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A Critical Analysis of New Mexico School Laws, 1933-1947

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A CRITICAL ANALYSIS OF NEW MEXICO SCHOOL LAWS, 1933-1947

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CHAPTER I

INTRODUCTION

The period following the end of World War I down to the present time has been characterized by rapid educational progress, and this progress, though highly beneficial, has not been without its problems. With progress has come increased complexity in educational methodology and administration.

In many instances the schools have struggled to make adjustments to a changing educational pattern only to find that they were bound hand and foot by archaic state school laws which render such adjustments, if not impossible, at least extremely difficult. Many changes have been necessary in school laws. Some of them have proved to be sound, while others are unsound and detrimental to educational progress.

Readjustments have been necessary because of the inherent imperfection of laws. Industrial and economic changes have naturally preceded social changes, and these same social changes have, just as naturally, preceded legislative changes designed to allow adjustments in the general field of education. The end result of this natural chain of events has been a distinct lag in educational legislation of a desirable nature.

I. THE PROBLEM

Statement of the problem. It is the purpose of this study (1) to analyze those New Mexico school laws which have been enacted since 1931; (2) to criticize them on the basis of their particular value, or lack of value, to public education in New Mexico; and (3) to suggest revisions which closely parallel the recommendations of outstanding research groups and authorities in the field of educational administration.

Delimitations of the problem. This study is limited to those laws which have been enacted since 1931 and down to and including the 1947 session of the New Mexico legislature. Only those laws which have a direct bearing upon the welfare of public education have been included. It is further limited to those laws particularly applying to elementary and secondary education. There has been no attempt to analyze school laws in the light of legal form, but purely on the basis of their content.

Importance of the problem. State school law is the foundation upon which a state educational system is built. In view of this fact, it is highly important that these laws be periodically studied by educators in order that those which are antiquated, outmoded, and harmful may be supplanted by new laws which are designed to meet current educational

needs.

The last complete analysis of New Mexico school laws was made in 1932. A period of sixteen years has thus passed since such a study was made. Those years have seen numerous school laws enacted, and a great amount of educational gain made, but not all the laws passed have been educationally sound. It is important, then, that a critical analysis of these recent laws be made in order that educators and legislators may have a better guide as to what is sound and what is unsound in both past and future legislation.

II. DEFINITIONS OF TERMS USED

Maintenance Budget. When the term maintenance budget is used in this study it is meant to indicate the New Mexico interpretation, which differs from national school accounting terminology. Maintenance budget, in New Mexico, refers to current school expenses such as general control, instructional service, operation of the school plant, and auxiliary agencies. This term should not be confused with maintenance of the school plant.

Direct Charge Budget. Direct charge budget is another term peculiar to New Mexico. Included in the direct charge budget in New Mexico are funds for new grounds, buildings, and equipment; repairs to grounds, buildings, and equipment;

necessary additional transportation; insurance; funds for public libraries; and debt service.

State Public School Equalization Fund. The state public school equalization fund is one which was established for the purpose of equalizing, as nearly as possible, the financial returns to all school districts in proportion to their needs and regardless of their abilities to raise revenue from local sources. Such a fund is designed to bring about a better balance in educational opportunity for children of the state. It is derived principally from the emergency school tax (commonly referred to as the "sales tax") and a portion of the state income tax.

III. SOURCES OF THE DATA

The school laws which form the basis for this study are taken exclusively from the complete volumes of the New Mexico Statutes, 1941, Annotated, and the 1943, 1945 and 1947 supplements thereto. In evaluating and criticizing these laws extensive use is made of authoritative information found in periodicals and books, as well as pamphlets and bulletins published by the United States Office of Education and the Research Division of the National Education Association. Recommendations, where made, are based largely upon the opinions of leading authorities in public school administration

and the findings of the previously mentioned research groups. Due to the fact that this study is designed as a continuation of the study by J. E. Seyfried entitled, Analysis and Evaluation of New Mexico State School Laws, which was published in 1932, numerous references are made to this bulletin.

IV. METHODS OF PROCEDURE

The laws under consideration in this study are presented in a condensed and simplified form in order that they may be more readily understandable. However, nothing has been eliminated from these laws except unnecessary and lengthy legal form which would only add complexity and give no particular value to the study itself. Each law is preceded by a section number corresponding to the section number of the same law in the New Mexico Statutes, 1941, Annotated. Thus a ready reference is provided for the reader who may wish to refer to the complete text of the law.

The laws are critically analyzed and evaluated on the basis of their value to New Mexico's public schools. Where changes are recommended, the guiding motive has been to suggest only such changes as would be applicable to New Mexico and at the same time be educationally sound. To this end extensive use was made of authoritative information.

V. REVIEW OF RELATED LITERATURE

A bulletin entitled, Analysis and Evaluation of New Mexico State School Laws appeared in 1932.[1] This bulletin has done for New Mexico school laws through the year 1931 what this study proposes to do for the laws from 1933 through and including 1947.

At the time Seyfried's study was made he was associate professor of education at the University of New Mexico. He spoke not only as a scholar in the field of school administration but as a student of school law as well.

His treatment of school law is largely non-technical and was written in a form which made it readily understandable by both layman and educator. A critical analysis was made without detailed reference to each individual section in the constitution and the statutes. The adverse criticisms were constructive and had as their aim the stimulation of the actions of educators and legislators toward the ultimate goal of reform in the school laws of New Mexico.

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[1] J. E. Seyfried, Analysis and Evaluation of New Mexico State School Laws (The University of New Mexico Bulletin, No. 218. Albuquerque: The University of New Mexico Press, 1932).

The study contains, in Chapter II, an analysis of the educational provisions of the New Mexico State Constitution. The more important criticisms offered deal with the membership of the state board of education and selection of the state superintendent of public instruction, method of distributing the state current school fund, investments of the permanent school fund, and control of state public school lands.

Seyfried recommends that the state board of education be composed of from five to seven members appointed by the governor, who should have the power to appoint wholly on considerations of personal merit and fitness in order that the board be kept free of racial, political, and sectarian influences.[2] He points out that no ex-officio members should be on the state board of education, and especially that the governor should not serve. Since the governor is the appointing power there is grave danger that, as a member of the board, he may dominate the other members.

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[2] Ibid., p. 12

The practice of the entire state board of education resigning each time there is a change in administration is one which is still followed and which was deplored by Seyfried in 1932. He states that such a procedure is an admission that the board is political and exercises control over the public schools of the state through partisan politics. The very fact that this custom is still followed offers reason for the opinion that undue political influence is still exercised by the state board of education.

The author feels that the governor should not be compelled, by constitutional provision, to appoint certain educators to serve on the state board of education. Loyalty to their own institutions and professional positions prevent such members from giving service without fear or favor. Many authorities feel that a board of education, carefully selected and composed of lay members, gives a type of service superior to that rendered by boards containing professional members.

It is strongly recommended by Seyfried that the state superintendent of public instruction be appointed rather than elected. He should be appointed for such a period of time and for as many consecutive periods as the state board shall choose, so long as any one period does not exceed the term of the board. The board should have the power to choose the superintendent free from all restrictions as to race, sex,

political affiliation, and residence, and should be given the power to set the qualifications desired.

The inherent weaknesses in the elective system are pointed out in the statement that:

> Voters give too little thought to the need of a competent man. . . and have too little opportunity of knowing a suitable candidate to enthrust the important duty of selection to them. . . . If the state superintendent must depend on the vote of the people for continuation in office he or she will be politically dominated. . . .
>
> The policy of electing the state superintendent of public instruction has the further disadvantage of restricting the office to those who fulfill state qualifications for eligibility to election--particularly to those who reside in the state. . . . It is preferable, in normal circumstances, to employ a superintendent of public instruction from another state, one who has had training and experience outside the state. Inbreeding in education is detrimental when practiced excessively.[3]

No amendment has yet been made to the constitution to permit such a change in the method of selecting the state superintendent, though there have been several attempts to do so, and the need for such a change is just as great today as it was at the time Seyfried's study was made.

The author criticizes the method of distributing the

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3 Ibid., p. 15.

state current school fund on the basis of the census child on the ground that "it does not encourage increased attendance or place a premium on greater effort or better schools, or adequately consider need and ability."[4] He suggests that the plan of apportionment should be left to statutory enactment rather than to constitutional stipulation. The constitution should require only that the income from the permanent school fund, the state general property tax, and all other income accruing to the current school fund be apportioned each year in a manner which will serve to equalize both the burden and the advantages of education.

Article XII, Section 7, of the New Mexico State Constitution, which requires that the permanent school fund be invested in bonds of New Mexico or its political subdivisions, is held to be almost opposite to what is considered acceptable. Seyfried regards it inadvisable to invest permanent school funds in the bonds of the state unless those bonds meet all state savings bank requirements and are

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[4] Ibid., p. 18.

purchased on the open market or after competitive bidding. The stipulation that all losses be reimbursed by the state is not true security, since such reimbursements would probably be made by issuing certificates of indebtedness. This amounts to little more than "a scheme of thrusting a perpetual tax burden upon the people, to pay interest on debts owed to themselves."[5] The author is convinced that state money should be invested in the state only when it is as profitable and safe as investments elsewhere would be.

The matter of school lands and their control is entirely in the hands of the state land commissioner, an elected official who, more often than not, has little knowledge of the vast duties of the office and is politically dominated. No representative of the public schools has any direct control over these lands, and the interests of the schools thereby may be subjugated to political interests.

Seyfried recommends that the state board of education be given control over public school lands, or that a special

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[5] Ibid., p. 17.

land board be created which would have in its membership the state superintendent of public instruction and perhaps the president of the state board of education. This board should be free to appoint an overseer without legislative interference and to pay such a person whatever is necessary to secure a man capable of handling a multi-million dollar business.

In Chapter III, Seyfried turns to analysis and criticism of statutory law as listed in the New Mexico School Code. The most noteworthy of these criticisms were found to be those concerning (1) the state superintendent of public instruction; (2) county school superintendents; (3) school finance and taxation; (4) rural schools; and (5) teachers.

The criticisms previously reviewed dealing with the state board of education and the state superintendent of public instruction are enlarged upon in this chapter, but the basic recommendations are the same.

In recommending that county superintendents be appointed by county boards of education, Seyfried states:

> One of the most serious weaknesses in New Mexico's school laws is the provision which makes it possible, in fact encourages, the counties to select county school superintendents of an inferior caliber. Little hope can be entertained for effective administration of the county schools so long as the office or position of county school superintendent is elective, and consequently, hampered by such petty restrictions as normally accompany elective offices. The best talent cannot be attracted to the position until it offers security of tenure,

reasonable freedom from politics, and a salary commensurate with the dignity and professional status of which it is worthy.[6]

Seyfried has fully recognized and enumerated the inherent weaknesses involved in both the appointed county board of education and the elective superintendency. He could find little to justify either, and held that the schools can do nothing but suffer under such a system.

Seyfried unequivocably condemns the New Mexico plan of school finance and taxation, as it then existed, as being so weak basically that to attack the method prescribed in the law for its execution would be hardly worthwhile. A complete revision of the system was found to be necessary if public education in New Mexico was to advance. Statistics and reports of investigations proved that the plans for financing public education were highly instrumental in keeping New Mexico backward educationally.

He does not offer any one plan for financing public education in New Mexico, but indicates that a financial

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[6] Ibid., p. 18.

survey should be made which would not be confined to educational finances alone but which would include state and local finances in general. This survey was deemed advisable before any changes be made.

A variety of financial plans are offered as possibilities, all of which educators considered to have merit. However, it is interesting to note that each plan mentioned embodied the equalization principle based upon a minimum program of education which would be made available to all school districts regardless of local ability. This, of course, meant placing the greater burden of financing public education upon the state--preferably as much as 60 to 75 per cent of the total cost.

It was found to be evident that such a plan for financing education meant finding additional sources of revenue, since the general property tax, which was the basic source, would not provide sufficient funds to finance such a program. Seyfried suggests a statewide plan of taxation which would be stable and yet remain flexible enough to meet changing conditions and which would be relatively safe from legislative interference, gubernatorial influence, politics, and control of big interests. He suggests the possibility of using one or a combination of the following taxes: corporation, income, severance, and sales taxes. As will be shown later in this study, the present plan of financing

education in New Mexico embodies many of the principles laid down by Seyfried.

In dealing with rural schools, Seyfried criticized those laws particularly applying to the control, consolidation, and general operation of rural school districts.

He is particularly critical of the appointive method of selection of county school board members. He recommends that the county boards of education be composed of five members, elected at a special, non-partisan election. This board would be granted the same powers and duties as municipal boards and would appoint employees and teachers only on the recommendation of the county superintendent. The stipulation that no more than two members of the board be members of the same political party should be discarded and members elected at large.

Consolidation of rural school districts, according to the author, should be a power bestowed upon the county board of education without any special vote of the people. Should the voters become dissatisfied with the actions of the county board, their recourse should be through the polls and not through granting to the public powers which would hamper the effective administration of the board.

The most important portion of the section on teachers in Seyfried's study deals with teachers' certificates.

Certification requirements, though they had been recently raised, were found to be too low generally. Especially was this true for elementary certificates. Administrative and s supervisory certificates were found to be lacking and were considered necessary by the author. The abandonment of certificates requiring only the lowest of qualifications was recommended at the earliest practicable time, and the general standard of requirements raised for all elementary certificates.

Seyfried, in his summary and recommendations, has included needed legislation and the approximate order in which such legislation should come. He places state and county reorganization at the head of the list as being major needs. These should be followed by revision of methods of taxation and apportionment of school funds. He recommended immediate attention to these two matters and indicated that many of the other recommendations would follow with very little effort after these changes had been made.

New laws considered greatly needed by Seyfried were a free textbook law, a statewide minimum salary schedule, a teacher tenure law, a teacher retirement plan, a law exercising state control over school buildings, regulations for in-service training of teachers, and provision for the education of incorrigibles, defectives, and delinquents. Three of these laws--a free textbook law, a teacher tenure

law, and a teacher retirement law--have been passed and will be discussed later in this study.

The New Mexico School System. In 1942 there appeared the book entitled The New Mexico School System.[7] This publication is designed to explain the educational system of New Mexico, including some of the history and background, the organization, types of education provided, duties of employees, and how the schools of the state are maintained.

Due to the fact that the book was designed as a textbook for use in a course involving New Mexico educational problems, its content, dealing with the school laws of the state, is largely factual and explanatory rather than analytical. However, a considerable amount of constructive criticism is made of constitutional and statutory weaknesses affecting the New Mexico educational system. In fact, this book is probably the most complete and detailed informative study that has ever been made of constitutional provisions and statutes governing the operation of the state educational

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7 S. P. Nanninga, The New Mexico School System (Albuquerque: The University of New Mexico Press, 1942).

system.

The first two chapters of this book serve as background material for the chapters which follow. They contain a brief history of education in the state, its topography and its physical, economic, and social aspects.

Chapters III and IV deal with the organization of the state department of education and the county system. The author soundly criticizes the organization of the state department of education because of the political influence which may be exercised in both the state board of education and the state superintendency. The elective superintendency and the appointive board make for a dual-headed system concerning which Dr. Manninga makes the following statement:

> The present arrangement by which the state superintendent of public instruction is elected by the people, and the state board of education appointed by the governor, with each in a position to act more or less independently of the other, only needs a sufficiently irritating situation to develop mutual hostility and destructive attitudes and tactics.[8] . . .

The county system is criticized on much the same

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[8] Ibid., p. 42.

basis as the state department of education. The county system is described as being under dual-control by a county board of education appointed by the district judge (now assisted by the state superintendent of public instruction and the chairman of the board of county commissioners) and a superintendent of schools elected on a partisan political ticket. Relative to the defects of the system Dr. Nanninga says:

> The defects are in the system and not so much in the men. The men and women we have today, as a group, are the best the system has thus far produced. The system itself is essentially unsound. The office of county superintendent of schools, a position of potential importance, offers no incentive to any man to prepare himself for the work, because nowhere in the state can he either enter the work or retain his position on the basis of merit alone.[9]

Nanninga proposes a county reorganization plan which is based on an elected board of education which appoints the county superintendent of schools on the basis of his qualifications and personal fitness for the position.

Chapter V thoroughly explains the operation of the several types of school districts in New Mexico, including

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[9] Ibid., p. 56.

rural school districts, independent rural school districts, municipal districts, union high school districts, and interstate school districts.

The chapter which follows is limited to higher institutions in New Mexico, their scope, maintenance and control, and support and appropriations.

Chapter VII contains a very complete discussion of the sources of Federal revenue for educational purposes in New Mexico. This discussion relates the numerous acts of Congress which have made both land and money grants for purposes of education in the several states.

It is interesting to note that the principle of federal aid to education dates back to 1802 at which time Congress granted section 16 of each township to the inhabitant thereof. The first land grant affecting New Mexico, however, was the Organic Act passed by Congress on September 30, 1850, and which preserved sections 16 and 36 of each township for the territory of New Mexico for the use of the common schools.

Sources of school revenue are given detailed coverage in Chapter VIII. Each source of school revenue is thoroughly explained. The amounts realized from each source and the fund into which it is placed is given complete explanitory treatment.

Chapter IX is exceptionally valuable to school administrators in New Mexico who are not familiar with the

procedure followed in the voting, issuing, and selling of school bonds for building purposes. A thorough knowledge of this important point of school law by school superintendents is made more important by virtue of the fact that practically all school building construction in New Mexico is done by the use of money secured by bond issues. This, of course, is due to the limitation of five mills which is placed on local taxes for direct charge purposes, making it virtually impossible for school systems to properly maintain buildings and grounds, purchase new equipment, and pay for necessary insurance and still be able to set aside sufficient amounts for the purpose of operating a "pay-as-you-go" building program. By issuing bonds not to exceed 6 per cent of the assessed valuation of taxable property in the district, such district may exceed the constitutional twenty mill tax limitation by the amount necessary to pay yearly principal and interest in retiring bonds.

Dr. Hanninga lists eleven principles governing the issuing of school bonds in New Mexico. School officials who are planning a building program for which bonds are to be issued will find their task much easier if they will follow these principles closely.

In dealing with the apportionment of New Mexico educational funds, the author, like most authorities in school administration, is very critical of the use of the

census child as a basis for apportionment of the state current school fund. Due to the fact that this plan of apportionment was inserted in the constitution, it now "stands seriously in the way of adequately financing the schools."[10]

The apportionment of other state school funds are given complete explanitory treatment. In summarizing apportionment of state school funds, the author makes a very pertinent statement in line with the principle of equalization. He says:

> A fundamental principle of a state apportionment plan should be to equalize the burdens of maintenance and educational opportunity for the entire state. . . . In apportioning only a limited amount care should be taken to stimulate and encourage new and desirable undertakings. Furthermore, aid should be given to relieve excessive burdens in order to secure minimum standards in teacher preparation, attendance, and length of term. . . . The apportionment plan could well encourage the county unit for taxation and administration. . . . But all of this assumes the elimination of partisan politics from the administration of the New Mexico School System.[11]

The last two chapters of this book deal with teacher

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[10] Ibid., p. 147.

[11] Ibid., p. 155.

status and the relation between the state and the child. In the treatment of teacher status, the author makes numerous references to the laws and attorney general's opinions dealing with teacher-pupil relationships, records and reports, teacher contracts, employment of teachers, personal aspects, subject matter to be taught, teacher certification, salaries, and retirement.

The opening paragraph of the discussion of the state and its relation to the child contains a statement which briefly summarizes the author's views on this important matter. The statement is as follows:

> All that has been presented in previous chapters has bearing on but one important consideration, and that is the product that comes from our schools. To think of education as a means of providing an organization through which enormous sums are spent for anyone other than the child is to form a wrong conception of the purpose of our state school system.[12]

The enforcement of compulsory attendance, the formation and operation of a democratic system of schools, consideration of the physical welfare of the child, provision

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12 Ibid., p. 177.

for education of the physically defective, transportation of pupils, and the furnishing of the tools of learning are all responsibilities which the state or its legal agents must assume in the education of the child. The regulations governing these responsibilities are well explained in the concluding chapter of the book.

VI. ORGANIZATION OF THE REMAINDER OF THE STUDY

Chapter II of this study will give critical treatment to those laws dealing with state and county organization and administration. Additional powers granted the state board of education will be evaluated. Reorganization of the state department of education on a sounder basis will be discussed, as well as membership on and method of selection of county boards of education. The law making independent rural school districts possibly will be given full critical treatment in the light of its value to effective administration.

All recent laws pertaining to financing education and taxing for educational purposes will be evaluated and criticized in Chapter III. The extent to which equalized distribution of state funds is realized through the operation of the equalization law is presented in a tabulated comparison of the amounts received by each county from local sources of revenue and the state public school equalization

fund.

Chapter IV will be concerned with laws particularly applying to instructional personnel. Included in the laws to be evaluated are such subjects as pupil-teacher ratio, teachers' health certificates, elementary and secondary supervision, teacher retirement, and teacher tenure. Retirement and tenure are covered in some detail.

The final chapter in the main body of the study will deal with those miscellaneous laws which could not be properly included under previous chapter headings. Included are laws dealing with the school census, school bus transportation, free textbooks, courses of instruction, consolidation of school districts, the New Mexico educational survey, fire drills, and a non-profit school lunch program.

Chapter VI will present a summary of the recommendations made in this study. These recommendations will be presented in the order in which they probably should be considered for future legislation.

CHAPTER II

STATE AND COUNTY ORGANIZATION AND ADMINISTRATION OF EDUCATION

In the development of the American system of education, an ever-increasing amount of attention has been directed toward effective organization and administration of the public school systems.

In the early days of education in the United States, because of a widely scattered population as well as inadequate means of communication and transportation, the local community was the center for a large portion of the social and economic life of that time. The typical school was little concerned with the schools elsewhere, and was largely independent of outside controls. Consequently there was little need for any other than a very simple organizational structure, and technical methods of administration were not developed nor found necessary.

The epochal growth of publicly supported education is well known. In the year 1800 there were only a few schools in widely scattered areas. They were attended by a small portion of the children of school age, and then only at irregular intervals. Even in 1850 the number of children attending schools was 3,350,000, a relatively small percentage of those of school age. In 1900 there were 15,500,000

pupils enrolled in 250,000 schools, while in 1937-1938, one of the high enrollment years, there were 27,000,000 pupils attending 245,000 schools.[1] It will be noted that the number of schools decreased by 5000 while the number of pupils enrolled increased by some 11,500,000 during the period between 1900 and 1938. This was due to the adoption of more effective organization and administration which brought about consolidations of school districts, larger and better equipped buildings, and more effective financial support. The increase in the amount of public money expended for educational purposes is significant. In 1900 the cost of education in the United States was $325,000,000; in 1936 it had increased to $2,500,000,000,[2] a total increase of 669 per cent in thirty-five years.

It is easy to see why such growth in education brought about a change from simplicity to complexity in the organization and administration of American education, and why problems have continued to face both educators and legislators.

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[1] W. D. Cocking and C. H. Gilmore, Organization and Administration of Public Education (Washington, D. C.: United States Office of Education, 1938), p. 5.

[2] Ibid., p. 7.

Legislative provisions which would have solved some of these problems have lagged behind the need for such provisions. This is due, in part, to the tendency of state legislatures to resist changes in laws until they become convinced that there is sufficient public demand for such.

One of the paramount reasons for this unnecessary lag is the fact that many states, and New Mexico in particular, are bound by constitutions in which educational provisions are outmoded and relatively inflexible. Changes are needed, and the need is recognized, but the difficulty encountered in attempting to amend the constitution has raised a stumbling block in the path of educational progress to the extent that organization and administration, in many cases, are so seriously retarded that the whole educational system is penalized.

POWERS OF THE STATE BOARD OF EDUCATION

Section 55-107. Additional Powers. (a) To examine and approve all plans and specifications for repair and construction of school buildings of five rooms or less, and declaring void any contract for such repair or construction which has not received approval of either the state board of education of the state superintendent of public instruction except in the case where the repairs or construction constitutes an expenditure of less than $500.

(b) All accrediting agencies for elementary grades and junior and senior high schools must act with the approval of and under the direction of the state superintendent of public instruction.

(c) To receive all grants of money from the United States or other agencies and provide for the disbursement of

these funds under the terms specified in the grant. (Session Laws, 1939.)

The powers hereby granted rightfully belong to the state board of education.

The power to examine and approve plans and specifications for repairs and construction of school buildings is worthwhile only in so far as it extends. By limiting this there seems to be little reason to the implied assumption that larger school systems which find it necessary to construct buildings of more than five rooms are necessarily competent to make plans without supervision. School administrators should have some general knowledge of proper standards for school buildings, but they are not generally qualified to supervise planning and construction. Cubberley, as long as twenty-four years ago, stated that one of the powers of the state board of education should be the adoption of rules and regulations for the sanitary inspection and approval of school buildings.[3] There appears to be little reason why present state boards of education should not be

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3 E. P. Cubberley, State and County Educational Reorganization (New York: The MacMillan Company, 1922), p. 22.

granted powers at least as broad as those recommended twenty-four years ago.

Several factors have contributed to faulty school building construction in New Mexico. (1) Communities have been too willing to use the old buildings which have become obsolete, unhealthful, and inadequate rather than to incur indebtedness which would result in increased taxation on property. (2) Statutory limitation on bonded indebtedness of school districts often makes it difficult for poor rural districts either to build desirable buildings or adequately remodel old ones. (3) Relatively new buildings have been poorly planned due to a lack of knowledge on the part of school boards and administrators of proper procedures in school building planning. (4) The state has required inadequate standards to be met in the construction, remodeling, or major repairs of school buildings. Local school units have had the sole responsibility in maintaining accepted standards in the construction of buildings. The result has been that these standards often have not been maintained.

The writer has seen school buildings which were constructed in New Mexico as late as 1936 in which sanitary features consist of outdoor privies, and drinking fountains which invite the spread of disease. These same buildings are located on inadequate sites, have improper natural lighting, obsolete equipment, narrow corridors which invite

disaster in case of a fire, poor ventilation, no central heating or method of properly controlling room temperature, and other undesirable features.

In order that children will not be subjected to such conditions in future buildings, it seems that some statutory provision should be made which would insure that future construction, including additions, remodeling, and major repairs, adhere to certain standards as set up by the state board of education. It would probably be well for a division of the state department of education to be established for setting up standards and providing inspectorial service. At the head of this division should be a school building specialist whose duties would be to inspect and approve all plans and specifications for the construction, remodeling, additions, and major repairs of all school buildings within the state. This individual should be recommended by the chief state school official and appointed by the state board of education.[4]

Before concluding the analysis of the powers of the

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[4] Ward G. Reeder, The Fundamentals of Public School Administration (New York: The Macmillan Company, 1941), p. 66.

state board of education, the writer feels than an additional power should be discussed--namely, the selection of the state superintendent of public instruction. This power is not granted to the state board of education in New Mexico, but the need for such a power is great.

Article V, sections 1, 3, and 12 of the New Mexico State Constitution, provides for the election of the state superintendent of public instruction by a vote of the qualified electors of the state. Such superintendent must be at least thirty years of age, a resident of the state, and a trained and experienced educator. His term of office is two years and he may succeed himself for only one term. His salary, as set by the constitution, is $3000 per year. This, however, was changed by the Seventeenth Legislature in 1945 when the salary was raised to $6000 annually. It was possible for the legislature to make this change because Article V, section 12 of the constitution grants to the legislature the power to increase or decrease the compensation of any executive office of the state at any time after the expiration of ten years from the date of the admission of New Mexico as a state.

The office of chief state school officer is potentially the most important educational post in the state. He should rank in prestige and influence even above the president of

the state university.[5] Education is either directly or indirectly engaged in by a larger portion of the population than any other business in the state. With this fact comes a realization of the importance of the office of state superintendent of public instruction. Ward G. Reeder sums up what the office should be as opposed to what it really is, in the following statement:

> The office should be the head and heart of the school system of the state. It should encourage, supervise, and direct the development of the whole school system of the state from the kindergarten through the university. It should bring every worthy educational endeavor in the state within its vitalizing influence. Unfortunately this ideal is not always realized; it is not realized because the legislation pertaining to the office is archaic in many respects. Like Topsy, the office in many states has "just growed up," and the growing-up period has been fairly short, dating back only to 1812, the date of its first establishment in New York.
>
> The chief handicap under which the office labors results from the method of selecting the incumbent. Approximately two-thirds of the states still elect the chief state school official by popular vote, and practically all of these still elect him on a partisan ticket.[6]

The practice of electing the state superintendent of

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[5] Ibid., p. 64.

[6] Ibid., pp. 64-65.

public instruction by popular vote may be attacked from several angles.

(1) It limits the office to residents of the state. It is a well known fact that continued inbreeding of administrative and instructional personnel weakens any educational system, and if one accepts the premise that the office of state superintendent of public instruction is the most important educational position in the state the best possible candidate should be selected for that office. Often such a person is not a resident of the state.

(2) It results in a low, static salary. A relatively inflexible salary is generally set either by the constitution or the statutes, and it is generally so low that properly prepared individuals seldom seek the position.

(3) It provides for only very short terms of office. No long range educational program can be more than started in a two to four year period. It is impossible to build a strong state department of education and an effective state educational system on a foundation so woefully weak.

(4) A person well qualified for the office usually will refuse to be subjected to the injustices of petty partisan politics by running for an elective office. The rightful dignity of the office cannot be maintained under an elective system.

(5) It makes for a dual-headed system of state control

and responsibility. The state board of education is appointed by the governor and is responsible to him, while the state superintendent of public instruction is directly responsible to no one except the electorate. It is impossible for such a situation to exist long without a considerable amount of friction, since both the state board of education and the state superintendent of public instruction may desire to act independently of each other. Loose organization, unassumed responsibility, and lack of cooperation are inherent in such a system, and the whole state program of education is severely penalized.

