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Michie's Alabama Education Laws Annotated

CONSTITUTION OF ALABAMA OF 1901

Article XIV.

Education.

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- 266. Alabama Polytechnic Institute; trustees.
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Editor's note. Amendments to the constitution are printed following the constitution in the order in which they were adopted. The publisher has set out case annotations following the section of the constitution or amendment which was effective at the time of the case's decision. Where a section of the constitution has been amended, the user should look at both the original section and all amendments for a complete history of the section.

ARTICLE XIV

EDUCATION

Sec. 256. School system.

The legislature shall establish, organize, and maintain a liberal system of public schools throughout the state for the benefit of the children thereof between the ages of seven and twenty-one years. The public school fund shall be apportioned to the several counties in proportion to the number of school children of school age therein, and shall be so apportioned to the schools in the districts or townships in the counties as to provide, as nearly as practicable, school terms of equal duration in such school districts or townships. Separate schools shall be provided for white and colored children, and no child of either race shall be permitted to attend a school of the other race.

Editor's note. This section has been revised by Amendment No. 111. For cases decided subsequent to the amendment, see notes under Amendment No. 111.

Amendment No. 284, which provides for appointment of the state

superintendent of education by the state board of education, repeals the provisions of article XIV of this Constitution in conflict therewith.

Cross references. — Apportionment of school funds, § 16-4-5.

Constitutional provision, apportionment of public school fund, Const. Ala., art. XIV, § 256.

Alabama Law Review. — Commentary: Education in Alabama: Is there a right to the three R's? 43 Ala. L. Rev. 133 (1991).

Cumberland Law Review. — Comment: A mandate to the legislature or serious judicial intervention? A remedy in the Alabama public school equity funding case. 25 Cumb. L. Rev. 133 (1994).

ALR. — Validity, construction, and effect of municipal residency requirements for teachers, principals, and other school employees. 75 ALR4th 272.

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General comment.

School boards, as juridical entities, while undertaking to administer the affairs of that segment of the system entrusted to them, are engaged in performing a purely governmental function. *Gainer v. School Bd.*, 135 F. Supp. 559 (N.D. Ala. 1955).

The state is under no constitutional obligation to provide public schools. *Mitchell v. McCall*, 273 Ala. 604, 143 So. 2d 629 (1962).

Authority of general assembly.

Under circumstances, school sought to be established is not a "public school" within meaning of this section; therefore, general assembly exceeded its constitutional authority in enacting legislation creating such school. *Ellsberry v. Seay*, 83 Ala. 614, 3 So. 804 (1888).

Children.

The provisions for separate schools for "colored children" contemplate that no child with an appreciable admixture of negro blood shall be admitted to a public school for white children. *State ex rel. Farmer v. Board of Sch. Comm'rs*, 226 Ala. 62, 145 So. 575 (1933).

Construction with other law.

When section 71 provides that no appropriations shall be included in the general appropriation bill for other causes than those enumerated, including those for public schools, it meant such schools as are mentioned in section 256. Appropriations for other educational purposes must be by separate bills. *In re Opinions of Justices*, 229 Ala. 98, 155 So. 699 (1934).

Evidence — Sufficient.

Where family applying for admission of children to a white school

was of a group known locally as “creoles”, a name in general applied to white people of French or Spanish descent, although locally applied to a mixed race in which negro blood is present, the trial judge saw and heard the witnesses and had the children before him; evidence of negro blood through their maternal ancestors was more direct and persuasive. *State ex rel. Farmer v. Board of Sch. Comm’rs*, 226 Ala. 62, 145 So. 575 (1933).

Liability.

While performing its duties within the scope of its express authority, the school board is an agency of the State of Alabama, endowed with its sovereign immunity from suit, and it follows that the courts are without power to impose a compensatory fine in a civil contempt proceeding. *Gainer v. School Bd.*, 135 F. Supp. 559 (N.D. Ala. 1955).

Pleadings.

In order to conform to the enactment of this section, requiring that the school fund be so apportioned to the schools in the districts or townships in the counties so as to provide as nearly as practicable school terms of equal duration, the school laws of the state were changed; thus, plaintiff’s suit, charging that he was wantonly and maliciously turned out of school, in violation of a former law providing for free public schools to be kept open five months each year, did not state a good cause. *Weaver v. Pepper*, 167 Ala. 328, 52 So. 754 (1910).

Requirements.

“A liberal system of public schools” means that the schools shall be liberally maintained, and that they should be open to common and general use. *Vincent v. County Bd. of Educ.*, 222 Ala. 216, 131 So. 893 (1931).

Illustrative cases.

Appropriation of funds to the state board of education for the further support and maintenance of the public schools of the state in order that a minimum school term could be provided was an appropriation from the general fund in the state treasury, not set apart and made a part of the public school fund to be apportioned and distributed by the educational authorities, but intercepted and apportioned by the Legislature to certain named counties as an emergency appropriation and not in violation of §§ 256 or 260 of the Constitution. *In re Opinions of Justices*, 215 Ala. 524, 111 So. 312 (1927).

The payment of an excise and privilege tax on gasoline consumed in school buses used exclusively for the transportation of school children or teachers to and from school is, in a sense, an application and payment for an educational purpose, and is within constitutional provision requiring school funds and poll taxes to be used for public school maintenance and support. *County Bd. of Educ. v. State ex rel. Carmichael*, 237 Ala. 434, 187 So. 414 (1939).

Power to provide for operation of schools was in the legislature, and although governor was authorized by constitution to employ available forces to keep peace in localities implementing policy of school desegregation, governor was not authorized to close schools unless that was the actual and incidental result of keeping the peace. *Opinion of Justices*, 275 Ala. 547, 156 So. 2d 639 (1963).

Miscellaneous.

Details of management involving incidental and matriculation fees may be left to the school trustees in charge. *Vincent v. County Bd. of Educ.*, 222 Ala. 216, 131 So. 893 (1931).

Cited in *Dickinson v. Cunningham*, 140 Ala. 527, 37 So. 345 (1904); *Heustess v. Hearin*, 213 Ala. 106, 104 So. 273 (1925); *Hall v. Blan*, 227 Ala. 64, 148 So. 601 (1933); *Williams v. State ex rel. Pickens County*, 230 Ala. 395, 161 So. 507 (1935); *Tucker v. State ex rel. Poole*, 231 Ala. 350, 165 So. 249 (1935); *Board of Sch. Comm’rs v. Hahn*, 246 Ala. 662, 22 So. 2d 91 (1945); *Mobile, Alabama-Pensacola, Fla. