the recommendation of its superintendent and the majority vote of the entire board of education, may adopt a basal text or the complete series of basal texts from the uniform list of books to be used in school districts outside of cities of the first, second, third, or fourth classes. (1930, c. 35, p. 93.)

Sec. 4421a-39, Ky. Stat. **List of Uniform Series of Basal Textbooks for Use in County School Districts and Independent School Districts Other Than Cities of the First Four Classes; Exception.**— The Commission shall also adopt, not later than May 1, 1930, and not later than March 1st in any subsequent adoption year, a uniform series or system of basal textbooks for use in the public schools of the county school districts and independent school districts in other than cities of the first, second, third, or fourth classes. The Commission shall also cause to be printed the list of books so adopted and send such lists to the administrative officer of each school unit of the state. In making such adoption of basal textbooks, the Textbook Commission created by this act shall designate the subject and grade for which the adopted book is intended, and not more than one book shall

be adopted for use in any one subject and grade. The adoption under this section shall be made for a period of five years. Provided that a county board of education, of a county maintaining a school term of at least nine months by a majority vote of the entire board, upon the recommendation of its superintendent, may select basal textbooks to be used in the county school district from the list adopted and approved for city school districts by the State Textbook Commission. (1930, c. 35, p. 94.)

Mills, Supt. of Schs. of Kenton County, v. Schobert, 216 Ky. 223, State Textbook Commission has authority to make adoption for common elementary schools on only the subjects required by statute to be taught; hence, its designation of supplementary books was recommendatory only, and did not prevent local authorities from recommending other books.

(1) The State Textbook Commission had authority to adopt textbooks for the common elementary schools only on the subjects named in the Statutes of Kentucky. (2) It had authority in the adoption of books upon subjects named in the statute to select one textbook upon each subject, as said subject was taught in each of the grades of the common elementary schools, and such books when so adopted must be used to the exclusion of all others on the same subject. (3) The uniform Textbook Act does not contemplate that the books legally adopted by the State Textbook Commission should exclude from the schools all other textbooks, but, to the contrary, clearly indicates that such books can be used. (4) As to these latter books, the local school authorities are free to recommend for use such as, in their judgment, best suit the needs of their pupils, and may, if they see fit, recommend the books mentioned in petition. (October 26, 1926.)

Sec. 4421a-40, Ky. Stat. **Only Approved and Adopted Textbooks to be Used.**—After July 1, 1930, no textbook shall be used in any public school in Kentucky as a basal textbook, unless it has been approved and adopted by the State Textbook Commission, or approved by the State Textbook Commission, and adopted by the board of education having jurisdiction over such school district, in accordance with the provisions of this act; provided that a change of a textbook, or textbooks, made by the State Textbook Commission, or by the board of education of any independent school district, embracing a city of the first, second, third, or fourth class, shall not become effective until grades or classes of respective school districts of counties or cities of the state have completed work for which the adopted book then in use was originally intended, but nothing in this act shall apply to the supplementary books as may be needed from time to time. (1930, c. 35, p. 94.)

Schlake v. Board of Education of Ft. Thomas, et al., 240 Ky. 426. Board of Education may permit second edition of a text to be used by pupils who have it when third edition of book is adopted as one to be used. Those who get new books to get third edition. (October 9, 1931.)

Sec. 4421a-41, Ky. Stat. **Distribution of Books; Bonds; Prices; Revocation of Appointment of Agent; Payment for Books.**—Each board of education in the Commonwealth may appoint a dealer, or dealers, to act as official retail agent, or agents, for the sale of books for use in such school district, or any school unit may purchase and distribute books, etc., to its own patrons instead of having an agent or dealer to handle the books. Publishers whose books have been adopted under the provisions of this act shall furnish such books either through such official retail agents, or through respective boards

of education, at the lowest net wholesale price and the lowest net exchange price listed with the Superintendent of Public Instruction, f. o. b. the publishers' nearest shipping point. Such official retail agent, or agents, shall give a reasonable bond, if required, to respective publishers who have contracts to furnish adopted texts. All orders given by such retail agent, or board of education, shall be promptly filled. Such official retail agent, or agents, shall sell such books at not more than fifteen per cent in excess of the net wholesale price. Where old books, displaced by a new adoption, are offered by pupils in exchange for the corresponding new books, such new book shall be offered at a price not to exceed by more than fifteen per cent the net exchange price listed by the publisher. If any such agent violates the requirements of this act, or fails to give reasonable bond requested by any publisher, the board of education that appointed such agent, by giving notice prior to May 1 in any year, may revoke the appointment of such agent on July 1 of that year. When an agent or dealer's permit is revoked or terminates by mutual agreement or otherwise all textbooks as per inventory of the dealer or agent must be paid for at wholesale price by the company, firm or individual from whom such textbooks were purchased, provided such textbooks are of the lawful adoption. (1930, c. 35, p. 95.)

Sec. 4421a-42, Ky. Stat. **Violation of Publisher's Bond.**—It shall be the duty of the superintendent of schools in each district to notify the Superintendent of Public Instruction of any violation by the publisher of any of the conditions in the publisher's bond on file with the Superintendent of Public Instruction. If the Superintendent of Public Instruction finds that such violation has occurred, he shall instruct the Attorney General to bring suit thereon against the publisher. In case judgment is received, any sum paid on such bond shall be placed to the credit of the general school fund of the Commonwealth. (1930, c. 31, p. 96.)

Sec. 4421a-43, Ky. Stat. **Purchase of Books from Pupils; Price.**—When a pupil removes from any school district, the board of education of such district shall purchase from such pupil, if requested so to do, the textbooks in actual use at the time by the pupil in such district. The price to be paid shall be based upon the condition of the books, and the same may be sold by the board of education, or furnished to indigent children in such district. (1930, c. 31, p. 96.)

Sec. 4421a-44, Ky. Stat. **Reward for Adoption Forbidden.**—No person, firm or corporation shall secure or attempt to secure the adoption of any school textbook or books in any school district in this Commonwealth by rewarding or promising to reward, directly or

indirectly, any person in any public school in the Commonwealth. No person, firm or corporation shall offer or give any emolument to any person in any school district for any vote or promise to vote, or the use of his influence, for any school textbook or books to be used in this Commonwealth. (1930, c. 35, p. 97.)

Sec. 4421a-45, Ky. Stat. **School Official, Etc., Not to Act as Agent.**—No superintendent, teacher, or other official, or employee of any institution supported wholly or in part by public funds shall act, either directly or indirectly, as agent for any person, firm or corporation whose school textbooks are filed with the Superintendent of Public Instruction, as provided by law. Such sample textbooks as may be submitted to members of the State Textbook Commission for examination shall continue to be the property of the bidder if claimed within 30 days after adoption or shall be sold by the State Board of Education and the money covered into the state school fund. (1930, c. 35, p. 97.)

Sec. 4421a-46, Ky. Stat. **Penalty for Violation of Act.**—Any person, firm or corporation violating any of the provisions of this act shall, on conviction thereof, be punished by a fine not to exceed five hundred dollars ($500.00), or by imprisonment not to exceed three months, or by both such fine and imprisonment, at the discretion of the court. (1930, c. 35, p. 97.)

Note.—This act of 1930, c. 35, was disapproved March 6, 1930, but passed the House of Representatives March 6, 1930, and also passed the Senate March 7, 1930, the Governor's veto to the contrary notwithstanding.