Changes should be made which would strengthen the structure of the state educational system, and these changes should probably take somewhat the following form:

A state board of education of seven members should be appointed by the governor for staggered terms of seven years. This board should be selected without regard to political affiliation, should be composed of laymen chosen for their abilities, proved success in their own fields, public spirit, and interest in education. They should serve without pay except for a per diem and travel allowance to cover actual expenses while attending board meetings. They should be granted enlarged powers and duties commensurate with their position of control over the whole educational system of the

state.[7]

One of the first and most important duties of the state board of education should be the selection of the chief state school officer. Such officer should be appointed without regard to his residence, politics, or any other extraneous factors. He should be appointed solely on his ability to direct the state system of education and on his professional qualifications, which, under no circumstances, should include less than a master's degree in educational administration from a fully accredited college or university. He should have sufficient experience as an administrator to insure that he is well acquainted with administrative problems in general.

The term of office should be indefinite, and he should serve so long as he is rendering efficient service and leadership. His salary should be set by the state board of education, and should be sufficient to attract the best available man. He should serve as the executive officer of the state board of education but not as an ex-officio member

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7 F. P. Graves, The Administration of American Education (New York: The MacMillan Company, 1932), p. 540.

thereof.

His duties should be large in scope and he should be supplied with an adequate and competent staff with which to carry on these duties. His staff should be paid salaries commensurate with their abilities and accomplishments as specialists in their given fields.[8]

SALES CONTRACTS BY BOARD MEMBERS

Section 55-715. Members of boards of regents of state educational institutions, boards of education, boards of school directors, or any member of such boards, or any school official or teacher is hereby prohibited from making sales or contracts with the educational institutions or schools with which they are associated. (Provision is made for a maximum fine of $1000 or one year imprisonment or both as a penalty for violation of the act.) (Amended, 1943.)

This law is a wise provision. This is especially true in New Mexico under its present organizational set-up. Regardless of how carefully the selection of school officials may be made, it is practically impossible completely to avoid filling some position with a person who is governed by personal interests and who is ready, at any time, to use

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[8] Reeder, op. cit., p. 68.

his position for the purpose of enhancing his own political or financial status.

The courts uniformly have held that contracts made contrary to such a law are null and void, and the district will not even be held on an implied contract for benefits received. The law "never implies an obligation to do that which it expressly forbids the party to do".[9] It, therefore, becomes evident that such contracts made contrary to the law are, under no circumstances, binding on the school district, and the schools are thus protected from the selfish interests of local officials.

In cases where such contracts are not prohibited by statute, it is usually considered that they are voidable at any time prior to their performance, on the basis that they are illegal under common law. However, if a school district permits performance of such a contract, it is held liable on the basis of benefits received on the principle of either a ratified or an implied contract.[10]

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9 Newton Edwards, The Courts and the Public Schools (Chicago: The University of Chicago Press, 1933), p. 200.

10 Ibid., p. 203.

COUNTY BOARDS OF EDUCATION

Section 55-806a-806f. County boards of education shall consist of five members, no more than three of which may belong to the same political party. Three members are selected, one from each county commissioners district, and one member at large. The fifth member is the county superintendent of schools. Not more than one member may reside in any incorporated municipality.

Members shall be paid $2.50 per day for attendance at board meetings. The amount paid each member must not exceed $100 annually. Each member shall also be paid travel expenses to and from meetings at a rate not to exceed six cents per mile, or when travel is by public conveyance, only the actual fare is allowed. The school superintendent receives no extra salary for attendance at board meetings.

The president of the board, elected from the board membership, shall execute a surety bond in the amount of $3000.

For the purposes of appointing members of county boards of education, the appointing power shall be the state superintendent of public instruction, the chairman of the board of county commissioners, and the district judge in the county affected.

Any appointed member of the county board of education may be removed at any time by the appointing power for conviction of any felony or of any misdemeanor involving moral turpitude, failure, neglect, or refusal to discharge any duty devolving on the officer by virtue of his office; knowingly demanding or receiving illegal fees; failure to account for money coming into his hands as such officer; or gross negligence in discharging the duties of his office.

When a vacancy occurs in a county board of education the appointing power shall select a successor to fill the unexpired term. (Session Laws, 1945.)

By enacting this law, it was probably the intent of the legislature to strengthen the previous law regarding county boards of education. However, in the light of the best modern administrative principles, such was not accom-

plished. In fact, the present law is little, if any, better than the repealed law. However, it is a foregone conclusion that little improvement can be made in this connection until the legislature is willing to enact laws which will provide for a complete reorganization of the rural school system.

The present law may be criticized from several different angles, since not one sub-section is in complete agreement with sound administrative principles.

The law states that the board shall be composed of five members, no more than three of whom may belong to the same political party. The intention here undoubtedly was to guard against political domination of a board of education by a party machine. Under the present appointive method of selecting the board there is probably some danger of political domination. However, since a majority of a board is usally all that is necessary in any board action, the three members of the same political party still can dominate the board. Petty politics seems to have been the controlling factor in the enactment of this law

Most authorities in the field of school administration agree that the school board membership should be non-partisan. By non-partisan is meant that political affiliation should not be a consideration in the selection of a board member.[11]

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11 Reeder, op. cit., p. 81.

If the law points so directly to the political affiliation of board members, as does this section, there is great danger that the three appointees of the same political party will almost invariably be political appointees, with far too little consideration being shown for their other qualifications for the office.

The practice of selecting board members by districts is archaic, and served its purpose when the local unit was predominant in education. At the present time, with increased centralization of control in the state, such a provision is unsound and should be eliminated. When selected by the method provided here, board members tend to feel that they are responsible only for the schools of their district.[12] They consider that it is their responsibility to protect the interests of their particular district and depend upon the other members to do likewise. As a result, harmony among board members may be jeopardized and factional disputes destroy the effectiveness of the whole board.

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[12] W. D. Cocking and C. H. Gilmore, Organization and Administration of Public Education (Washington, D. C.: United States of Education, 1938), p. 106.

It has long been admitted by authorities in school administration that election of board members from the county at large is much more likely to secure the desirable board member than selection by districts.[13] A school board member should feel a responsibility for the proper operation and control of every school under his jurisdiction and should show as much interest in the successful operation of a school outside his own community or district as he would for one in his home district. Such interest and feeling of responsibility is difficult to obtain by utilization of the district method in selecting board members.

Under the present law the county superintendent of schools is the fifth member of the county board of education. The writer has never found any capable administrator or administrative authority who sanctions such membership. It is thoroughly agreed that the superintendent of schools should be the executive officer of the board of education but should not be a member thereof, even in an ex-officio

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13 Cubberley, op. cit., p. 38.

capacity.

There are three major functions required in the administration of a school system. They are the legislative, executive, and inspectorial functions. The board, on the recommendation of the superintendent, legislates policies; the superintendent and his staff execute those policies; and the board inspects to ascertain the effectiveness of the policies.[14] It is noteworthy that the superintendent executes the policies with the aid of his staff. He should not be a member of the group which legislates and inspects the policies which he is expected to put into effect.

Members of county boards of education probably should not be residents of municipal school districts. This law limits municipal residents on county boards of education to one member. It is debatable as to whether even one member on the board should reside in any incorporated municipality as long as each municipality is a school district independent of any control by the county. Cubberley states that county

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[14] Reeder, op. cit., p. 86.

boards of education should be elected by a popular vote of those electors residing outside city school districts.[15] It seems only reasonable, then, to assume that appointive members of county boards should also reside outside the boundaries of municipal school districts. It appears that bona fide residents of the rural areas of the county would have a greater interest in the welfare of the rural schools than the residents of a municipality with its own independent system of schools.

School board members, in general, should serve without pay.[16] The public spirited, unselfish service thus rendered will be more likely to result in educational policies designed for the general welfare rather than for the personal aggrandizement of the individual or group. However, there is no serious objection to the small amounts provided for the purpose of reimbursing members of county boards of education. These individuals often live relatively far from the county seat and must incur certain expenses in order to attend board meetings.[17] It seems only just that they do not find it

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15 E. P. Cubberley, State and County Educational Reorganization (New York: The MacMillan Company, 1922), p. 38.

16 Graves, op. cit., p. 463.

17 Ward G. Reeder, The Fundamentals of Public School Administration (New York: The MacMillan Company, 1941), p. 83.

necessary to use their own funds in meeting these expenses. The $100 maximum per year allowed each board member under this act is probably adequate to meet any expenses incurred by the member while conducting official board business.

Previous to the enactment of this law, the appointing power for county boards of education had been the district judge in the county affected. Probably the legislature intended to make the appointment of board members less political by adding the state superintendent of public instruction and the chairman of the board of county commissioners. It is doubtful that the result has been such. If there is any difference at all, the appointments are probably more political now that three political officials make the appointments rather than the one as previously was the case. Responsibility is now harder to place, and removals from office and filling of vacancies is made more cumbersome by the new law.

The greatest criticism of this provision, however, is the fact that the county board of education is appointed at all. It is generally agreed among educators that the board should be elected by popular vote, on a non-partisan ticket, and at a special election called for the purpose and on a date sufficiently far from the general election that party politics will not be an issue. "In this way the board is made more responsive to popular initiative and held

to honorable conduct by public opinion."[18]

According to the present law vacancies which occur on the county board of education are filled by the appointing power. As long as the appointive board exists it is probably just as well for the appointing power to fill the vacancies. The board is responsible to the appointing power, and if responsibility is to continue to be placed on such appointing power this group should be allowed to fill vacancies. Elective boards, however, would have all vacancies filled by the board membership, and the member thus appointed would serve only until the next regular election.[19]

RURAL SCHOOL SUPERVISOR

Section 55-807. County boards of education may employ a rural school supervisor who has been nominated by the county superintendent of schools and who must be approved by the state board of education. Such supervisor must have a minimum of one year actual teaching experience in the elementary schools of New Mexico and must have at least a a bachelor's degree or its equivalent from a fully accredited college or university. He must have at least fifteen hours

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18 Graves, op. cit., p. 459.

19 Cubberley, op. cit., p. 39.

training in classroom supervision. He may not be a member of the immediate family of the county school superintendent, nor engage in any political activity and shall not be a candidate for any elective office during his term of office. (Amended, 1939.)

It is difficult for the writer to understand why this act stipulates that the appointee receive the approval of the state board of education before the county board of education can legally appoint a rural school supervisor. Rural school supervisors are employees in the county which they serve, and the power to appoint them should be reserved to the county boards of education.

The state board of education has many more important duties to perform and should not be saddled with the necessity of approving the appointment of each county supervisor. It is in a position which is not favorable for passing on such an employee, and it has no opportunity to study the qualifications, character, and general fitness of the candidate for the position. It seems that it would be a requirement no more foolish for the state board of education to find it necessary to give its approval before any school principal could be employed by any board of education. Such approval of rural school supervisors is completely outside the bona-fide duties of the state board of education and should be removed from the statutes at the earliest possible time.

The number of years of teaching experience required

By law for a rural school supervisor in New Mexico is only one year of classroom teaching within the state. Since the total years of service is not mentioned and no experience is required by law other than one year within the state, it seems that this will qualify an individual for the position of rural school supervisor. Such limited experience in the classroom is so obviously inadequate for this important office that further discussion is unnecessary.

If the purpose of the act is to require that a well qualified, out-of-state supervisor serve as a classroom teacher for one year in New Mexico before he may become eligible for supervisory work in the state, legislators and educators who sponsored the act are guilty of educational bigotry. Supervisory work, in general, is the same in New Mexico as elsewhere, and a superior supervisor will still be superior in New Mexico regardless of whether he has done one year of classroom teaching in the state.

The educational requirements for rural school supervisor are objectionable only in that they are set too low. A master's degree or its equivalent should be required for this important position rather than the bachelor's degree which is required under the present law.[20] A supervisor should be

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J. E. Seyfried, Analysis and Evaluation of New Mexico State School Laws, The University of New Mexico Bulletin, Vol. 6, No. 2 (Albuquerque: University of New Mexico Press, 1932), p. 71.

an educational specialist, well prepared in his field. He is no longer an inspector, but serves in an advisory capacity only, and performs no administrative functions. His prime objective is to enable teachers to do their work more efficiently and effectively.[21] Certification requirements, therefore, should be set up for elementary supervisors by the state department of education much in the same manner as that by which teachers and administrators are now certificated.

The requirement that a rural school supervisor not be a member of the immediate family of the county superintendent of schools is probably wise. It obviously was placed in the statute to discourage nepotism on the part of elective county superintendents. This admits of unethical and non-professional activities connected with the elective office of county superintendent of schools, and indicates a feeble, though conscientious effort on the part of the legislature to discourage such activities. As long as politically dominated, poorly trained, non-professional individuals find

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21 F. P. Graves, The Administration of American Education (New York: The MacMillan Company, 1932), pp. 248-249.

it possible to enter the office of county superintendent of schools, it is wise to use restrictive legislation to curb their activities.

RURAL INDEPENDENT SCHOOL DISTRICTS

Section 55-814. Any rural school district in which the average daily attendance for two consecutive years exceeds four hundred, and which district has successfully maintained a regular four year high school that has met the requirements of the state board of education may become an independent rural school district upon certification of the state superintendent of public instruction. Session Laws, 1935. (Amended, 1937.)

The organization of large administrative units under small, responsible boards of education is a distinct characteristic of an effective educational system.[22] New Mexico early recognized this fact when, in 1917, the first law was passed placing all rural schools in a single administrative unit--the county.

Conway lists numerous educational developments in New Mexico from 1917 to 1923. He states that "the county-unit law was probably not responsible for all of this development,

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[22] Ibid., p. 479.

but it is interesting to note that the development came only when the county-unit law was in effect."[23]

Cubberley advises the use of the county as the unit for administration of all schools except city districts when he states that all territory except that comprised of city school districts should be one county school district, and should be under the control and management of a county board of education.[24]

Reeder sets up the following criteria for determining the size of administrative units:

> 1. The unit should be sufficiently large to permit the organization of a complete system of elementary and secondary schools on an efficient financial and pedagogical basis. . .
>
> 2. It should be sufficiently large to make provision for an adequate administrative and supervisory personnel.
>
> 3. It should not be so large that the people would lose interest in the schools.[25]

Research has not yet demonstrated what the size of the local administrative unit should be, but it is rather generally accepted that, for the rural schools, the county

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[23] J. V. Conway, The County Unit in New Mexico, Rural School Leaflet, No. 28, 1924. (Washington, D. C.: Bureau of Education, 1924)

[24] Cubberley, op. cit., p. 59.

[25] Reeder, op. cit., p. 71.

is the most desirable unit from an administrative and a fiscal standpoint. The trend is toward larger local school units, and, in general, greater efficiency in administration, increased economy in operation, and greatly increased educational facilities for pupils usually result from these larger units.

In view of these facts, any law which tends to encourage reducing the size of local school units operates in direct contrast to the accepted theory. In a state in which the small population is scattered, as is the case in New Mexico, the establishment of small independent rural school districts is not defensible, and it is even doubtful that there are many municipal districts which should be separate from the county as an administrative unit.

Were the county properly reorganized on the basis of an elected board of education and an appointed county superintendent of schools, in many instances, the possibility of combining all school districts within the boundaries of the county into one single district would become feasible.

In order to determine, in some measure, the practicability of such a plan, the writer has gathered data on the number of pupils in average daily attendance, number of teaching positions--municipal and rural, and land areas in square miles of each county of the state. These data may be found in Table I on the following page.

Table I shows that Bernalillo County has a total of 510 teaching positions, 380 of which are in the city of Albuquerque and 130 in the rural schools of the county. This indicates that in the matter of size the two may well be separate administrative units without seriously harming either. However, when it is considered that a large portion of the wealth of Bernalillo county is centered in Albuquerque, it becomes apparent that the city schools of Albuquerque are highly favored as to funds directed toward the construction and maintenance of school plants which are adequately equipped to carry on a modern educational program. This is due to the fact that money made available for the erection of buildings and equipping them must be used in the district where it is secured. A doubt is thus raised as to whether even Albuquerque, the largest city in the state, should be independent of the county as a whole.

There is no other county in which the total number of teaching positions exceeds 219, which is certainly not an excessive number for any one administrative unit, all other factors being conducive to the adoption of the county as the complete educational and fiscal unit.

In fact there is ample evidence, in so far as teaching positions are concerned, to indicate that many of the counties should probably operate under such a plan in order to secure effective and economical administration. It will

TABLE I

WEIGHTED AVERAGE DAILY ATTENDANCE, TEACHING POSITIONS, AND LAND AREAS OF COUNTIES IN NEW MEXICO 1945-1946

County	Weighted A. D. A.#	Teaching Positions			Area in Sq. Mi.
		Municipal	Rural	Total	
Bernalillo	14,227.44	380	130	510[a]	1,163
Catron	726.71	25	5	30	6,898
Chavez	5,198.63	153	15	168	6,094
Colfax	3,801.35	104	34	138[a]	3,765
Curry	4,637.25	122	30	152[a]	1,403
De Baca	885.49	27	6	33	2,358
Dona Ana	6,244.25	102	117	219	3,804
Eddy	6,055.54	181	36	217	4,163
Grant	4,789.38	77	52	129[a]	3,970
Guadalupe	1,844.31	41	26	67	2,998
Harding	723.07	22	12	34	2,136
Hidalgo	1,065.51	34	5	39	3,447
Lea	4,171.05	136	50	186[a]	4,393
Lincoln	1,711.84	44	22	66	4,859
Luna	1,750.16	50	8	58[a]	2,957
McKinley	2,307.48	54	25	79	5,456
Mora	2,005.57	14	63	77	1,942
Otero	2,383.38	62	23	85	6,638
Quay	2,717.96	53	54	107	2,883
Rio Arriba	4,816.79	20	146	166[a]	5,855
Roosevelt	3,782.76	82	44	126	2,455
Sandoval	1,904.99	0	87	87	3,811
San Juan	2,208.22	59	23	82	5,515
San Miguel	4,945.99	81	113	194	4,749
Santa Fe	4,994.66	94	75	169	1,943
Sierra	1,226.99	27	16	43	3,034
Socorro	2,263.44	49	35	84[a]	7,772
Taos	3,735.66	47	83	130	2,256
Torrance	2,423.88	45	40	85[a]	3,340
Union	2,431.05	54	16	70[a]	3,817
Valencia	4,684.53	114	20	134[a]	5,637

[a] Due to the fact that figures relating to teaching positions for these counties were not available, the figures given are estimates based upon the average daily attendance for the year 1944-1945.

(Explained on the next page.)

be noted that there are twenty counties in which the number of rural teaching positions is less than fifty, fourteen in which they number less than thirty, and eight in which they number less than 20. By converting these figures into percentages, it is found that 64.5 per cent of the rural county administrative units have less than fifty teaching positions, 45 per cent have less than thirty, and 25.8 per cent have less than twenty.

Although Table I does not break down the number of teaching positions in municipal and other independent administrative units, the writer found that the range between individual independent units was from 380 in Albuquerque to four in Hondo. Of the 104 administrative units in the state, including rural county units, only 2.9 per cent have as many as one hundred teaching positions, and 15.4 per cent have less than ten. The average number of teaching positions per administrative unit for the state as a whole is twenty-three.

Likewise, the total number of pupils in average daily attendance, weighted according to law, per county shows a

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(Refer to page 53.) High school pupils in average daily attendance are given a weighting of 1.75. Formula: High school average daily attendance X 1.75 + elementary average daily attendance=Total weighted average daily attendance.

range from 14,227.44 in Bernalillo County to 723.07 in Harding County. It is interesting to note that in Bernalillo County, having the highest weighted average daily attendance, there are only two administrative units, while in Harding County, with the lowest average daily attendance in the state, three administrative units are in operation. The average weighted average daily attendance per county is found to be 3,437.59, a figure which is obviously not excessive for a single administrative unit.

The last factor which was considered in determining the practicability of each county serving as a single administrative unit in New Mexico was the land area in square miles of the several counties. Here again may be observed a rather wide range between the largest and the smallest counties. Socorro County, the largest in the state, contains 7,772 square miles of land area, and Bernalillo County, the smallest, contains 1,163 square miles of land area. Herein lies the greatest question mark concerning the county as the complete administrative and fiscal unit for education. Many of the counties are larger in area than some of the eastern states, and the topographical features of the state make for many small, relatively isolated communities. The possibility, therefore, arises that some of the counties are too large and sparsely populated for effective school administration by a single board of education, superintendent, and

administrative staff.

A thorough survey should be made to determine the feasibility of making the county the complete administrative and fiscal unit. A step so big as this should not be taken until a large measure of the doubt of its practicability is removed by irrefutable evidence based on such a survey.

If the complete county unit is found to be impractical in some counties, the survey committee will have gathered enough data to be able to recommend the division of these counties into two or more school districts. These divisions could be made along lines which are more or less natural from the standpoint of geographic and economic features.

The writer cannot stress too strongly, however, the inadvisability of making such a change until such time as the method of selecting the county board and county superintendent of schools is changed. At the head of such a system as is recommended here must be a chief officer who is an educator well prepared in public school administration, thoroughly experienced, possessing leadership ability above the average, of irreproachable character, and, in general, possessing all the qualities which make an efficient school administrator. The possibility of obtaining this type of individual is very limited under the present method of selection. To make the county the complete administrative and fiscal unit under such a plan of organization as now exists would be to invite

virtual educational suicide.

MUNICIPAL SCHOOL DISTRICT

Section 55-909. After the incorporation of any city, town or village a petition bearing the signatures of not less than ten per cent of the qualified electors of the municipality and the territory annexed thereto for school purposes may be presented to the county board of education asking that an election be held to permit the qualified electors to vote upon the question as to whether the school or schools of such district shall become a municipal school, schools, or school district. The county board of education, upon approval of such a petition shall order an election to be held for such purpose. The creation of such municipal school district shall not become effective until July 1, following its creation. (Session Laws, 1937.)

This, again, is a law which encourages small, straggling administrative units, and as such, is not advocated by most authorities. The law should probably limit itself to cities only, as towns and villages generally do not have sufficient population to warrant an independent administrative unit for educational purposes. Such administrative units are generally extremely uneconomical to operate, and they often provide little better educational facilities than is provided in rural schools.

Section 55-910. In municipalities of less than 700 population according to the last government census, municipal school districts may be dissolved and revert to the status of rural schools by substantially the same procedure set forth in section 55-909. Before such election is called the county board of education must secure the written approval of the state superintendent of public instruction. Such change shall become effective upon the appointment, by the county board of education, of a board of directors for such school. (Session Laws, 1937.)

Such a provision is a wise one. Municipalities so small should not attempt to operate an independent school system. Poor schools could be the only direct result of continued operation in such municipalities of an independent system of schools. The law should probably go a step further and make it mandatory that such school districts revert to the status of rural schools.

Section 55-911. This section provides for municipal districts to revert to rural districts upon disincorporation of any city, town or village.

Section 55-912. This section provides for the annexation, for school purposes, of the remainder of a school district from which a city, town or village was organized.

CHAPTER III

SCHOOL FINANCE AND TAXATION

The next few years may well become ones of great importance in school finance. The nation has just passed through a war which has placed an extremely heavy load upon its resources. It is true that, as a result, the nation has also passed through a period which may well be classified as one of false prosperity. However, the possibility of great economic upheavals is at hand, and education must be prepared to meet these changes if a great amount of damage to the children of the nation is to be avoided.

Several questions need to be posed for the consideration of educators. In the case of another depression, what is likely to happen to school expenditures? Will the cost of all state government necessarily be drastically reduced? Are present sources of revenue flexible enough to provide adequate funds during lean years? What changes need to be made in school finance which will provide a more solid economic foundation for educational systems?

The writer does not have the answers to all the foregoing questions, as a complete survey of the whole state system of finance and taxation would be necessary to provide valid ansers. In this chapter, existing laws will be analyzed in the light of acceptable practices in the field of school

finance. These, until they are amended or superceded, must provide the structure under which whatever economic problems the future holds must be met. The analysis will review the relative success realized in equalizing educational opportunity through the operation of the state public school equalization fund. It will also point to the adequacy of present revenues in providing a minimum program of education in all localities. In this connection the strengths and weaknesses of the present tax structure for the production of school revenues in New Mexico will be critically viewed.

SCHOOL BUDGETS

Section 55-603. Maintenance Budgets. All school maintenance budgets shall be made in conformity with and limited to the following:

I. General Control (Administration)
   1. Salary of Superintendent
   2. Travel of Superintendent
   3. Salaries of Clerical Assistants
   4. Expenses of Members of the Board of Education
   5. Office supplies
   6. Telephone and Telegraph
   7. Census and Election Expense
   8. Travel of Supervisors
   9. Miscellaneous (shall be itemized)

II. Instructional Service:
   1. Salaries of Teachers
   2. Salaries of Supervisors
   3. Salaries of Principals
   4. School Supplies
   5. Salaries of Public Health Nurse

III. Operation of the Plant:
   1. Wages of Janitors
   2. Fuel

3. Water, Light, and Power
4. Janitor's Supplies

IV. Auxiliary Agencies:
1. Library Supplies and Services
2. Promotion of Health

V. School Bus Transportation

The aggregate amount budgeted from the state public school equalization fund for school supplies, library supplies, and janitor supplies shall not exceed for any fiscal year an amount equal to $3.00 per pupil in average daily attendance for the preceding school year.

The maintenance budget shall not include any item of expense for adult education, kindergarten or pre-school programs, free school lunches, group insurance, truant officers, contributions to public or private libraries, or salaries for clerks of boards of education. Any school district for which maintenance budgets are made and which has on hand a cash balance from the preceding year and it is not necessary to use this cash balance as a credit to meet the regular maintenance budget, may use such cash balance for any of the above purposes or any other necessary school expense approved by the educational budget auditor and the local budget commission.

The governing authorities of any district for which a budget is made shall, at the time of holding the annual budget hearing, present the state educational budget auditor and the local budget commission with an accurate list of all teachers and employees together with their salaries for the preceding year and any proposed increases and any proposed additional teachers or employees and their salaries. (Session Laws, 1941.) Amended, 1945.

Educational budgetary procedures, in the light of national school accounting practice have long been out of line in New Mexico. There seems to be no real reason why budgetary items in New Mexico should be classified as they are. In comparing the New Mexico system with the national system of school accounting it is at once apparent that

New Mexico has two entirely separate budgets, as compared to the single unified budget of the national system. This is very confusing to one not familiar with New Mexico budgetary procedure, as maintenance is generally thought of as being maintenance of the school plant. Chris A. DeYoung criticizes the use of this term in the following statement:

> In cataloguing public school expenses one may employ the major classification of: (1) current expenses, (2) capital outlay, (3) debt service. The current expenses are sometimes labelled "cost of maintenance", an expression easily confused with "maintenance of the plant", and one, therefore, that should be eliminated.[1]

Since current expenses are the items included in the New Mexico maintenance budget, and confusion does arise from the use of the term "maintenance", a change should be made in the terminology used in New Mexico budgets.

It has been called to the attention of prominent educators in New Mexico that, in preparing comparative statistics concerning New Mexico and the nation as a whole, it is very difficult and highly confusing to translate New Mexico's budgetary items into comparable items as they are generally

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[1] Chris A. De Young, Budgeting in Public Schools (Garden City: Doubleday, Doran and Company, 1936), p. 72. /New York

classified nationally. In fact, it is undoubtedly true that statistics from New Mexico are often inaccurate when compared with those of the nation as a whole because of this confusion.

In the present maintenance budget as set up by statute there appear to be several items that are placed in the wrong categories. Under instructional service, the salary of the public health nurse may be found. It is impossible for the writer to understand why an item which is obviously a coordinate activity should be placed under instructional service. In fact, the salary of the health nurse should come under "promotion of health", which is classified as an auxiliary agency in New Mexico, but is more generally considered a coordinate activity.[2]

When it is considered that the public health nurse is actually an employee of the Department of Public Health and is not employed by the public schools, the payment of a portion of her salary from school funds may be questioned. Though she works through the schools and performs some of

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[2] Ibid., p. 102.

the duties of a regular school nurse, school officials have no authority in her selection or over her activities. Her immediate superior is the county health officer. However, when school revenues are insufficient in small administrative units to employ a regular school nurse and the public health nurse is performing the duties of such an individual, there is no serious objection to a portion of her salary being paid from school funds.

School bus transportation is given a special category of its own in the present maintenance budget. It is probable that this was so arranged because such transportation costs may include as much as 25 per cent of the total maintenance budget and an amount equal to a two-mill levy on general property within any district, this two-mill levy to be listed in the direct charge budget. However, transportation is generally classified as an auxiliary agency and, to avoid confusion, probably should be so classified in New Mexico.

Doubtless the limit of three dollars per pupil in average daily attendance for the preceding year placed on the amounts to be budgeted for janitor, library, and school supplies was prompted by the necessity of curtailing the extravagant expenditures of inefficient administrators. Nevertheless, such a limitation works a hardship on many schools during periods of economic inflation.

If it were possible to receive, year in an year out, a dollar in value for each dollar expended, the existing statutory limitation on the amounts to be spent for these items might work no real hardship. Such is not the case, however. It is probable that during periods of economic normalcy the three dollars per pupil, as provided by law, would furnish sufficient funds. During periods of economic depression, however, such funds would probably be in excess of the amounts actually needed, thereby encouraging waste. On the other hand, during inflationary periods schools would suffer because of the statutory limitation.

Any law which fosters inflexibility is invariably harmful and should be abandoned. If the limitation were removed some waste would probably occur, but it is doubtful that it would be in excess of that encountered over a period of years under the present limitation. This law shows little regard for rapid changes in needs and clearly demonstrates that the legislature has placed little confidence in the judgment of local boards and administrators.

