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A Logical Classification of and Recommendations for the Utah Education Law

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A LOGICAL CLASSIFICATION OF AND RECOMMENDATIONS
FOR THE UTAH EDUCATION LAW

by

Thurman M. White

A dissertation submitted in partial fulfillment
of the requirements for the degree

of

DOCTOR OF EDUCATION

Approved:

UTAH STATE UNIVERSITY
Logan, Utah

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Thurman M. White

SECTION I

THE PROBLEM

Introduction

As our society becomes more complex, it follows that the laws governing this society become more numerous and more complicated. Problems arise relative to local, state, and federal control, necessitating further interpretation and ultimately new laws. The areas where legal confusion is most obvious are those subject to control by all levels of government: local, state, and federal.

In recent years it has become evident that education laws are beginning to reflect this legal confusion and complication, and evidence readily suggests that the need for a thorough examination of laws relating to education is becoming increasingly greater. There is little doubt that the provisions of the education law in most states have become considerably more complex and disarrayed. School administrators, board members, and others concerned with public education are experiencing a growing difficulty in finding and interpreting the law as it relates to particular educational topics. Furthermore, change in education is rapidly producing a continued addition of education laws with each session of the respective legislatures.

As educators become more concerned about the problems involved in education law, special attention is focused on research concerning this law. Among those who have made suggestions for the improvement of the philosophical framework of education law are Hamilton and Mort (1959), Edwards (1957), and Gauerke (1959), who have all been concerned with the legal aspects of state education law. Garber (1953, pp. 73-75) reported that the "legal structure for schools needs repairs and additions" and presented areas of particular concern. McCann (1954, pp. 29-31) wrote of "the far reaching importance of the recodification of school laws." Bolmeier (Garber, 1962, pp. 185-198), writing in the 1962 Yearbook of School Law, pursued the topic, "Is School Law in Tune with the Times?" These authors have stressed inter-relationships between constitutional provisions, legislative enactments, court decisions, and public opinion.

Of great significance in the research relating to the technical aspects of education laws are the studies by Remmlein and others. Remmlein, who has participated in three publications, has been the leader in the field. She served as a consultant with the National Education Association for a nation-wide report on school law and plans for improving the technical aspects of education law (NEA, 1954). Remmlein and Ware (1959) published a work extending the scope of the previously mentioned study, and Remmlein and Rezny (1962) authored a publication describing law and its use by school men and the use of legal research tools.

That there is a growing awareness of the need to examine state education law is evident from the positive action being taken along these lines in many states. Recent studies of state education law have been completed in Wyoming, Colorado, Idaho, Oregon, and California, to mention but a few. New York has a comprehensive recodification program in progress at the present time, and other states are attempting to meet the needs pertinent to their individual statutes.

Utah is no exception in this respect. State and local school officials, as well as university personnel, have expressed the need for an improvement of the education law in the state of Utah. Among these educators is Hatch (1965), who has completed several recent publications concerning Utah education law.

Therefore, it can be concluded that there does exist among educators a growing recognition of the problems relating to both the substantive content and the technical aspects of education law.

Need For The Study

An examination of the substantive content of both the Utah state constitution and legislative enactments reveals that there are areas of conflict relating to education laws. An example of major conflict could best be illustrated by an examination of the following provisions:

The general control and supervision of the Public School System shall be vested in the State Board of Education, the members of which shall be elected as provided by law. (Article X, Education, Section 8, Utah Constitution)

On the other hand, Article VII, Section 13, Utah Constitution, declares:

Until otherwise provided by law, the Governor, Secretary of State and Attorney-General shall constitute a Board. . . . They shall constitute a Board of examiners, with power to examine all claims against the State except salaries or compensation of officers fixed by law; and no claim against the State, except for salaries and compensation of officers fixed by law, shall be passed upon by the Legislature without having been considered and acted upon by the said Board of Examiners.

Subsequent legislation and court decisions have given the State Board of Examiners, through its agent, the Finance Commission, sweeping powers. These powers in financial matters are in direct conflict with provisions in Article X, Section 8, which give to the State Board of Education the general control and supervision of the Public School System.

In addition to conflicting enactments, there are restrictive provisions applicable to state education law. An example of these can be found in Article XIV, Public Debt, Section 4, Utah Constitution.

When authorized to create indebtedness, as provided in Section 3 of this article. . . no school district. . . shall become indebted to an amount, including existing indebtedness, exceeding four per centum of the value of the taxable property therein, . . .

Another restrictive provision is found in Section 53-7-4, Utah Code Annotated. This provision relates to the apportionment of mineral leasing act funds for research. Contained in this enactment are specific percentages of funds allocated to particular institutions for research. This type of restrictive legislation is normally considered to be a hampering factor in educational progress.

Because of such conflicts and restrictions, along with numerous others, it would seem that there is a need to establish a more clear cut philosophy relating to the substantive content of the Utah education law. Furthermore, there is a parallel need to examine the technical aspects of these education laws.

Since the first Utah Legislature met in the late nineteenth century, many laws pertaining to the various areas of government in Utah have been enacted. These statutes have been recodified by legislative authorization on several occasions. The most recent of these recodifications, Utah Code Annotated (1953, Vols. 1-10), was published in 1953 and is the official legal reference containing the general laws of Utah. However, the publication was not recodified to the extent that obsolete, conflicting, and impliedly repealed laws were deleted. Although Volume 5, Utah Code Annotated, contains the Utah school law under Title 53, other laws pertaining to education are interspersed throughout the remaining volumes of the state's general laws. Because of this arrangement and the lack of an adequate index, the code is difficult to use as a reference to general questions related to education. An added difficulty in using the state code is presented by its up-dating procedure. The Regular and Special Sessions Laws become addenda to Utah Code Annotated by the use of pocket parts, which are added each biennium.