CHAPTER XIV

FREE TEXTBOOKS

Sec. 4421c-1, Ky. Stat. **Pupils for Eight Grades Furnished Free Textbooks.**—That the State Board of Education is hereby authorized and empowered and it is made its duty to purchase books from the contractors of textbooks used in the free public schools of the state and to distribute the same without cost to the pupils attending such schools, grades 1 to 8, inclusive, within this state in the manner and upon the conditions hereinafter set out. (1928, c. 48, p. 184.)

State Board of Education, et al., v. Kenney, et al., 230 Ky. 287. Providing for purchasing and paying for free textbooks in common schools, held not violative of Constitution, section 49, as creating debt beyond constitutional limit. Payment for free school books not intended to be appropriated from common school fund of Commonwealth, and purchasing of books not to be construed as ordinary expense of government. No fund appropriated for same, cannot buy. Board of education could not purchase and pay for free textbooks to be used in common schools of Commonwealth under acts of 1928, chapter 48 and Kentucky Statutes. Supplement of 1928, section 4019, where none of school fund had been appropriated for that purpose, and where general fund has been exhausted by appropriating power of legislature, under acts of 1928, chapter 128, leaving no fund out of which warrants for price of books could be paid. Acts of 1928, chapter 48, providing for purchasing and paying for free textbooks in common schools, held not violative of Constitution, section 49, as creating debt beyond constitutional limit. (July 3, 1929.)

Sec. 4421c-2, Ky. Stat. **Annual Appropriation.**—That in order to carry out the provisions of this Act:

(1) There is hereby appropriated out of the State Treasury, annually, a sum sufficient to cover the cost and distribution of free textbooks herein provided for, and the Treasurer of the Commonwealth of Kentucky is hereby directed to pay for same, upon presentation of triplicate voucher for same, signed by the Superintendent of Public Instruction and approved by the State Board of Education.

(2) There is hereby appropriated, annually, for a period of two years, the sum of fifteen thousand dollars, or so much thereof, as may be necessary, to be used by the State Board of Education in the administration of this Act, as herein provided, and provided that any unused portion of the same, shall biennially, be covered into the general funds of the treasury. (1928, c. 48, p. 184.)

Sec. 4421c-3, Ky. Stat. **Supervision of Distribution.**—The purchase and distribution of free textbooks by the state shall be under the management of the State Superintendent of Public Instruction, subject to the approval of the State Board of Education. (1928, c. 48, p. 184.)

Sec. 4421c-4, Ky. Stat. **Superintendent to Purchase Books.**—That it shall be the duty of the Superintendent of Public Instruction,

subject to the approval of the State Board of Education, to purchase the textbooks from the publishers with whom the Textbook Commission has entered into contract, such purchases to be upon requisitions of county superintendents, independent graded school principals, and city superintendents as hereinafter provided. (1928, c. 48, p. 185.)

Sec. 4421c-5, Ky. Stat. **Requisition for Books, Etc.**—That the Superintendent of Public Instruction shall prepare or cause to be prepared requisition forms on which all county superintendents, independent graded school principals, and city superintendents shall requisition the books needed for the next ensuing school term in the districts of their respective jurisdiction. Such requisition shall be filed with the Superintendent of Public Instruction at least one hundred and twenty (120) days before the beginning of school in the various districts.

The Superintendent of Public Instruction, under direction of the State Board of Education, shall order the textbooks, which have been requisitioned, from the various purchasers according to the terms of the contracts entered into by and between the State Textbook Commission and the publishers.

Such textbooks shall be shipped by the publisher, by prepaid freight, express or parcel post, as directed by the Superintendent of Public Instruction, direct to the county superintendents, city superintendents, and principals of schools, as may be directed by the Superintendent of Public Instruction. The publishers shall issue invoices in triplicate. Invoice No. 1 shall be sent direct to the Superintendent of Public Instruction and Invoices Nos. 2 and 3 shall be sent to the superintendent or principal receiving the textbooks. Upon receipt of the textbooks the superintendent or principal shall check the shipment against the invoice and O. K. Invoice No. 2 to the Superintendent of Public Instruction as a receipt of the shipment. The State Board of Education may then order payment. (1928, c. 48, p. 185.)

Sec. 4421c-6, Ky. Stat. **Property of State; Issue of Books.**—That all textbooks purchased under the provisions of this Act are and shall remain the property of the state. The superintendents and principals making requisition for the textbooks are custodians of the books in their respective jurisdiction. They shall issue the books to the various schools and districts in their jurisdiction according to the rules and regulations which shall be formulated by the Superintendent of Public Instruction, subject to the approval of the State Board of Education. (1928, c. 48, p. 186.)

Sec. 4421c-7, Ky. Stat. **Rules Governing Requisition.**—That specific rules as to the requisition, distribution, care and use of textbooks shall be made by the State Superintendent of Public Instruction, subject to the approval of the State Board of Education; provided, that such rules shall not conflict with the provisions of this Act; nor with the uniform textbook law under the terms of which contracts for books have been made or may hereafter be made with the publishers nor with the terms of said contract; provided further, no teacher or school employee engaged in the distribution of textbooks under the provisions of the Act shall, in connection with such distribution or otherwise or at all, sell or distribute, or in any way handle, any kind of school furniture or supplies, such as books, desks, stoves, blackboards, crayon, erasers, pens, ink, pencils, tablets, etc., for use in the public schools. (1928, c. 48 p. 186.)

Sec. 4421c-8, Ky. Stat. **Disposal of Worn-Out Books.**—That the State Superintendent of Public Instruction, subject to the approval of the State Board of Education, shall provide rules and regulations for the disposal of such textbooks as are no longer in fit condition to be used for purposes of instruction. Any funds accruing from the sale of such books shall be covered into the general funds of the treasury. (1928, c. 48, p. 186.)

Sec. 4421c-9, Ky. Stat. **Sale of Books for Private Use.**—That the State Superintendent of Public Instruction, subject to the approval of the State Board of Education, shall formulate rules and regulations governing the sale of textbooks by the local superintendents and principals to pupils, parents, or guardians of pupils attending the public schools of the state; provided, such individuals desire to hold textbooks as their own property; provided, further, principals and superintendents shall not sell textbooks to private or sectarian schools, nor shall any of the provisions of this Act govern the use of textbooks in any private or sectarian school.

Local superintendents and principals shall furnish the books, as described in the paragraph above, at the retail contract price. Funds accruing from such sales shall be covered into the general fund of the state treasury. (1928, c. 48, p. 187.)

Sec. 4421c-10, Ky. Stat. **Violation of this Law; Penalty.**—That the willful violation of this Act by any person shall be a misdemeanor punishable by a fine of not less than one hundred ($100.00) dollars nor more than five hundred ($500.00) dollars. (1928, c. 48, p. 187.)

Sec. 4421c-11, Ky. Stat. **Labeling; Care and Return.**—That all textbooks shall be permanently labeled as the property of the State

of Kentucky according to a plan formulated by the Superintendent of Public Instruction and approved by the State Board of Education; provided that rules and regulations shall also be formulated by the Superintendent of Public Instruction and approved by the State Board of Education, governing the assignment of textbooks to pupils, their care in the hands of the pupil, and their return to the teachers; provided further, that each pupil, or its parent or guardian, shall be responsible to the teacher for all books not returned by the pupil, and said pupil not returning all books delivered to him or her shall not be entitled to the benefits of this Act until said books are paid for by said parent or guardian or accounted for in keeping with regulations of the State Board of Education. No textbook issued or distributed under this Act to a white school child shall ever be reissued or redistributed to a colored school child, and no textbook issued or distributed to a colored school child shall ever be reissued or redistributed to a white school child. (1928, c. 48, p. 187.)