Excluding kindergartens, adult education, group insurance for employees, free school lunch programs, and other minor items from the maintenance budgets of schools is the legislature's way of placing the burden of the responsibility for these functions upon local authorities. Though these are all valid and important educational functions, it

would be difficult to class them as essential. The legislature was probably wise in excluding these things in order that funds might be used for more essential educational activities. This is especially true in New Mexico which, although spending a larger portion of its revenue for educational purposes than any other state in the nation, is able to finance only an adequate elementary and secondary program.

The final paragraph of this law seems to be an unnecessary requirement, though one which can do no particular harm. It is impossible that an administrator and a board of education could prepare a valid budget without utilizing a list of the salaries of all teachers and other employees for the preceding year with any proposed raises and/or additional employees. These items form the major portion of any budget, and it appears that any local group, of necessity, would have such a list to present at budget hearings. It, otherwise, would be difficult to defend these proposed major items of expenditure.

Section 55-604. Direct Charge Budgets. The direct charge budget shall include the following items:

1. Interest on bonds
2. Sinking fund for bonds
3. Property insurance
4. Repairs of buildings and equipment

It may also include the following:

5. Lease of school buildings
6. Erection of school buildings
7. New Equipment
8. Purchase of school grounds

9. Improvements to school grounds and buildings
10. Tuition for pupils attending school in other districts
11. Library reference books
12. Additional school bus transportation
13. Other necessary items approved by the state educational budget auditor and the local budget commission
14. Donations to public libraries
(Session Laws, 1941.)

This classification of budgetary items, like the maintenance budget, makes considerable confusion possible. It is separate from the maintenance budget, creating thereby a lack of unification in budget preparation and presentation, to say nothing of administration. This is probably due to the fact that the revenue to meet direct charge expenditures is used only in the district in which it is raised. For the purposes of direct charge expenditures, each county may levy a general property tax not to exceed five mills which is credited to the direct charge fund of each district by the county treasurer.

There seems little to justify the placing of building, equipment, and ground repairs in the same budgetary category as that of purchase of grounds, erection of new buildings, and purchase of new equipment. Maintenance of buildings, grounds, and equipment as well as replacement of any equipment are items of current expense and cannot be correctly classified under capital outlay. They rightfully belong under

maintenance of the plant.[3]

Pupil tuition, library reference books, and additional school bus transportation are all items generally listed under auxiliary agencies and coordinate activities, and are classified incorrectly under New Mexico budgetary procedure. It also appears that donations to public libraries is a coordinate activity and, as such, is not correctly classified.

In order to secure a more unified budget and to avoid unnecessary confusion, it is recommended that budgetary items in New Mexico be classified according to the National classification, as follows:

I. General Control
   1. Board of education expenses
   2. School census
   3. Operation and maintenance of general offices
   4. Salaries of superintendents, assistant superintendents and clerical assistants
   5. Enforcement of compulsory attendance
   6. Travel and other expenses of superintendents and his assistants

II. Instructional Service
   1. Salaries of teachers
   2. Salaries of principals and supervisors

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3 A. B. Moehlman, Public School Finance (New York: The MacMillan Company, 1927), p. 314.

III. Auxiliary Agencies
1. Promotion of health
2. School bus transportation
3. Pupil tuition
4. School lunch programs

IV. Coordinate Activities
1. Libraries (Salaries, supplies, and books)
2. Community centers
3. Operation of playgrounds
4. Summer recreation programs

V. Operation of the School Plant
1. Wages of janitors and similar employees
2. Fuel
3. Light and power
4. Janitor's supplies
5. Care of grounds

VI. Maintenance of the Plant
1. Repairs to buildings
2. Repairs to grounds
3. Repair and replacement of equipment
4. Other expenses of maintenance of the plant

VII. Fixed Charges
1. Teacher retirement
2. Insurance
3. Rent or lease of buildings

VIII. Debt Service
1. Payment of bonds (direct)
2. Sinking fund for bonds
3. Redemption of short term loans
4. Interest on bonded indebtedness
5. Interest on short term loans

IX. Capital Outlay
1. Purchase of land
2. New buildings
3. Alterations to old buildings
4. New equipment exclusive of replacements

Section 55-605. School bus transportation items shall not exceed twenty-five per cent of the total maintenance budget, and the amount included in the direct charge budget shall not exceed an amount equal to a two mill levy upon all taxable property in the school district, based on the evalua-

tion for the preceding year. In districts where no school is being held and in which there is no school bus transportation, the levy may exceed two mills. All amounts budgeted for school bus transportation must be approved by the state transportation director. (Session Laws, 1941.)

Since transportation of pupils is a major item of expense in a state in which the population is so scattered, the provision for a limitation of twenty-five per cent of the total maintenance budget for transportation purposes may work a distinct hardship on those counties in which the population is scattered and local tax revenue is low. Of course, where transportation costs are as great as twenty-five per cent of the maintenance budget, other items are penalized accordingly, and the difficulty in properly equalizing educational opportunity with this inherent inequality is evident.

In addition to this state source of transportation funds, each county may, when necessary, and with proper approval, levy an additional local tax of two mills in order to provide additional transportation. Such levys are almost invariably made in sparsely populated, poor counties in which the local property tax yields a small portion of the revenue needed for all educational purposes. Additional levys add to a tax burden already too heavy in a locality which is generally least able to raise revenue. Such a practice is not in harmony with the equalization principle, and it is probable that New Mexico should relieve these localities of

this additional burden by providing additional state funds for these localities.

MINIMUM EDUCATIONAL STANDARDS

Section 55-613. Minimum educational standards for all public schools in the state are to be set up by the state board of education on the following bases:

1. Curriculum of the school
2. Organization and administration of education within the county
3. Keeping of school records
4. Pupil accounting
5. Teacher preparation
6. Physical condition of school buildings and grounds
7. Educational equipment of schools
8. Length of the school term

Provision is made for modification of these standards and copies of the modifications and standards to be furnished to each governing board.

Schools not meeting these standards may not receive any budgetary increase except for the purpose of attaining them, and if at the end of the succeeding year, no progress has been made toward attaining these standards, no budgetary increase may be allowed except upon petition to the state board of education. (Session Laws, 1941.)

One of the bases upon which educational opportunity within a given state should be equalized is a defensible minimum educational program.[4] The ideal minimum program

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[4] Paul R. Mort, State Support for Public Education (Washington, D. C.: The American Council on Education, 1933), p. 44.

would be the one which the counties of greatest wealth are able to provide. However, it is obvious that such a program could not be financed by the state as a whole, so a minimum program for all counties is one which logically could be provided by the proper equalization plan. It is that program which the counties of average wealth actually provide.

Unless some minimum program of education is set up a state finds equalization of educational opportunity virtually an impossibility. It is this minimum program which an equalization plan strives to secure in every county of a state, regardless of its own ability to support such a program.

In this law, New Mexico makes it mandatory that the state board of education set up minimum educational standards on certain specified bases.

It may be noted that there is no clause relating to teachers' salaries. Since such salaries are the greatest single item of expense in any educational program, it seems that any minimum program should be based upon a minimum salary for teachers.[5] The Research Division of the National

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[5] Ibid., p. 46.

Education Association lists such minimum salary schedules, below which no local district may be allowed to go, as one of the major issues on which action is needed in many states.[6]

There has been much discussion in recent years of minimum state salary schedules, and the greatest criticism has been that a state guaranteed minimum salary will tend to reduce local initiative to the extent that such a salary will tend to become a maximum rather than a minimum. In actual practice, however, this has not been always the case. Some states which have set up minimum salary schedules have found them to be satisfactory.

The state of West Virginia, because of a loss of $16,000,000 in school revenue in 1932 by a tax limitation amendment to the state constitution, adopted, in 1933, the county unit system whereby the state forced the wealthier parts of counties to share with the poorer sections the burden of local school support. In the following year the legislature passed a bill authorizing the state to pay for

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6 "Teachers' Salaries and the Public Welfare," Research Bulletin of the National Education Association, 21:111, December, 1943.

basic salaries for eight months. A state minimum single salary schedule was thereby set up. How well it has worked may be determined from a statement by Robert D. Baldwin of the University of West Virginia College of Education:

> The reader's appraising glance. . .reveals a gradual evolution of progressive state salary policy and prompts the expectation that future salary policies will be progressively encouraging to superior individuals to become and to remain teachers of West Virginia's succeeding generations."[7]

Utah, too maintains compulsory state-wide salary schedules. In the salary schedule of this state, beginning July 1, 1945, a teacher with no experience and a bachelor's degree is guaranteed $1,060 by the state, but the majority of the school districts paid such a teacher a beginning salary of $1,500. In only three districts was the minimum merely met. Dr. Roald F. Campbell states that "the law seems to have provided many of the school districts of Utah a more businesslike and equitable method of determining salaries than the 'horsetrading' techniques employed previously."[8]

It would seem, from the experiences of these two

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[7] Robert D. Baldwin, "The Evolution of West Virginia State Minimum Salary Schedule," The American School Board Journal, 112:38-39, May, 1946.

[8] Roald F. Campbell, "Compulsory State-Wide Salary Schedules," The American School Board Journal, 112:28-29, March, 1946.

states in entirely different sections of the nation, that state-wide minimum salary schedules are not without merit. New Mexico may well be giving some serious thought to such salary schedules.

It is doubtful that the method of setting up a minimum program of education, according to the present law, is a wise one. The state board of education cannot be classified as a professional board, and is generally not qualified to handle professional matters as they pertain to education. It seems that the setting up of a minimum program of education should be a function of the state department of education. Such a program could be subject to the approval of the state board of education, if such were felt to be necessary, but the burden of setting up such a program should not rest upon this group.

The law concerning the minimum program of education makes no provision for projecting the minimum standards into teacher units or per capita pupil costs. Some method should be used to determine the cost, in terms of teacher units or per capita pupil costs, or maintaining such standards. If governing authorities are left to their own devices in determining such costs, inequalities among the several counties and/or administrative units will be the inevitable result.

Another indictment which is not really a criticism

of the law itself so much as it is of those who have been charged with the duty of carrying out the terms of the statute, is the laxity with which this law has been handled. As far as this writer has been able to determine by interrogation of several superintendents, the governing authorities of many administrative units have not been furnished modifications of the minimum standards as required by law, and are, as a result, unable to determine whether or not their respective schools are meeting such standards.

A law which is merely on the statute books and is not followed is a situation just as deplorable as failure to enact proper legislation. By charging the state department of education with the responsibility of modifying and setting up the minimum standards and distributing copies of them to the proper authorities, it is probable that this difficulty could be avoided.

EXPENDITURE OF BUDGETARY ITEMS

Section 55-614. The amounts budgeted for respective budget items may only be expended for the purpose for which they were budgeted, and expenditures for any item may not exceed the amount budgeted. However, transfers within any budget may be authorized by proper authority upon the written request of any governing board of education. (Session Laws, 1941.)

The provision limiting the expenditure of amounts budgeted to the items for which they were budgeted is a wise provision. The budget is made to be followed as closely as

possible; else there is little reason for the effort involved in making it.

The last sentence in this act which provides for transfers within a budget is also sound from an administrative standpoint. A budget is, at best, an estimate of expenditures for the succeeding year, and even though it may be followed as closely as possible, circumstances will arise which may cause estimates to fall short of the necessary expenditures. Most states, in order to provide for such unforeseen circumstances, allow either transfers within a budget or borrowing of money or both.[9] Of the two methods of securing funds, transfers seem to be the better procedure to follow. Here again, however, the letter of the law is not followed. The law specifically states that such transfers may be made by the state comptroller upon the written request of a governing board. In actual practice, these transfers are made with the approval of the educational budget auditor, who is already granted too much power over local school budgets

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9 Ward G. Reeder, The Fundamentals of Public School Administration (New York: The MacMillan Company, 1941), p. 339.

in the state.[10]

EMERGENCY BUILDING AND REPAIR FUND

Section 55-629. Emergency Building and Repair Fund. Any municipal or rural school district, which is unable to raise sufficient funds to meet its approved direct charge account budget, including necessary items for buildings, equipment, and repairs, by levying the maximum tax allowed by law, may use an amount not to exceed five per cent of its total maintenance budget for the purpose of meeting such direct charge account budget. The maintenance fund of such school district must be sufficient to meet the maintenance budget of the district and the use of such maintenance fund to meet the direct charge budget must be agreed to by all the governing boards of education in the county and by the county budget commissioners, the educational budget auditor and the state board of education.

Any municipal or rural school district which has a balance to its credit in the maintenance fund for the preceding school year may have transferred into its direct charge account for the purpose of meeting its direct charge budget, an amount not out of such balance not to exceed five per cent of its total maintenance budget. Such school district must be unable to raise sufficient funds by levying the maximum tax allowed by law. (Session Laws, 1937; Amended, 1943 and 1947.)

The 1947 amendment to this law increases from one per cent to five per cent of the total maintenance budget the amount which may be used for direct charge purposes in those school districts which are unable to meet direct

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10 J. E. Seyfried, Analysis and Evaluation of New Mexico State School Laws, The University of New Mexico Bulletin, Vol. 6, No. 2 (Albuquerque, New Mexico: University of New Mexico Press, 1932), p. 39.

in the state.20

NECESSARY BUILDING AND REPAIR FUND

Section 35-[illegible]: Emergency Building and Repair Fund. Any municipal or rural school district, which is unable to raise sufficient funds to meet its approved direct charge account budget, including necessary items for buildings, equipment, and repairs, by levying the maximum tax allowed by law, may use an amount not to exceed five per cent of its total maintenance budget for the purpose of meeting such direct charge account budget. The maintenance fund of rural school districts must be sufficient to meet the maintenance budget of the district and the use of such maintenance fund to meet the direct charge budget must be approved by by all the governing boards of education in the county and by the county budget coordinator, the educational budget committee and the state board of education.

Any municipal or rural school district which has a balance to its credit in the maintenance fund for the preceding school year may have transferred, into its direct charge account for the purpose of meeting its direct charge budget, an amount not more or less than to exceed five per cent of its total maintenance budget. Such annual district must be unable to raise sufficient funds by levying the maximum tax allowed by law. (Session Laws, 1937, Chapter 1943 and 1947.)

The 1947 amendment to this law increases from one per cent to five per cent of the total maintenance budget the amount which may be used for direct charge purposes in those school districts which are unable to meet direct

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20 J. D. Pope, Manual and Handbook of the Laws Relative to School Law, The University of New Mexico Bulletin, Vol. 5, No. 2 (Albuquerque, New Mexico: University of New Mexico Press, 1952), p. 37.

charge budgets by levying the maximum tax allowed by law.

There is little question that, in many instances, the five-mill levy for direct charge purposes is inadequate to meet the building, repair, and equipment needs of an expanding, modern educational program. The remedy, however, seems not to lie in reducing the maintenance budget in order to increase the direct charge revenue. This is very much the same as taking money from one pocket and placing it in another. Maintenance budgets, which include current operational costs, do not generally show a surplus so great that they may be reduced by five per cent without there being some detrimental effect on the educational benefits to pupils.

The true remedy seems to lie in statewide equalization of property assessments for tax purposes. Were taxable property assessed at more nearly its true normal value, the five-mill levy allowed by law for direct charge purposes would probably be more nearly adequate.

STATE PUBLIC SCHOOL EQUALIZATION FUND

Some thirty-nine years ago John Dewey evolved a philosophy of education which basically was one which stated that the aim of education must be to provide for the individual that training which will enable him to develop his natural abilities to their fullest extent while he is engaged in activities which serve to benefit society.[11]

This philosophy is now widely accepted by the educational profession and carries with it the distinct implication that governmental agencies having control over the education of the youth of the nation must strive to provide educational opportunity for all on a basis which is as nearly equal as possible.

The need for a program of state aid which had as its purpose equalizing educational opportunity developed rapidly with the changing philosophy, and at the present time all states have some program of equalization.[12] Though some of these programs are far from adequate, the trend is definitely toward each state eventually equalizing educational opportunity in as far as its financial ability will allow it to do so.

The opinion is held by many authorities in the field of education that after a state has done all it can do, the federal government should then provide the funds to equalize the educational opportunity among states. It is impossible

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[11] A. B. Moehlman, Public School Finance (New York: The MacMillan Company, 1927), p. 8.

[12] Reeder, op. cit., p. 357.

to determine whether or not this would be a step in the right direction, but the writer feels that, though many weighty problems would have to be solved in carrying on such a program, the fundamental principles underlying federal aid are sound.

The extent to which equalization may be realized through the use of federal aid will depend, to a large extent, upon the distributive plan of the individual state. It would be entirely possible for the federal government to provide sufficient funds to equalize education up to a minimum defensible program in a given state and equalization would still not be realized because of a poor distributive plan in the state.[13] It appears, then, that a measure for federal aid would be the degree to which the individual state's equalization plan has been successful in providing for a minimum defensible program of education.

The following sections will be concerned with the New Mexico plan of equalization and the extent to which it has provided for equalization of educational opportunity.

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13 Newton Edwards and Herman Richey, The Extent of Equalization Secured Through State School Funds, Staff Study, No. 6 (Washington, D. C.: United States Government Printing Office, 1938), p. 1.

Section 55-632. A state public school equalization fund is hereby provided to which are credited all moneys previously directed to be credited to the "state school fund", "state common school fund", "state school equalization fund", and "state public school equalization fund", together with all moneys now or hereafter credited to such fund. (Session Laws, 1941)

The moneys credited to the state public school equalization fund, as well as to all other funds in the New Mexico system of school finance, may be more easily visualized by reference to Figure 1 on the following page.

By establishing a state public school equalization fund, New Mexico has followed the national trend toward increased amounts of state aid to schools. The relative merits of the New Mexico equalization plan will be discussed under Section 55-636.

Section 55-634. See Pupil Transportation, Chapter V.

Section 55-635. See Pupil Transportation, Chapter V.

Section 55-636. All moneys available in the state public school equalization fund not otherwise appropriated shall be distributed to the counties for school maintenance purposes on the following basis:

Average daily attendance, weighted as provided, coupled with the educational standards required to be maintained shall be the basis, measure, and limit of participation in the state public school equalization fund. In order that marked increases and decreases shall not take place in putting this distribution into effect, a primary and a secondary distribution is provided which will allow no administrative unit to have its funds increased or decreased by more than ten per cent in any one year. This primary and secondary distribution shall be used until June 30, 1946, after which distribution shall be solely on weighted average daily attendance. (Session Laws, 1941.)

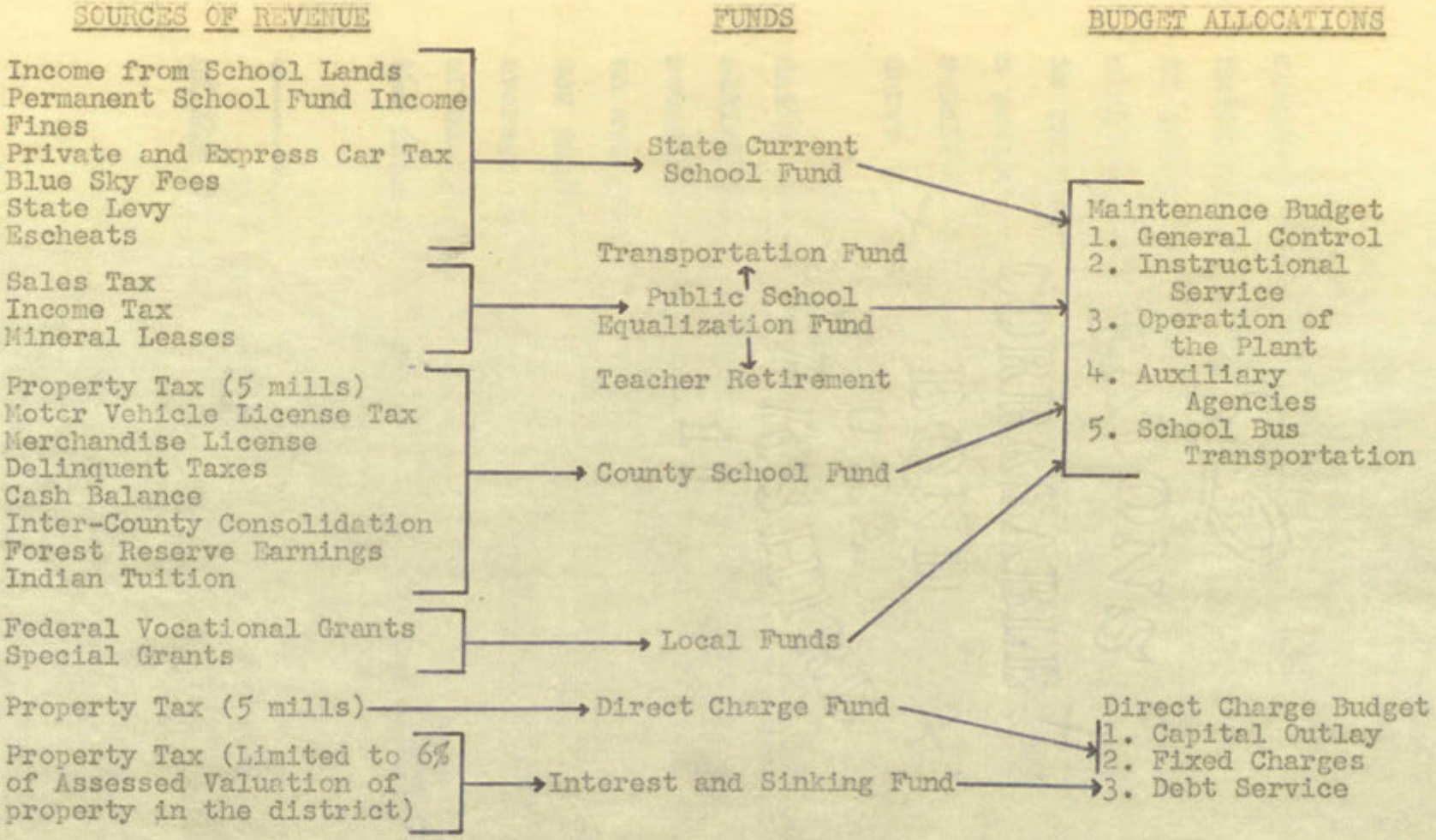
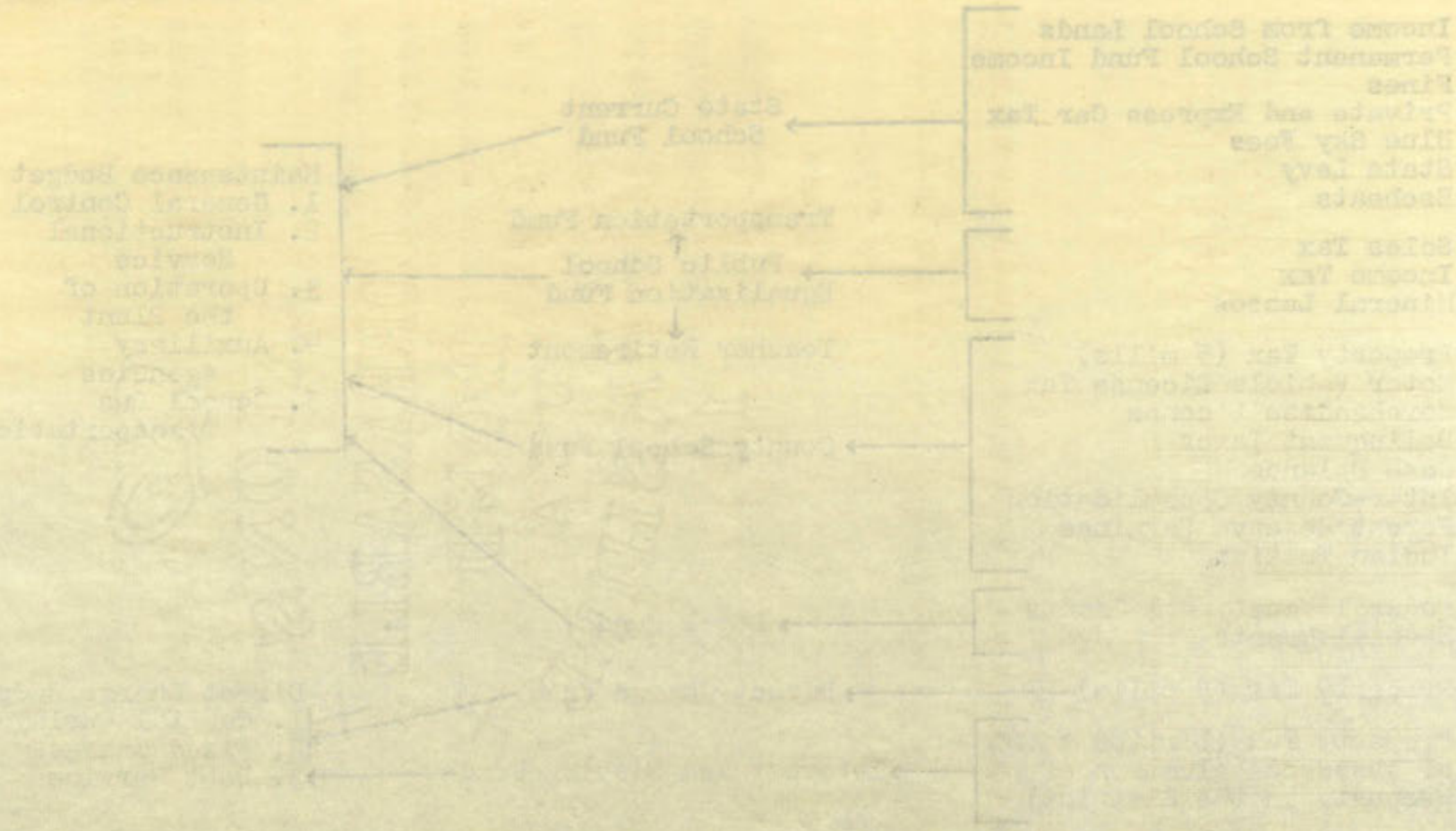


FIGURE 1

PUBLIC SCHOOL FINANCE IN NEW MEXICO



One of the greatest criticisms to be made of the use average daily attendance as the sole basis for the distribution of the state public school equalization fund is that it provides aid to those counties best able to support a minimum educational program to the same degree that such aid is provided for those counties least able to provide for such a program. It does provide for a considerable amount of equalization of educational opportunity, but it does not serve to equalize the local tax burden.[14]

Neither does distribution on the basis of average daily attendance take into consideration the size of the administrative unit. It is impossible to provide a well rounded educational program in an administrative unit with an average daily attendance of 250 pupils at the same cost per pupil as could be provided in a unit maintaining an average daily attendance of 2,500 pupils. The cost per pupil of carrying on an adequate educational program decreases with the increase in the number to be instructed. There is, of

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[14] "State School Finance Systems," Research Bulletin of the National Education Association, 20:169, November, 1942.

course, a point beyond which additional average daily attendance will not decrease the cost per pupil, but it is doubtful that this point has been reached in any administrative unit in New Mexico.

It might be well for New Mexico, because of its many small administrative units, to consider the possibility of applying the principle of weighting average daily attendance on the basis of the size of administrative units.

However, despite these weaknesses in the present method of distribution of the state public school equalization fund as well as the unequal factors of transportation, population density, and unequal tax assessments, a considerable amount of equalization of educational opportunity is realized in New Mexico at the present time. Table II indicates this fact rather conclusively.