School Laws of the State of Utah is a compilation of laws pertaining to education found in the ten volumes comprising Utah Code Annotated, extracts of the applicable Attorney General Opinions, and excerpts from

the Utah Constitution. In addition, there are the Regular and Special Session Laws of 1953, the Regular Session Laws of 1955, 1957, 1959, 1961, 1963, and 1965, as well as the Attorney General Opinions given during these periods. As a general rule, at the conclusion of each biennium, new laws are placed at the end of the particular chapter in School Laws of the State of Utah covering the topic to which they refer. In many instances, House or Senate Bills are inserted in their original form without the usual annotation procedure. To complicate the use of the education law compilation, only those laws which make up the School Code, Title 53, are grouped together. Laws pertaining to education in other titles, a total of 24, have been grouped into a miscellaneous section.

The organization of both Utah Code Annotated and School Laws of the State of Utah requires a comprehensive reading and study to locate those laws pertinent to a particular topic, since applicable provisions may appear under different titles, chapters, and sections. Thus the publications' organization and the obsolete, overlapping, and conflicting provisions hamper adequate indexing.

In summary, it may be said that there is, first, a need to establish a philosophical rationale in order to clarify the substantive content of the Utah education law and, secondly, a need to improve the technical aspects of these education laws in order to provide for continued improvement in this area.

Purpose

It was the purpose of this study to arrange the education law of the state of Utah into a logical classification and to provide recommendations for the present and continued improvement of these laws.

Procedures

The study was formulated by the following procedures:

The writer reviewed literature relevant to both the substantive content and the technical aspects of education law.

All provisions applicable to education in the Utah Code Annotated, 1953, as amended, repealed, and enacted to 1965 inclusive, were studied. Court decisions and Attorney General Opinions pertinent to Utah education law were also examined.

Selected superintendents, legislators, state officials, university professors, and others were informally interviewed to gain a better understanding of Utah education law and educational policy of the state.

Following the review of literature, the review of legislation, and interviews with those familiar with education law, principles relevant to the substantive content of education law in the state of Utah and standards relevant to the technical aspects of these laws were examined. Based on an examination of these principles and standards, criteria were developed by the writer to be used as guidelines for a logical classification of the Utah education law. Throughout the study, legal assistance was obtained from Utah state officials.

A logical classification of Utah education law was compiled and provision was made for cross references to their original source, Utah Code Annotated. Recommendations were made for the present and continued improvement of the state's education law.

Clarification and Definition of Terms Used

Hamilton and Mort (1959, pp. 14-24) refer to the "conceptual design" as an "expression of purposes to be achieved in education, organized in a rational system, internally consistent, that gives a functional place to educational practices that are considered good and rejects practices that are considered bad." Furthermore, they explain, "Constitutional provisions, statutory enactments and judicial decisions determine the 'structural pattern' of education and the mode of its operation. . . it is the current form of government."

The clarification and definition of terms presented below relating to the technical aspects of recodification are consistent with those set forth by Remmlin and Ware (1959).

At the conclusion of legislative sessions, all laws are usually published as "Session Laws." Each state maintains a "compilation" of laws arranged by "subject," such as education, insurance, and banking. These compilations have various names: the code of the state, the general statutes, the consolidated laws, the compiled laws. The process used in preparing compilations is called the "recodification" of the law although the terms "compilation," "codification," and "revision"

are often used in rather loose fashion and interchangeably. Compilation, in the technical sense, means a "collection of statutes existing and in force in a given state, all parts of laws relating to each subject matter being brought together under one head, and the whole arranged systematically in one book."

A complete revision of a compilation is rarely made after each legislative session. A recodification may be a rearrangement, a re-writing, a re-enactment, and re-publication of the entire body of the general statute law on one or more subjects of the general law.

A "logical classification" relates logic between the arrangement of the subject matter and the thought processes of the user of the compilation. The laws concerning any one subject (e.g., schools) should be compiled together and should not be interspersed among statutes classified under other titles.

The title under which school laws are compiled is given the name "Education" or "Schools." The more comprehensive title "Education" is considered preferable since it may encompass more than school laws in the strict sense of the term. After the laws are classified and arranged, numbers must be assigned to them. The "numbering system" should be planned to provide identification, exact reference, and permanence with possibility of expansion.

The "title" is the broadest classification and embraces all the other classifications of the laws on a particular subject. The "chapter" is a major subdivision within the title and may embrace a number of

articles. The "article" is a subdivision of a chapter and embraces the text of the "sections," the law itself. Some rules of law are so complex that several sections are needed or a section which covers the entire rule needs to be stated in subsections. A section or subsection may consist of one or more "paragraphs." "Items" and "sub-items" serve the same purpose as paragraphs but are used only when constituent specifications may each be expressed in a few words.

SECTION II

PRINCIPLES, STANDARDS, AND CRITERIA

It would seem logical to assume that before any laws could be re-codified, it is first necessary to establish principles and standards relating to education laws which should provide an over-all rationale for recommended changes in both the substantive content and technical aspects of Utah education law. The principles and standards presented in the following section represent the views of some of this country's leading authorities in the area of legal aspects of education. Although an attempt has been made by the writer to divide these principles and standards into those relating to the substantive content and those referring to the technical aspects of education law, it was often impossible to make this clear distinction. This is understandable in that the content and form of any law are closely inter-related.

The criteria presented in this section are based on the principles and standards discussed. These criteria were used in making over-all recommendations for the improvement of the Utah Education Law.

Principles Related to the Substantive Content

In order to determine those principles which could best serve as guidelines for developing the substantive content of education law,

both legislative enactments and constitutional provisions were examined.