Sec. 4421c-12, Ky. Stat. **Effective Date.**—This act shall become effective, July 1, 1928, and textbooks shall be furnished under its provisions for the school year of 1929 and each succeeding year thereafter, provided that school children, who have textbooks still in use as adopted texts shall be permitted to use and continue to use said books so long as they are fit for use in the schools of this Commonwealth. (1928, c. 48, p. 188.)

Sec. 4421d-1. **Purchase and Distribution; to Begin with First Grade; Annual Appropriation.**—That the State Board of Education shall have full authority to purchase text books as provided by Chapter forty-eight, (Secs. 4421c-1 to 4421c-13) Acts of nineteen hundred twenty-eight, and shall have full authority to adopt such rules and regulations for the purchase and distribution of such books as in its judgment may be necessary, provided such rules and regulations are not in conflict with law. In the purchase and distribution of text books the State Board of Education shall begin with the first grade and shall furnish textbooks to the first grade before any are bought for the second grade. After books have been furnished to the first grade, if additional funds are available the State Board shall furnish books to the second grade, and so on, until the fund is exhausted; provided if, in the judgment of the State Board of Education sufficient funds are not available to furnish all the text books to any grade, then that Board shall have authority to determine for what subject or subjects in that particular grade textbooks shall be provided. There is hereby, appropriated annually, out of the Gen-

eral Fund, the sum of five hundred thousand dollars for the purchase and distribution of textbooks as provided in this Act, and any unused balance left from one year shall be carried to the following year and shall be used for the purposes provided in this Act. This sum is irrevocably set aside for purchase and distribution of text books as provided in this Act. The State Board of Education is hereby given full authority to administer the purchase and distribution of text books in the Commonwealth of Kentucky, and shall expend from the funds appropriated by this Act a sufficient amount to bear the expense of Acts providing for the purchase and distribution of textbooks in this Commonwealth, provided that no amount shall be expended out of this fund except on proper approval of the State Board of Education, and by requisition of the Superintendent of Public Instruction upon the Auditor of Public Accounts. (1934, ex. s. c. 3, Sec. 1.)

CHAPTER XV.

FINANCING BUILDING CONSTRUCTION FOR HIGHER EDUCATION

Sec. 4535cc-1, Ky. Stat. **State Educational Institutions May Alienate Fee in Real Property for Certain Purposes.**—That for the purpose of providing buildings to be used in connection with the University of Kentucky, or any of the state normal schools and teachers' colleges, or other state educational institutions, the board of trustees of said University or the board of regents of any of said state normal schools and teachers' colleges or governing body of such other state educational institutions, are hereby authorized and empowered to convey a fee simple title with covenant of general warranty of title, to a site for any such building on the campus or other real estate now held or hereafter acquired by said University or such state normal schools and teachers' colleges, or other state educational institutions, or now held or hereafter acquired by the Commonwealth of Kentucky for the use or benefit of said University or such state normal schools and teachers' colleges, or other state educational institutions, to any person or corporation complying with the provision of Sections 4535cc-2 and 4535cc-3 of this act. (1928, c. 64, p. 220, Section 1.)

Note.—This section referred to in K. S. Section 4435cc-2.
McDonald v. Univ. of Kentucky, 225 Ky. 205, 7 S. W. (2d) 1046. This act is constitutional. (June 22, 1928.)

Sec. 4535cc-2, Ky. Stat. **Grantee to Erect Buildings for Such Institution.**—Every person or corporation to whom a building site for a building has been conveyed, as provided for by Section 4535cc-1 of this act, shall immediately enter into a contract or contracts in writing with some person or persons, corporation or corporations, approved by the board of trustees of said University or the board of regents of such state normal schools and teachers' colleges, or governing body of such other state educational institutions, for the immediate erection on said site of a building with the necessary appurtenances, according to plans and specifications to be approved by the board of trustees of said University or the board of regents of such state normal schools and teachers' college, or governing body of such other state educational institution. Said contract shall provide the time when said building shall be completed, and the contractor or contractors shall enter into bond with the Commonwealth of Kentucky for the benefit of said University, state normal school and teachers' college or other state educational institution in the penal sum of

not less than twenty-five per cent (25%) of the contract price for the completion of the work in the manner and within the time set out in the contract. (1928, c. 64, p. 220, section 2.)

Note.—This section referred to in K. S. Sections 4535cc-1, 4535cc-3.

Sec. 4535cc-3, Ky. Stat. **Grantee to Execute Lease; Provision for Purchase of Option; Other Covenants.**—Immediately upon the execution of the contract provided for by section 4535cc-2 of this act, the person or corporation to whom such site has been conveyed shall immediately execute, acknowledge and deliver to the board of trustees of said University or the board of regents of such state normal schools and teachers' colleges, or governing body of such other state educational institution, a lease, leasing the said site, together with the building to be erected thereon, for a term of one year from the time said building shall be completed and ready for occupancy, with the right and option in such lessee to extend the term of said lease for a term of one year from the expiration of the original term of said lease and for one year from the expiration of each extended term of said lease, until the original term of said lease shall have been extended for a total number of years to be agreed upon by the parties thereto at a rental which, if paid for the original term and for each of the full number of years for which the term of said lease may be extended, will amortize the total cost of the erection of said building and appurtenances, which rental shall be paid at such times as the parties to said lease may agree upon. Said lease shall further provide that the lessee shall have the right and option at the expiration of the original or any extended term thereof, to purchase said leased premises at a price which shall be stated therein, and which shall be the balance of the total cost of the erection of said building and appurtenances not amortized by the payments of rent theretofore made by the lessee, the same to be paid at such times as the parties to said lease may agree; and shall contain a further provision that in the event of the exercise of said option to purchase said leased premises or in the event said lease shall have been extended for the full number of years which it is agreed the same may be extended, and all rents and payments provided for in said lease have been made, the lessor shall thereupon convey said premises to the lessee in fee simple with covenant of general warranty of title. Said lease may provide that the lessee shall, as additional rent for said leased premises, pay all taxes assessed against said leased premises, and the cost of insuring the building erected thereon against loss or damage by fire and wind storm in such sum as may be agreed by the parties thereto. (1928, c. 64, p. 220, section 3.)

Note.—This section referred to in K. S. Section 4535cc-1.

Sec. 4535m-1, Ky. Stat. **Board of Regents of Any State Teachers' College Authorized to Establish and Erect Buildings.**—That for the purpose of providing buildings to be used in connection with the University of Kentucky, or any of the state teachers' colleges, or other state educational institutions, the board of trustees of said University or the board of regents of any said state teachers' colleges or governing body of such other state educational institutions, are hereby authorized and empowered to erect, with necessary appurtenances or extensions thereto, buildings to be used in connection with such institutions under the provisions of this act, for the purpose of supplying such institution with the necessary buildings for educational purposes. (1934, c. 72, p. 371.)