It will be noted that Column 1, Table II, shows total county receipts. This, however, does not include direct charge receipts, but only receipts for school maintenance budgets. By referring to Figure 1, page 83, it is found that funds for school maintenance purposes are derived from numerous sources other than the five-mill county tax levy (Column 2) and the state public school equalization fund (Column 3). Since the county tax levy for school maintenance purposes is five mills as set by the state tax commission, and all counties levy taxes at this rate, Column 4, the per

TABLE II

COUNTY RECEIPTS FROM LOCAL TAX AND STATE PUBLIC SCHOOL EQUALIZATION FUND, PER CENTS EACH ARE OF TOTAL COUNTY RECEIPTS, RANKS AND PER CENT DEVIATION FROM STATE AVERAGE 1945-46

County	Total Receipts 1	Receipts Local Taxes 2	Receipts From SPSEF 3	Per Cent County Taxes of Total Receipts 4	5 Rank
Lea	$ 611,241	$156,195	$ 368,136	25.4	1
Hidalgo	148,874	36,037	93,973	24.2	2
De Baca	135,515	32,555	85,789	24.0	3
Grant	647,120	141,356	404,163	21.8	4
Luna	230,899	49,607	151,235	21.5	5
Eddy	762,608	162,787	470,212	21.3	6
McKinley	296,564	60,805	186,832	20.5	7
Colfax	492,925	82,695	340,748	16.8	8
Lincoln	238,148	38,835	165,223	16.3	9
Guadalupe	251,202	38,402	171,986	15.3	10
Quay	357,799	49,678	264,904	13.9	11
Socorro	281,348	38,497	197,192	13.7	12.5
Harding	116,844	15,985	84,866	13.7	12.5
Dona Ana	755,181	102,583	525,820	13.6	14
Chavez	650,950	86,857	445,658	13.3	15
Sierra	161,218	22,568	106,342	12.0	16
Otero	291,816	37,559	208,823	12.8	17
Valencia	550,109	68,800	396,021	12.5	18
Union	345,594	41,974	255,633	12.1	19
San Miguel	601,217	71,603	421,373	11.9	20
Torrance	331,620	38,810	243,219	11.7	21
Santa Fe	668,352	75,708	415,211	11.3	22
Catron	114,286	11,914	74,652	10.4	23
Bernalillo	1,687,972	173,833	1,136,565	10.3	24.5
Curry	559,656	57,740	425,802	10.3	24.5
Roosevelt	499,391	47,536	382,028	9.6	26
San Juan	246,907	22,335	187,688	9.5	27
Sandoval	214,800	18,176	161,367	8.5	28
Mora	256,165	21,260	186,288	8.0	29
Taos	398,999	21,269	308,167	5.4	30
Rio Arriba	495,289	20,315	372,653	4.1	31

TABLE II (continued)

COUNTY RECEIPTS FROM LOCAL TAX AND STATE PUBLIC SCHOOL EQUALIZATION FUND, PER CENTS EACH ARE OF TOTAL COUNTY RECEIPTS, RANKS, AND PER CENTS DEVIATION FROM STATE AVERAGE
1945-46

County	Per Cent SPSEF Receipts of Total Receipts		Per Cent County Receipts Deviate From State Average	
	6	7	8	9
		Rank	Equalization	Local Tax
Lea	63.2	26	-6.9	+12.9
Hidalgo	63.1	27	-7.0	+11.7
De Baca	63.3	25	-6.8	+11.5
Grant	62.4	29	-7.7	+9.3
Luna	65.3	22.5	-4.8	+9.0
Eddy	61.7	31	-8.4	+8.8
McKinley	63.3	28	-7.1	+8.0
Colfax	69.1	18	-1.0	+4.3
Lincoln	69.4	17	-0.7	+3.8
Guadalupe	68.4	20	-1.7	+2.8
Quay	74.0	9	+3.5	+1.4
Socorro	70.1	14.5	-0.0	+1.2
Harding	72.6	11	+1.2	+2.5
Dona Ana	69.6	16	-0.5	+1.1
Chaves	68.5	19	-1.6	+0.8
Sierra	65.2	24	-4.9	+0.5
Otero	71.5	13	+1.4	+0.3
Valencia	72.0	12	+1.9	-0.0
Union	78.8	1	+8.7	-0.4
San Miguel	70.1	14.5	0.0	-0.6
Torrance	76.3	4	+6.2	-0.8
Santa Fe	62.1	30	-8.0	-1.2
Catron	65.3	22.5	-4.8	-2.1
Bernalille	67.3	21	-2.8	-2.2
Curry	76.1	5	+6.0	-2.2
Roosevelt	76.5	3	+6.4	-2.9
San Juan	76.0	6	+5.9	-3.0
Sandoval	75.1	8	+5.0	-4.0
Mora	72.7	10	+2.5	-4.5
Taos	77.2	2	+7.1	-7.1
Rio Arriba	75.2	7	+5.1	-8.4

STATE SUMMARY

Total State Receipts $13,187,668
State Public School Equalization Fund. . 9,253,582
Total County Taxes (5 mill levy. 1,645,614
Per Cent SPSEF of Total Receipts 70.1
Per Cent County Taxes of Total Receipts.12.5

cent county taxes are of total county receipts, is indicative of local ability.[15] A range in percentages is found to be from Lea County, which is able to finance 25.4 per cent of its total current operational costs from the receipts of the five-mill tax levy to Rio Arriba County, which can finance only 4.1 per cent of these costs from local taxation. This represents a difference in local ability of 21.4 per cent.

On the other hand, Column 6 shows what per cent the amount each county receives from the state public school equalization fund is of its total receipts and Column 7 gives the ranks of the several counties on the basis of the percentages in Column 6. Here it may be seen that in general the counties which are more able to support education locally receive a smaller percentage of their total receipts from the state public school equalization fund than do those counties less able to provide adequate local support. The range between the highest and the lowest county is found

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15 Timon Covert and Ward Keesecker, Legislative Plans for Financing Public Education, Pamphlet No. 79, 1938. (Washington, D. C.: United States Office of Education, 1938), p.22.

to be from 78.8 per cent in Union County to 63.2 per cent in Eddy County. This represents a difference of 15.6 per cent. If the unequal factor, transportation, were not considered it would seem that Union County, which ranks nineteenth in local ability, receives too great a share of the state public school equalization fund. Yet, when it is considered that Union County, because of its size, small population, and topography, has one of the highest per-pupil transportation costs in the state, its equalization receipts do not seem so far out of balance. It is highly possible, also, that Union County is actually carrying a heavier local tax burden than some of the more wealthy counties because of inequalities in local tax assessments. It may be expected, then, that some counties, such as Union and Harding will continue to receive slightly heavy percentages of state public school equalization funds in relation to their total receipts.

That Bernalillo and Santa Fe Counties rank relatively low in percentages of both equalization and local tax receipts compared to their total mainenance revenue is an inconsistency which is difficult to explain. Bernalillo County ranks 24.5 in the per cent county taxes are of its total receipts and 21 in the per cent equalization receipts are of the total. Santa Fe County ranks 21 and 30 respectively in these categories. This indicates that these two counties are among the poorer of the state and are not

receiving their share of the equalization money, but this is not at all true. It is highly probable that funds from the state current school fund, which is distributed on the basis of the census child, coupled with greater revenue from vehicle licenses, merchandise licenses, Indian tuition, and forest reserve earnings, provides a margin of difference. It is probable, also, that these two counties, because of low assessed valuation on taxable property, are falling far short of securing revenue from the county tax levy in proportion to their true local ability.

After considering the various unequal factors which have been previously mentioned, it is found that Column 5 and Column 7 show a considerable degree of negative correlation. This indicates that there is a rather strong trend toward equal educational opportunity among the several counties. Column 8 and Column 9 show the same trend to exist. With a few exceptions, a county which shows a per cent of county tax receipts below the state average of 12.5 per cent receives equalization funds somewhat above the state average of 70.1 per cent and visa versa. The counties showing near average percentages of receipts in both county taxes and equalization funds indicate little deviation from the state averages.

Since it is not practical for a state to endeavor to bring all counties up to the level of the richer ones, it is

considered advisable to bring all counties nearer those which are average.[16] From the evidence presented in Table II it seems that the New Mexico equalization law works in that direction.

Section 55-637. Distribution Within the County. All the moneys received by the county treasurers of the several counties from the state public school equalization fund other than for transportation shall be distributed to each school administrative unit within the county in the proportion that the approved maintenance budget of each of such counties bears to the total approved maintenance budget of all said units. (Session Laws, 1941.)

The weaknesses in this section become apparent upon close examination of the statute. There is not any satisfactory measure for the distribution of equalization funds within the counties. Approved budgets depend, in their entirety, upon the administrative head who prepares the budget, the local board which reviews and approves the recommendations of the administrative head, the local budget commission, and the educational budget auditor.

The present method of distribution encourages a certain amount of dishonesty on the part of superintendents

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16 Paul R. Mort, State Support for Public Education (Washington, D. C.: The American Council on Education, 1933), p.52.

and boards of education. Approval of a padded budget is made possible, and the administrative unit for which it is approved thereby receives a share of the funds greater than its true needs demand. As a result, administrative units within a county compete against each other for an approved maintenance budget as large as possible. The direct result of such competition is a waste of funds by the expenditure of surplus money in order to show no great surplus at the end of the fiscal year and thereby risk a major reduction in the budget for the succeeding fiscal year.

Another weakness of the present method of distribution of equalization funds within the county is the fact that educational budgets in New Mexico are largely controlled by one man, the educational budget auditor, who is a gubernatorial appointee and who is not under the supervision of the state department of education or the state board of education. The statutory requirement that the state tax commission fix the final budgets for the several counties would seem to be a check on the power of the educational budget auditor, but since budgets must be certified to the state tax commission by the budget auditor, a large measure of the effectiveness of this check is lost. The budget auditor has the power to refuse to certify any and all budgets, and it is possible for him to be so controlled by the appointing power that certain counties can be severely penalized.

The need for a new method of distribution of equalization funds within the county thus becomes apparent, and it probably should take somewhat the following form:

1. The administrators of the several school administrative units of the county shall set up a uniform single salary schedule for the teachers, principals, and supervisors of the county based on qualifications and experience and other pertinent factors agreed upon. This schedule shall be submitted to the several boards of the respective administrative units for approval. in event of failure of the administrators and the boards of education to agree on a salary schedule, and the County Budget Commission shall set up the schedule. The Schedule may be revised bi-annually if the administrators and Boards of Education find it necessary or desirable to do so.

2. The number of teachers shall be determined on the basis of pupil-teacher ratios established by state statute.

3. The school administrators of the county shall in conference determine the amount of funds to be allotted to each administrative unit by:
   (a) determining on the basis of 1 and 2 above amount of funds necessary for salaries of teachers, principals, and supervisors.
   (b) calculating the total amount of funds to be allotted to each administrative unit on the basis of salaries as 80 per cent of the total amount.

4. . . . . .

5. The administrators and Boards of Education shall determine the amount of funds to be allotted for transportation to each of the administrative units. They shall set up a uniform schedule for determining the cost to be allowed for each bus route on the basis of the number of pupils, the distance traveled, the type of roads over which the bus travels, and such other factors as may be pertinent to that county. This schedule used in allocating transportation funds to the county. In event the administrators and Boards of Education fail to agree upon a schedule, a schedule

shall be fixed by the State Director of Transportation.[17]

Such a distribution would provide for a more equitable division of equalization funds within the counties at the present time, but it is still not the long range solution of the problem.

The true answer seems to lie in the eventual adoption of the county as the unit for the administration of all schools, municipal and rural. The cost of administration in the present decentralized system is heavy and actually amounts to nothing more than a waste of funds which could be better used for supervision and instruction.

Dr. Thomas C. Donnelly has recommended that the people of New Mexico give consideration to the county unit plan.

> The advantages of the county unit system are that it cuts down the overhead cost of administering the schools, thus leaving more funds for supervision and instruction; and it equalizes educational opportunity for children throughout the county, since the county becomes the tax unit for supporting the schools as well as the administrative unit. At present, since schools depend on the property tax for much of their revenue, and since the more valuable property is in municipalities, rural

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17 Recommended by the Staff Finance Conference of the New Mexico Educational Association, May 31, 1946.

> districts are at a disadvantage and find it difficult if not impossible to maintain schools with standards comparable to those of richer districts. Rural children are thus penalized through no fault of their own.
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> . . . . . .
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> West Virginia adopted the plan in 1933 and offers us an example of its value. The number of school districts in the state was reduced from 398 to 55, and the number of board members and paid secretaries from 1,631 to 275. Whereas only about one fourth of the 398 old districts had been able to afford adequate supervision of their schools, under the county unit plan an adequate system of supervision for all schools was made financially possible through diversion of money that had been formerly spent for routine overhead expenses.[18]

An indication of the saving which might be made can be ascertained by using the 1945-1946 general control costs for the state as a whole, amounting to $720,886. It is found that the average general control cost for the 105 administrative units is $6,865.85. The average number of administrative units per county is found to be three, making the average cost for general control per county $20,596.74. If we may assume that by using the county as the unit for administration of all schools a saving of the amount spent for one of the three units in the average county may be effected, it is found that $212,832.98 could be saved over the state as a

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18 Thomas C. Dormelly, The State Educational System (Albuquerque: Division of Research, Department of Government, University of New Mexico, 1946), pp. 19-20.

whole. This amount could well mean the difference between adequate and poor supervision of the schools in the several counties.

Under the county unit system all school districts within the county would lose their identity as separate units, and the county would receive its funds from the state with no further distribution necessary. Such a system should be seriously considered in New Mexico, however, only after a change is made in the method of selecting the county superintendent of schools and the county board of education.

Section 55-63B. Computation of Average Daily Attendance. Average daily attendance is herein defined and the method of computing such is set forth. The following factors are to be used in computing average daily attendance:

a. Only those pupils who will be six years of age on or before January 1st, after the beginning of the school year will be taken into consideration.

b. Only those pupils regularly enrolled in one-half or more of the subjects prescribed by the state board of education shall be considered.

c. A pupil who has been in school one-half day or less shall be counted in attendance only one-half day.

d. No pupil may be considered in attendance unless he is actually present or is representing the school in some authorized school activity.

e. A school year is 180 days less not more than five holidays and three days for the annual teachers convention.

f. Schools must be in session for 172 days during the year after June 30, 1945 or take a reduction in equalization funds.

It is hereby required that superintendents make regu-

lar monthly and yearly reports to the state superintendent of instruction on the average daily attendance in their respective administrative units. (Session Laws, 1941).

The provision that only those children whose age will be six on or before January 1st following the opening date of school is sound. Administrators and boards are thus discouraged from allowing under-age children to enter school. Six years is the accepted age at which children should be allowed to enter regular public schools unless kindergartens, supported by public funds, are provided. The practice of allowing under-age children to enter regular elementary school in order that the average daily attendance may be increased and additional funds be realized is one which cannot be condoned by conscientious educators.

Factors b, c, d, e, and f used in computing average daily attendance are all valid requirements necessary to accurate computation of average daily attendance.

Regular reports by superintendents on average daily attendance are vitally necessary to the state department of education if fair distribution of the state public school equalization fund is made. Since average daily attendance, weighted according to law, is the sole basis for such distribution, reports on such attendance should be rendered regularly and with a high degree of accuracy.

The requirement that all records and accounts concerning average daily attendance be a part of the permanent

records of the governing boards and be subject, at all times, to audit or inspection by certain state school authorities is good in theory. In actual practice, however, it falls short of the desired result.

The state department of education is operating on less personnel than is actually needed. The educational budget auditor has neither time nor personnel to make such inspections, and the state board of education is in no position to provide the necessary revenue to employ authorized agents for the purpose of making inspections and audits of average daily attendance records. The result is that they are not made, and governing authorities of school districts, if they are so inclined, are relatively free to render padded reports in order to retain funds.

Section 55-639. Appropriation of State Public School Equalization Fund. All moneys accruing to the state public school equalization fund are hereby appropriated for the use and benefit of the public elementary and high schools of the state. The transfer of funds from the state public school equalization fund in accordance with the provisions of this act shall be made upon the order and direction of, and distribution certified to the state auditor and the state treasurer, by the state educational budget auditor, state superintendent of public instruction, or the state transportation director, as the case may be. (Session Laws, 1941.)

This section fails to include a highly important provision. It has been noticeably demonstrated in the past two sessions of the legislature that inroads are being continually made on the state public school equalization

fund, and the money is being used for purposes other than those originally intended under the law. Some statutory provision should be made to protect the equalization fund from future depletion by groups not particularly interested in the schools of the state. The writer fears that unless some statutory measure is enacted to protect this fund from future inroads by pressure groups, the future financial well being of public education in New Mexico will suffer.

Section 55-640. Penalty for violation. Any member or members of boards of education, person, official, or teacher who shall falsify reports or records in violation of this act shall be subject to removal from office, cancellation of teaching certificate, and a fine not to exceed $200 or imprisonment for no more than 30 days. (Session Laws, 1941.)

The penalty provided here is not excessive, and it seems only just that an official convicted of falsification of records or misuse of public funds should receive punishment even more severe than is hereby provided.

Section 55-643. Appropriation of Funds from Mineral Leases.

All moneys annually received by the state from mineral leases are hereby appropriated for the use of the public schools of the state for instructional service except the annual appropriation out of this fund to fee textbooks, administration of the textbook division, and to the Bureau of Mines. (Session Laws, 1943)

This act has provided for the public schools of New Mexico some $300,000 to $500,000 every year since it was enacted by the legislature. During the school year 1945-1946, up to and including May 31, 1946, receipts from mineral leases were $566,311.50. Education has been fortunate that

the legislature saw fit to provide these funds for the public schools.

Section 55-632. A Temporary State Public School Emergency Fund.

There is hereby created a state public school emergency fund in the amount of $300,000 to be transferred from the state public school equalization fund annually during the fiscal years ending June 30, 1948, and June 30, 1949.

No county may participate in the emergency fund unless fifty per cent of its cash balance in maintenance funds plus receipts from other funds are insufficient to provide a budget not in excess of five per cent over the previous year's budget. No county which uses more than five per cent of its maintenance funds for building purposes may participate in this fund, and no county shall be eligible to participate which has not met all the regulations of the state board of education regarding consolidations and other economies which might be effected in the school maintenance fund.

Distribution of this fund shall be on the joint approval of the state board of education, state comptroller, and the educational budget auditor, and may be used only to supplement maintenance budgets. No surplus existing in this fund shall ever revert to the general fund. (Session Laws, 1947.)

This emergency fund has all the attributes of being legislation for the benefit of special interests. The state public school equalization fund, as has been shown earlier in this chapter, provides equalized distribution of most state aid to a considerable degree. Reducing this fund by $300,000 annually for a two-year period in order to benefit localities which are already getting their fair share of the revenue is not defensible from the standpoint of the equalization principle. By such reduction, the majority of the administrative units in the state are penalized for the

benefit of a few localities.

It is probable that some changes need to be made in the present equalization formula in order to aid those poor counties which are experiencing difficulty in adequately financing an educational program comparable to those in other counties. However, transferring of equalization funds "from one pocket to another" does not appear to be the answer.

Class or group legislation cannot be sanctioned by right thinking school authorities and generally result from political "horsetrading" in the state legislature. This law is not effective after June 30, 1949, and every effort should be made by educators to insure that it will not be continued by future legislatures.

Session Laws, 1947. Use of Surplus Funds for Building Purposes. (Chapter 75, Sections 1, 2, 3, 4, and 5.)

Any school district in the state, whether rural or municipal, which is unable to adequately house the pupils attending its system and which has outstanding bonds of the district in the amount of 85 per cent of the limit of its indebtedness as fixed by the constitution, may obtain additional money for building purposes as provided in this act.

Surplus funds or reserve funds applicable to direct charge or maintenance budgets, or any other surplus funds of a school district may be transferred to the building fund of such district and expended for building purposes in the same manner as other funds of the district are drawn upon. Before such transfer may be made approval must be secured from the state comptroller, the educational budget auditor, and the school budget commission.

County boards of education may use surplus funds in the same manner as the above.

Municipal school districts which maintain a regular four-year high school meeting the requirements of the state board of education and which accepts and enrolls students resident of other school districts, may request surplus funds from the county provided the county has such funds which will not be needed to meet the budget for the succeeding fiscal year. The county may order that such funds be transferred to such municipal district making the request. Thes funds may be requested only if the municipal district is unable to adequately house pupils attending that sytem, and which has 85 per cent of the legal limit. Such funds may be used in addition to the surplus funds of the municipal district.

This act shall not be effective after January 1, 1949.

Here, again, is special legislation enacted for the benefit of certain individual administrative units, and as such cannot be sanctioned. A school district which has outstanding bonded indebtedness as great as 85 per cent of the statutory limit should probably be forced, by law, to carry insurance coverage on buildings sufficient to enable it to rebuild damaged or destroyed buildings without the necessity of resorting to this special type of legislation.

Such funds can be used by school districts to construct additional buildings rather than to replace those destroyed. However, if all school districts actually needing additional buildings were to use these surplus funds in order to construct new buildings the comfortable surplus presently held in maintenance funds could rapidly disappear. Such is neither wise nor necessary at the present time.

However, since this act is ineffective after January 1, 1949, it can do no great damage in that period of time,

but care should be taken to insure that such a law is not continued by succeeding legislatures.

Session Laws, 1947, Chapter 45, Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10. State Agent for Surplus Property.

There is hereby created the office of State Educational Agent for Surplus Property, which agent shall be appointed by the governor and serve at his pleasure.

It shall be the duty of such agent to purchase or accept as donations from the War Assets Administration or any other agency of the United States Government, any surplus property requested by the governing authorities of school districts, state institutions, or any other political subdivision of the state.

A budget is hereby set up in the amount of $12,000 for the balance of the 35th fiscal year and $23,500 for the 36th and 37th fiscal years.

This law simplifies the purchase of surplus government property by the public schools and state institutions. A state agent who has complete access to all United States Government lists of surplus property as well as places and dates of sales can purchase such items as the public schools and state institutions desire. He, thereby, relieves governing authorities of the necessity of attending sales, and can effect a saving in funds which must be taken from direct charge budgets. This can mean much to many school districts in which the property tax does not provide sufficient revenue for the purchase of much needed equipment.

The legislature acted wisely in providing the necessary funds for the operation of the office of State Agent for Surplus Property.

EARMARKED TAXES

There are two major taxes earmarked for school purposes in New Mexico. They are the income tax and the emergency school tax, more commonly known as the "sales tax." Since both these taxes are general and are decidedly flexible, they will not be treated separately in the following analysis. A criticism which will apply to one of these taxes from the standpoint of school administration, can well be applied to the other.

Sections 76-1201 to 76-1247. Income Tax. An income tax is hereby levied on all incomes within the state which are up to certain levels. The express purpose of this act is to secure funds for the common schools of the state and the receipts of the tax are distributed on the following basis:

1. The income tax suspense fund shall include all taxes which are paid under protest for any given year until such a time as their status has finally been determined or for a period of 60 days if the taxpayer does not prosecute. Also included in this suspense fund is 10 per cent of all other income tax receipts until the total amount of the fund, less protest payments, amounts to $5,000. When the fund has reached this amount, only enough is paid to the fund to provide a constant undistributed reserve in the above amount.

2. The income tax administrative fund which shall provide for the proper administration of the act shall be in the amount of 10 per cent of all receipts after suspense fund deductions.

3. Of the remainder of the receipts, 75 per cent shall be credited to the state public school equalization fund and 25 per cent to the casual deficit fund. If a surplus of the 25 per cent casual deficit fund remains after all certificates of indebtedness have been paid, such surplus shall revert to the state public school equalization fund. (Session Laws, 1933.)

Sections 76-1401 to 76-1446. Emergency School Tax. This tax is imposed on the gross income of businesses at rates ranging from one-eighth of one per cent on certain wholesaling and production enterprises to two per cent on businesses, professions, and services. The tax is collected from the consumer and payments are made monthly to the Bureau of Revenue by the business which collects the tax. The revenue derived from the tax is credited to the state public school equalization fund after five per cent is deducted for purposes of administration.[19] (Session Laws, 1935.)

Little comment is needed concerning these laws. They are both wise types of taxation and follow the general trend in that they both provide financial support for the public schools of the state on a taxation basis much more general than could be provided by the property tax, which was formerly the major source of school revenue.

The general property tax is admitted to be undesirable as a method for raising funds for state school support.[20] It tends to add to a tax burden which is already too heavy, and in a number of states it has been abandoned as a method of raising funds for state school support. Delaware is a case in point. The general property tax for school support

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19 This law is so lengthy and complex that a mere attement of what the tax is and to what fund the revenue is allocated is made here.

20 J. E. Seyfried, Analysis and Evaluation of New Mexico State School Laws, The University of New Mexico Bulletin, Vol. 6, No. 2. (Albuquerque: University of New Mexico Press, 1932), p. 49.

was reduced by law in this state in 1927 and was eliminated in 1929. Since that time state funds for public schools have come from income taxes, corporation and franchise taxes, and corporation and capital invested taxes. Other states which have no general property tax for state school support are Michigan, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.[21] This indicates the strong trend toward abandoning the property tax as a state source of school revenue and of turning to such tax sources as general sales, corporation, franchise, public utilities, and income for state school funds.

There has been some question as to whether the emergency school tax will continue to provide revenue which is adequate. Research based on wartime economic trends indicated that revenue from this source would be reduced to some extent during the war because of a reduced supply of consumer goods due to rationing and wartime demands. The Research Division of the National Education Association

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[21] Covert and Keesecker, op. cit., p. 35.

predicted such a decline and considered fortunate those states which were still able to fall back on a property tax during that period of anxiety.[22] During the war the yearly revenue from the emergency school tax increased; it has continued to increase during the first few post-war years and will probably not experience a decline until there is a decrease in business and professional service income. At that time a decrease may be expected in the receipts from the sales tax. The same is true of the income tax. Both are dependent upon the economic conditions at any given period, but rather than weakening them, this characteristic tends to give them the flexibility so necessary in a system of taxation. The revenue from these taxes changes with the changing economic conditions, and as economic conditions change so do costs of an educational program.

Seyfried, in his recommendations for a better system of taxation in New Mexico, states:

By way of review it would seem that the best educational legislation applicable to New Mexico points to the

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22 "State School Finance Systems," Research Bulletin of the National Education Association, 20:160, November, 1942.

adoption of a statewide plan of taxation that is more or less fixed and stable, yet flexible enough to meet changing conditions, and which is reasonably safe from legislative interference, gubernatorial influence, politics, and the control of big interests. . .No plan that permits tax evasion will ever prove adequate or satisfactory. The irch, the poor, the influential, the non-influential, must all be taxed fairly.[23]

Both the income tax and the emergency school tax meet these requirements rather adequately it seems, and the schools of New Mexico are operating on a much sounder financial basis today as a result of these taxes and the present equalization law.

This does not mean that the tax system and the equalization fund need not be further strengthened. The cost of education is continuing to increase, and it is not likely to level off for some time to come. The Research Division of the National Education Association places the cost of an acceptable nationwide program of education during the postwar years at a figure slightly over four and one-half billions of dollars. It is unlikely that the nation, through its states, will be able practically to double the current school expenditures without some major readjustments in state taxation which will lead to further increases in state revenues for educational purposes.[24]

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[23] Seyfried, op. cit., p. 50.

[24] "State Tax Legislation Affecting School Revenues," Research Bulletin of the National Education Association, 22:126, October, 1944.

The present problem in New Mexico seems to be not so much a lack of sufficient funds for carrying on an adequate educational program as it is the way in which these funds are expended. Before the educational profession of the state can assume to ask the people, to provide additional revenue for schools, it must prove to these people that present funds are being wisely and efficiently expended. The profession can offer no such proof at the present time.

The remedy lies in state and county educational reorganization which will facilitate the elimination of a great amount of wast. Removal of the schools from political influences is the first and major step in this direction. Reeder aptly places the responsibility for providing the means for effecting economies directly upon the shoulders of the state, or more accurately, upon the state legislature.

It is reasonable to urge that the state see to it that small and unnecessary schools are merged with other schools, that small and unnecessary school districts are joined with other school districts, that transportation routes are reorganized to permit the elimination of any unnecessary school buses. It is the responsibility of the state to insist that pupil-teacher ratios be changed when they are too large or too small, that co-operative purchasing of supplies be required when it will eliminate wast, that the curriculum be revised to provide for individual development and social improve-

ment. The state should insist that all graft be eliminated, and that any other change be made which will secure a better type, or a greater amount, of education for the money expended.[25]

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[25] Ward G. Reeder, The Fundamentals of Public School Administration. (New York: The MacMillan Company, 1941), p. 370.

CHAPTER IV

TEACHERS AND OTHER INSTRUCTIONAL PERSONNEL

It has been said that as is the administration so is the school, but it can be even more emphatically stated that as is the teacher so is the school. This truism and other time-worn statements point to the tremendous importance of the teacher as the chief factor involved in a successful, economical, and efficient program of education. James A. Garfield made the statement, now familiar to the educational profession, that a university was no more than Mark Hopkins at one end of a log and a student at the other. He thereby aptly illustrated the secondary importance of the physical tools of education. A school system may be abundantly supplied with modern, well-equipped plants and a copious amount of materials with which to carry on the educational process, but if that system, at the same time, is heavily staffed with inferior instructional personnel adequate educational process, but if that system, at the same time, is heavily staffed with inferior instructional personnel adequate educational progress cannot be expected. The pupils--those for whom the schools are operated--suffer irreparable damage.

The most important factor concerning instruction is the selection instructional personnel. If this be true, there is a coordinating responsibility placed upon the

people, acting through duly elected state legislators, to insure that proper legal provisions be made to make certain that the teacher will have satisfactory working conditions, will not need to fear unfair dismissal, and will have a fair amount of security during her later years. If the teacher is thus made to feel satisfied in her work, the pupil will benefit by her satisfaction in much the same degree that he would be harmed by the dissatisfaction and insecurity of the teacher not protected by adequate legislation.

Legislation affecting teachers, then, must have as its basic consideration the improvement of instruction for the pupil. If such laws were made and administered without regard to the welfare of the pupil, they could not be justified on the basis of their value to education.

This chapter will deal with laws which directly affect teachers and other instructional personnel, and an attempt will be made to determine how well these laws are providing for the welfare of both teacher and pupil.

PUPIL-TEACHER RATIO

Section 55-1107. Number of Teachers to be Employed. Not more than one teacher shall be employed:

a. In rural schools to every 25 pupils or major fraction thereof.

b. In municipal schools to every 30 pupils or major fraction thereof.

c. In high schools to every 20 pupils or major fraction

people, acting through duly elected state legislators, to insure that proper legal provisions be made to make certain that the teacher will have satisfactory working conditions, will not need to fear unfair dismissal, and will have a fair amount of security during her labor years. If the teacher is thus made to feel satisfied in her work, the pupil will benefit by her satisfaction in much the same degree that he would be barred by the dissatisfaction and insecurity of the teacher not protected by adequate legislation.

Legislation affecting teachers, then, must be on the basis consideration the improvement of instruction for the pupil. If such laws were made and administered without regard to the welfare of the pupil, they would not be justified on the basis of their value to education.

This chapter will deal with laws which directly affect teachers and other instructional personnel, and an effort will be made to determine how well these laws are providing for the welfare of both teacher and pupil.

PERTI-TEACHER LAWS

Section 75-1207. Number of teachers to be employed.

Not more than one teacher shall be employed:

a. In rural schools to every 35 children or major fraction thereof.

b. In municipal schools to every 30 pupils or major fraction thereof.

c. In high schools to every 20 pupils or major fraction

thereof.

d. In junior high schools to every 25 pupils or major fraction thereof.

One special teacher may be allowed in high schools for each forty pupils or major fraction thereof. The number of special teachers, in any case, may not exceed six in any one school. Special teachers are allowed in rural schools for each 500 pupils or major fraction thereof, with the number of such special teachers not to exceed six. (Amended, 1945.)

The size of the class is one of the chief factors in determining the instructional cost of education and, outside the realm of finance, it is a factor of no little importance in determining the degree to which a teacher derives satisfaction from her work.

There are two factors which should influence the pupil-teacher ratio. The number of pupils per class should not be so large that inefficient teaching would be the result, and neither should this number be so small that financial waste would result.