State policy finds expression through the medium of constitutional provisions and statutory enactments, as voiced by Edwards:

Subject to constitutional limitation, the state legislature has plenary power with respect to matters of educational policy. In the absence of constitutional prohibitions, the ends to be attained and the means to be employed are wholly subject to legislative determination. (Edwards, 1957, p. 27)

The general principles presented in this section should bring closer together the structural pattern and the conceptual design of the state relative to education laws.

Constitutional provisions

The National Municipal League's publication, Model State Constitution (1963, pp. 18 and 101), presented suggested constitutional provisions for public education as follows:

Article IX

Public Education

Section 9.01. Free Public Schools: Support of Higher Education. The legislature shall provide for the maintenance and support of a system of free public schools open to all children in the state and shall establish, organize and support such other public education institutions, including public institutions of higher learning, as may be desirable.

Hamilton and Mort proposed:

. . . that the state constitution should reflect the more aggressive posture toward education that has evolved in this century. As items (principles) establishing a stronger

posture, the following have been suggested:

1. The legislature. . .shall overcome the destructive effects on education of poverty induced by the decisions to operate as school districts.
2. The legislature. . .shall keep the tax system in such adjustment that local autonomy shall not be throttled merely for lack of access to the resources the community has.
3. The legislature. . .shall establish fiscal control machinery that will give each community an important measure of control over its educational destinies.
4. The state department of education. . .shall keep a continuing chart of the locus of effective control over education and shall hail to court any educational officer or officer of any other aspect of government, local, state, or federal, that through administration warps a law so as to enhance central power to a degree not explicitly spelled out in the law.
5. In controversy over the meaning of a law, the courts shall decide in favor of the more local level of government involved.
6. On petition of citizens alleging undue delay in action on educational concerns by the constituted authorities, provision shall be made for a popular vote at the next general election on the issues enumerated in the petition.

To these fiscal questions may well be added the question of the constitutional choice of the ultimate curriculum authority--the state educational authority. . .
(Hamilton and Mort 1959, pp. 624-625)

Bolmeier, writing in the Yearbook of School Law, said:

Any state constitution is out of tune with the times, as far as education is concerned, if it does not conform to the following stated principles: (1) the state constitution should contain the basic provisions for the organization, administration, and support of a state program of education. (2) It should empower and direct the legislature to establish the general plan for carrying out the basic provisions so set forth. (3) It should be broad enough to include all of the essentials for an adequate educational program. (4) It should exclude details which tend to limit or handicap the legislature in developing an adequate school system to meet emerging needs. (5) It should include provisions which are applicable on a state-wide basis. (6) It should be uniform in its application

to educational opportunities and minimum essentials.
(Bolmeier In Garber, 1962, p. 186)

Lee O. Garber, writing in The Nation's Schools, (said:

As the framework of state government, the constitution should be a statement of permanent, fundamental, organic principles defining the breadth or scope of the powers of the state. It should not be a statement of specific laws that tend to control in detail the organization and conduct of institutions and people. (Garber, 1963, pp. 73-75)

Legislative enactments

Bolmeier (Garber, 1962) pointed out, as others have, the importance of the education laws being in agreement with the Federal Constitution. These principles to be followed in the enactment of education laws were presented by Bolmeier:

1. The laws should be in agreement with provisions of the state constitution.
2. Even though statutory laws should be more specific than constitutional provisions, they should be general enough to enable state and local boards of education to function without needless handicaps and restrictions.
3. The laws should be stated in unmistakably clear terms so as to convey the precise intent of the legislature.
4. The laws should be codified periodically and systematically--eliminating or amending provisions which are obsolete. (Bolmeier In Garber, 1962, pp. 189-198)

McCann in an article "The Recodification of School Laws" listed four principles to be used in statutory revision:

1. . . .grants of power and authority by the state to local school corporations should be broad in scope and general in nature. These grants should be specific enough to insure the continuance of the general patterns of public school practice already established.
2. Many of the special laws in the present codes should be eliminated. The net effect of broadening grants of power

and extending them to local school units generally will be to reduce the need for many classes of school districts. Fewer classes of local school corporations and few special laws for favored local school corporations may be expected to result in easier interpretation of the laws and in a greater uniformity of desirable educational practice.

3. The process of statutory recodification and revision should not be the occasion for extensive changes in state educational policy. To extend privileges and authority from a few to most of the school districts in a state is one thing. To change basic school policy is another.

4. The section of the new code which repeals the old statutes should be carefully drawn. 'The intent of the legislature is the law.' Every change in language raises a question of a change in legislative intent which the courts must consider. (McCann, 1954, pp. 29-31)

Hamilton and Mort (1959, pp. 617-622) have stated "that courts need additional help in understanding the evolving conceptual design of education to serve as a supplement to legal theory." Too, they "frown upon detailed prescriptions into the organic law" as well as the delegation of broad discretionary power to special state boards. Budgetary reviewing bodies and preauditing services designed to bring about a closer adherence to the legal structural pattern are considered deplorable. These writers offer as an "alternative to constitutional limitation of legislative powers. . .the development of a legislative conscience and a public opinion alert to its violations: in short, a legislative code of ethics."

Three principles are listed for such a code:

1. Legislative powers having to do with broad public policy shall be worked out by the legislature and made a matter of law rather than be delegated to an administrative agent.