Sec. 4535m-2, Ky. Stat. **May Borrow Money and Issue Bonds.**—For the purpose of defraying the cost of acquiring such buildings and appurtenances thereto by construction, any such state educational institution may borrow money from the Public Works Administration or other agency of the Federal Government and issue negotiable bonds, provided no such bonds shall be issued unless and until authorized by a resolution specifying the proposed undertaking, the amount of bonds to be issued and the maximum rate of interest such bonds are to bear, which shall not be more than six per cent (6%) per annum. Such resolution shall further provide that the proposed building or buildings and appurtenances which are to be acquired, are to be constructed pursuant to the provisions of this act. (1934, c. 72, p. 371.)

J. D. Van Hooser and Co., et al., v. University of Kentucky, 262 Ky. 581. Statutes authorizing state educational institutions to construct and finance buildings held valid, etc. (February 11, 1936.)

Sec. 4535m-3, Ky. Stat. **Bonds Issued Under This Act.**—All bonds under the provisions of this act may be issued bearing interest at a rate not exceeding six per cent per annum, payable semi-annually, and shall be executed in such manner and be payable at such times, not exceeding forty years from the date thereof, and at such place or places as such board of trustees, board of regents or governing body of such state educational institutions shall determine. (1934, c. 72, p. 372.)

Sec. 4535m-4, Ky. Stat. **Negotiable Bonds.**—Any and all such bonds shall have and are hereby declared to have in the hands of bona fide holders all of the qualities of negotiable instruments under the law merchant, and shall not be subject to taxation. In case any of the officers whose signatures or counter signatures appearing on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures or counter signatures shall

nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. Such bonds shall be sold in such manner and upon such terms as the board of trustees, board of regents or governing body of such state educational institution shall deem for the best interest of such institution. Such bonds when issued shall be payable from the revenue funds derived from such buildings as provided in sections eight and nine hereof and shall not constitute an indebtedness of such institution within the meaning of the constitutional provisions or limitations. It shall be plainly stated on the face of such bond that the same has been issued under the provisions of this act and that it does not constitute an indebtedness of such institution or the Commonwealth of Kentucky within the meaning of any constitutional provisions or limitations. (1934, c. 72, p. 372.)

J. D. Van Hooser and Co., et al., v. University of Kentucky, 262 Ky. 581. Statutes authorizing state educational institutions to construct and finance buildings held valid, etc. (February 11, 1936.)

Sec. 4535m-5, Ky. Stat. **Application of Money from Bonds; Mortgage Lien.**—All moneys received from any bonds issued pursuant hereto shall be applied solely to the establishment or erection of such buildings and necessary appurtenances thereto, provided such moneys may be used also to advance the payment of the interest on bonds during the first three years following the date of such bonds. And there shall be and there is hereby created a statutory mortgage lien upon the buildings and appurtenances so acquired to and in favor of the holders of said bonds and each of them and to and in favor of the holders of the coupons of said bonds. (1934, c. 72, p. 372.)

Sec. 4535m-6, Ky. Stat. **Buildings Subject to Lien; Enforcement Mortgage.**—The buildings so acquired and the appurtenances thereto, shall remain subject to such statutory lien until the payment in full of the principal and interest of the bonds. Any holder of said bonds or of any of the coupons may, either at law or in equity, protect and enforce the statutory mortgage lien hereby conferred and may by suit, action, mandamus, or other proceedings, enforce and compel performance of all duties required by this act, including the making and collecting of sufficient rates, the segregation of the income and revenue, and the application thereof. (1934, c. 72, p. 373.)

Sec. 4535m-7, Ky. Stat. **Court May Appoint a Receiver.**—If there be any default in the payment of the principal or interest of any of said bonds, any court having jurisdiction of the action may appoint a receiver to administer said buildings on behalf of the insti-

tution, with power to charge and collect rentals sufficient to provide for the payment of any bonds or obligations outstanding against said buildings and for the payment of the operating expenses and apply the income and revenues in conformity with this act, and the resolutions referred to in sections eight and nine hereof. (1934, c. 72, p. 373.)

Sec. 4535m-8, Ky. Stat. **Income and Revenues of Such Building or Buildings to be Set Aside and Pledged into a Separate and Special Fund.**—At or before the issuance of such bonds the board of trustees, board of regents or governing body of such educational institutions shall, by resolution, set aside and pledge the income and revenues of such buildings or building into a separate and special fund to be used and applied in payment of the cost thereof and in the maintenance thereof including a sufficient sum to pay the cost of insuring such building or buildings against loss or damage by fire and windstorm or other calamity in such sum as may be acceptable to the purchaser or purchasers of such bonds.

Said resolutions shall fix the rents, tolls, fees, and other charges to be imposed in connection with any such building or buildings or services to be thereby furnished, and shall provide that such board of trustees, board of regents or governing body of such educational institution shall pay into such separate and special fund the reasonable cost and value of any service rendered to such educational institution by such building or buildings furnishing classrooms, laboratory facilities, assembly halls or any such other educational facilities necessary in the operation of such educational institutions, and that such reasonable cost and value of any such service rendered shall be paid, into such fund monthly as the service accrues, from the current funds of such educational institution. Said resolution shall definitely fix and determine the amount of revenues which shall be necessary and be so set apart and applied to the payment of the principal and interest of the bonds, and the balance of such income and revenues shall be set aside as a proper maintenance fund, including a sufficient sum to pay the cost of such insurances as are hereinabove provided. The rents, tolls, fees and other charges for the services from such building or buildings shall be sufficient to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the same becomes due and to provide for the operation and maintenance thereof. Such rents, tolls, fees and other charges shall be revised from time to time so as to produce these amounts. (1934, c. 72, p. 373.)

J. D. Van Hooser and Co., et al., v. University of Kentucky, 262 Ky. 581. Statutes authorizing state educational institutions to construct and finance buildings held valid, etc. (February 11, 1936.)

Sec. 4535m-9, Ky. Stat. **Surplus in Maintenance Fund to be Transferred to the Sinking Fund.**—If any surplus shall be accumulated in the maintenance fund, which shall be equal to the cost of maintaining such building during the remaining portion of the calendar, or fiscal year, as may be provided by the resolution hereinbefore required and the cost of maintaining and operating such building the succeeding like calendar or fiscal year, any excess over such amount may be transferred at any time by the governing body to the sinking fund or may be used for any improvements, extensions or additions to such building. (1934, c. 72, p. 375.)

Sec. 4535m-10, Ky. Stat. **Refunding Bonds May be Issued.**—Such institutions may issue refunding bonds for the purpose of providing funds for the payment of any outstanding bonds, in accordance with the procedure prescribed by this act. Such new bonds shall be secured to the same extent and shall have the same source of payment as the bonds which shall have been thereby refunded. (1934, c. 72, p. 375.)

Sec. 4535m-11, Ky. Stat. **Additional Bonds May be Issued.**—Should the board of trustees, board of regents or other governing body of state educational institutions find that the bonds authorized will be insufficient to accomplish the purpose desired, additional bonds may be authorized and issued subject to the procedure as herein described and required. (1934, c. 72, p. 375.)

Sec. 4535m-12, Ky. Stat. **May Make Provision for Administration of Income on Building, Etc.**—Such institution in acquiring any building under the provisions of this act, may provide by resolution any such provision and stipulations for the administration of the buildings and the income and for the security of the bondholders as the board of trustees, board of regents or other governing body of state educational institutions may deem necessary; provided that the sinking fund, which shall be provided by resolution as hereinbefore required, shall be deposited in a depository selected by such board of trustees, board of regents or other governing body of state educational institutions, which deposit, where practicable, may be continuously secured by a pledge to the institution of direct obligations of the United States of America, exclusive of accrued interest, at all times at least equal to the balance on deposit in such account, or in such other manner acceptable to the purchaser or holders of such bonds. Such securities shall either be deposited with the institution or be held by a trustee or agent satisfactory to the board of trustees, board of regents or other governing body of state educational insti-

tutions. Such sinking fund may be invested in direct obligations of the United States of America. (1934, c. 72, p. 375.)