Just what the correct pupil-teacher ratio should actually be has not yet been determined by experimentation.[1]

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[1] Ward G. Reeder, The Fundamentals of Public School Administration, (New York: The MacMillan Company, 1941), p. 121.

It appears, therefore, that pupil-teacher ratios in New Mexico were rather arbitrarily set by the legislature. Little can be found to justify such ratios other than the fact that they should be lower in the rural schools than in municipalities, since the attendance unit in rural schools is usually lower than in municipal schools. However, under the present system of organization, there are several municipal units which are just as small as, and in some cases even smaller than, the larger rural schools. An example of this may be cited by comparing the number of teaching positions in some rural schools with the number in small municipal units. In Dona Ana County alone there are three rural schools maintaining more than fifteen teaching positions as compared to two independent units having less than this number. Small independent units are not economical to operate, but so long as the welfare of the child is admitted to be the basic consideration these small municipal units should be allowed to benefit by a low pupil-teacher ratio to the same extent as rural schools.

The New Mexico plan operates in reverse according to class sizes in lower grades and in high school. High schools are allowed one teacher for each twenty pupils in average daily attendance and one special teacher for each forty pupils in average daily attendance, with a maximum of six such special teachers being allowed. Added to these advantages

is the fact that high school average daily attendance is weighted on the basis of each pupil having a value 1.75 times the value of each elementary school pupil. At the other end of the pupil-teacher ratio scale, primary teachers in municipal schools are allowed on the basis of one teacher to each thirty pupils or major fraction, and no special teachers are allowed. In other words, in all grades through grade six in municipal schools the enrollment per teacher must be near forty in order to maintain an average daily attendance of thirty pupils. It is reasonable to assume that primary and lower-grade pupils require more individual attention of the teacher than do junior and senior high school pupils. High school pupils have learned the fundamental processes and find great amounts of individual attention unnecessary, while pupils in the lower grades are in the early stages of educational development and require great amounts of individual help and instruction. It is doubtful that the pupil-teacher ratio for primary and lower grades should be higher than one teacher to each twenty pupils in average daily attendance. On the other hand, some authorities insist that one teacher to forty or forty-five high school pupils is not undesirable.[2]

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[2] Loc. cit.

Reeder, in discussing this problem, states:

> Contrary to present practice, best theory holds that classes should be smaller in the lower grades than in the upper ones; pupils in lower grades need more individual attention than those in upper grades.[3]

It is believed by some that no restrictions should be placed upon local or county units in regard to class size.[4] Local units, under the professional leadership of their superintendents, have a much greater opportunity to observe and to determine the actual number of teaching positions necessary in a given school.

There is undoubtedly a point beyond which class size cannot be increased without bringing about a decrease in pupil efficiency, but experimentation has not yet determined that point. Experiments have shown, however, that there appears to be little difference in pupil efficiency between the large class and the small class. One such experiment by P. R. Stevenson showed that in classes which were double in size to other classes, all other factors being equal, the pupil efficiency was only one per cent lower.[5] This indicates that class size has little effect on pupil efficiency. On the other hand, the armed services proved that effective teaching was best accomplished with small groups. It was

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[3] Loc. cit.

[4] J. E. Seyfried, Analysis and Evaluation of New Mexico State School Laws, The University of New Mexico Bulletin, Vol. 6, No. 2, (Albuquerque: University of New Mexico Press, 1932), p. 67.

[5] Reeder, op. cit., p. 122.

It was found that such a situation placed the teacher in a position to know each of the men under his instruction and to plan his work in order to meet each individual's needs.[6]

It may readily be seen that opinions and conclusions based on experimentation by different authorities are conflicting. From these conflicting conclusions it is possible to draw a still further conclusion. With all the theories concerning teaching to care for individual needs, a large portion of present day teaching is still mechanical and teachers are still, to a large extent, teaching subject matter instead of pupils. If this be true, the additional cost of smaller classes will not produce sufficiently increased efficiency to provide the taxpayer with value received until teachers take full advantage of the opportunities the small class offers.

The writer tends to agree with Seyfried in that class size and number of teachers should be left to the judgment of local authorities. Few school boards will risk public

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6 Maxwell S. Stewart, We Can Have Better Schools (Public Affairs Pamphlet, No. 112. (New York: Public Affairs Committee, Incorporated, 1946), p. 8.

opinion to the point that they will request the services of more teachers than is actually needed. If such should happen, a budget commission could easily refuse to approve the budget of the unit until the number of teachers requested could be properly defended by the superintendent of the unit affected.

Section 55-1107a, 55-1107b. Additional Teachers for Crippled Children. In addition to all other budgetary requirements of the state of New Mexico, fixing the number of teachers for budgetary purposes, there may be allowed in each administrative unit an additional teacher for each five to fifteen crippled children regularly enrolled in such administrative unit, and an additional teacher may be allowed for each additional fifteen crippled children or major fraction thereof.

A crippled child is hereby defined as a child who by reason of a physical disability is unable to attend regular classes. (Session Laws, 1947.)

This law is a progressive educational step and one which can mean much to the small number of unfortunate children who, due to certain physical defects, are unable to attend regular classes in the public schools and whose parents are financially unable to hire private tutors. New Mexico is to be commended for having placed this law on its statute books.

TEACHER'S HEALTH CERTIFICATE

Section 55-1108. Health Certificate Required. Persons having tuberculosis or syphilis in a communicable stage may not be employed in the public schools of the state, and teachers must present a certificate of freedom from trans-

missible disease, including a laboratory report on tubercular and Wasserman tests. This certificate may not be dated more than twenty days prior to the opening date of the yearly term of school. (Amended, 1943.)

Requirement of a health certificate from teachers before appointment and periodical physical examinations thereafter are recommended by most authorities in educational administration.[7] The Health of the teacher is a highly important factor in any school system. There is immediate danger to the pupils if a teacher is not free from all transmissible disease; the teacher finds it impossible to carry on her work properly when she is run down physically; and the board of education finds it economically unsound to employ a teacher in poor health.

The New Mexico statute is a good one in theory, but operates very poorly in practice. The writer is firmly convinced, although proof would be difficult to obtain, that a very small portion of the teachers in New Mexico have regularly complied with the present law since its enaction. Although only a very meager portion of the teachers of the

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7 F. P. Graves, The Administration of American Education, (New York: The MacMillan Company, 1932). p. 269.

state have been interviewed, it has been interesting to note that only a very few have ever had either a Wasserman or a tuberculin test in connection with the issuance of a health certificate. In some instances, the health certificate held by the teacher was found to be as much as five or more years old.

It appears, from the above evidence, that both teachers and administrators are maliciously breaking the law, but such is not the case. The law does not require that these certificates be granted by either school physicians or physicians approved by the governing board of education. Any licensed physician meets the requirements of the law. They are paid for the examination by the teacher and have no obligation to the state, other than a moral one, to refuse to grant a certificate to a candidate whose health does not warrant such. This makes possible the granting of health certificates which are such in name only.

The writer knows of one instance in which an individual was employed by a municipal board of education in New Mexico after the presentation of a health certificate. Several months later this same individual who had been actively teaching was stricken with a severe tubercular hemorrhage while on duty at school and died a few days later at a local hospital. The health certificate held by this teacher did not protect the pupils from contact with tuberculosis.

The requirement that a yearly Wasserman blood test be taken is not easily met by all teachers. Such tests cannot be made except in well equipped laboratories, and as a result only those teachers living in or near some of the larger centers of population find it easy to secure these tests.

The intent of the present law was good, but it apparently was hastily enacted with little thought as to its practicle application, the expense to teachers, or the possibility of its enforcement. It is not practical in as much as it makes requirements which are not easily met by all teachers; it is excessively expensive to the teacher in that two relatively costly laboratory tests are required each year; and it is not enforced because of the requirements not easily met by all teachers. The desirability of laboratory tests is not questioned, but their necessity as a school health requirement for teachers is doubtful and unless they could be administered on a statewide basis by a county or a city health unit and without cost to the teacher they should not be required.

The law is not properly enforced because the state makes no provision for checking teachers' health certificates. This could be remedied by making it mandatory that each superintendent certify to the state department of education that a certificate has been granted to each teacher. This certification should include the name of each teacher,

the examining physician, and the date on which the health certificate is granted.

The existing law may be attacked from the standpoint of its apparent intent not only to exclude teachers in poor health from entrance into the profession, but it seems, also, to have as its purpose disqualification of those who are already in service. Periodic physical examinations for teachers should be made for the definite purpose of promoting health rather than disqualification. If certain physical weaknesses which will render the teacher unfit for service are discovered by these examinations, they should be checked closely for their degree of permanency. If they are temporary and correctable, a follow-up should be made and a probationary period allowed for their correction. Sufficient leave for recuperation and correction should be granted when necessary. Such leave should be accompanied by reasonable financial remuneration.[8] When such disability of the teacher is found to be permanent, provision should be made for the retirement

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[8] Reeder, op. cit., p. 568.

of that teacher. In this case, New Mexico meets such a standard. Disability retirement for all teachers with five or more years of service in New Mexico is provided in the present retirement law.

Closely connected with laws requiring health certificates are those granting sick leave, with full pay, to teachers and other school employees. It is doubtful that the state should establish definite sick leave for school employees by statutory enactment. Such leave is generally granted by rules of governing boards of education.[9] However, it would probably be well that governing boards be required by statute to provide for a minimum amount of sick leave as set by the state board of education. This would leave local authorities freedom to establish their own policies. Teachers would thus be assured of a minimum amount of sick leave, and local boards would be free to exceed the minimum at their own discretion.

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9 Graves, op. cit., p. 271.

STATE DIRECTORS OF ELEMENTARY AND SECONDARY EDUCATION

Section 55-1110. Requirements for State Supervisors. Directors of elementary and secondary education in charge of elementary and high school supervision for the State of New Mexico shall have certain qualifications and shall not engage in any political activity nor be candidates for any elective office during their term of office as supervisors. (Session Laws, 1939.)

Under the statutory provisions of this section, state directors of elementary and secondary education are required to hold at least a master's degree or its equivalent, have a minimum of five years' teaching or supervisory experience in New Mexico, and have earned at least 15 hours training in classroom supervision.

Such required qualifications are not too stringent if the state department of education is to provide professional leadership in supervision of instruction.[10]

It would probably be better if the personnel in the state department of education were nominated by the state superintendent of public instruction and appointed by the state board of education. Although the dual-headed state

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[10] Ibid., p. 556.

system of education actually relieves the state superintendent of public instruction from direct responsibility to the state board of education, the board is still the legal head of education in the state and, as such, should probably have the power of appointment of state department personnel reserved to it. The above statute renders it possible for state supervisors to be appointed by either the state board or the state superintendent.

Such personnel should be selected without regard to political affiliation, but so long as the office of state superintendent is elective and highly political the appointments to various divisions of the state department of education will be largely political. Of course definite requirements of definite qualifications make it mandatory that even political appointees possess relatively high standards of educational preparation, but this, unfortunately, does not always guarantee a suitable individual to fill an office. Possession of high educational qualifications does not, nor se, immunize individuals from undesirable traits which would make them unsuitable as supervisors of instruction.

For the most part, efficiency in state departments of education is gained in those states in which the superintendent of public instruction is appointed and, as a result, selects non-political nominees for positions within the state

department of education.[11]

If the state department of education were non-political, the last sentence of this statute would be unnecessary. Appointees would be interested only in the professional aspects of their positions and political activity or seeking political office would hold no attraction for them. Here is admission in the statutes that the state department of education is political, and it attempts to eliminate such politics. However, they can be eliminated only by changing the method of selecting the state superintendent of public instruction.

TEACHER TENURE

Section 55-1111. Conditions of Tenure. On or before the closing date of school, the governing board of each school district in the state shall serve written notice on each classroom teacher by it employed, stating whether it desires to continue or discontinue the services of such teacher.

Notice to discontinue the services of a teacher who has served a probationary period of three years and holds a contract for the fourth year in a particular school system, shall specify a place and a date not less than five days nor

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11 Katherine M. Cook, Supervision of Instruction as a Function of State Departments of Education, (United States Office of Education, Bulletin No. 6, 1940. Washington, D.C.: United States Government Printing Office, 1941), p. 36.

more than ten days from the date of mailing such notice at which time and place the teacher may appear before the board for a hearing. If the decision of the board is not satisfactory to the teacher, he or she may appeal to the state board of education within ten days from the date of the hearing. Should the state board of education find the causes for dismissal insufficient, the teacher shall be considered employed for the following year under the terms of his or her then existing contract, provided he or she shall be entitled to any additional compensation allowed other teachers of like qualifications and experience employed in the same unit or system. In the case of the compensation of other such teachers being reduced, the reinstated teacher shall have the right to decline employment.

Teachers whose professional qualifications are below those required by the governing board shall not be entitled to the benefits specified in this act.

Failure of a board to serve notice of its intentions concerning the future employment of a teacher shall be construed the same as if notice had been served to discontinue the services of such teacher, and in such case the teacher may, within ten days after the closing of school, request the board to hold a hearing and thereupon, the board shall grant the hearing within ten days from the date of such request.

Within fifteen days after the closing date of school in case of notice being received to continue services, or within fifteen days after a decision is rendered by the state board of education requiring the retention of the services of a teacher, such teacher shall either accept or reject, in writing, such employment and a contract shall be executed as soon as practicable and, in any case, not later than ten days before the opening date of the next school term.

No teacher may be employed who, under the law in force, does not hold a teacher's certificate for the position to be filled. (Session Laws, 1941.)

Section 55-1112. Contract Forms. All contracts for employees, other than those not required to hold a teaching certificate, shall be on forms approved by the state board of education. (Session Laws, 1941.)

Section 55-1113. Cause for Dismissal. No teacher having a written contract shall be discharged except upon good cause and after a hearing on written charges. Notice of hearing and written charges shall be served at least five days prior to the date set for the hearing, and the right of appeal to the state board of education is granted to the teacher at any time within ten days after the date of the hearing.

Pending a decision of the state board of education, a discharged teacher shall be entitled to receive his or her contractural salary. (Amended, 1941.)

Adequate legislation granting protection of tenure to teachers has long been advocated by authorities in the field of education. The National Education Association has been committed to the principle of tenure for teachers as far back as 1915, the year in which the first resolution favoring security of tenure was passed by the association.[12] With the advent of tenure laws teachers obtained a release from the constant fear that an antagonistic board of would "fire" them for unjust and unreasonable causes.

The committee on tenure of the National Education Association, in 1935, presented a report which listed the

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12 "A Handbook on Teacher Tenure," Research Bulletin of the National Education Association, 14:169, September, 1936.

following reasons for teacher tenure:

1. To prevent political control of schools and teaching positions.

2. To permit and encourage teachers to devote themselves to the practice of their profession without fear or favor.

3. To encourage competent and public spirited teachers to remain in the schools.

4. To discourage school management based on fear and intimidation.

5. To prevent the discharge of teachers for political, religious, personal, or other unjust reasons.

6. To protect teachers in their efforts to secure well-financed and adequate education for the children in their charge.[13]

These are valid reasons for teacher tenure and were state legislatures guided by them in enacting tenure laws it is probable that little fault could be found with existing or future laws. Unfortunately, however, legislatures have not always been concerned with such sound reasons for enacting tenure laws.

The Committee on Tenure of the National Education

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[13] Loc. cit.

Association has formulated twelve principles to be followed in setting up sound tenure laws. By using them as a measuring device the relative merit of any such law may be rather accurately ascertained.[14] Such a procedure will be followed in this analysis.

1. Tenure laws should be devised and administered in the interest of better instruction for children.

Any tenure law which protects efficient, well trained, professionally-minded teachers from politically dominated, unfair boards of education indirectly protects the pupils these teachers are employed to instruct. However, a law should not provide protection for that small group of teachers who, having once qualified for tenure, allow themselves to become inefficient, non-professional, uninterested in their work, and generally unsatisfactory. Such a law does not have as its basis the welfare of the child. It becomes an instrument for the protection of teachers as a class, and as such cannot be justified.

Under the New Mexico law the only requirements a

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[14] Ibid., p. 170.

teacher must meet in order to qualify for enure is to serve a probationary period of three years and hold a contract for a fourth year. After once meeting these qualifications a teacher in New Mexico is practically guaranteed life tenure. Obviously, this does not always work toward the best interests of the child.

2. Tenure laws should be accompanied by proper legal regulations governing training, certification, remuneration, and retirement allowances.

New Mexico's school laws do not include any provision governing remuneration other than the one provision in the tenure law which guarantees to teachers re-employed at the direction of the state board of education their same salaries with the benefits of any increase granted to other teachers of like qualifications and experience. There appears to be nothing in this law, however, which would prevent a board of education from lowering the salary of a teacher in order to secure that teacher's resignation. County-wide salary schedules have done a great deal toward lessening this danger, however. A large majority of the counties in the state now have single salary schedules which control the salaries paid to teachers and principals in all schools within the county, both municipal and rural. Still, since such schedules are not statutory, boards of education are under only moral obligation to meet the salaries as set up therein.

There is no law in New Mexico guaranteeing to teachers a minimum salary based upon their professional training and teaching experience. Such laws have proved effective in other states[15] and in order to provide a desirable companion law for the tenure law a state minimum salary schedule may well be considered by New Mexico educators and legislators.

New Mexico does provide for retirement allowances, the relative values of which will be discussed later in this chapter.

Training and certification are governed by regulations set up by the state department of education. Though they probably are still somewhat low, considerable progress has been made and more may be expected in the future.

3. Tenure laws should be devised and administered as a stimulus to better preparation and more efficient service on the part of the teacher.

The present law makes it exceedingly difficult for a board of education to dismiss a teacher. This apparent bene-

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15 Robert D. Baldwin, "The Evolution of West Virginia State Minimum Salary Schedule," American School Board Journal, 112:38-39, May, 1946.

fit gives the teacher who is so inclined an opportunity for letting down in her efficiency after she has served a probationary period and is eligible to receive the benefits of the act. In view of the possibility of such a let-down on the part of a teacher, a tenure law should require that a warning specifically stating weak points should be given. This warning should be given either by the governing board or its authorized representative, and the teacher should be given ample opportunity to correct her deficiencies. If the deficiencies are not corrected the governing board should be given the authority to quietly dismiss such a teacher. Sufficient supervisory aid should be rendered the teacher in correcting the alleged weaknesses.[16]

Although the New Mexico tenure law does not provide for continuing contracts, the effect is much the same after a teacher has served the probationary period. This has its dangers, the greatest of which is the difficulty of dismissal of a teacher. Unless some definite checks can be placed

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16 Graves, op. cit., p. 213.

upon unlimited retention of teachers after they have acquired permanent tenure status, the danger of considerable damage to pupils is evident. Indefinite tenure without any checks most certainly works against the impulse of certain teachers to improve since many individuals require more than the push of their own ambition to spur them along the path of progress. On the other hand, the writer would certainly not advocate abolishing indefinite tenure because of this inherent weakness. It would be folly to place the teacher again at the complete mercy of boards of education. A middle-ground policy must be found in which the necessary spur to progress is not removed and protection of teachers from boards of education is adequately provided.

The city school system of Detroit, Michigan has formulated a very effective middle-ground policy in regard to teacher tenure. The city divides its teachers into two groups, "probationary" and "regular". A probationary teacher can work herself into the "regular" class by successfully serving for two years, during which time she has convinced school authorities of her ability as teacher. After attaining the status of "regular" however, she does not automatically retain that status throughout the time spent in the Detroit schools. At the end of any semester during which she may be found unsatisfactory she may be returned to the probationary list of teachers. If at the end of a year thereafter she

still remains unsatisfactory she may be dismissed. If, however, her status is still in doubt at the end of this year, she may be granted another year of probation, at the end of which her proved efficiency will place her again on the "regular" list of her evident unfitness renders it mandatory that she be dismissed.[17]

The value of such a system of tenure is evident. The teacher is shown every fair consideration, is given adequate supervisory aid to help her correct weaknesses, and yet cannot feel herself so securely protected by law that the board is powerless to dismiss her though her services may become unsatisfactory. Protection against unfair dismissal is adequate, and yet the gentle spur to progress is not entirely removed.

4. Indefinite tenure should be granted only upon evidence of satisfactory preliminary training, successful experience, and professional growth.

By requiring three years of teaching experience and a

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17 Ibid., p. 217-218.

contract for the fourth year as a pre-requisite for protection under the tenure law, New Mexico satisfactorily fulfills one portion of the above principle. Requirements for certification as set up by the state department of education fulfill another. No teacher who is unable to meet certification requirements may receive the benefits of the tenure law.

Professional growth of the teacher is not mentioned in the New Mexico tenure law. As a result the three-year probationary period may serve to provide merely three years of teaching experience, and experience, of itself, does not necessarily bring about professional growth. Each governing board, acting through its authorized representatives, should be charged with the responsibility of measuring the professional growth of each teacher before placing that teacher on tenure. Professional growth is largely accomplished by the individual teacher and one who puts forth little effort or shows little desire to broaden professionally by the various means at hand should not be granted indefinite tenure.

5. Indefinite tenure should be provided after successful experience during a probationary period of adequate length, usually two or three years.

This principle is followed in the New Mexico law.

6. The right of dismissal should be in the hands of the appointing board.

Boards of education in New Mexico are granted the right of dismissal of unsatisfactory teachers. However, the result of exercising this right is often an unhappy experience for the governing board and the superintendent. The teacher often finds it easy to secure enough community sympathy that the outcome results in the board and the superintendent finding themselves virtually on trial for unfairness in their judgments concerning the dismissed teacher. In some cases school superintendents and boards of education have been forced to resign because of community feeling generated by the dismissal of teachers who, in all probability, should have been dismissed.

Again, the middle-ground policy is obviously the best procedure to follow for the protection of both teachers and governing authorities. E. P. Cubberley aptly deals with the middle ground policy as follows:

> The middle ground gives practically life tenure to every worthy teacher and school officer, but merely reserves to the board of control for the schools, acting on the recommendation of their chief executive officer and only after helpful advice has failed to bring the desired improvement, the right quietly to remove from the schools those who should not be there. To say that a school board has such power by trial, under the life-tenure laws, is to cherish a delusion.[18]

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18 E. P. Cubberley, Public School Administration, (Cambridge, Mass.: Houghton Mifflin Company, 1922), p. 217.

Though there is some danger of such a policy being abused by certain superintendents and boards of education, the writer feels that such abuse would be the exception rather than the rule.

7. Laws establishing indefinite tenure should provide for the easy dismissal of unsatisfactory or incompetent teachers for clearly demonstrable causes, such as misconduct, incompetence, evident unfitness for teaching, persistent violation or refusal to obey laws, insubordination, neglect of duty, or malfeasance.

It has already been pointed out in this analysis that easy dismissal of unsatisfactory teachers is practically non-existent in the New Mexico teacher tenure law.

There is only one brief reference in the New Mexico tenure law to cause for dismissal of teachers. This reference, in Section 55-1113 of New Mexico Statutes, 1941, Annotated, merely specifies that a teacher having a written contract may not be dismissed except for good cause. What may be considered good cause is an unknown factor, and since the State Board of Education is the reviewing authority in cases where appeals have been made to it by teachers not satisfied with the findings of local authorities, it rests with this body to determine the finality of what is good cause for dismissal.

In instances where an appeal has not been made to the State Board of Education, the local governing board must determine whether or not the cause for dismissal of a teacher

is just. The writer agrees that the local body should be granted the right of dismissal, but it is doubtful that this right can always be justly exercised where boards ofeducation are given no statutory guide-posts to follow. It seems that the result can be only that local boards will lose more and more of their statutory right of dismissal as increased numbers of cases are appealed to the State Board of Education which, in the past, has shown a tendency to reverse the decisions of local boards.

Specific causes for which a teacher may be dismissed should be included in a good tenure law, and surely causes should not be completely omitted as is the case in the New Mexico law.

> 8. The proposed dismissal of a teacher on account of incompetency or neglect of duty should be preceded by a warning and a written specific statement of defects.

It is the right of a teacher to be informed of her weaknesses and defects and to be given a reasonable length of time for their correction. She also should be provided with adequate supervisory aid in the correction of these defects.[19] This is a well-established principle of the

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19 Cubberley, loc. cit.

middle-ground policy and should be included in any statute on teacher tenure. Such a provision is conspicuous by its absence from the New Mexico tenure law.

9. In cases of proposed dismissal, teachers should be granted the right of hearing.

This principle is followed in the present tenure law in New Mexico, but confusion is possible because of one specific clause. The previous New Mexico tenure law provided, and most other state tenure laws specifically provide, that in the event notice of re-election or dismissal is not received by the teacher in the time alloted by statute, the teacher shall consider that she is to be retained in service. However, the more recent New Mexico law reverses this provision by stating that in the event the board of education fails to serve notice of re-election or dismissal on or before the closing date of school, the teacher is to consider herself dismissed and must apply for hearing within ten days after failure to receive such notice. This provision gives to superintendents and boards of education an unfair advantage over teachers who are unfamiliar with the law. It indirectly removes from the board the responsibility of serving notice within the prescribed time. An unethical board and superintendent may knowingly fail to serve notice in order to be able legally to refuse a request for hearing made more than

ten days after the closing date of school by a teacher who discovers that she has been dismissed by virtue of having received no notice. After the statutory time limit for request for hearing a board of education may refuse to grant such request and a teacher is left without legal recourse.

The present tenure law should be amended to provide that in the event a board of education fails to serve notice within the time prescribed by law a teacher shall be considered re-elected to the position in which she has served for the preceding year. Such a provision would place the burden of responsibility of serving notice within the time prescribed by statute directly upon the governing board, and teachers would receive greater protection than they do under the present law.

10. Teachers who do not desire to continue in their positions should give reasonable notice of their intention in writing.

Here, again the New Mexico teacher tenure law fails to meet an important principle. It is widely accepted that a teacher desiring to leave a position should give ample notice to the board of education (usually four weeks or more), and the board, in turn, should release such teacher as soon as it finds it possible to fill her position.[20] Both parties

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20 Ward G. Reeder, The Fundamentals of Public School Administration, (New York: The MacMillan Company, 1941), p. 148.

to a contract should have protection from termination of such contract without reasonable written notice.

It is true that teacher contract forms as set up by the State Department of Education require that a teacher give thirty days notice of an intendended resignation. Failure to give such notice grants to the board the right to withhold all accrued salary. However, a similar clause in the statute itself would strengthen the law.

11. In putting tenure laws into operation, suitable provisions should be made for teachers already in service.

The existing tenure law in New Mexico makes no specific provision for teachers already in service, but it is possible that the courts would hold that the law implies that teachers having the necessary service to qualify for indefinite tenure would be immediately protected by the law.

12. Indefinite tenure should be accorded to all classes of school employees; at least to those on status of teachers.

There is little controversy over the granting of indefinite tenure to those school employees classed as teachers. However, much has been said both for and against allowing indefinite tenure for principals and supervisors. Nevertheless, it is now fairly well accepted by most authorities that these individuals, because of their close daily

association with classroom teaching, should be eligible for indefinite tenure.[21]

In the light of conditions of tenure, the superintendent should probably be considered from a different point of view. The type of service rendered by a superintendent of schools is quite different from that of the teacher and, in large measure, even from that of the supervisor and the principal. He is primarily the "educational strategist." His is the responsibility for coordinating plans and furnishing effetive leadership in molding these plans into a well-organized educational program. In carrying on this function he must have some protection against collateral attack by an overly-dictatorial board of education. This protection is usually provided by definite, long contract periods of approximately four to five years, after one year of probation. During the life of this contract the board of education should not be permitted to dismiss him except for serious cause, and

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[21] Cubberley, on. cit., p. 218.

then only by a heavy majority vote of four-fifths, five-sevenths, or some like figure. Neither should his salary be subject to reduction during the contractural period.[22]

With this protection from attack the superintendent is relatively free to plan and carry into successful operation an effective educational program. At the end of his contracted term of office his accomplishments are then subject to review and appraisal and, if he has handled the position well, his work will have justified his actions and a renewal of his contract is almost assured. Under the long term contract plan, a superintendent is provided protection to the extent that he is free to administer the schools under him without undue interference. At the same time he is not so secure in his position that he can afford to become lax in carrying out an efficient, economical, and educationally sound program.

The enaction of a suitable tenure law based on the principles pointed out in the foregoing analysis should be

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[22] Ibid., p. 219.

an early objective of the educational profession in New Mexico.

The present law practically amounts to a blanket guarantee of a life teaching position for all teachers who have served for a period of three years and hold a contract for a fourth year. The result of this law can be that a large number of teachers just entering the profession will have three or less years of service in any one system. Such a condition can easily result from the fear of superintendents that they will not be able to dismiss unsatisfactory teachers under the existing law, coupled with a doubt as to whether certain individuals will remain satisfactory when the gentle spur of possible dismissal is removed. Such a law as is at present in effect may thereby result in less tenure for many teachers than would be the case if no law were in operation.

TEACHER RETIREMENT

Section 55-1114. Conditions for Retirement.
Any regular full time employee of the public schools of New Mexico, the state department of vocational education, or any of the state educational institutions mentioned in Section 11, Article 12 of the New Mexico State Constitution who is over sixty years of age and who has been employed in the schools or said institutions for at least 15 years may be retired either at his own request or at the request of his governing board of education. (Half credit may be given for not more than ten years service outside the state prior to service in New Mexico.) In every case, not less than 15 years of service is required in New Mexico, the last

five of which has been consecutive and immediately prior to the date of retirement. However, any person who has been employed for more than thirty years in any of the said services in New Mexico, although the service may have been in more than one of such services, shall be temporarily reemployed and retired; notwithstanding any requirement that such person shall have served five years prior to retirement.

Anyone in such emeritus employment may be required by his governing board to perform such services as he may be physically qualified to perform. (Session Laws, 1937; Amended, 1941 and 1945.)