- a. Whatever use may be made of administrative agencies in the development of structural plans, the plans themselves should not take effect until acted upon by the legislature.
 - b. Power should not be delegated to administrative authorities to make essential changes in the structural pattern of the school system (finance, district organization of control).
2. Orderly procedures in the local unit should be encouraged, not discouraged, by the methods used by the legislature in exercising its broad powers.
 - a. The extent and nature of the participation in support and control of schools by central agencies shall be so definitely determined in law that uncertainty of the local agencies shall be reduced to a minimum.
 - b. Where the legislature is a partner in financing a governmental function in which one of its local agencies is the other partner, disrupting changes in the legislature's contribution will be delayed in taking effect for a sufficient time to permit an orderly readjustment in the affairs of the local districts.
 - c. In passing laws changing the structural natures or modes of operation of the school system, due consideration shall be given to the effects it will have on all types of local districts existing in the state.
 3. Changes should not be made in detail of educational structure without assessing their implications for the general structural pattern.
 - a. Legislatures should have clearly in mind that there are two general designs for the operation of education: central operation and local operation, and that the core to operation is the power to control the details of the program. Combinations of these two patterns should take the form of delegating the operation of some functions to central agencies and the delegating of the operation (with power to control) of other functions to local agencies.
 - b. Legislatures should avoid placing all districts under restrictions that appear to be needed because of the maladministration in a few. They should look to the cause of the maladministration and seek its removal rather than take the easy road of restrictive prudential legislation. (Hamilton and Mort, 1959, pp. 617-622)

Standards Related to the Technical Aspects

The general standards related to the technical aspects of education law are discussed in the following section. These standards have been set forth for the recodification of statutes in publications by the National Education Association Research Bulletin (1954) and by Remmlin and Ware (1959).

1. The system of classification of statutory provisions should be logical. There should be a relationship in logic between the arrangement of the subject matter and the thought processes of the average user of the code. The general statutes should be classified so that all laws on a particular subject are compiled under a heading describing that subject. The education laws should be compiled together and should not be interspersed among statutes classified under other titles. Within the title on education, the education laws should be arranged so that all provisions on the same topic are compiled together.
2. The classification of provisions within a title should be assigned headings in about four levels of subdivisions. Simplicity of outlining is the key to good codification. Use of subdivisions of major topics is necessary, but should be limited to avoid unnecessary subdividing, as this tends to detract from the value of uniformity and continuity.
3. Major topics within the title should have equal significance. The first level in the classification should be a series of major topics of rather general nature. This does not imply that generality is so desirable that it outweighs all other considerations. When specific provisions imbedded within other provisions are in need of regrouping, this should be done.
4. The numbering system should be planned so as to provide identification, exact reference, and permanence with possibility of expansion. Numbers are essential because legal research tools cannot be used efficiently without the use of numbers and because they are the means of referring to statutory provisions. If an adequate numbering system is adopted, it can be used for many years.

- a. Each section should have a number that is distinctive and identifiable with subject matter. Each section should be identifiable with the article and chapter in which it is classified.
 - b. The same numbers should be retained after legislative changes. Performance of numbers is considered basic in a continuing recodification plan.
 - c. New provisions should be inserted at their logical places without disturbing the numbering system. It is believed that with careful planning of major topics, new materials can be inserted in their logical places.
5. The compilation should permit continuous revision to keep it up to date. The numbering system discussed in Standard 4 must meet the objectives of easy location and continuity after legislative changes.
 6. Frontal analyses should be included but held to a reasonable degree of detail. Usually the chapters are listed at the beginning of each chapter within the title.
 7. A good index is essential. The indexer must imagine what will be the key word in the mind of the user when he looks for the reference to a particular provision.
 8. Recodification should result in eliminating obsolete, unconstitutional, impliedly repealed, duplicated and useless provisions as well as eliminating unnecessary words and improving grammatical structure. Recodification results in the statutes being clarified, simplified, coordinated, and generally makes them more accessible, understandable, and usable. (Research Bulletin, 1954, pp. 8-18, and Remmlein and Ware, 1959, pp. 119-128)

Criteria

The criteria in this section relating to the substantive content and technical aspects of education law are an outgrowth of the previous discussion of principles and standards applying to these laws. For the most part, the writer has accepted the principles and standards as set forth by noted authorities as a basis for these criteria. A thorough examination of the criteria is necessary as they will serve as

guidelines for the recommendations for the present and continuing improvement of the Utah education law.

Substantive content

It has been stated that the structural pattern of the education law should, as nearly as possible, represent the conceptual design of education although there is always a lag between the two. When major revision of the education code is necessary, it becomes important that the legislature, the courts, and all concerned with education understand the nature of the revision. Each agency must be prepared to assume its proper role in the revision.

Criteria relevant to the substantive content concern both the constitutional provisions and the legislative enactments.

Constitutional provisions. The following are criteria by which recommendations relevant to constitutional provisions can be made.

These provisions should insure that:

1. The legislature maintain and support public education.
2. A direct mandate charge the legislature with providing the necessary funds to permit strong educational programs.
3. An important measure of control be allowed to remain at the local level.
4. The state board of education (through the state department of education) be the agent of the legislature in directing the educational affairs of the state.

5. The state board of education be the ultimate curriculum authority in the state.

6. The constitutional provisions applying to education law should not be detailed in such a manner as to restrict, limit, or handicap the legislature, the state board of education, or the local districts in meeting changing needs.

7. The constitutional provisions applying to education law should not contain statements of specific laws which control within narrow limits the organization and conduct of the institution and people.

8. Other provisions of the constitution not be in conflict with educational provisions.

Legislative enactments. The following are criteria by which recommendations relevant to legislative enactments can be made. These enactments should provide that:

1. Education laws should be in agreement with constitutional provisions.

2. Education laws should be more specific than constitutional provisions; however, they should be general in nature and not hamper state and local boards.

3. Education laws should be concise, understandable, and reflect the intent of the legislature.

4. Education laws should include few, if any, class or special laws favoring any group.

5. Education laws should prevent budgetary reviewing agencies or pre-auditing services other than the state board of education. The state board of education must have authority in this area in order to meet its responsibility to the legislature.