Sec. 4535m-13, Ky. Stat. **Bonds Not a Debt.**—Such bonds shall be obligations only of such board of trustees, board of regents or other governing body of state educational institutions, payable from the revenues of such buildings as hereinabove provided, and in no event shall they be considered a debt for which the full faith and credit of the Commonwealth of Kentucky is pledged. Any such resolution or resolutions shall constitute a contract between the board of trustees, board of regents or other governing body of state educational institutions with the holder of any bond or bonds, coupon or coupons, and shall be binding in all respects upon such governing bodies of such institutions and their successors, which contract may be enforced in the manner and form as hereinabove provided. (1934, c. 72, p. 376.)

Sec. 4535m-14, Ky. Stat. **Act Creates Additional Method for Acquisition of School Building.**—This act shall be deemed to create an additional and alternate method for the acquisition of buildings to be used in connection with the University of Kentucky or any of the state teachers' colleges or any of the other state educational institutions and shall not be deemed to include, alter, amend or repeal any other statute. No proceeding shall be required for the acquisition of any such buildings hereunder, or the issuance of bonds hereunder except as prescribed by this act, any provisions of the general laws of the Commonwealth of Kentucky notwithstanding. (1934, c. 72, p. 376.)

Sec. 4535m-15, Ky. Stat. **Sections and Provisions of This Act Separable.**—The sections and provisions of this act are separable and are not matters mutually essential one to the other, and it is the intention to confer the whole or any part of the powers herein provided for, and if any of the sections or provisions or parts thereof are for any reason illegal, it is the intention that the remaining sections and provisions or the parts thereof shall remain in full force and effect. (1934, c. 72, p. 377.)

INDEPENDENT DISTRICTS OF INCORPORATED CITIES

Sec. 4421-1, Ky. Stat. **Cities of First Six Classes Authorized to Convey a Fee Simple Title to Building Site.**—That for the purpose of providing buildings for elementary and/or high school purposes, boards of education or boards of trustees of school districts embracing cities of the first, second, third, fourth, fifth or sixth class, are hereby authorized and empowered to convey a fee simple

title with covenant of general warranty of title, to a site for any such building now held or hereafter acquired by such boards of education or boards of trustees, to such cities. (1934, c. 68, p. 351.)

Board of Education of City of Catlettsburg, et al., v. City of Catlettsburg, et al., 275 Ky. 797. Evidence held to authorize finding that the particular money claimed by the school board was a gift and hence need not be paid to board of education. (November 9, 1938.)

Piggott v. Kasey, et al., 271 Ky. 651. Where bonds for school purposes were issued by city and later school merged with county district the bonds were valid and county board assumed all obligation of the independent district board. Bonds may be sold to private persons. (March 17, 1938.)

Davis v. Board of Education of City of Newport, et al., 260 Ky. 294. Thirty-year lease of school building to board on condition of paying $15,000 a year until all rentals paid on condition that building would be conveyed to board held unconstitutional. Lease of building to board by city for annual rental which does not exceed budget for year constitutional. (May 31, 1935.)

Sec. 4421-2, Ky. Stat. **Such City to Enter into Contract for Erection of Building.**—Every such city to which a building site for a building has been conveyed, as provided in section one hereof, shall enter into a contract or contracts with some person or persons, corporation or corporations, for the erection on said site of a building with the necessary appurtenances, accoring to plans and specifications adopted by such city and approved by such board and the Superintendent of Public Instruction. (1934, c. 68, p. 351.)

Sec. 4421-3, Ky. Stat. **Board Shall Offer to Lease Building.**—Immediately upon the approval of the plans and specifications as provided in section two hereof such board of education or board of trustees shall offer to lease such building for a term of one or more years from the time such building shall be completed and ready for occupancy, which term shall be for a number of years acceptable to such city. The said lease by its terms shall give such lessee the right and option to extend the term of such lease for a term of one or more years from the expiration of the original term of such lease and for one or more years from the expiration of each extended term of such lease, until the original term of such lease shall have been extended for a total number of years, not exceeding thirty years, at a rental which, if paid for the original term and for each of the full number of years for which the term of said lease may be extended, will amortize the total cost of the erection of said building and appurtenances, provide an adequate maintenance fund and in addition thereto a sum sufficient to pay the cost of insuring the building against loss or damage by fire and windstorm or other calamity in such sum as may be agreed by the parties thereto. (1934, c. 68, p. 351.)

Sec. 4421-4, Ky. Stat. **Act Creates Additional Method for Acquisition of School Buildings.**—This act shall be deemed to create an additional and alternate method for the acquisition of elementary and/or high school buildings by any board of education or board of trustees of school districts embracing cities of the first,

second, third, fourth, fifth or sixth class and shall not be deemed to include, alter, amend or repeal any other statute. (1934, c. 68, p. 352.)

Sec. 4421-5, Ky. Stat. **Cities May Establish and Erect School Buildings.**—That cities of the first, second, third, fourth, fifth, and sixth classes, whether organized under the general law or special charter law, and including such cities where the commission form of government has been adopted, are hereby authorized and empowered to establish and erect elementary and/or high school buildings, together with necessary appurtenances thereto within the corporate limits under the provisions of this act for the purpose of supplying the boards of education or the boards of trustees of such city or town adequate buildings necessary to carry out their corporate duties and powers. (1934, c. 69, p. 353.)

Sec. 4421-6, Ky. Stat. **May Borrow Money and Issue Bonds.**—For the purpose of defraying the cost of acquiring any such elementary and/or high school buildings by construction and appurtenances thereto, any such city may borrow money from the Public Works Administration or other agency of the Federal Government and issue negotiable bonds, provided no such bonds shall be issued unless and until authorized by an ordinance specifying the proposed undertaking, the amount of bonds to be issued and the maximum rate of interest such bonds are to bear, which shall not be more than six per cent (6%) per annum. Such ordinance shall further provide that the proposed elementary and/or high school buildings and appurtenances thereto are to be constructed or acquired pursuant to the provisions of this act. (1934, c. 69, p. 354.)

Piggott v. Kasey, et al., 271 Ky. 651. Where bonds for school purposes were issued by city and later school merged with county district the bonds were valid and county board assumed all obligation of the independent district board. Bonds may be sold to private persons. (March 17, 1938.)

Sec. 4421-7, Ky. Stat. **Bonds Issued under This Act.**—All bonds under the provisions of this act may be issued bearing interest at a rate not exceeding six per cent per annum, payable semi-annually, and shall be executed in such manner and be payable at such times, not exceeding thirty years from date thereof, and at such place or places as such common council, board of commissioners or board of trustees shall determine. (1934, c. 69, p. 354.)