Section 55-1115. Retirement Benefits.
When any person has served in any of the aforementioned services or a combination of such services for a period of twenty years or more and is retired, he shall be entitled to receive annually for the remainder of his natural life sixty per cent of the average annual salary paid to him during the five years of full employment next preceding the date of retirement; providing the minimum amount be paid shall be $720 and the maximum amount $1,800 per annum. Any person whose average annual salary for the five years of employment preceding retirement was less than $720 shall receive the full amount of such salary.

When any person has served for 15 or more years but less than 20 years is retired he shall receive annually for the rest of his natural life that proportion of sixty per cent of his average salary for his last five years of service as his total service bears to 20 years. The minimum and maximum amounts in such cases shall be the proportionate amount of the minimum and the maximum amounts as stated hereinbefore.

No person may receive as retirement pay in any one year more than his pro rata part of actual money on hand in the retirement fund available for emeritus employee's salaries. (Session Laws, 1937; Amended, 1939, 1941, and 1945.)

Section 55-1117. Retirement Due to Disability.
The governing board may retire from active service any regular full time employee when such person is totally disabled from continuing his profession as shall be determined by a certificate of medical examiners appointed by the state retirement board, provided such person shall have been employed in one of the aforementioned services or a combina-

tion of such services for a period of not less than five years. He shall receive as compensation during the time of his total disability an allowance as provided in section 55-1115, but determined upon the ratio which his years of service in New Mexico bears to twenty years. (Session Laws, 1937; Amended, 1939, 1941, 1945.)

Section 55-1116. Dismissal of Employees Entitled to Retirement.

Any full time employee of the public schools or the aforementioned institutions who has the qualifications as to age and time of service which would entitle him to retirement under this act may not be discharged by the governing board unless he shall have been convicted of a crime or shall have been found guilty of conduct involving moral turpitude. (Session Laws, 1937; Amended, 1945.)

Section 55-1118. Reduction of Retirement Allowance.

If any person retired under this act shall also be entitled to benefits under any state or national old age benefit law, then the amount paid such person under this act shall be only the difference between the amount received under such other retirement and the amount provided in this act. (Session Laws, 1937. Amended, 1945.)

Section 55-1119. Teacher Retirement Fund.

The teacher retirement fund shall be made up of three per cent of the emergency school tax; three per cent of the schools' part of the state income tax; three per cent of the schools' part of the funds from the mineral leasing act; and three per cent of the payrolls of the regular full time employees of the previously mentioned institutions and the state board of vocational education.

In the event there shall be insufficient money in the state teacher retirement fund to pay all retired employees, the state budget auditor and the state superintendent of public instruction shall in their certificate to the state treasurers in the ratio in which amounts to be paid bear to the money in the fund.

Any surplus in the said fund at the end of any fiscal year shall be held as a reserve, and shall, upon the order of the state superintendent of public instruction and the educational budget auditor, be invested as provided by law, and all interest thereon shall be placed to the credit of such fund. (Session Laws, 1939; Amended, 1941, 1945.)

Section 55-1120. Nothing in this act shall prohibit governing boars from carrying group life or accident insurance upon their employees either acting or emeritus. (Session Laws, 1939; Amended, 1945.)

Section 55-1121. Crediting Retirement Fund. Disbursement. Penalty for Violation.
All money provided for the retirement of teachers under this act which shall be received from the state treasurer by the county treasurer of any county making provision for the retirement of teachers and other employees as provided in this act shall be credited by the county treasurer to the teacher retirement fund item of the school maintenance budget of such school district which shall have employees retired under this act.

Disbursements from such fund shall be made only on warrants issued and signed by proper school authorities and countersigned by the state educational budget auditor and the state superintendent of public instruction.

Any county treasurer violating any provision of this act shall upon conviction be punished by a fine not exceeding $1,000 and imprisonment not exceeding one year. (Session Laws, 1939; Amended, 1945.)

Section 55-1122. Emeritus Employees Already Retired.
Nothing in this act shall adversely affect the emeritus employment of a retired employee, and all such employees shall be deemed to have been retired under the provisions of this act. (Session Laws, 1945.)

Section 55-1123. State Retirement Board.
The state retirement board shall consist of the state superintendent of public instruction, the educational budget auditor, the state treasurer, the president of the New Mexico Educational Association, and the president of the Emeritus Employees Association of New Mexico. (Session Laws, 1945.)

A plan whereby aged and disabled teachers may be retired is an obligation which every state should and must accept if the educational welfare of the children is to be protected. Although individual teachers benefit incidentally

by such retirement, the greatest benefit is to the pupil and is only on this principle that a teacher retirement law can be justified.

Both the teacher and the public are aided by a good retirement law. Many teachers are not paid salaries sufficient to enable them to save an amount substantial enough to provide for their personal welfare during old age or permanent disability. Federal social security is not granted to teachers. It, therefore, often becomes necessary for a teacher to continue in the classroom--usually to the detriment of the pupils--long after she has reached an age at which she should have retired.

Although all the states except one, Idaho, have teacher retirement plans,[22] not all teachers find it possible to retire at retirement age. This is due to the relatively small retirement allowance which some states provide. In 1944, among those teachers retired in twenty-six states having joint-contributory plans the average retirement

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22 "Statistics of State and Local Retirement Systems," National Education Association Research Bulletin, 23:31, April, 1945.

allowance ranged from a low of $249.63 to a high of $1,534.00.[23] This shows why many teachers find it necessary to continue in the classroom after they have reached retirement age. They simply cannot afford to retire.

Inadequate retirement protection has probably been one of the factors which has kept much outstanding young talent from entering the teaching profession, the result of which, again, has been the retention of the aged teacher in the classroom by virtue of the fact that there has been no one to replace her upon her retirement.

Relative to attracting and holding good teachers, the National Education Association passed the following resolution as early as 1900:

> Proper standards--both general and professional--for entrance upon the work of instruction, security of tenure, decent salaries, and an adequate pension system are indespensible if the schools are to attract and to hold the service of the best men and women of the United States; and the nation can afford to place its children in the care of none but the best.[24]

It appears that the states can ill afford to continue

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[23] Ibid., p. 43.

[24] "Status of Teacher Retirement," National Education Association Research Bulletin, 19:5, January, 1941.

to force disabled and senile teachers upon their children simply because of weak and inadequate retirement systems. Grave educational waste is the end product for the children and financial waste results from salaries paid to teachers no longer capable of earning the amount paid to them.

The objective relative to retirement systems is no longer one of securing these systems in the several states but is now one of strengthening them by the application of sound educational and financial principles. Such a set of principles has been formulated by both the Carnegie Foundation for the Advancement of Teaching[25] and the National Council on Teacher Retirement.[26]

In making an analysis of the New Mexico Teacher Retirement Law these principles will be used as the ideal and the law measured by the degree to which it conforms to these principles. The first three principles were formulated by the Carnegie Foundation for the Advancement of Teaching and the remaining twelve were set up by the National Council on

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[25] Ward G. Reeder, The Fundamentals of School Administration, (New York: The MacMillan Company, 1941.), p. 225.

[26] Oscar F. Weber, Problems in Public School Administration, (New York: The Century Company, 1930), p. 276.

Teacher Retirement.

(1) Membership in the system should be optional for those persons who were teaching prior to the going into operation of the pension law. Membership should be compulsory, however, for all teachers accepting appointment after the enactment of the law.[27]

It is imperative that all retirement systems look toward a time when becoming a member of such system is compulsory for all who are eligible.[28] Requiring all new teachers and other employees to become members will bring about such a condition, and it is probable that most of the older employees will join as soon as a system is put into effect. No system can long operate without full support of those eligible to become members.

New Mexico, since it has a pension plan to which teachers do not contribute, automatically provides membership for all eligible to come under the privileges of the act. This is one advantage which the pension plan has over the joint-contributory plan.

(2) The rules of the system should provide for retirement of any teacher when old age or disability makes satisfactory service no longer possible. The retirement allowance should be sufficient to enable the teacher to live in comfort.[29]

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[27] Reeder, loc. cit.

[28] Reeder, loc. cit.

[29] Reeder, loc. cit.

Though this principle of retirement does not necessarily mean that mandatory retirement at a given age be included in the law, it may be well to touch upon that viewpoint.

Much has been said both for and against mandatory retirement. The opinion is held by some that unless such is stipulated by law that actual retirement age will become five or more years past that age when the law permits retirement. While this may be true--which is doubtful--mandatory retirement would force out of service those individuals who are still valuable members of a faculty, supervisory, or administrative group though they may have reached retirement age.

The writer believes that retirement should come at the request of either the individual or his governing board of education--this, of course, only when retirement age has been reached or the teacher becomes disabled. Such a provision makes it possible for the teacher who has not become senile to continue teaching at the discretion of the governing board. At the same time, the board is free to force the retirement of the teacher who can no longer render satisfactory service. This is a provision of the New Mexico law which is a wise one.

Retirement allowances are not based primarily upon the principle of adequate care for aged teachers who have

not been able to provide for their old age. Such would be an unsound reason for establishing a retirement system. As stated before, the first and basic consideration is the welfare of pupils, and all retirement plans can be justified only by the protection which pupils receive from the unsatisfactory instruction of individuals who have become incapable of efficiently handling their classroom supervisory, or administrative duties. Retirement allowances which are inadequate and provide a mere pittance for the superannuated personnel cannot serve the very purpose for which the retirement system should be established.[30]

The New Mexico retirement law provides allowances equal to 60 per cent of the average annual salary for the last five consecutive years of service. A statutory minimum is set at $720 and a maximum at $1,800. This is certainly an adequate allowance when compared to those of other states and would serve well the purpose for which the law was enacted if those who were to benefit from the act could feel at all

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[30] Weber, loc. cit.

sure that such allowances were based upon an actuarially sound plan. Such, however, is not the case, as the New Mexico law provides no assurance to the individual teacher that the amount of retirement allowance as provided in the law will actually be available when she reaches retirement age. In fact, the law admits of this weakness. It provides that in the event there is insufficient money in the state teacher retirement fund to pay all retired employees the state budget auditor and the state superintendent of public instructions shall certify to the state treasurer apportionments to the various counties based upon the ratio in which amounts to be paid bear to the available money in the fund. Here is admission in the law that there is a definite possibility that at a future date the retirement fund may be depleted to the extent that it is insufficient to meet the payments which the law proposes that it will. As a result, the retired or retiring personnel must take a fraction of that amount or possibly none at all if the fund becomes exhausted.

The New Mexico law appears to be a classic exampe of a retirement statute which promises to unsuspecting teachers a relatively high retirement allowance but which contains no sound actuarial plan to insure that money will be available to meet such an allowance when the teacher reaches

retirement age. If the teacher looks only at the proposed allowances she is likely to feel that she is being graciously protected. However, when she investigates the weak structure of the retirement system she is likely to feel little sense of security and little desire to trust her future financial well being to such a system.

> (3) The contributions of the teacher and of the public should be approximately equal, and in no case should the teacher or the public provide the contributions without the help of the other. The amounts to be paid by the teacher and by the public should be stated in the law creating the pension system.[31]

Since the New Mexico teacher retirement law is financed wholly by the state, with no teacher contribution, the weakness of the law in the light of this principle is obvious. As early as 1918 the Committee on Teachers' Salaries, Tenure and Pensions of the National Education Association issued a report which contained the following statement:

> The only way in which absolute security can be obtained is for the contribution of the public as well as the teacher to be paid annually, credited to the individual teacher, and set aside to accumulate until the time of his retirement. This is also the only economical plan.[32]

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[31] Reeder, loc. cit.

[32] "Teacher Retirement Systems and Social Security," National Education Association Research Bulletin, 15:95, May, 1937.

It is impossible for a state financed pension system to conform to this principle.

> (4) The deposit by the teacher and payment by the public should be stated by the organic act creating a retirement system, subject to adjustment in accordance with future actuarial investigations.[33]

Again, because of the lack of contributions by the teacher, New Mexico's retirement system fails completely to meet this principle.

Recent tendencies in retirement laws indicate that the retirement annuity should be approximately one-half the salary of the teacher at retirement. It has been determined that in order for the teacher to retire at one-half her annual salary it will be necessary for the yearly contributions to be approximately 10 per cent of the salary. Five per cent of this would be contributed by the teacher and 5 per cent by the state.[34]

It is a well established fact that regardless of the

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33 Weber, op. cit., p. 276.

34 Ibid., p. 278.

amount of the annuity the fixation of this amount automatically will determine the amount of the annual contribution.

The New Mexico system proposes to pay a retirement benefit of 60 per cent of the average annual salary for the last five years of service by using only 3 per cent of the revenue from which teachers' salaries are paid. Approximately 80 per cent of the revenue derived from the emergency school tax, the schools' part of the state income tax, and the schools' part of the money from the mineral leasing act is used in paying teachers' salaries.

It appears unlikely that 3 per cent of these monies plus 3 per cent of institutional and vocational education board payrolls will produce enough revenue to pay retirement benefits of 60 per cent of annual salaries for a very long period of time when actuarial figures have set the sum of state and teacher contributions at 10 per cent of annual salaries as the amount necessary to safely finance benefits equal to 50 per cent of annual salaries. There is every reason to believe, therefore, that at some future date the teacher retirement fund in New Mexico will fall short of the revenue necessary to meet proposed benefit payments.

(5) The teachers' contributions and the state's payments to the retirement fund should be made regularly and concurrently during the teacher's period of

service.[35]

Here, again, the state-financed pension system fails to meet an important principle by virtue of the fact that there are no teacher contributions.

> (6) The retirement board should open an account with each individual teacher. Sums deposited in that account by the teacher should be held in trust for that teacher.[36]

The inadvisability of throwing all money into a common retirement fund is obvious when the results of such a plan are closely examined.

Such a system would seem to be working well during the early years of operation of the retirement law, but eventually it could become evident that retired teachers were drawing annuities out of all proportion to their contributions. New teachers, rather than building up annuities for themselves, would find that they had been paying the annuities of retired teachers. After a few years of this system many more teachers would be retired and a deficit

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35 Ibid., p. 276.

36 Weber, loc. cit.

would show up in the fund.

The only safe and business-like manner by which such a situation may be avoided is by separate accounts for each individual member. This insures that all contributions of an individual teacher, together with earned interest, is credited to the account of that teacher. As these funds accumulate they serve only to build up more funds for the individual. The teacher is thereby assured of the annuity for which the law provides.[37]

The New Mexico Retirement Board Cannot hold separate accounts for each individual member of the retirement system because the teacher makes no contribution and is, therefore, unable to build up an individual annuity.

> (7) An Adequate and actuarially sound reserve fund should be created to guarantee that the necessary money to pay benefits promised will be on hand at the time of retirement.[38]

In New Mexico the surplus money of the state teacher retirement fund at the end of each fiscal year is held as a

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[37] Ibid., p. 280.

[38] Ibid., p. 276.

reserve. Since this surplus is unstable and uncertain, the reserve fund is likewise uncertain. Of course, for the first few years of operation of the plan the reserve will build up rapidly due to the relatively small number of retired personnel. However, when it becomes necessary to use all money credited to the retirement fund for a given year in addition to dipping into the reserve fund in order to pay retirement benefits, the rapid break-down of the retirement plan is certain.

The investment of this reserve fund in New Mexico is not placed in the hands of the retirement board, but is handled in the same manner as other invested state funds. This usually means that the investments are made in state bonds or highway debentures. Such a practice is sound only when the investments can be made within the state on a basis as safe and as profitable as elsewhere.[39]

(8) Periodic actuarial investigations should be made of every retirement system to insure its financial soundness.[40]

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39 J. E. Seyfried, Analysis and Evaluation of New Mexico State School Laws, The University of New Mexico Bulletin, Vol. 6, No. 2 (Albuquerque: University of New Mexico Press, 1932), p. 17.

40 Weber, op. cit., p. 276.

Actuarial investigations of a retirement system should take place at least once every three to five years, and it is even possible that the better plan would be to provide for such investigations each year.[41] In view of the fact that future conditions can never be exactly predicted, it would seem wise to provide for these investigations in order to insure the continued financial soundness of a retirement plan.

New Mexico makes no statutory provision for such services of an actuary. In fact, the New Mexico plan is so basically unsound that the services of an actuary would probably have little effect in so far as its future is concerned.

(9) A retirement allowance should be provided for disabled teachers after a reasonable period of service.[42]

The New Mexico retirement plan does provide for disability retirement. A teacher may receive disability retirement allowances after five years of service, being

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[41] F. P. Graves, The Administration of American Education, (New York: The MacMillan Company, 1932), p. 283.

[42] Weber, op. cit., p. 276.

paid that proportion of 60 per cent of her average annual salary for the last five years of service which her years of service bear to twenty years.

> (10) Teachers leaving the service before the regular retirement age should retain rights to all monies accumulated in their accounts. Teachers' accumulated deposits should be returnable upon withdrawal from teaching service or death prio to retirement.[43]

Under a state-financed pension plan there are no individual contributions, hence no accumulated accounts. As a result, teachers who for one reason or another leave teaching service in New Mexico to take up similar employment in another state have no money to their credit which they may transfer and find it necessary to start from the very beginning in building up a retirement annuity in another state. If they leave teaching service to enter other employment, they forfeit all rights to any allowance from a system to which they probably have given several years of service.

Should a teacher die before retirement age, her

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[43] Weber, loc. cit.

rightful beneficiary receives nothing. If death happens to come to a person nearing retirement, the hardship on the family may be excessive due to the fact that very few teachers are able to build up an estate of any consequence.

> (11) The teacher should have the opportunity to elect the manner in which he will receive the benefits represented by the accumulated value of his deposits and the state's payments.[44]

New Mexico provides the only method of payment practice-under the plan which is not joint-contributory. Since the state finances the total plan, a monthly income as provided by law is the only fair and workable procedure to follow.

> (12) Upon the adoption of a retirement plan, teachers should be given credit for their service prior to the establishment of the system. Funds for this purpose should be provided by the public.[45]

Under the present pension system in New Mexico it becomes unnecessary for the law to specifically provide for prior service. The only requirements for a teacher being

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[44] Weber, loc. cit.

[45] Weber, loc. cit.

placed on emeritus employment status are age and term of service. If a teacher were able to meet these requirements in the first year during which the plan was in operation, she received the full retirement allowance.

The New Mexico retirement law does not stop here, however. It generously includes all those with more than thirty years of service by requiring that they be temporarily reemployed and retired.

> (13) The public should guarantee active teachers the benefits which they had a reasonable right to expect under the old system. It should guarantee teachers retired under a previous system the allowance promised at the time of their retirement.[46]

There can be no guarantee to any individual that he will receive the amount provided for in the present or previous New Mexico retirement laws. All money for payment of benefits has been provided by the state and retirement in New Mexico, therefore, amounts to a gratuity. It is a well-established fact that what is granted by legislative act can likewise be taken away if there has been no contractual

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[46]Weber, loc. cit.

relationship involved. A future legislative act may increase, decrease, or completely stop retirement payments, and those benefiting by such retirement will have no means of stopping reductions or withdrawals other than through political pressure brought about by enlisting public opinion. It appears that public opinion is too fickle an instrument for the teachers of the state to have to depend upon for the protection and continuation of retirement allowances.

A joint-contributory plan under which each eligible individual has a contractural relationship with the state is the only sure way by which retirement allowances may be guaranteed. The courts would probably uphold the contract legally entered into by the state and the teacher when the teacher shall have made her first payment and an account is opened for her.

Until such a time as the New Mexico plan is made joint-contributory, those eligible to receive benefits must understand that they have no real guarantee of receiving the payments stipulated in the present law and are left solely to the mercy of the state legislature.

(14) Provision should be made for cooperative or reciprocal relations between retirement systems in different states.[47]

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[47] Weber, loc. cit.

The New Mexico law makes no provision for transfering funds to another state in the case of a teacher leaving teaching service in New Mexico to take it up in another state. It does, however, provide for accepting one-half the service outside New Mexico previous to service in New Mexico of teachers transferring to New Mexico Schools. The maximum number of transferable years of service is ten.

Retirement laws should be carefully made in order not to interfere with teacher mobility. On the other hand, reciprocal relations between states are exceedingly difficult to achieve because of the variations in the several state retirement laws. Nevertheless, such cooperation should be the eventual goal of every state retirement system.

> (15) The administration of the retirement system should be in the hands of a retirement board whose make up is carefully prescribed in the retirement law, and which represents both the public and the teachers.[48]

From one point of view it may be said that there is only

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[48] Weber, Loc.cit.

one true representative of the teachers, the president of the New Mexico Educational Association on the New Mexico Retirement Board. The other members are the state treasurer, who is an elected official and whose interests are rightfully those of the public; the educational budget auditor, a political appointee and another representative of the public; the state superintendent of public instruction, an elected official who, by virtue of this political office, loses much of his value as a representative of the public; the state superintendent of public instruction, an elected official who, by virtue of his political office, loses much of his value as a representative of teachers; and the president of the Emeritus Employees Association, one who might be inclined to protect the interests of those already retired rather than those to be retired in the future.

The membership of this board could be greatly improved by including a classroom teacher, a school principal, and an unelected superintendent of schools, and by excluding at least, the president of the Emeritus Employees Association.

It is found that the great weight of authority favors a joint-contributory retirement system rendered actuarially sound by a reserve fund, which is merely the accumulation of all monies paid into the system plus interest earned on investments. Such a plan has the many advantages pointed

out in the foregoing analysis. Its wide popularity is exemplified by the large number of states in which this system or a very similar system is in operation. There are, at present, only two states, New Mexico and Rhode Island, in which teacher retirement operates under a state-financed plan to which teachers make no contribution.[49]

By review of the preceding analysis of the New Mexico teacher retirement law it is found that it fails to conform to principles numbered: 1, 3, 4, 5, 6, 7, 8, 10, 11, 13, and 14. (1) Original membership is not optional (this appears to be a strength rather than a weakness); (3) the public provides all the funds; (4) the teacher provides none; (5) the state's payments are regular but the teacher makes none; (6) it is impossible for teachers to have individual accounts; (7) the reserve fund is not actuarially sound; (8) actuarial investigations are not required; (10) teachers may make no withdrawals upon leaving service and beneficiaries receive nothing at their deat; (11) teachers have no voice in the manner in which benefits will be paid; (13) teachers have

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[49] Statutory Provisions for Statewide Retirement Systems, (Washington, D. C., Research Division and National Council on Teacher Retirement of the N. E. A., Jan., 1946), p. 6.

no guarantee that benefits under past or present laws will be paid; and (14) although New Mexico allows one-half credit for service outside the state up to ten years, no transfer of money may be made to another state on behalf of a teacher transferring out of New Mexico schools.

The law adequately conforms to only the four principles numbered: 2, 9, 12, and 15. (2) A teacher may be retired at her own request or that of the governing board; (9) disability retirement is provided for; (12) full credit for past service was automatic at the time the law was enacted; and (15) the administration of the retirement system is in the hands of a retirement board, though teacher representation on this board is not adequate.

There has been considerable controversy concerning New Mexico's retirement law, but many are satisfied with it in its present form. Its advocates insist that it fits New Mexico's own conditions better than any other plan. They claim that a joint-contributory plan would entail administrative costs out of proportion to benefits gained, and the benefits to retired personnel would be considerably less than they are at present. A steadily increasing reserve fund is offered as evidence of the financial stability of the present system. Relatively high retirement allowances are pointed to as proof of the superiority of the pension plan.

There is little evidence that conditions in New Mexico are greatly different from those in other western states of comparable population and per capita wealth, most of which states maintain joint-contributory plans.

It is true that joint contributory systems entail much higher administrative costs, and the pension plan has a distinct advantage on this basis. However, it is highly questionable as to whether the savings realized by administrative costs being greatly lowered is a factor which is more important than the assurance that funds will be available for the payment of benefits when retirement age is reached. Politics being what they are and legislatures being political bodies, it appears that old age security of teachers and welfare of pupils hangs by a very thin thread. This thread can be broken by a shift in polits as any legislature of the future finds it politically expedient to reduce retirement allowances. Such is not only possible, but highly probable at such a time as revenue receipts decline from their present high level and income into the retirement fund falls below disbursements. It is very probable that reserves which are now being built up will long be sufficient to provide for such a contingency.

It would be far better for future retired teachers to be assured of benefits less than those now paid than to gamble on receiving little or nothing at all. There is only

one way be which present employees can be assured the allowances promised in the law and that is by making the plan joint-contributory and a guarantee clause written into the law which would force the state to pay promised benefits in order to avoid the abrogation of an implied contract between itself and the teacher.

In view of these conclusions, the writer feels that the present retirement system in New Mexico is so replete with weaknesses that it is doomed to failure in the future. It is, therefore, highly desirable that the retirement law in New Mexico be strengthened along the following lines:

1. It should be made joint-contributory.
2. An actuarially sound reserve fund should be maintained.
3. The state should be required to match teacher funds concurrently.
4. Actuarial investigations should be made at least every three to five years.
5. Adequate safeguards should be placed on investments of reserve funds.
6. Administrative costs should be kept at a minimum and paid for by the state.
7. The retirement board should include adequate representation of both the teacher and the public, and under no conditions, should retired personnel serve on this board.
8. Membership should be made compulsory for all those

entering educational fields after the establishment of the system.

9. Full credit should be given for service in the state previous to the establishment of the system, this service credit to be financed by reserves now on hand.

10. Teacher contributions should be on a rate fixed by actuarial tables.

11. Public and teacher contributions combined must be an amount sufficient to pay a retirement allowance which will not reduce a retired teacher to virtual poverty.

12. Contributions of the teacher should be returned, with interest, upon withdrawal from service, and upon death prior to retirement such contributions should be returned to a beneficiary.

13. A teacher withdrawing from service before retirement should be allowed to take a deferred annuity policy instead of a cash refund.

14. Adequate guarantee of promised allowances should be made in the law.

15. Efforts should be made to obtain reciprocal agreements with as many other states as possible at the earliest possible date.

16. Retirement allowances must be based on mortality tables.

17. Retiring employees should be given several choices of the way in which they desire to receive retirement allowances.

CHAPTER V

MISCELLANEOUS LAWS

This chapter deals with those laws which could not be properly included under previous chapter headings. Included are the school census law, the school bus transportation law, the free text book law, courses of instruction, consolidation of school districts, the New Mexico educational survey, the fire drill law, and the non-profit school lunch program.

THE SCHOOL CENSUS

Section 55-1501. Between the first day of March and the first day of May of each year, every board of education of any of the public schools of this state shall cause to be made a complete and accurate school census which shall only include all unmarried persons who will be six years of age or not over eighteen years of age on the first day of January of the year following the taking of the census. (Session Laws, 1941.)

The major criticism of this section is that it does not provide for the taking and keeping of a continuous census. If a census has as one of its major purposes

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1 Ward G. Reeder, The Fundamentals of Public School Administration, (New York: The MacMillan Company, 1941), p. 488.

assisting in the enforcement of compulsory attendance, a yearly enumeration will fall short of securing the best information concerning the number of pupils of school age residing in a given school district. Many children make their residence only for a short period of time in a school district and, unless a continuous census is kept, these children may not show on the census record at any time. As a result, these children may not attend school while they are in the district and their non-attendance never be detected.

It may be pointed out here that a school district does not have a continuous census when a card is filled out once a year for every child in the district who is eighteen years of age or under. To be continuous a census must be so kept that at any time during the school year the file will contain a card for every child of census age residing in the district but will not contain the cards of such children no longer in residence within such district.[2] This means that information must be continuously received concerning births,

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[2] Ibid., p. 492.

children moving out of the district, children moving to the district, deaths of census age children, and children passing the census age. Such information is not easy to secure, but there are several aids which may be employed in effecting its continuous receipt. Reeder has listed several of these aids as follows:

> 1. Put in operation an efficient set of transfer slips. Such a set of transfer slips will make it possible for the census office to secure information promptly concerning all changes in address, or in the school attended by the pupil
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> 2. Check the census cards each semester or year--depending upon whether the school promotes semi-annually or annually--with the principal's office record card. . . .
>
> 3. An organization of pupils could be effected so that some pupil would become responsible for reporting to his principal all families who move into or out of a certain small area. . . .
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> 4. Arrangements should be made whereby the local officials who are responsible for the registration of all deaths and births would report all deaths and births to the attendance office at short and regular intervals.
>
> 5. Members of the police force, and drivers of moving vans, should be required to report all families moving into or from the district. Any other plans that local districts can devise which will insure more prompt and more adequate reports concerning incoming and outgoing families will make possible a school census that will be more nearly continuous.[3]

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[3] Ibid., p. 493.

may be forecast with some degree of accuracy.

Section 55-1502. Census Enumerators.
The census enumeration shall be made by a person or persons designated by the respective boards of education, and the cost may be paid by the governing boards out of funds available for that purpose, but such cost shall not exceed three cents for each genuine name enumerated in each municipal district and territory annexed thereto for school purposes, and shall not exceed five cents per name enumerated in rural districts. (Session Laws, 1941.)

The method of making the census enumeration as set forth in this section is archaic and outmoded. The census enumerator has often been a needy individual or one selected for political reasons. Qualifications for making an accurate count have often been ignored and the task completed in an inefficient manner. In fact, "padding" of reports has often been done purposely in order to secure increased funds for the district.

Because of the resulting inaccuracy of the present census records, their value, other than for the distribution of state funds, is greatly reduced, and because they are used in the distribution of funds they encourage dishonesty. A continuous census, as described in the preceding section analysis, would provide valuable information for school authorities, and much inaccuracy would be avoided.

Section 55-1503. Certification of Census and Distribution of Current School Fund. The board of education of each of the school districts shall certify the census enumeration to the state superintendent of public instruction on or before the first day of June of each year. The state superintendent of public instruction shall, on or before the first day of July of each year, compile from the enumeration certificates received the school census of each school district in the counties and certify the same to the educational budget auditor, the state auditor, and the state treasurer as being the correct census for the distribution of the current school fund for the ensuing fiscal year, and the state treasurer shall make distribution of such fund to the various counties. (Session Laws, 1941.)