6. Education law should not delegate administrative authority to another branch of government. The state board of education, as an agent of the legislature, should work within the framework of these laws.

7. Education laws should permit greater uniformity of desirable educational practices. The control over details of the educational program should be allowed at the local level.

8. Education law should provide for orderly procedures at the local level.

9. Education laws should not penalize all school districts with restrictions needed by only a small number of districts.

10. Education laws should be recodified under a continuing plan for deleting or amending provisions which do not meet the intent of the legislature.

Technical aspects

The following criteria relative to the technical aspects of education law are based on the standards set forth by the National Education Association and previously enumerated on pages 17 and 18.

1. The system of classification of statutory provisions should be logical.

2. The classification of provisions within a title should be assigned "catchline" headings in about four levels of subdivisions.
3. Major topics within the title should have equal significance.
4. The numbering system should be planned so as to provide identification, exact reference, and permanence with possibility of expansion.
5. The compilation should permit continuous revision to keep it up to date.
6. Frontal analyses should be included but held to a reasonable degree of detail.
7. A good index is essential.

Other technical aspects, such as conflicting, obsolete, and otherwise unnecessary provisions, are also of a substantive nature and will be included in the over-all recommendations for improving the Utah education law.

SECTION III

A LOGICAL CLASSIFICATION OF THE UTAH EDUCATION LAW

This section contains a re-classification of the Utah education law based on the standards relating to technical aspects cited in the previous sections. This re-classification will serve as a reference in making over-all recommendations for the present and continued improvement of the Utah education law.

Unless otherwise noted, the numbers shown in brackets following the articles and sections refer to the Utah Code Annotated of 1953, as amended, repealed, and revised to 1965.

For example, the reference which appears as [53-29-20] means that Title 53, Article 29, Section 20, of the Utah Code Annotated is the source of legal reference for the topic. [Art. X, Sec. 1, Const.] refers to Article X, Section 1 of the Utah Constitution. Likewise, Senate or House Bills will be referred to as [H.B. or S.B., number, and date].

Chapter 1. General Provisions

- Art. 1. State Plan for Public Education
 - Sec. 1-1-1 Statement of Policy
[Title 53, UCA]
 - 1-1-2 General Scope. All constitutional and statutory provisions relating to education.

Art. 2. Definitions

- Sec. 1-2-1 Public School System
[Art. X, Sec. 2, Const.]
- 1-2-2 Free Non-sectarian Schools
[Art. X, Sec. 1, Const.]

Chapter 2. General Administration

Art. 1. State Board of Education

[Art. X, Sec. 8, Const.; 53-2-12]

- Sec. 2-1-1 Composition and Organization
[53-2-1, 8, 10]
- 2-1-2 Qualification of Members
[53-2-1]
- 2-1-3 Selection and Penalties
[53-2-1]
- 2-1-3 (A). Regional Conventions
[53-2-3]
- 2-1-3 (B). Procedure at Convention
[53-2-3]
- 2-1-3 (C). Nomination of Members
[53-2-3]
- 2-1-3 (D). Primary Elections
[53-2-3]
- 2-1-3 (E). Elections
[53-2-4]
- 2-1-3 (F). Canvass of Election Returns
[53-2-5]
- 2-1-4 Oath of Office
[53-2-1]
- 2-1-5 Term of Office, Filling Vacancies
[53-2-1, 7]
- 2-1-5 (A). Dates of Election
[53-2-6]
- 2-1-5 (B). Filling Vacancies
[53-2-7]
- 2-1-6 Meetings, Compensation of Members
[53-2-9, 11]
- 2-1-6 (A). Traveling Expenses
[53-2-9]
- 2-1-7 General Powers and Duties
[53-2-12]
- 2-1-7 (A). State Superintendent and Staff
[53-2-8]

- 2-1-7 (B). System of Public Education
[53-3-1]
- 2-1-7 (C). Policy of Act and Acceptance
[53-1-10]
- 2-1-7 (D). State Board of Education and
State Superintendent, Utah Agency
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[No provisions]

SECTION IV

RECOMMENDATIONS

The recommendations for improving the Utah education law contained in this section are presented in three areas. Specific recommendations contained in the first two areas, substantive content and technical aspects, were developed from the criteria established in Section II. The general recommendations suggested in the third area appear necessary in order to strengthen the general education policy of the state and relate to existing problems in the Utah education law which are not specifically covered by the criteria established in Section II.

Recommendations Relating to the Substantive Content

The first recommendation, the foundation upon which all future recommendations in this section are made, concerns constitutional provisions relating to education in the state of Utah. It is recommended that present constitutional provisions, as contained in Article X, Public Schools, of the Utah Constitution, be deleted and the following provisions be accepted.

Article X. Public Education

Section 1. Free Public Schools. The legislature shall provide for the maintenance and support of a system of free public schools

open to all children of the state, and shall establish, organize, and support other public education institutions of higher learning, as may be desirable.

Section 2. The state board of education, through the state department of public instruction, shall be the agency of the legislature in all matters of free public education and shall administer all state legislation as it concerns education in the state.

A. The state department of public instruction shall be the curriculum authority of the state system of free public education.

B. The state board of education shall serve as the legislative budgetary reviewing and pre-auditing agency in all matters pertaining to free public education.

Section 3. The legislature shall provide a tax structure allowing access to community resources in order that local control shall not be restricted.

Section 4. The state board of higher education shall be the agency of the legislature in all matters of higher education and shall administer all state legislation as it concerns higher education in the state.

It is further recommended that all other provisions of the Utah state constitution be amended or deleted to avoid conflict with the above provisions relating to education.