Sec. 4421-8, Ky. Stat. **Negotiable Bonds.**—Any and all such bonds shall have and are hereby declared to have in the hands of bona fide holders all of the qualities of negotiable instruments under the law merchant, and shall not be subject to taxation. In case any of the officers whose signatures or counter signatures appearing on the bonds or coupons shall cease to be such officers before delivery of

such bonds, such signatures or counter signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. Such bonds shall be sold in such manner and upon such terms as the common council, board of commissioners or board of trustees shall deem for the best interest of such city. Such bonds when issued shall be payable solely from the revenue funds derived from such elementary and/or high school building as provided in sections eight and nine hereof and shall not constitute an indebtedness of such city within the meaning of the constitutional provisions or limitations. It shall be plainly stated on the face of such bond that the same has been issued under the provisions of this act and that it does not constitute an indebtedness of such city within the meaning of any constitutional provisions or limitations. (1934, c. 69, p. 354.)

Sec. 4421-9, Ky. Stat. **Application of Money from Bonds; Mortgage Lien.**—All moneys received from any bonds issued pursuant hereto shall be applied solely for the establishment or erection of such elementary and/or high school building and necessary appurtenances thereto, provided such moneys may be used also to advance the payment of the interest on bonds during the first three years following the date of such bonds. And there shall be and there is hereby created a statutory mortgage lien upon the elementary and/or high school building and appurtenances so acquired to and in favor of the holders of said bonds and each of them and to and in favor of the holders of the coupons of said bonds. (1934, c. 69, p. 355.)

Sec. 4421-10, Ky. Stat. **Building Subject to Lien; Enforcement of Mortgage.**—The elementary and/or high school building so acquired, together with the appurtenances thereto, shall remain subject to such statutory lien until the payment in full of the principal and interest of the bonds. Any holder of said bonds or of any of the coupons may, either at law or in equity, protect and enforce the statutory mortgage lien hereby conferred and may by suit, action, mandamus, or other proceedings, enforce and compel performance of all duties required by this act, including the making and collecting of sufficient rates, the segregation of the income and revenue, and the application thereof. (1934, c. 69, p. 355.)

Sec. 4421-11, Ky. Stat. **Court May Appoint Receiver.**—If there be any default in the payment of the principal or interest on any of said bonds, any court having jurisdiction of the action may appoint a receiver to administer said elementary and/or high school building on behalf of the city, with power to charge and collect rentals sufficient to provide for the payment of any bonds or obligations out-

standing against said elementary and/or high school building and for the payment of the operating expenses and apply the income and revenues in conformity with this act, and the ordinance referred to in sections eight and nine hereof. (1934, c. 69, p. 356.)

Sec. 4421-12, Ky. Stat. **Plans and Specifications for School Building to be Filed in Office of City Clerk, Etc.**—When any such city shall desire to construct such elementary and/or high school building, the common council, board of commissioners or board of trustees of such city shall, by ordinance, cause plans and specifications for the elementary and/or high school building to be constructed to be duly made and filed in the office of the city clerk, which plans and specifications shall give a full description of the building to be constructed, the details thereof and the manner of construction.

The plans and specifications of such building shall be prepared by an architect selected by the city and approved by the board of education or board of trustees of the school district and shall be submitted to the board of education or board of trustees of the school district of such city and to the Superintendent of Public Instruction for approval and if approved, and if such board of education or board of trustees shall offer to lease such building for a term of one or more years from the time such building shall be completed and ready for occupancy, with the right and option in such lessee to extend the term of such lease for a term of one or more years from the expiration of the original term of such lease and for one or more years from the expiration of each extended term of such lease, until the original term of such lease shall have been extended for a total number of years, not exceeding thirty years, at a rental which, if paid for the original term and for each of the full number of years for which the term of said lease may be extended, will amortize the total cost of the erection of said building and appurtenances, provide an adequate maintenance fund and in addition thereto a sum sufficient to pay the cost of insuring the building erected against loss or damage by fire and windstorm or other calamity in such sum as may be agreed by the parties thereto, the common council, board of commissioners or board of trustees shall by ordinance authorize the issuance of bonds, in the manner and form as herein provided sufficient to pay the cost of constructing such building, and shall cause the city clerk to advertise for bids, and thereafter the common council, board of commissioners, or board of trustees, by and through the mayor or chairman of the board of trustees of such city, may contract for the construction of such building. (1934, c. 69, p. 356.)

Sec. 4421-13, Ky. Stat. **Income of Such Building to be Set Aside into a Separate and Special Fund.**—At or before the issuance of such bonds, the common council, board of commissioners, or board of trustees of such city shall, by ordinance, set aside and pledge the income of such building into a separate and special fund to be used and applied in payment of the cost thereof and in the maintenance thereof. Said ordinance shall definitely fix and determine the amount of revenue which shall be necessary and be set aside and applied for the payment of the principal and interest of the bonds, and the balance of such income shall be set aside for the reasonable and proper maintenance thereof, including a sufficient sum to pay the cost of such insurance as hereinabove provided. The rentals to be charged for the use of such building shall be sufficient to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the same becomes due and to provide for the maintenance thereof including the cost of insuring such building erected against loss or damage by fire and windstorm or other calamity. (1934, c. 69, p. 357.)

Sec. 4421-14, Ky. Stat. **Surplus in Maintenance Fund to be Transferred to the Sinking Fund.**—If any surplus shall be accumulated in the maintenance fund, which shall be equal to the cost of maintaining such building during the remainder of the calendar, or fiscal year, as may be provided by the ordinance hereinbefore required and the cost of maintaining and operating such buildings the succeeding like calendar or fiscal year, any excess over such amount shall be transferred to the sinking fund. (1934, c. 69, p. 358.)

Sec. 4421-15, Ky. Stat. **Refunding Bonds May be Issued.**—Such city may issue refunding bonds for the purpose of providing funds for the payment of any outstanding bonds, in accordance with the procedure prescribed by this act. Such refunding bonds shall be secured to the same extent and shall have the same source of payment as the bonds which shall have been thereby refunded. (1934, c. 69, p. 358.)

Sec. 4421-16, Ky. Stat. **Additional Bonds May be Issued.**—Should the common council, board of commissioners, or board of trustees find that the bonds authorized will be insufficient to accomplish the purpose desired, additional bonds may be authorized and issued subject to the procedure as herein required. (1934, c. 69, p. 358.)

Sec. 4421-17, Ky. Stat. **City May Make Provision for Administration of Income on Building, Etc.**—Such city in acquiring any building under the provisions of this act, may provide by ordinance any such provision and stipulation for the administration of the

income for the security of the bondholders as the common council, board of commissioners, or board of trustees of such city may deem necessary; provided that the sinking fund, which shall be provided by ordinance as hereinbefore required, shall be deposited in a depository selected by such common council, board of commissioners, or board of trustees, which deposit, where practicable, may be continuously secured by a pledge to the city of direct obligations of the United States of America, exclusive of accrued interest, at all times at least equal to the balance on deposit in such account, or in such other manner acceptable to the purchaser or holders of such bonds. Such securities shall either be deposited with the city or be held by a trustee or agent satisfactory to the common council, board of commissioners, or board of trustees of such city. Such sinking fund may be invested in direct obligations of the United States of America. (1934, c. 69, p. 359.)

Sec. 4421-18, Ky. Stat. **City to Convey Premises to Board, Etc.**—When the board of education or board of trustees of such school district of such city has paid rent, in the manner and form as provided in this act, sufficient to amortize the cost of the erection of such building and appurtenances, to maintain such building and pay the cost of insurance, such city shall thereupon convey said premises to such board, and shall transfer the balance, if any, remaining in the funds herein provided to the account of such board of education or board of trustees. (1934, c. 69, p. 359.)