Although the use of the school census in the distribution of state general aid funds is declining, few states have taken any action in recent years toward entirely eliminating this basis for distribution.[4] Such a method of distribution of state money has been attacked from several angles by outstanding authorities.

Cubberley, as early as 1905, pointed out that the school census used as a basis for the apportionment of funds, unduly favored districts which were negligent in the enrollment of pupils or in which private or parochial

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[4] "State School Finance Systems," National Education Association Research Bulletin, 20: 165, November, 1942.

schools were educating pupils for whom funds were collected and used by public schools.[5]

The major portion of state school money in New Mexico is distributed through the state public school equalization fund. Average daily attendance is the basis for such distribution. This, to a degree, reduces the number of children on census rolls not attending school, since they not only must be enrolled but attending if the school district is to realize its greatest financial gain. Nevertheless, many school-age children still provide their school districts with certain funds by virtue of being on the census rolls of the district regardless of their enrollment or attendance.

The census, as a basis for the distribution of funds, does not take into consideration the ability, need, or effort of local school districts to finance school costs.[6] Every district, rich or poor, receives the same amount for each child enumerated, and since the rich districts are almost invariably the most thickly populated and have the

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5 Paul R. Mort, State Support for Public Education, (Washington, D. C.: The American Council on Education, 1933), p. 94.

6 Reeder, op. cit., p. 486.

most private and parochial schools, state aid thus apportioned tends to favor them. In fact, this advantage held by richer districts has probably been one reason why the school census is still used as a basis for apportionment. These districts have been loathe to give up such a financial advantage.

Dr. S. P. Nanninga, Dean of the College of Education of the University of New Mexico, refers to the distribution of state school funds by use of the census child as an unsatisfactory plan. He says:

> The plan disregards tax rates and assessed valuations. . . and offers no incentives to communities to insure longer terms, to enforce compulsory attendance, and to relieve crowded rooms. The smaller the percentage of census children enrolled, the greater the value of the grant, and . . . it encourages school districts to "pad the census" to obtain larger money grants. Where private or parochial schools exist the plan pays communities for children who do not attend the public schools.[7]

In view of the distinct weaknesses encountered in the use of the school census as a basis for apportionment of the current school fund, it would be to the general welfare of education in New Mexico for such a method to be abandoned and a basis found which more nearly complies with the

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7 S. P. Nanninga, The New Mexico School System, (Albuquerque: The University of New Mexico Press, 1942), p. 147.

equalization principle.

COURSES OF INSTRUCTION

Since the public schools exist primarily for the purpose of properly training the future citizens of the state and the nation, the state, oper ting through its legally constituted agents, has the power to prescribe certain courses of instruction which are to be carried on it the schools.[8]

It is a foregone conclusion, however, that in a modern educational program the curriculum is never static. It is, or should be, always in a state of change. This does not mean that radical changes are to be continually taking place to the constant confusion of pupil and teacher alike, but that the way must be left open for changes which will meet the particular needs of a given locality. Too often legislatures have created undesirable standardized situations by requiring the teaching of specified school subjects throughout a whole state. In this connection, Graves has made the

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[8] Newton Edwards, The Courts and the Public Schools, (Chicago: The University of Chicago Press, 1933), p. 555.

following significant statement:

> As we cannot anticipate the problems that our children will have to face, we can scarcely hope to furnish them in advance with definite solutions. Much less can such a civic improvement be realized through prescriptions by state legislatures of any portion of the curriculum. No one will deny the right of the people to determine in a broad way through their representatives what the aims and purposes of education shall be, but it is obviously not desirable that educational laymen should undertake to prescribe the details of so delicate a task by direct means.[9]

Section 55-1602. Course in Spanish Language. In all public schools in the state having three or more teachers and an average daily attendance of ninety or more pupils, the Spanish language shall be taught in the fifth to the eighth grades inclusive. The governing boards of education, by resolution spread of record upon its minutes, specifically naming the school or schools to which the order applies, may dispense with the teaching of Spanish during any school year. No pupil may be required to take the course in Spanish in any public school where the parent or guardian of such pupil objects in writing to the superintendent or principal in charge of such school. (Session Laws, 1941.)

Though this section requires that a course in Spanish be taught in grades five through eight, it wisely delegates to governing boards of education the authority to dispense with the teaching of such a course when it deems such to be

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9 F. P. Graves, The Administration of American Education, (New York: The MacMillan Company, 1932), pp.37-38.

not in the best interest of the pupils or the community. Boards of education, through their executive officer, the superintendent, are in a position to know whether the teaching of Spanish is a worthwhile project in the elementary schools under their control. Because of this fact, they should have the power to eliminate such a state-required subjects when it does not fit the particular needs of their own schools.

Section 55-1603. Qualifications for Teachers of Spanish. Teachers of Spanish in the public grade schools of the state shall have the following qualifications:

(a) An ability to speak the Spanish language in a manner sufficient to carry on an ordinary conversation with school children from the fifth to the eighth grades inclusive, or shall have taught Spanish for at least two years.

(b) He shall have a minimum credit of ten semester hours or their equivalent in Spanish from some accredited normal school, college, or university. (Session Laws, 1941.)

There is no objection to certain qualifications being required of teachers of Spanish in the elementary schools, due to the fact that any foreign language course is specialized and cannot be successfully taught by those untrained in the language itself. It seems, however, that the state board of education, acting on the recommendation of the state department of education, should be responsible for setting the qualifications to be met by special teachers to the same degree that it is responsible for setting the qualifications to be met for certification of all teachers.

Statutory qualifications for teachers tend to be entirely too static. If instruction is to be made to meet the demands of an ever changing society, instructors' qualifications must not be made rigid and unchangeable through inflexible statutory enactments.

Section 55-1604. Responsibility of the State Board of Education. The state board of education is hereby charged with the responsibility of prescribing a course in Spanish and of enforcing this act. (Session Laws, 1941.)

This complete law appears to be unnecessary in view of the fact that Spanish is taught in grades five through eight only in those school districts where it is feasible and considered useful. As a matter of fact, the act is inoperative due to the clause in section 55-1602 which grants to local boards the authority to dispense with offering a course in Spanish. It is doubtful that local boards which do not provide for the teaching of Spanish in the previously-mentioned grades make such a matter of record on their official minutes. The law is simply ignored, not only by local authorities but by the state board of education as well. Such a law should be removed from the statutes.

55-1605. Humane Education. The state board of education shall prescribe a course in humane education to be taught in the public schools of New Mexico. This course shall be such as, in the opinion of the state board of

education and the state superintendent of public instruction, will educate and train the pupils in the humane treatment of dumb animals, and other subjects calculated to develop in the minds of the pupils a spirit of kindness, humanity, and tolerance. (Session Laws, 1941.)

There is no doubt that it is important that pupils learn humane treatment of dumb animals and develop a spirit of kindness and tolerance. It is extremely doubtful, however, that such education should be accomplished by a course required specifically for teaching these things. Children learn through a wide variety of experiences, and these are provided by the home and the community as well as the school. The writer feels sure that a child learns kindness and tolerance in school only to the degree in which his school experiences demonstrate the compensations derived from acts of kindness and tolerance. The child learns that experiences gained through acts of kindness and tolerance are pleasant, and those gained through unkindness and intolerance are unpleasant.

Kindness and tolerance is taught in such courses as citizenship, but a separate course in humane education is not feasible from the standpoint of economy of time nor money. The desired end will be much the same as a result of the vicarious experiences gained in other courses in the regular curriculum, on the playground, at home, and in the community.

FREE TEXTBOOKS

The trend toward the practice of providing free textbooks for pupils in the public schools has proved to be very strong. At the present time approximately two-thirds of the states require that free textbooks be furnished to pupils in the public schools, and the remaining states have laws under which it is permissible for boards of education to provide them.[10]

The practice of providing free textbooks is favored by a large majority of teachers and school officials in school systems which have used them. Reeder has listed several arguments which have been used by those who favor free textbooks and several which are advanced by those who are for pupil-owned books. Thos arguments in favor of free textbooks are as follows:

> 1. All children are placed on the same plane. Under the free-textbook plan, no child is embarrassed because he must go without textbooks. . . .
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> 2. The cost is less, because under normal conditions

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[10] Reeder, op. cit., p. 663.

a book will last from three to five years. Moreover, the trouble with a portion of the public over the cost of textbooks disappears.

3. Uniformity of textbooks in each school-administrative unit is more easily procured under the free-textbook plan than under the pupil-owned textbook plan.

4. Under the plan, textbooks may be more easily changed when the need for changing them is demonstrated.

5. On the first day of school each pupil is provided with his textbooks and is ready to begin work immediately and on equal terms with his fellows.[11]

The arguments which Reeder sets down as those used proponents of pupil-owned textbooks are as follows:

1. The cost of providing free textbooks is too large a strain for the public to bear. . . .

2. Pupil-owned textbooks make pupils more appreciative of the advantages of education. . . .

3. Free textbooks are likely to be unhygienic since they are used by all classes of children, dirty and clean alike. Moreover, the danger of the spread of disease is inherent in the plan. . . .

4. The custodial care of free textbooks places an extra burden upon school officials and employees and such burden should be avoided.

5. Free textbooks do not encourage the pupils to build up home libraries. Moreover, pupils do not have access to the free textbooks during the summer vacation.

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11 Ibid., pp. 663-664.

6. It is argued finally that under the free-textbook plan, pupils do not take as good care of the books as they do of their own.[12] . . .

By comparing these two groups of arguments, it is not difficult to determine which has the more logical basis. They also demonstrate why the practice of providing free textbooks has been quite generally accepted.

Section 55-1703. Creation of the State Textbook Division. There is hereby created within the state department of education a division to be known as the "State Textbook Division." The state board of education shall appoint a "State Textbook Director." (Session Laws, 1941.)

By creating the state textbook division of the state department of education, New Mexico has followed the general trend and has made a progressive educational step. All pupils, regardless of their financial status thus are provided with these basic materials of learning.

The provision for the appointment of a state textbook director by the state board of education is a wise one and was probably prompted by a rather unpleasant experience with a former plan whereby textbooks were furnished to the

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[12] Ibid., p. 664.

state by one individual who made the purchases from publishing companies. Considerable trouble ensued when it became apparent that the state was not getting value received for revenue expended, and there was even some talk of misappropriation of funds. Under the present law, the state textbook director is an employee of the state superintendent of public instruction and the state board of education.

Section 55-1704. Textbook Administration Fund. The state treasurer shall set up a separate fund to be known as the "Textbook Administration Fund" into which $17,000 annually shall be paid out of the first moneys available at the beginning of each fiscal year in the "Free Text Book Fund" as now hereafter constituted. The money thus set aside, or as much as may be necessary, shall be used to administer the free textbook division. The state board of education shall, prior to July 1st of each year, make up an itemized budget to cover expenditures for the ensuing year. Such a budget shall only include the following: Salary of the state textbook director and of his bookkeeper and clerk-stenographer; expense of the state board of education in administrating the act; office supplies; insurance; other necessary expenses. The moneys so budgeted shall be expended only for the purpose for which budgeted, and any balance remaining in the textbook administration fund at the end of any fiscal year shall revert to the free textbook fund. An annual report shall be made by the state text book fund. An annual report shall be made by the state textbook director to the state board of education, giving complete and accurate account of his administration for the provisions of this act, and such additional report shall be made as may be required by said board. (Session Laws, 1941; Amended, 1947.)

The 1947 amendment to this section increases the text book administration fund from $7,500 to $17,000 annually and requires that money be expended from this fund on the basis of a budget set up by the state board of education. There is little doubt that this increase in the fund was

sorely needed in order to provide for the proper administration of the free text book fund. Increased operational costs made necessary the upward revision in the administrative fund.

The requirement that expenditures out of this fund be made only by budgetary procedure is merely sound business practice. Public money certainly should not be spent in a manner not acceptable in private business. Strict adherance to a carefully made budget is the only sure way in which public money may be honestly and economically spent.

The provision that all unexpended balances revert to the fee text book fund at the end of each fiscal year is not objectionable since the basic purpose of both funds is to provide free textbooks for pupils in the public schools of New Mexico. Any money not used for administrative purposes may thus be used for the more direct benefit of the pupils, those for whose welfare the law was enacted. The fact remains, however, that this provision may encourage spending to the budgetary limit, regardless of need, in order to prevent the loss of balances. In view of this fact, it might be well for the law to provide for balances to revert only if those balances were not needed in making the administrative budget for the ensuing year.

Section 55-1705. Annual Appropriations. The sum of

$350,000.00 for the free text book fund and the $17,000.00 herein provided for the text book administration fund are hereby annually appropriated out of the moneys derived from the Mineral Leasing Land Act fund. (Session Laws, 1941; Amended, 1947.)

It has long been recognized by many educators in New Mexico that the $215,000.00 allotted to the free text book fund previous to the 1947 amendment was insufficient to provide textbooks in adequate quantity or quality. Sorely needed new textbook adoptions were often impossible due to the fact that textbook budgets were insufficient to allow them. The term most frequently used for new textbook adoptions is every three to five years.[13] Under the previous law it was virtually impossible for administrative units in New Mexico to make new adoptions this often and still provide for annual pupil needs.

Due to increases in costs of materials and labor in the publishing field, there appears to be only a partial relief from insufficient funds for free textbooks in the schools of New Mexico at the present time even though the

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[13] Ibid., p. 667.

the 1947 amendment to the above section provides for an increase in the free textbook fund in the amount of $135,000. Nevertheless, textbook budgets are much more adequate today than they would have been had the additional appropriation not been made.

In view of the flexibility of school enrollments and pupil needs, it appears that, in order to supply textbooks in sufficient quantity in the future, New Mexico should look toward a source of revenue for this purpose which will be more flexible than the present flat figure of $350,000.00.

Section 55-1706. Distribution of Text Book Fund. Each school unit shall be credited with that proportion of the free text book fund as the average daily attendance of such unit bears to the average daily attendance of the state for the previous year, and the governing authority of the school unit may requisition such books as are necessary. However, any material variation from the adopted list shall be submitted to the state superintendent of public instruction for approval. Any money left to the credit of a school unit at the end of a fiscal year shall remain available for the requisition of books in such unit during a subsequent year. (Session Laws, 1941.)

The distribution of the free text book fund, as provided in this section, appears to be equitable even though receipts by individual school units may not always be adequate. Of course, administrative units which do not properly enforce compulsory attendance will undoubtedly suffer to some extent.

This method of distribution has been criticized by

those who feel that it does not consider the fact that all children must be issued textbooks regardless of the number of days they are in attendance. This would be a valid criticism if the funds received by each school unit were limited to a definite amount per child in average daily attendance. Under such a plan the total free text book fund for a given fiscal year might not be distributed and the undistributed balance left in the fund. Such balance would be of no immediate benefit to anyone, and pupils would suffer for need of textbooks by virtue of its existence. Such is not the case under the present plan of distribution, as the total free text book fund is allocated to the several school units in the state. Balances which are left at the end of any fiscal year remain to the credit of the school unit in which they occur and do not revert to the free text book fund for redistribution. Therefore, each school unit not only receives but keeps its just share of the fund.

The list of state-adopted textbooks contains several choices of books in each subject field and grade level. In view of this fact, it appears that the choice in state adopted books is wide enough, and individual school units should generally be able to make selections without deviation from the adopted list. Any material deviation from

this list, then, should require approval by the state superintendent of publis instruction, as provided in the law.

Section 55-1711. Textbook Inventories. Each year, an inventory shall be made by the governing authority of each school unit, of the textbooks on hand and an estimate of those needed for the succeeding year. (Session Laws, 1941.)

This provision is sound from the standpoint of both good business practice and proper school accounting procedure. The number of textbooks which any school may have on hand at the end of a given school year will depend upon the number lost, destroyed, or worn out during the year, subtracted from the number on hand at the beginning of the school term. If an accurate account of textbooks is not kept the school district will suffer financially, and unless a yearly inventory is made needs for the succeeding year cannot be determined.

The law should probably go a step farther by requiring that textbook accounting records be kept and inventories made on standard forms prepared by the text book division of the state department of education.

Section 55-1712. Free Textbook Budgets. The state superintendent of public instruction, each year, shall make a detailed budget for each school unit in the state in which the pupils are to receive free textbooks. This budget shall include the cost and freight of books, and no school unit may requisition books in excess of this budget. These budgets must be approved by the state board of finance. In cases of

emergency, these budgets may be increased or reduced with the approval of the state superintendent of public instruction and the state board of finance. (Session Laws, 1941.)

The only safe procedure to follow in the expenditure of considerable amounts of public money is by the use of a detailed budget. If such is not provided for in the law, unnecessary waste due to careless purchases will invariably result in financial loss to the state.

Allowance for emergency increase of reduction of these budgets is wise in view of the fact that budgets, at best, are only estimates of contemplated expenditures. Unexpected contingencies can easily throw proposed budgets out of line with necessary expenditures. Therefore, if the budgets cannot provide the necessary flexibility within themselves through means of transfers, permissive legislation granting the right of increase or reduction, under emergency conditions, is necessary.

Section 55-1717. Contracts with Publishers. The state board of education may enter into contracts with publishers in order to furnish textbooks as provided in this act. These books shall only be paid for after they have been received by the governing authority requisitioning them.

The publisher must agree:

a. To file a copy of the textbook or books to be furnished with the state board of education, together with a certificate attached to each book identifying it as a copy of the book to be furnished under the contract.

b. All books furnished shall be of the same quality in regard to paper, binding, printing, illustrations, subject matter, and authorship as the copy filed with the state board of education.

c. That the contract price will be maintained during the life of the contract, and if the book be sold elsewhere in the United States for a price less than that agreed upon, the price to the state shall be reduced to that amount.

d. To furnish surety bond conditioned upon compliance with all terms of the contract. (Session Laws, 1941.)

The purchase of textbooks from publishers should be handled on a contractural basis between the publisher and the state. By this means, not only the best interests of the state will be served but those of the publisher as well. It probably would be wise for this provision to be made mandatory rather than permissive, as it is in this section.

The terms of the contract to which publishers must agree, including filing of copies of textbooks with the state board of education, assuring equal quality in all books, strict adherence to the contract price, and furnishing of surety bonds, are safeguards against fraudulent actions of publishers.

Sections 55-1718, 55-1719, 55-1720. Distribution of Textbooks. Provision is made in these sections for the publishers to distribute the textbooks directly to the governing authorities of each school unit making requisitions. Contracts with publishers are to be modified to this effect, thus providing a substantial saving to the state. (Session Laws, 1941.)

A law which will serve to provide more efficient

service to the schools of the state and at the same time effect substantial economies is wise legislation. Freight charges from Santa Fe to the requisitioning school unit and handling costs encountered in sorting and repacking books in Santa Fe are completely eliminated by the application of the above provision. The savings thus affected serve to provide more textbooks and related materials for the school children of the state.

PUPIL TRANSPORTATION

The transportation of pupils at public expense has experienced a tremendous growth since its beginning in Quincy, Massachusetts, in 1784.[14] In its early days pupil transportation was merely permitted, but the more recent trend has been to make such transportation mandatory. According to Paul R. Mort, all states had made some provision for this highly important phase of its educational program by 1932.[15] Since that time many states have made rather extensive revisions in their transportation laws, and the trend has been toward greater expenditures for transportation and increased state funds for this purpose.

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[14] Ibid., p. 420.

[15] Paul R. Mort, State Support For Public Education, (Washington, D. C.: The American Council on Education, 1933), p. 72.

In one state, North Carolina, the state has acquired ownership of all public school transportation equipment and the system is administered in its entirety by a state board.[16] Such a trend shows that the several states have realized that the transportation of pupils is not necessarily a local function, but is of prime importance in the successful operation of a state-wide educational program which has as its basic consideration equal educational opportunity for all children.

Section 55-634. Participation in Public School Equalization Fund: Certification of Routes: Computation of Total Cost: Reports: and Maximum Percentage. The extent to which each county may participate in the public school equalization fund for the purpose of paying school bus transportation costs shall be determined upon the following schedule:

1. $25.00 for each separate school bus unit, per month, with a capacity of ten children or less;

2. (a) Fifty dollars per school bus unit, per month, for buses having a capacity of more than ten but less than twenty-one;

(b) Two dollars per pupil, per month, for the next twenty pupils;

(c) One dollar per pupil, per month, in excess of forty pupils one way.

3. Two dollars and fifty cents per mile, or major fraction thereof, per month, for the first fifteen miles one way.

4. One dollar and twenty-five cents per mile, or major fraction thereof, for the next fifteen miles, one way.

5. Fifty cents per mile, per month, for all miles, or major fraction thereof, in excess of thirty miles, one way.

6. The state transportation director, with the approval of the state board of education may allow an additional amount per mile per month for travel over gravel or dirt roads, one way. This amount is to be based on the class of gravel or dirt roads over which any route is established, and may not exceed three dollars per mile, per month.

7. There is hereby created a contingent fund of three hundred thousand dollars ($300,000.00) to pay addition-

al cost of transportation over approved bus routes in each county. The amount each county may receive from this fund is not to exceed the percentage which the total state revenue to the county for school purposes bears to ninety per cent of the five mill maintenance levy on the assessed valuation of property within the county.

8. Public school boards of education, with the approval of the state transportation director and the educational budget auditor, may set up a systematic program for the purchase of necessary transportation equipment, in lieu of contracted equipment, payable from the annual budget allocation for school transportation.

Not later than August 15 of each year, the governing authority of each school administrative unit in which bus routes are maintained shall certify to the state transportation director, the number of routes to be operated, the number of miles traveled by each bus, the type of road to be traveled by each bus, the number of students in residence on each route who it is anticipated will require transportation, and the number of miles to be traveled by each student over each type of road on the bus route.

The state transportation director shall thereafter compute the total amount required for transportation for the ensuing year, and shall determine the percentage of such total that the amount required by each administrative unit bears to the total amount available for distribution, and shall certify to the state auditor the amount to be distributed to each administrative unit. Such amounts shall be so distributed until the following March 15.

Not later than February 15 of each year, the governing authority of each school administrative unit transporting pupils shall certify on forms provided by the state transportation director, the number of approved routes

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16 Timon Covert, Financing of Schools as a Function of State Departments of Education, Bulletin No. 6, Monograph 3, 1940 (Washington, D. C.: United States Office of Education, 1940), p. 21.

actually operated, the type of road over which each bus actually traveled, the number of miles actually traveled daily by each bus over each type of road, and the number of children actually carried each day over each type of road. Such governing authorities shall also certify the daily attendance of each pupil transported by bus. The state transportation director then shall recompute the amount each administrative unit is to receive based upon the total amount available for distribution. He shall then certify to the state auditor the amount which each administrative unit shall thereafter receive, deducting from such amount any excess payments made under prior distributions, and adding any deficiencies. Thereafter such distributions shall be made on the adjusted basis until the full amount to which each administrative unit is entitled has been received.

The aggregate of the payments to the several counties for school bus transportation shall not exceed 20 per cent of the moneys available in the state public school equalization fund for any fiscal year, and if such amount is not sufficient to pay the several counties on the basis of the provided schedule, payments to counties shall be reduced proportionately. (Session laws, 1941; Amended, 1947.)

The 1947 amendment provided for several changes in the schedule by which school bus transportation funds are distributed to the several counties. Twenty-five dollars per school bus unit with a capacity of ten children or less, and fifty dollars per unit with a capacity of more than ten but less than twenty-one is allowed by the 1947 amendment. The original law allowed $2.50 per pupil, per month for the first twenty pupils, three miles, one way. The amendment gave much needed aid to small school bus units, most of which operate in remote areas and under adverse conditions. A major objective of school bus transportation is to aid in providing equal educational opportunity for all children, and if the new schedule for distribution of transportation funds makes possible better school bus service for children in remote areas and small schools it is well worth the additional cost to the state.

The 1941 law provided for a maximum of $1.50 per mile per month for travel over dirt or gravel roads. This maximum was doubled by the 1947 amendment. This seems to be the only fair procedure which could have been followed. Busses

operated over poor roads continued to depreciate at the same rate as they had previously, but repair, operational, and replacement costs increased greatly. It was only just, then that the distribution schedule provide for these increased costs by proportionately increasing allowances for the operation of equipment over poor roads.

The contingent fund of $300,000.00 provided for in the 1947 amendment is used to pay additional costs of transportation over approved routes. This fund is administered by the state transportation director with approval by the educational budget auditor and the state board of education. With increased transportation costs and heavier school enrollments being rather generally predicted, it appears that the legislature acted wisely in providing a fund upon which counties might draw when all other sources of transportation funds fail to provide sufficient amounts to finance adequate transportation facilities.

Pupil transportation, under this law, has been well administered by an able state transportation director. It remains a major educational problem in New Mexico, however, largely due to its steady increase in cost. According to the state transportation director, the cost per pupil transported during the 1947-48 school term was approximately $53.00, and there appears to be no possibility of reducing that figure in the foreseeable future. In fact, indications point toward further increases.

In view of those rather startling facts, it appears that the state of New Mexico has two alternatives in regard to pupil transportation. It must either find new sources of revenue to meet increasing costs or economies must be effected in some way. New sources of revenue will not be easily found at the present time, and the only foreseeable way in which possible economy could be effected is through public ownership and operation of transportation equipment. The evidence presented in several recent studies on pupil transportation costs is overwhelmingly in favor of school-owned equipment due to the increased economy of such ownership.[17] There are two distinct factors which contribute to this economy: (1) School-owned buses are not operated at a profit, whereas those operated under private ownership must be profitable. (2) School-owned buses are usually exempt from all taxes, but those privately owned are subject to taxation.[18]

The 1947 amendment to this law makes it possible for school administrative units to purchase necessary transporta-

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17 Reeder, op. cit., p. 439.

18 Loc. cit.

tion equipment and to pay for it from annual budget allocations for transportation. It will be interesting to note the number of administrative units taking advantage of this permissive legislation, and the savings, if any, which are realized. It probably would have been wise for the law to have required accurate records to be kept and reports made to the transportation director of operational costs of such school-owned equipment. Then, if such records should show that substantial economies result from school ownership, concrete evidence would be available on the basis of which a future legislature could require that contracted school bus transportation be abandoned and public ownership and operation be made statewide.

Limiting the aggregate payments to the several counties for transportation purposes to 20 per cent of the moneys available in the state public school equalization fund is probably wise. Transportation expenditures must not be allowed to become disproportionate with those for all other current school operational costs. The state public school equalization fund provides most of the money upon which school maintenance budgets are based and, since these budgets contain the major items of current operational costs, allocations for purposes of transportation must necessarily be limited. As was pointed out previously, the problem of transportation costs continues to loom as one of major pro-

portions and some answer must eventually be found. It is imperative, therefore, that the law make certain that this answer is not found by allocating to transportation a disproportionate share of the money from the state public school equalization fund.

Section 55-635. State Transportation Fund. A state transportation fund is set up in the amount of 1 per cent of the total cost of school bus transportation in the state for the preceding fiscal year. This fund, or so much thereof as may be necessary, shall be used for the purpose of administering the provisions of this act. The state board of education shall fix the salary of the state transportation director and his clerical assistants, and may also pay out of said fund any expenses incurred by the state director of transportation in making necessary surveys or otherwise in connection with administering this act.

In the even that there is a balance in this fund at the end of the fiscal year, such balance shall revert to the state public school equalization fund. (Session Laws, 1941; Amended, 1947.)

One per cent of the total cost of transportation in the state, the amount set up in this section for the purpose of administering school bus transportation, certainly does not appear to be excessive. In fact, incomparison with general administrative costs, it seems to be rather low. Pupil transportation in New Mexico, since it has yearly expenditures in excess of one million dollars is in the realm of big business. Any comparable business which does not spend in excess of 1 per cent for administrative purposes if being very frugal, indeed. The state of New Mexico has had an outstanding piece of work done in the administration

of school bus transportation, at very low cost.

The provision that all balances in the state transportation fund revert to the state public school equalization fund is not objectionable, though it is very doubtful that balances will exist, due to the relatively low administrative allowance.

Section 55-1801. Appointment and Authority of the State Director of Transportation. The state board of education may appoint, with the approval of the governor a director of transportation who shall have authority, with the approval of the state board of education to establish standards of transportation, including establishment of bus routes, requirements of drivers, and specifications for buses used in the transportation of pupils. (Session Laws, 1937.)

In order to make the appointment of the state transportation director comply with best school administration practice, the state superintendent of public instruction should recommend and the state board of education legally appoint. There is no good reason why the approval of the governor must be secured in such appointment. In fact, such a provision in the law automatically inserts politics into the appointment of an individual who should be selected solely on the basis of his qualifications for the position. He should be an employee of the state department of education and as such, should be directly responsible to the state superintendent of public instruction.

Again, the method of appointment hereby provided is

a result of a dual-headed system of education brought about by the political office of the state superintendent of public instruction. The writer's views on this system have been fully expressed in a previous chapter, and there is no need to elaborate further here.

The authority to establish bus routes which this law grants to the state transportation director is not in accord with best administrative policies. The reason for this is clear when it is considered that bus drivers and bus routes should be subject to change when the best interests of the local unit may be served by such change. Edgar L. Morphet made the following statement in this connection:

> The plan of state aid should leave the initiative for developing routes and schedules, for selecting drivers, and for other phases of the transportation program with the local school administrative unit.[19]

Section 55-1802 grants local administrative units the right to protest established bus routes, but the initiative for such establishment apparently lies with the state director of transportation.

Section 55-1802. Establishment of Bus Routes and

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[19] Ibid., p. 423.