The following recommendations are specifically related to the substantive content of the Utah education law. Inasmuch as the purpose of this study was to provide for the present and continuing

improvement of Utah education law, the following recommendations relate to either immediate needs for change, or future improvement based on the acceptance of new constitutional provisions. These recommendations have been arranged in a sequence following the logical classification of the Utah education law as presented in Section III.

Chapter 1. General provisions

1. Section 1-1-1, 2. Statement of Policy and General Scope. These sections identify the location of education law interspersed throughout the ten volumes of the Utah Code Annotated. A later recommendation will provide that all education laws be classified under the education title.
2. Section 1-2-3. Public School System. This section defines the different classes of school districts. If recommended constitutional provisions are accepted, this provision would be deleted.
3. Section 1-2-2. Free Non-sectarian Schools. This section directs the legislature to provide for a uniform system of public schools, free from sectarian control. If recommended constitutional provisions are accepted, this provision would be deleted.

Chapter 2. General Administration

1. Article 1. State Board of Education. "The general control and supervision of the public schools in Utah is vested in the state board of education. . . ." This control and supervision of the public schools is in complete agreement with criteria developed. It is

recommended that additional legislation be enacted to clarify the authority of the state board of education. Budgetary review and pre-audit service should be delegated to the state board of education within a framework of legal enactments designed to reveal the intent of the legislature in these matters.

2. Section 2-1-7 (A). This subsection gives the state board of education the power to fix the salary of the state superintendent of public instruction. Conflicting enactments have given the state finance commission and the state board of examiners overriding power in this regard as well as the authority to approve salaries of other state department of education personnel. The recommendation suggested in Article 1, Chapter 2, if accepted, would eradicate this conflict.

3. Section 2-1-7 (H). This subsection gives the state board of education the power to determine standards by which high schools shall be maintained and to determine if each district justifies support from the state school funds. It is recommended that the state board of education be designated as the direct agent of the legislature. The legislature should then legally adopt enactments in a general way to direct the state board to compel compliance with minimum standards. Flexibility at the local level to allow experimentation and provide for change is an important aspect of local control. The legislature should be reasonable in enacting this type legislation.

4. Article 4. Fact Finding Body. This fact finding body was authorized prior to 1940. Enactments in this article have been used on

several occasions to gather information relevant to public education since that time. It is recommended that this obsolete article be deleted. Enactments of this nature should be directed to the state board of public instruction.

5. Section 2-6-1. Composition and Organization. This section sets forth the composition and organization of local boards of education. Of particular concern is the class legislation providing for different types of local boards of education. It is recommended that all school districts be governed by the same laws relative to the composition and organization of school boards. As a general rule, class legislation favors certain groups.

Another part of this law states that presidents and vice-presidents of local school boards must have two years of their terms remaining at time of election to these positions. An attorney general opinion refutes this legislation by giving the opinion that "members select a president of their choice rather than that the president they select must have a term of at least two years." It is recommended that legislation follow the attorney general opinion so that the members of the local board have the privilege of selecting a man of their choice as president or vice-president of the local board even though this officer may serve less than two years.

7. Section 2-6-3. Election of Members. This section relates to the method by which board members are selected. As previously recommended, this type of class legislation should be deleted, and all board

members should be selected through the same election procedures.

8. Section 2-6-8 (A-7). Old Documents. This item gives the board of education the power to authorize the clerk or treasurer to dispose of documents and papers which have been on file for 10 years or more and in the judgment of the board of education are of no further importance. It is recommended that this item be deleted as a recent legislative enactment, The New Management of Public Records Act, makes the old statute obsolete. It is further recommended that new legislation of this nature be enacted to provide a method of disposing of records in a manner that is easily administered.

9. Section 2-6-8 (B-2). Authorization of Expenditures. This item requires that no purchase shall be made and no indebtedness shall be incurred by any officer or employee of any school district without the approval and order of the board of education of such district. It is recommended that this law be made less restrictive. The local board of education should retain control of financial matters at the local level; however, if followed to the letter of the law, it would be unduly restrictive and hamper effective administration. A ceiling on the amount of the indebtedness or purchase would seem more reasonable.

Chapter 4. Finance

Subchapter 1. State school monies.

1. Article 1. Revenue from the State School Lands. The state land board provides for the sale, fees, forfeitures, leases, rentals,

and other disposition of school land funds. It is recommended that a study be made of the procedures followed in renting, leasing, and selling school lands to determine if these procedures are desirable or should be changed.

2. Section 4-4-3 (D). This subsection "empowers the state board of education to accept and assume. . .responsibility for such assets, supplies and equipment. . .held and used by the federal W.P.A." This subsection should be repealed as being obsolete.

3. Section 4-4-3 (E). This subsection apportions an amount "not to exceed \$45,000 annually. . .for the purpose of administration and supervision of the school lunch program." Legislation should not specify ceilings on apportionments which are continuing without making periodic adjustments to assure adequate funds.

4. Section 4-7-2. Distribution of Costs Between State and Local Districts. This section emphasizes that Article XIII, Section 7, of the Utah constitution prevents the state from contributing more than 75 percent in the support of public education. If recommended constitutional provisions are accepted, this requirement would be deleted.

5. Section 4-7-4 (A). This subsection prescribes basic aid for local school districts. Categorical aid is established for libraries, instructional centers, and summer programs. It is recommended that this aid not be categorical.

6. Section 4-7-4 (B-E). Board and voted leeway programs are discussed in these two subsections. It is recommended that the maximum

mill levy requirement for these programs be deleted. The removal of these maximum mill levy requirements for voted and board leeway would allow local boards to take full advantage of state incentive benefits and not make the additional funds subject to voter approval. This recommendation, if accepted, would bring about the deletion of Section 4-7-4 (E) which provides for voted leeway programs.