Sec. 4421-19, Ky. Stat. **Act Creates Additional Method for Acquisition of School Building.**—This act shall be deemed to create an additional and alternate method for the acquisition of elementary and/or high school buildings by any city of the first, second, third, fourth, fifth, or sixth class and shall not be deemed to include, alter, amend or repeal any other statute. No proceeding shall be required for the acquisition of any elementary and/or high school building hereunder or the issuance of bonds hereunder except such as are prescribed by this act, any provision in the general laws of the Commonwealth of Kentucky or the charter of any city to the contrary notwithstanding. (1934, c. 69, p. 359.)

Davis v. Board of Education of City of Newport, et al., 260 Ky. 294. Thirty-year lease of school building to board on condition of paying $15,000 a year until all rentals paid on condition that building would be conveyed to board held unconstitutional. Lease of building to board by city for annual rental which does not exceed budget for year constitutional. (May 31, 1935.)

COUNTY DISTRICTS IN UNINCORPORATED CITIES

Sec. 4421-20, Ky. Stat. **Board to Convey Title to County.**—That for the purpose of providing buildings for elementary and/or high school purposes, boards of education of county and independent school

districts located within counties, exclusive of incorporated cities of such counties, are hereby authorized and empowered to convey a fee simple title with covenant of general warranty of title, to a site for any such building now held or hereafter acquired by such boards of education, to such counties. (1934, ex. s., c. 14, Sec. 1.)

Note.—Acts 1934, c. 70, was held unconstitutional (See note under Sec. 415c-1); but the same act with a few minor changes was passed at the extraordinary session of 1934, (c. 14). This section referred to in Sec. 4421-21.

Fiscal Court of Jackson County, et al., v. Board of Education of Jackson County, 268 Ky. 336. This contract to lease a building provides for continuance from year to year and is illegal. It could be remedied by making lease for one year. (April 30, 1937.)

Franklin County, et al., v. Franklin County Board of Education, 267 Ky. 554. Board of Education rather than Fiscal Court held to have power and duty to determine site for high school building. (March 5, 1937.)

Bellamy v. Bd. of Edu., 255 Ky. 447, 74 S. W. (2d) 920. County board of education has power to convey good title to educational corporation which will build school on property and lease same back to county board on a yearly basis with option to renew each year until enough rental is paid that corporation will convey property and school to county board. The department of public property has nothing to do with such transaction. (September 25, 1934.)

Sec. 4421-21, Ky. Stat. **County to Contract for Erection of Building.**—Every such county to which a building site for a building has been conveyed, as provided in section one (Sec. 4421-20) hereof, shall enter into a contract or contracts with some person or persons, corporation or corporations, for the erection on said site of a building with the necessary appurtenances according to plans and specifications adopted by such county and approved by the board of education of the county or independent school district in which such building is proposed to be constructed and by the Superintendent of Public Instruction. (1934, ex. s., c. 14, Sec. 2.)

Sec. 4421-22, Ky. Stat. **Board to Lease Building From City; Terms.**—Immediately upon the approval of the plans and specifications as provided in section two hereof, such board of education shall offer to lease such building for a term of one or more years from the time such building shall be completed and ready for occupancy, which term shall be for a number of years acceptable to such county. The said lease by its terms shall give such lessee the right and option to extend the term of such lease for a term of one or more years from the expiration of the original term of such lease and for one or more years from the expiration of each extended term of such lease, until the original term of such lease shall have been extended for a total number of years, not exceeding thirty years, at a rental which, if paid for the original term and for each of the full number of years for which the term of said lease may be extended, will amortize the total cost of the erection of said building and appurtenances, provide an adequate maintenance fund and in addition thereto a sum sufficient to pay the cost of insuring the building against loss or damage by fire and windstorm or other calamity in such sum as may be agreed by the parties thereto. (1934, ex. s., c. 14, Sec. 3.)

Sec. 4421-23, Ky. Stat. **Construction of Act; No Change in Other Statutes.**—This act shall be deemed to create an additional and alternate method for the acquisition of elementary and/or high school buildings by any county board of education or board of education of independent school districts and shall not be deemed to include, alter, amend or repeal any other statute and shall apply solely to school buildings constructed with financial assistance from the Federal Government. (1934, ex. s., c. 14, Sec. 4.)

Acquisition of school buildings, Sec. 4399-48.

COUNTY DISTRICTS ORGANIZED UNDER GENERAL LAW OR SPECIAL CHARTER LAW—FISCAL COURT AUTHORITY

Sec. 4421-24, Ky. Stat. **Counties Authorized to Construct School Buildings.**—That counties whether organized under the general law or special charter law are hereby authorized and empowered to establish and erect elementary and/or high school buildings, together with necessary appurtenances thereto under the provisions of this act for the purpose of supplying the board of education of such county or independent school districts located outside of the incorporated cities of such county, adequate buildings necessary to carry out their corporate duties and powers. (1934, ex. s., c. 15, Sec. 1.)

Note.—Acts 1934, C. 71, was held unconstitutional (See note under Sec. 415c-1); but the same act with a few minor changes was passed at the extraordinary session of 1934 (C 15).

Franklin County, et al., v. Franklin County Board of Education, 267 Ky. 554. Board of Education rather than Fiscal Court held to have power and duty to determine site for high school building. (March 5, 1937.)

Sec. 4421-25, Ky. Stat. **Financing the Construction; Bonds.**—For the purpose of defraying the cost of acquiring any such elementary and/or high school building by construction and appurtenances thereto, any such county may borrow money from the Public Works Administration or other agency of the Federal Government and issue negotiable bonds, provided no such bonds shall be issued unless and until authorized by a resolution specifying the proposed undertaking, the amount of bonds to be issued and the maximum rate of interest such bonds are to bear, which shall not be more than six per cent (6%) per annum. Such resolution shall further provide that the proposed elementary and/or high school buildings and appurtenances thereto are to be constructed or acquired pursuant to the provisions of this act. (1934, ex. s., c. 15, Sec. 2.)

Sec. 4421-26, Ky. Stat. **Interest on Bonds.**—All bonds under the provisions of this act may be issued bearing interest at a rate not exceeding six per cent per annum, payable semi-annually, and shall be executed in such manner and be payable at such times, not exceeding thirty years from the date thereof, and at such place or places

as such fiscal court or board of commissioners shall determine. (1934, ex. s., c. 15, Sec. 3.)

Sec. 4421-27, Ky. Stat. **Bonds Negotiable, Tax Free; Not a County Indebtedness.**—Any and all bonds shall have and are hereby declared to have in the hands of bona fide holders all of the qualities of negotiable instruments under the law merchant, and shall not be subject to taxation. In case any of the officers whose signatures or counter signatures appearing on the bonds or coupons shall cease to be such officers before the delivery of such bonds, such signatures or counter signatures shall nevertheless be valid and sufficient for all purposes the same as if they had remained in office until such delivery. Such bonds shall be sold in such manner and upon such terms as the fiscal court or board of commissioners shall deem for the best interest of such county. Such bonds when issued shall be payable solely from the revenue funds derived from such elementary and/or high school building as provided in sections eight and nine hereof and shall not constitute an indebtedness of such county within the meaning of the constitutional provisions or limitations. It shall be plainly stated on the face of such bond that same has been issued under the provisions of this act and that it does not constitute an indebtedness of such county within the meaning of any constitutional provisions or limitations. (1934, ex. s., c. 15, Sec. 4.)