Contracts for Bus Service. After making a survey, the state transportation director shall establish tentative bus routes and shall notify the governing authority of the school district to be served by routes. If the governing authority of such district is not satisfied with the proposed route, it may file a written protest to the state board of education within fifteen days from the time of receipt of notice. The state board of education shall, within thirty days, set a time for a hearing of such protest, and shall have authority to modify such routes in any manner as it may determine.

No bus route may be established to serve less than ten pupils.

Where bus routes are established as to serve more than one school district or county, the state board of education shall determine the percentage of the total cost of such routes to be borne by the units involved, and such units shall jointly contract for such transportation service as provided by law; provided, however, no bus route shall be changed or modified so as to interfere with any existing contract for school bus service, unless such change is made with the consent of any such bus line operator. In such case the governing authorities of any district so affected shall have the right and authority, with the approval of the state transportation director, to modify such contract and to adjust the compensation to be received by the bus operator without readvertisment for competitive bids, as provided by law.

The state board of education may change or modify the bus routes established as provided herein, from time to time where it is found necessary or advisable to do so, but such change shall only be made effective for the succeeding school year. All contracts entered into for school bus service shall be in conformity with the provisions of this act and subject to the approval of the state transportation director. Contracts may be made after advertisement, as provided by law, or without advertisement by the administrative units, when approved by the transportation director, for a period not to exceed four years, with the option of the governing authority to renew such contract from year to year without competitively bidding, upon the same terms and conditions as the original contract, provided such renewals are approved by the state transportation director. (Session Laws, 1941; Amended, 1947.)

As was pointed out previously, the initiative for the establishment of bus routes does not lie with the local

administrative unit. Protests are allowed and hearings before the state board of education are granted, it is true, but more community interest and good will would result from the local unit making the initial move in establishing such routes and greater interest in their future improvement would be gained thereby. Reeder made the following statement along this line of thought.

> . . . School officials and employees who spend extra time and effort in attempting to improve their transportation routes are certain to be rewarded in the greater happiness, comfort, and safety of the pupils, in greater economy of operation, and in larger community support and good will.[20]

Education today is largely state centered--especially in the realm of finance. This has proved to be highly superior to the almost complete local control and financial support of the past. It is the writer's opinion, however, that the state must be ever cognizant of the fact that it must not go too far in removing local control, lest in so doing it stifle local interest in education.

The clause which sets a minimum of ten pupils to be

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[20] Ibid., p. 423.

transported for the establishment of a bus route does not appear to be objectionable. It will be noted that nothing in the law prevents the state from reimbursing an individual for transporting less than ten pupils in areas where no regular bus route may be established. If it is the intent of the law that pupils living in isolated areas be transported in this manner, no great harm would be done. If, however, children who live in isolated areas cannot be transported in this manner because they are too few in number, the unfairness of the law is obvious. Transportation must be provided for all who need it, and in order that all secure transportation one of two steps must be taken. Either existing bus routes must be lengthened in order to accommodate isolated children or parents who furnish this transportation must be reimbursed at the rate per child, per mile, provided by law.

That portion of this section which provides for sharing the total cost of transportation routes by more than one county or school district in which the routes are established is wise from the standpoint of economy. By virtue of this provision separate counties or school districts may contract for a single bus to transport all pupils in a given area, regardless of county or school district boundaries. The economy thus effected by the operation of one bus instead of two may be of great benefit to those poor counties in which receipts from the state public school equalization

fund are inadequate to meet needs.

The 1947 amendment granting local administrative units the right to let school bus contracts without competetive bidding upon approval by the state transportation director might be unwise were economy the only factor to be considered. The most economical school bus transportation is not, however, always the safest nor the most efficient. Deficiencies in the character, honesty, and efficiency of a potential bus contractor making a low bid may be such as to make his services entirely unsatisfactory. The local board of education is in the best position to judge these qualities of a bus contractor and will exhibit an interest in his selection much keener than that of state officials in higher positions. If such board must let contracts to the lowest competitive bidder on a competitive basis, it is unable to exercise its own judgment and is powerless to protect the welfare of its pupils.

Section 55-1803. Cattle Guards on Bus Routes. Cattle guards may be built by the county commissioners and paid for out of county road funds where privately owned fences cross bus routes and an agreement is made with the owners of the real estate involved. (Session Laws, 1941)

This law is objectionable in only one way. It probably should be mandatory rather than permissive. The state or its political sub-divisions must always deal fairly with private property owners, and in cases where school bus routes cross privately owned fences, cattle guards should be

constructed at public expense.

CONSOLIDATION OF SCHOOL DISTRICTS

Consolidation of schools has been one of the major educational developments in rural areas during the past twenty to thirty years. Many small one and two-teacher schools have been abandoned and their pupils brought together into a single larger unit. The educational advantages which have been gained through such consolidation have been many, the greatest of which has been increased facilities for a greatly broadened educational program for rural school children. State school laws which at least permit consolidation of schools have become quite general throughout the continental United States, and the trend toward the abandonment of the small, inefficient, and uneconomical school continues to become stronger with each passing year.

Section 55-1901. Mandatory Consolidation. On or before the first day of April of each year, the state board of education, in cooperation with the state transportation director, shall cause to be made a survey for the purpose of determining the feasibility of making consolidations so as to effect the greatest possible economies and so that proper educational facilities may be furnished to all the school children of the state.

Whenever any elementary school shall have less than twelve pupils in average daily attendance for the preceding school year and whenever any high school shall have less than thirty pupils in average daily attendance for the preceding school year, the pupils in such schools shall be transported to the nearest schools having facilities to properly care for them. However, when the state board of education shall determine that, in any isolated case, it is not economically

sound or educational facilities are not available to properly care for such pupils, and shall so certify to the governing boards of education, such schools shall be permitted to continue until such time as conditions justify the transportation of such pupils to another district.

Section 55-1902. Mandatory Consolidation. In all school districts where no schools were conducted for the fiscal year 1940-41 or for any subsequent year on account of the transportation of the pupils in these districts to other schools as provided in the previous section, such districts are hereby consolidated with the contingous districts.

Section 55-1903. Resolutions and Orders for Consolidations. Whenever any county board of education shall determine by resolution that substantial savings can be effected and standards of education raised by the consolidation of two or more rural districts within the county, the state board of education may order such consolidation. Likewise, when the state board of education shall make findings after a survey made under the provisions of this act that substantial savings may be made and educational standards raised by the consolidation of two or more school districts, said board may order such consolidation.

Section 55-1904. Boundaries and Debt Service of Consolidated Districts. Where consolidations are mandatory by virtue of the provisions of Section 55-1902, the county board of education shall determine the district or districts to which such areas are to be annexed and the boundaries of such consolidated districts and shall furnish to the state board of education a copy of such consolidation for its approval. In all other cases where consolidations are ordered by the state board of education, it shall do the same for the effected districts, and such consolidations, properly described, shall be kept as a permanent record of the state department of education and a certified copy furnished to the governing authority of the effected districts. All consolidations shall be effective for purposes of taxation on January 1st following such consolidation.

Whenever any school district consolidated hereunder shall have outstanding and unpaid any bonds or certificates of indebtedness, such district shall retain its identity for the purpose of debt service until such time as such bonds or certificates are paid in full. No district consolidated

under the provisions of this act shall be responsible for the debt service of any other distict included in such consolidation. (Sections 55-1901-1902-1903-1904 are all from the Session Laws of 1941.)

New Mexico, like many other states, found that permissive legislation regarding consolidation of school districts resulted in few consolidations actually taking place. Some communites have been loathe to give up their own local schools in order to combine educational interests with contiguous districts even when the advantages to be gained by such a move have been obvious to educators. As a result of this community reluctancy which has seriously retarded the consolidation movement, the foregoing laws have been passed making certain consolidations mandatory or, at least, granting the state board of education the power to order such consolidations.

Weber made the following statement regarding consolidation of schools:

> We have come to realize that the problems confronting people that live in rural communities are just as important as those that confront people who live in urban centers. . . .The school administrator must see the problem of consolidation as one of our great national issues. Essentially the movement toward consolidation must lead to such complete reorganization of our educational program that the public school as such will realize its dynamic social purpose far more fully than ever before.[21]

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21 Oscar F. Weber, Problems in Public School Administration, (New York: The Century Company, 1930), p. 133.

If this statement be accepted, the problem of consolidation cannot be solved by joining two districts with the view of extending educational opportunity to a few more individuals. Areas must be consolidated which will enable the greatest good to be derived by the greatest number. We may no longer hold the miserly point of view that consolidation is principally a means for saving money. This argument has been completely worn threadbare in bringing about past consolidations, and the result has been that when such savings were not effected the public has felt that they had been misled.[22] If a saving can be made by a consolidation, it is all to the good, but the principle justification for any consolidation is the extension of educational opportunity, and if such is not the result in a given situation the consolidation is a failure. The greatest criticism to be made of the present New Mexico consolidation law is that it repeatedly refers to consolidations being ordered when substantial economies can be effected. It would lend strength to the law if it provided for consolidations to be

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[22] Ibid., p. 134.

ordered, all other factors being favorable, when the cost of such would not be greatly in excess of that of the operation of small districts.

As was pointed out in Chapter II, pages 38 to 46, of this study, the continued operation of a relatively large number of small administrative units in New Mexico can result only in high administrative costs and reduce educational opportunity. Any law which will reduce either the number of small administrative units or the number of small, struggling schools in rural county units is to be recognized as progressive educational legislation. The present law makes the latter possible, and future changes in county organization and administration can be a major step in the direction of the former. County reorganization relative to changes in the method of selecting county boards of education and county superintendents, as indicated in Chapter II, could pave the way for the county becoming the administrative unit for education in the state. The result of such a contingency would be that New Mexico would have thirty-one administrative units rather than the present 105, and thirty -one school districts whose boundaries would be coterminous with those of the county. This would truly be consolidation by areas rather than by schools.

Section 55-1401. A Temporary Act Providing for a General Educational Survey. There is hereby created an educational survey board consisting of five members appointed by the governor and serving until the completion of the survey required by this act. This board shall obtain the services of a recognized firm or organization thoroughly experienced in the making of surveys. The survey board, through the services of this firm or organization shall make a study of all educational problems concerning the educational program in New Mexico and shll report to the nineteenth legislature of the state of New Mexico the nature of their findings and their recommendations.

There is hereby appropriated $37,500.00 out of the state public school equalization fund to carry out the purposes of this act. (Session Laws, 1947.)

Properly conducted, such an educational survey as is provided in this act can provide valuable information concerning educational problems in the state which will enable the state legislature to secure a much truer picture of these problems than it has ever been able to obtain previously.

The state legislature has hereby demonstrated its desire to learn the true educational problems of the state. So many conflicting educational bills have been placed before the legislature in past sessions that legislators have been confused as to what the true problems actually are. The result has been that many desirable bills have been killed, while less desirable ones have been enacted into law.

Though this is a temporary act, its results can well be far reaching in the effect they will have on the future educational progress of New Mexico schools. The beneficial results to be gained will depend, in large measure, upon

the degree to which the state legislature accepts the recommendations of the survey board. Educators of New Mexico have every reason to feel optimistic as a result of this act.

FIRE DRILLS

Section 55-1610. Fire Drills in Schools. In every public and private school in New Mexico there shall be a fire drill held at least once every week during the first month of each school term and at least once every month thereafter. It shall be the duty of the superintendent, the principal or the teacher in charge of any or all such schools to carry out the provisions of this act. In localities where a paid fire department is maintained a member thereof shall be requested to be in attendance at such fire drills for the purpose of instruction and constructive criticism. (Session Laws, 1947.)

Section 55-1611. Penalty for Violation. Failure on the part of any school superintendent, principal, or teacher charged with the responsibility for carrying out the provisions of this act, shall constitute sufficient grounds for his or her immediate discharge. (Session Laws, 1947.)

Several tragic school fires in which a number of children have lost their lives in recent years are sufficient evidence that statewide fire drill laws are badly needed. Overwhelming evidence is available which proves beyond a doubt that pupils are seldom injured in school fires when properly conducted fire drills have been held regularly. On the other hand, the loss of life in other schools which have not held regular fire drills has sometimes been appalling. New Mexico is to be commended for making a fire drill law

statewide.

The penalty provided for failure to carry out this act is certainly not too harsh. An individual no more interested in the welfare of children under his supervision than one who would ignore fire drills should certainly be dismissed from his position.

THE SCHOOL LUNCH PROGRAM

Section 55-525. Definitions of Terms. (Omitted)

Section 55-526. Expenditure of Federal Funds. The state board of education is hereby authorized to accept and disburse federal funds appropriated for school lunch programs. All such funds are to be deposited in a special account with the state treasurer who shall make disbursements upon the direction of the state board of education. (Session Laws, 1947.)

Section 55-527. Administration of the Program. The state board of education may enter into agreements with any agency of the federal government, prescribe regulations, employ personnel, or take other necessary action to maintain, technical advice to school boards establishing lunch programs and shall aid in training of personnel who are to engage in menu planning. The state department of education or any school may accept any gift for use in connection with school lunch programs. (Session Laws, 1947.)

Section 55-528. Disbursement of Funds by School Boards. School boards are hereby empowered to use disbursed funds, gifts or other funds received from the sale of school lunches in carrying out the program. (Session Laws, 1947.)

Section 55-529. Accounts, Records, and Reports. The state board of education shall prescribe regulations for the keeping of accounts and records. Audits, inspections and review of records of accounts is hereby provided. This audit, inspection and review are for the purpose of determining

whether agreements are being complied with. (Session Laws, 1947.)

Section 55-530. Studies and Appraisals. The state board of education is hereby authorized, in so far as funds are available for the purpose, to conduct studies in cooperation with other agencies for the purpose of improving and expanding the school lunch program. (Session Laws, 1947.)

Section 55-531. State Appropriation. $17,000.00 per annum for the thirty-sixth and thirty-seventh fiscal years is appropriated out of the state public school equalization fund for the purpose of carrying out the provisions of the act. The state board of education may increase this amount if such becomes necessary and if the equalization fund has sufficient revenue with which to meet the increase. (Session Laws, 1947.)

The tendency in recent years has been for the school to provide for lunch facilities. The demand for such facilities became so great that the federal government appropriated funds to be used by the several states in carrying on adequate lunch programs.

The State of New Mexico, by enacting laws providing for a school lunch program, has made another step forward in meeting the demands of a modern educational program. Many children in the public schools of the state are malnourished because of ignorance on the part of parents or economic conditions in the home which prevent their receiving proper diets. The school cannot afford to ignore this condition, because the hungry or malnourished child is certain to be less alert in his school work than the child who receives sufficient food and well-balanced diets. The state's invest-

ment in the education of the child is no small amount. This investment must not be wasted due to the lack of a well-balanced daily meal.

The one great danger of the school lunch program in New Mexico appears to be the possible over-zealousness of certain school officials who, because of their concern for malnourished children under their supervision, may endeavor to inaugurate a school lunch program without first securing adequate facilities and personnel. This will almost inevitably throw the burden of menu planning, and sometimes even food preparation, upon the teachers. The result is a teacher who is efficient neither in the classroom nor the lunchroom. She does not have sufficient time for either. In the light of this danger, it appears that the state board of education should cause a thorough investigation to be made in regard to proper facilities and personnel before entering into an agreement with a school for purposes of conducting a lunch program. Schools without adequate facilities should probably be limited to a program consisting of serving of milk only. It is then the responsibility of school officials in such school, with the aid and cooperation of the community, to provide facilities adequate for a full lunch program.

CHAPTER VI

SUMMARY OF RECOMMENDATIONS

In the preceding chapters, the New Mexico School Laws observed in this study have been critically analyzed. Many of these laws were found to be conducive to a sound, progressive educational system. Others will require only minor changes in order to make them satisfactory, while some were found to be so poor that they are not only valueless but actually will inhibit the educational progress of the state system of public schools.

Various recommendations have been made relative to needed changes in the present school laws of the state. The following pages will summarize the major recommendations in the order which, in the opinion of the writer, they should be considered for future legislative action.

REORGANIZATION OF THE STATE DEPARTMENT OF EDUCATION

Seyfried designated the organization of the state department of education as being probably the weakest part the state school system in 1932.[1]

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[1] J. E. Seyfried, Analysis and Evaluation of New Mexico State School Laws, (The University of New Mexico Bulletin, No. 218. Albuquerque: University of New Mexico Press, 1932), p. 84.

In the opinion of the writer this still remains the state school system's greatest weakness, and as such should be given first consideration in making legislative or constitutional revisions. Until efficient leadership can furnish continuity of administration in establishing state educational policies, other progressive steps will be taken only under difficulty. The writer cannot recommend too strongly that the state department of education be reorganized along the lines suggested in this study and others, that a constitutional amendment to this effect be submitted to the people of the state, and that the educational forces of the state put forth their utmost effort in publicizing the great need for the proposed reorganization. Failure to accomplish such reorganization will result in excessive retardation of educational progress in the state to a degree not less than that of the past.

COUNTY REORGANIZATION

Very close in importance to state reorganization is the reorganization of the county school system. In fact, reforms in these two fields should probably take place simultaneously. Rural schools in many counties have been woefully retarded by virtue of politically dominated county boards of education and unqualified, politically-minded, and politically elected county school superintendents. Little

educational progress can be expected in rural schools under such a system of administration. It cannot be denied that the welfare of the child in the rural school is just as important as that of the child in the municipal school. In view of this fact, there is absolutely no reason why rural schools must continue to be burdened with an inferior type of administration. A reorganization of the county system based on an elected board of education and an appointed superintendent is another legislative "must" in New Mexico.

PROTECTION OF EQUALIZATION MONIES

The public school equalization fund has been the life blood of the New Mexico public schools. A large measure of the revenue making up this fund is derived from the emergency school tax (commonly known as the "sales tax") and a major portion of the state income tax. These two sources of revenue have built up a sizable surplus in the equalization fund, and for the past several years the tendency has been for purposes not strictly educational. This surplus is apparently too easy to tap. It is therefore imperative that some statutory measures be taken to prevent the further depletion of this highly important source of school funds.

PUPIL TEACHER RATIO

The present pupil-teacher ratio law is used largely

for budgetary purposes and operates in a manner contradictory to accepted theory in regard to class size at various grade levels. The practice of using a pupil-teacher ratio as a measure in the preparation of yearly school budgets appears to have as its purpose the limiting of the amounts which may be secured for yearly teachers' salaries in any one administrative unit. As a result, the teaching load, in many instances, is far too heavy and effectiveness of the instruction is decreased. There seems to be little to justify such a practice, since the sole basis for the distribution of a large portion of state school money is weighted average daily attendance, while the remaining state funds are distributed on the basis of the census child.

This study has recommended that the number of teachers employed in each administrative unit be left to the judgment of local governing authorities, subject to the approval of the budget commission. However, it is well to point out here that the granting of this power to local authorities must be contingent upon a complete reorganization of the rural county system. It would be folley to place such power in the hands of politically dominated boards, politically dominated boards of education and school officials.

DISTRIBUTION OF FUNDS WITHIN THE COUNTY

The problem of unequal distribution of state funds

within the county would cease to exist in the event that all seperate school districts in the county were dissolved and the county made the complete unit for taxation and administration of all schools within its boundaries. This study has presented evidence which would appear to be favorable to such administration but, as has been pointed out, this move must not be made until county reorganization has been effected along recommended lines. In the meantime a method of distribution along the lines recommended by the staff conference on school finance of the New Mexico Educational Association would be superior to that now in effect which provides for distribution solely on the basis of approved budgets.

DISTRIBUTION OF CURRENT SCHOOL FUND

The use of the census child as a basis for the distribution of state aid funds has been condemned by outstanding educators in the state and the nation. It appears that this inequitble method of distributing the State Current School Fund has received enough adverse criticism to justify its early revision. The writer strongly recommends that a more equitable method of distribution be devised and presented to the people of the state in the form of a constitutional amendment. It is true that the necessity of a constitutional amendment will make such a revision difficult, but those who

put forth effort in securing the amendment will be so well repaid through the advantages gained by the children in the public schools of the state.

TEACHER RETIREMENT

A rather extensive analysis of the state teacher retirement law is made in Chapter IV of this study. It is found that the present teacher retirement system is woefully weak from the standpoint of its financial soundness. Though present retirement allowances are sufficiently high, the present law does not provide for any assurance to future retired personnel that such allowances will remain at their present high level over a period of years. In fact, the law admits this weakness by providing for proportionately reducing payments according to available funds.

The weakness of the law stems largely from the fact that the system is fully state supported, and the teacher, therefore, has no true vested rights in the system. That which the legislature grants it can just as easily take away.

The weight of authority holds that under a joint-contributory system of retirement a contractural relationship exists between the state and each member of the system. On this basis, the state is obliged to meet promised allowances.

On the basis of the findings of this study, the writer strongly recommends that New Mexico teachers look to the legislature to provide them with a sound, joint-contributory, actuarial-reserve retirement plan.

TEACHER TENURE

An analysis similar to the one made of teacher retirement was made of teacher tenure. A very weak system of tenure was found to exist in New Mexico.

Most authorities recommend a tenure plan which will provide ample protection to the teacher, and yet will not make their dismissal so difficult that they are virtually guaranteed their positions for life. Such a plan is aptly classed as the "middle ground" policy.

Under the New Mexico law it is exceedingly difficult to discharge a teacher who has secured tenure. Some teachers will tend to "let down" in their work when the gentle spur of possible dismissal is removed. Such teachers who fail to show sufficient improvement when given adequate supervisory aid should be quietly removed from the system in which they are serving. Such is not possible under the existing law in New Mexico, and as a result it is possible that teachers not already on tenure will actually have less tenure than they would if no law were in effect. This will be due to boards of education being reluctant to grant a contract

for the fourth year for fear of placing on tenure a teacher who may later become unsatisfactory.

A new tenure law, drawn up on the basis of those principals of tenure as set down by the Committee on Tenure of the National Education Association, is highly recommended. In order that both teachers and governing boards have adequate protection without undue delay, this change should take place at the earliest possible date.

SCHOOL BUILDING CONSTRUCTION

Due to the fact that the state of New Mexico does not prescribe a school building code, school building construction has largely been left in the hands of local governing boards. Numerous school buildings in the state--especially those in rural areas--demonstrate the need for such a code as well as adequate supervision by the state department of education of all school building construction and major repairs.

The state board of education is empowered by law to exercise some control over the construction of school buildings, but such control, being on buildings of five rooms or less, is entirely inadequate. A division of the state department of education, headed by a consultant architect, is recommended for the purpose of setting up a building code and supervising all school building construction in New Mexico.

THE SCHOOL CENSUS

A yearly school census such as is provided by law in New Mexico, falls far short of securing the information needed by school administrators in operating efficient school programs. A much more useful and effective census is one which is continuous and which will be so kept that at any time during the school year the file will contain the card of every child of census age residing in the district but will not contain the cards of those children no longer in residence. Such a continuous census for New Mexico would be highly superior to the one which is now taken yearly, kept in book form, used for the distribution of state funds, and is not readily available to school officials for use in enforcing attendance and forecasting future educational needs.

SCHOOL BUDGETS

In the light of national school accounting practice, New Mexico's school budgetary system is somewhat out of line. New Mexico, by having two entirely separate budgets, maintenance and direct charge, rather than one which is unified, has fostered a confusing and unnecessarily complicated plan for budgeting school funds. It is recommended that statutory revisions place in effect a unified budgetary plan which

is in line with national practice and which will allow comparisons to be made of educational expenditures in New Mexico with those in other states, without the present resulting inaccuracies and confusion.

HEALTH CERTIFICATE

The health certificate required of teachers in New Mexico schools at the present time apparently has as its intent the disqualification of teachers now in service. There is no denial that a health certificate should be held by all teachers or that such certificate should be renewed periodically. However, such certificates and their renewals should have as their purpose the promotion of teacher health rather than disqualification. Such certificates should not require expensive laboratory tests such as those required in the existing law unless these tests can be made in or near the community in which teachers may reside, and at no cost to the teacher.

Because of its rather stringent requirements, the present law is, for all practical purposes, inoperative, and its early revision is recommended.

COURSES OF INSTRUCTION

Provisions in the statutes for the teaching of specified subjects in the school curriculum, though legal, are

not generally considered wise. Statutory requirements are inflexible and are not conducive to the development of a modern educational program. Demands of the rapidly changing social and economic conditions in a modern world cannot be easily met by school curricula which are hampered by the necessity of conforming to courses prescribed in the statutes. Any reference in the law to courses of instruction should be very broad and should leave the establishment of required courses in the hands of the state department of education. Such courses then could be easily eliminated when such should become expedient. New Mexico, by prescribing in its statutes courses in Spanish and humane education in addition to several other requirements which have been on the statute books for more than a decade, has acted contrary to this important principle.

BIBLIOGRAPHY

BIBLIOGRAPHY

A. BOOKS

Cubberley, E. P., Public School Administration. Cambridge, Massachusetts: Houghton Mifflin Company, 1922. 479 pp.

_____, State and County Educational Reorganization. New York: The MacMillan Company, 1922. 257pp.

De Young, Chris A., Budgeting in Public Schools. Garden City, New York: Doubleday, Doran and Company, 1936. 610 pp.

Edwards, Newton, The Courts and the Public Schools. Chicago: The University of Chicago Press, 1933. 591 pp.

Graves, Frank P., The Administration of American Education. New York: The MacMillan Company, 1932. 620 pp.

Moehlman, A. B., Public School Finance. New York: The MacMillan Company, 1927. 500 pp.

Mort, Paul R., State Support for Public Education. Washington, D. C.: The American Council on Education, 1933. 489 pp.

Nanninga, S. P., The New Mexico School System. Albuquerque: The University of New Mexico Press, 1942. 203 pp.

Reeder, Ward G., The Fundamentals of Public School Administration., New York: The MacMillan Company, 1941. 781 pp.

Weber, Oscar F., Problems in Public School Administration. New York: The Century Company, 1930. 726 pp.

B. PERIODICAL ARTICLES, PAMPHLETS, AND BULLETINS

Baldwin, Robert D., "The Evolution of West Virginia State Minimum Salary Schedule," The American School Board Journal, 112:38-39, May, 1946.

Campbell, Roald F., "Compulsory State Wide Salary Schedules," The American School Board Journal, 112:28-29, March, 1946.

Cocking, W. D., and C. H. Gilmore, Organization and Administration of Public Education, Staff Study No. 2. Washington, D. C.: United States Office of Education, 1938. 183 pp.

Conway, J. V., The County Unit in New Mexico, Rural School Leaflet No. 28. Washington, D. C.: United States Office of Education, 1924. 10 pp.

Cook, Katherine M., Supervision of Instruction as a Function of State Departments of Education, United States Office of Education Bulletin No. 6, Monograph No. 7, 1940. Washington, D. C.: United States Government Printing Office, 1941. 165 pp.

Covert, Timon, State School Taxes and State Funds and Their Appropriation in Seven States, 1934-1935, United States Office of Education Pamphlet No. 78. Washington, D. C.: United States Government Printing Office, 1938. 21 pp.

Covert, Timon, and Ward Keesecker, Legislative Plans for Financing Public Education, United States Office of Education Pamphlet No. 79. Washington, D. C.: United States Government Printing Office, 1938. 43 pp.

Donnelly, Thomas C., The State Educational System, Division of Research, Department of Government. Albuquerque: The University of New Mexico Press, 1946. 35 pp.

Edwards, Newton and Herman Richey, The Extent of Equalization Secured Through State School Funds, Staff Study No.6. Office--United States Government Printing, Washington, D. C.; 1938. 51 pp.

Hamilton, Robert R., Selected Legal Problems in Providing Federal Aid for Education, Staff Study No. 6. Washington, D. C.: United States Government Printing Office, 1938. 66 pp.

"A Hand Book on Teacher Tenure," Research Bulletin of the National Education Association, 14:158-194, September, 1936.

Hutchins, C. D., "The Trend is Toward School Ownership of Busses," Nations Schools, 36:43-44, October, 1945.

Keesecker, Ward, A Review of Education Legislation, 1937-38, United States Office of Education Bulletin No. 16, 1939. Washington, D. C.: United States Government Printing Office, 1939. 53 pp.

Seyfried, J. E., Analysis and Evaluation of New Mexico State School Laws, The University of New Mexico Bulletin, Vol. 6, No. 2. Albuquerque: The University of New Mexico Press, 1932. 87 pp.

"State School Finance Systems," Research Bulletin of the National Education Association, 20:151-194, November, 1942.

"State Tax Legislation Affecting School Revenues, 1939-43," Research Bulletin of the National Education Association, 22:84-126, October, 1944.

"Statistics of State and Local Teacher Retirement Systems, 1943-44," Research Bulletin of the National Education Association, 23:28-55, April, 1945.

Statutory Analysis of Retirement Provisions for Teachers and Other School Employees. Washington, D. C: Research Division and National Council on Teacher Retirement of the National Education Association, January, 1944. 63 pp.

Statutory Provisions for Statewide Retirement Systems. Washington, D. C.: Research Division and National Council on Teacher Retirement of the National Education Association, January, 1946. 55 pp.

Stewart, Maxwell S., We Can Have Better Schools, Public Affairs Pamphlet No. 112. New York: Public Affairs Committee, Incorporated, 1946. 31 pp.

Teacher Retirement, Discussion Pamphlet No. 2., Washington, D. C.: Department of Classroom Teachers and Research Division of the National Education Association, November, 1944. 23 pp.

"Teacher Retirement Systems and Social Security," Research Bulletin of the National Education Association, 15:92-143, May, 1937.

"Teachers' Salaries and the Public Welfare," Research Bulletin of the National Education Association, 21:92-119, December, 1943.

New Mexico. New Mexico Statutes, Annotated, 1941 Compilation and 1943, 1945 and 1947 Supplements, Volumes 4 and 5. Indianapolis: The Bobbs-Merrill Company, 1942. 4157 pp.

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