7. Section 4-9-2. Continuing School Building Programs. In this section the legislature accepts part of the responsibility for providing capital outlay expenditures for school building programs. It is recommended that a study examine the following aspects of this legislation:

- (a) The \$700.00 limit for each school building unit.
- (b) The same building unit limit for both elementary and secondary construction.
- (c) The period of time necessary to retire bonded indebtedness.

Subchapter 2. County and local school revenue.

1. A constitutional provision, Article XIV, Section 4, states in part, "when authorized to create indebtedness. . .no school district . . .shall become indebted to an amount, including existing indebtedness, exceeding four per centum of the value of property therein. . ." is unduly restrictive. If previous constitutional provisions are accepted, this section would be deleted.

Subchapter 3. Local school budgets.

1. Section 4-15-4. Approval at State Level. This section outlines procedures which different classes of school districts must follow in

order to meet budget approval requirements at the state level. If previous recommendations are accepted, this section would be modified to provide the same budget approval requirements for all local districts.

Subchapter 4. School district expenditures.

1. Section 4-18-3. This section provides certain audit requirements for different classes of school districts. If previous recommendations are accepted, these audit requirements would be made the same for all local districts.

Subchapter 5. Local district indebtedness.

1. Article 21. Borrowing Power. Existing legislation which provides for local district indebtedness represents a labyrinth of legal terminology in many laws interspersed throughout this chapter. It is recommended that all laws relating to local district indebtedness, both short term and long term, be carefully studied. The results of this study should result in clear, understandable laws which are conveniently located for general use and are not unduly restrictive.

2. Article 22. Bond Issues. Recommendations made under Article 21 of this subchapter are applicable to the laws relating to bond issues. Too, all procedures relating to local school district indebtedness should be the same for all local districts.

Chapter 6. Employees

1. Sections 6-1-1, 2. These sections provide for basic requirements and qualifications relating to teaching certificates and diplomas. The

state board of education should have complete authority in these determinations. It is recommended that the laws in these two sections, as well as those found under other sections relating to specific certification, be clarified. All conflicting provisions relating to certification should be deleted.

2. Section 6-1-6. Leaves of Absence. There are no state provisions relating to leaves of absence. Local districts apparently have the authority to provide such leaves. It is recommended that legislation be enacted providing state incentive funds which would encourage local districts to participate in programs of this nature. Furthermore, such incentive plans should encourage local districts to provide internships for both future teachers and school administrators.

3. Article 2. Retirement. This article provides legislation for the new Utah School Employee Retirement Plan. It is recommended that an examination of the Utah School Employee Retirement Plan be undertaken to determine if it would be feasible to withhold a larger amount of member salaries with matching state funds. The allowing of out-of-state teachers to participate in the retirement plan should also be considered.

Chapter 7. Pupils

1. Article 2. Health. Legislative enactments in this article prescribe certain requirements for school districts relating to health of all pupils. These enactments include the responsibilities the state board of health shall have in school health programs. It is recommended

that this section make the state board of education responsible for health requirements and that all parts of the law relating to the state health department be deleted as these laws are too detailed and restrictive. This recommendation is not meant to imply that the state board of education should not seek the advice of other state agencies relating to matters of health.

Chapter 9. Instruction

1. Section 9-1-2. Curriculum. Present curriculum requirements provided by law include: (a) Bird Day, (b) Physiology and Hygiene, (c) Sanitation and Prevention of Disease, (d) Constitution to be Taught, (e) Alcohol and Tobacco, (f) Development of Character Habits, and (g) Metric System. Some of these requirements are provided for by constitutional provisions and others by legislative enactments. If previous constitutional provisions are accepted, those requirements found in constitutional provisions would be deleted. Legislative enactments relating to these curriculum requirements would also be deleted if previous constitutional provisions by which the state board of education is named as the final curriculum authority were accepted.

2. Section 9-1-3. Textbooks. It is recommended that the state furnish textbooks and related materials for all pupils in the public schools. This would follow the recommended constitutional mandate that the public schools should be free.

3. Article 2. Vocational Education, Vocational Rehabilitation,

and Adult Education. This article contains many obsolete provisions, some of which were enacted fifty years ago. It is recommended that all obsolete and unnecessary provisions be deleted from this article.

Chapter 11. The University of Utah

1. Section 11-6-1 (B). Teacher Certificate. This subsection provides that the University of Utah College of Education may issue teacher certificates and diplomas. This subsection is obsolete and should be deleted.

Chapter 14. State junior colleges, trade and vocational schools

1. Section 14-3-3. Roosevelt Junior College. This section providing for Roosevelt Junior College was enacted by the legislature; however, an appropriation bill was not enacted. It is recommended that this section be deleted from the law.

Chapter 16. Private and parochial schools

Very few provisions relate to private and parochial schools in the state of Utah. It is recommended that provisions be enacted by the legislature to insure minimum educational standards for these schools.

Recommendations Relating to the Technical Aspects

Two broad recommendations relative to improving the technical aspects of the Utah education law are suggested.

1. A logical classification of the Utah education law, based on

the classification presented in Section III, should be accepted.

(a) Increased federal interest in education the past decade would appear to necessitate new headings under existing major headings to facilitate this interest.

(b) Too, several additional headings under existing major headings appear needed to accommodate recommendations in several general areas as presented in the last part of this section.

(c) There is substantial overlapping of legislation relating to higher education in Chapters 10 through 14.

2. A thorough examination of the Utah education law should be undertaken immediately and thereafter periodically by a committee of the legislature in order to delete or amend all obsolete, conflicting, and otherwise unnecessary provisions. Personnel from a law publishing firm should assist with this project in order to assure correct legal terminology and other codification procedures. Provisions relating to higher education in Chapters 10 through Chapter 14 could well be codified into a single chapter.