Sec. 4421-28, Ky. Stat. **Use of Bond Funds; Mortgage Lien Declared.**—All moneys received from any bonds issued pursuant hereto shall be applied solely for the establishment or erection of such elementary and/or high school building and necessary appurtenances thereto, provided such moneys may be used also to advance the payment of the interest on bonds during the first three years following the date of such bonds. And there shall be and there is hereby created a statutory mortgage lien upon the elementary and/or high school building and appurtenances so acquired to and in favor of the holders of said bonds and each of them and to and in favor of the holders of the coupons of said bonds. 1934 ex. s., c. 15, Sec. 5.)

Sec. 4421-29, Ky. Stat. **Mortgage Lien Rights.**—The elementary and/or high school building so acquired, together with the appurtenances thereto, shall remain subject to such statutory lien until the payment in full of the principal and interest of the bonds. Any holder of said bonds or of any of the coupons may, either at law or in equity, protect and enforce the statutory mortgage lien hereby conferred and may by suit, action, mandamus or other proceedings, enforce and compel performance of all duties required by this act, including the making and collecting of sufficient rates, the segrega-

tion of the income and revenue, and the application thereof. (1934 ex. s., c. 15, Sec. 6.)

Sec. 4421-30, Ky. Stat. **Appointment of Receiver in Case of Default.**—If there be any default in the payment of the principal or interest of any of said bonds, any court having jurisdiction of the action may appoint a receiver to administer said elementary and/or high school building on behalf of the county, with power to charge and collect rentals sufficient to provide for the payment of any bonds or obligations outstanding against said elementary and/or high school building and for the payment of the operating expenses and apply the income and revenues in conformity with this act, and the resolution referred to in sections eight and nine hereof. (1934 ex. s., c. 15, Sec. 7.)

Sec. 4421-31, Ky. Stat. **Building Plans and Specifications; Lease to Board; Prerequisites to Bond Issue.**—When any such county shall desire to construct such elementary and/or high school building, the fiscal court or board of commissioners of such county shall, by resolution, cause plans and specifications of such building to be constructed, to be duly made and filed in the office of the county court clerk, which plans and specifications shall give a full description of the building to be constructed, the details thereof and the manner of construction.

The plans and specifications of such building shall be prepared by an architect selected by the fiscal court and approved by the board of education of the school district and shall be submitted to the board of education of the school district in which said building is proposed to be constructed and to the Superintendent of Public Instruction for approval and if approved, and if such board of education shall offer to lease such building for a term of one or more years from the time such building shall be completed and ready for occupancy, with the right and option in such lessee to extend the term of such lease for a term of one or more years from the expiration of each extended term of such lease, until the original term of such lease shall have been extended for a total number of years, not exceeding thirty years, at a rental which, if paid for the original term and for each of the full number of years for which the term of said lease may be extended will amortize the total cost of the erection of said building and appurtenances, provide an adequate maintenance fund and in addition thereto a sum sufficient to pay the cost of insuring the building erected against loss or damage by fire and windstorm or other calamity in such sum as may be agreed by the parties thereof, the fiscal court or board of commissioners shall by resolution authorize

the issuance of bonds, in the manner and form as herein provided, sufficient to pay the cost of constructing such building, and shall cause the county court clerk to advertise for bids, and thereafter the fiscal court or board of commissioners, by and through the county judge of such county, may contract for the construction of such building. (1934 ex. s., c. 15, Sec. 8.) See note under Sec. 4421-24.

Sec. 4421-32, Ky. Stat. **Amount and Disposition of Building Rent.**—At or before the issuance of such bonds the fiscal court or board of commissioners of such county shall, by resolution, set aside and pledge the income of such building into a separate and special fund to be used and applied in payment of the cost thereof and in the maintenance thereof. Said resolution shall definitely fix and determine the amount of revenue which shall be necessary and be set aside and applied for the payment of the principal and interest of the bonds, and balance of such income shall be set aside for the reasonable and proper maintenance thereof, including a sufficient sum to pay the cost of such insurance as hereinabove provided. The rentals to be charged for the use of such building shall be sufficient to provide for the payment of interest upon all bonds and to create a sinking fund to pay the principal thereof as and when the same becomes due and to provide for the maintenance thereof including the cost of insuring such building erected against loss or damage by fire and wind storm or other calamity.(1934 ex. s., c. 15, Sec. 9.)

Sec. 4421-33, Ky. Stat. **Surplus in Maintenance Fund.**—If any surplus shall be accumulated in the maintenance fund, which shall be equal to the cost of maintaining such building during the remainder of the calendar, or fiscal year, as may be provided by the resolution hereinbefore required and the cost of maintaining and operating such building the succeeding like calendar or fiscal year, any excess over such amount shall be transferred to the sinking fund. (1934 ex. s. c. 15, Sec. 10.)

Sec. 4421-34, Ky. Stat. **Refunding Bonds.**—Such county may issue refunding bonds for the purpose of providing for the payment of any outstanding bonds, in accordance with the procedure prescribed by this act. Such refunding bonds shall be secured to the same extent and shall have the same source of payment as the bonds which shall have been thereby refunded. (1934 ex. s. c,. 15, Sec. 11.)

Sec. 4421-35, Ky. Stat. **Additional Bonds.**—Should the fiscal court or board of commissioners find that the bonds authorized will be insufficient to accomplish the purpose desired, additional bonds

may be authorized and issued subject to the procedure as herein required. (1934 ex. s., c. 15, Sec. 12.)

Sec. 4421-36, Ky. Stat. **Administration of Income; Sinkng Fund Depository.**—Such county in acquiring any building under the provisions of this act, may provide by resolution any such provision and stipulation for the administration of the income and for the security of the bondholders as the fiscal court or board of commissioners of such county may deem necessary: Provided, that the sinking fund, which shall be provided by resolution as hereinbefore required, shall be deposited in a depository selected by such fiscal court or board of commissioners, which deposit, where practicable, may be continuously secured by a pledge to the county of direct obligations of the United States of America, exclusive of accrued interest, at all times at least equal to the balance on deposit in such account, or in such other manner acceptable to the purchaser or holders of such bonds. Such securities shall either be deposited with the county or be held by a trustee or agent satisfactory to the fiscal court or board of commissioners of such county. Such sinking fund may be invested in direct obligations of the United States of America. (1934 ex. s., c. 15, Sec. 13.)

Sec. 4421-37, Ky. Stat. **When Title Goes to Board.**—When such board of education has paid rentals, in the manner and form as provided in this act, sufficient to amortize the cost of the erection of such building and appurtenances, to maintain such building and pay the cost of insurance, such county shall thereupon convey said premises to such board, and shall transfer the balance, if any remaining in the funds herein provided to the account of such board of education. (1934 ex. s., c. 15, Sec. 14.)

Sec. 4421-38, Ky. Stat. **Construction of Act; No Change in Other Statutes.**—This act shall be deemed to create an additional and alternate method for the acquisition of elementary and/or high school buildings by the county and shall not be deemed to include, alter, amend or repeal any other statute. (1934 ex. s., c. 15, Sec. 15.)

Note.—See note under Sec. 4421-24. Acquisition of school buildings, Sec. 4399-48.

Piggott v. Kasey, et al., 271 Ky. 651. Where bonds for school purposes were issued by city and later school merged with county district the bonds were valid and county board assumed all obligation of the independent district board. Bonds may be sold to private persons. (March 17, 1938.)

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