Recommendations for Studies Relating to General Areas

In view of their importance in the overall educational structure, it is recommended that the following general areas be examined. It is believed that further study of these areas will reveal a great need for clarification and new legislation.

1. School Boards. A comprehensive study relative to school board

legislation appears needed in the areas of elections, terms of office, and salaries paid above necessary expenses. At present, members are elected from specific geographical areas and yet are required by law to represent the district as a whole. The practice of paying members in excess of expenses is thought to cause board members to infringe upon executive functions. Periodically, a majority of school board members' terms expire at the same time; this practice could hinder a district's continuing plans.

2. Superintendents. There is a need to provide for the legal status of the school superintendent. Assuming that the superintendent of schools should be the chief administrative officer of the board, a comprehensive study is needed in this area. Laws providing or permitting dual administrative officers should be deleted or amended. New legislation would then clarify in general terms the responsibilities of both the board of education and the school superintendent.

3. Consolidation. Should the principle of equalization of opportunity be applied to school district organization, there would be a need for a comprehensive study to bring about further district and attendance area consolidation.

4. School Personnel. A comprehensive study involving the legal status of both certified and noncertified personnel is needed. Of primary importance would be legislation relating to collective negotiation procedures between school personnel and boards of education. A more complicated problem to be considered because of national

implications is that of reciprocity between states involving tenure, certification, and retirement programs.

5. Student Personnel. A complete study of all legislation relating to juveniles appears to be overdue. The codification of all law relating to juveniles now found under several titles could well be re-classified. Such a study should be concerned with all legislation relating to juveniles which would include delinquency, apprenticeships, rights, responsibilities, courts, and other matters of an educational nature. Inasmuch as several agencies and departments now have responsibility in these matters, new enactments appear needed to prevent duplication of services and responsibilities. Provisions for enforcing this legislation should be unmistakably clear in naming the responsible agency or agencies.

Rapidly changing trends in education and related fields make the need imperative that state legislatures provide the necessary enactments to meet these changes. The legislature should not abrogate its legislative function to the judiciary because of failure to accept these responsibilities.

SECTION V

SUMMARY AND CONCLUSIONS

Summary

As federal, state, and local governments attempt to keep abreast of our rapidly changing and complex society, it has become necessary for these bodies to enact more and more legislation in all areas. As a result of this abundance of new legislation, numerous problems relating to both the substantive content and technical aspects of the law have arisen. Conflicts exist in all areas and at all levels of government relevant to the authority and responsibilities to be assumed by different agencies.

It is obvious that the areas which are experiencing the greatest difficulties with legal confusion are those areas of great public concern; therefore, it is understandable that education law has become more complex, as there is probably no area of greater concern or interest to the general public than education. Another aspect of education law which gives rise to legal confusion is that education is subject to control from all levels of government; therefore, conflicts of authority and responsibilities are inevitable.

That there is a growing concern among educators relating to the

substantive content and the technical aspects of education law is obvious not only from the amount of recent literature concerned with the subject but also from the positive action being taken by various states. In Utah, state and local school officials, as well as university personnel, have expressed the need for improvement in the education law in the state.

Therefore, it has been the purpose of this study to arrange the education law of the state of Utah into a logical classification and to provide recommendations for the present and continued improvement of these laws.

In order to accomplish the purpose of the study, literature relating to both the substantive content and technical aspects of education law was reviewed; provisions applicable to education in the Utah Code Annotated, 1953, as amended, repealed, and enacted to 1965 inclusive, were studied; court decisions and Attorney General Opinions pertinent to Utah education law were examined. Selected superintendents, legislators, state officials, university professors, and others were informally interviewed concerning Utah education law and educational policy. An examination of principles relevant to the substantive content and standards relevant to the technical aspects of Utah education law was made; from this examination, criteria were established as guidelines for a logical classification of the Utah education law. Legal assistance concerning the study was obtained from Utah state officials.

The study resulted in the formulation of a logical classification of Utah education law with provision for cross references to their original source, Utah Code Annotated. Recommendations were made for the present and continued improvement of the state's education law.

Conclusions

The following conclusions relative to the substantive content of Utah education law were derived from this study:

1. The general educational policy of the state should be reflected in the structural pattern of the law. Education laws must clearly state the responsibilities to be assumed by state and local agencies. If these responsibilities are not clearly defined, conflicts are inevitable.

2. The legislature should assume full responsibility for the maintenance and support of education as provided for in the constitution. When the legislature does not assume its proper responsibility in this area, the courts must take on these responsibilities.

3. The state board of education should be the agent of the legislature in all matters relating to education. The legislature should not delegate administrative responsibility. It should provide a framework of law within which the state board of education, through the state education department, can direct the educational activities of the state.

4. Local control of education should be maintained with a greater

awareness of attendant responsibilities.

The following conclusions relative to the technical aspects of Utah education law were drawn from this study:

1. There is a need for a complete revision of Utah education law which should incorporate the following standards:

(a) All laws pertaining to education should be recodified under the broader term "education" in order to provide a usable and ready general reference to these laws.

(b) The arrangement of these laws within the "Education" title should be logical.

(c) The numbering system should be planned to provide identification, exact reference and permanence, with possibility of expansion.

(d) Obsolete, conflicting and unnecessary provisions should be deleted and grammatical structure improved.

2. Recommendations relating to the educational policy or substantive content of Utah education law should be incorporated in this revision of Utah education law.

That comprehensive studies be made in several areas not specifically covered by the criteria established in the study was also recommended. These general areas concern the superintendency, school board members, school personnel, pupils, and consolidation.

The final conclusion resulting from this study is that education

law can, in the final analysis, be only as effective as the agencies which enforce its provisions.

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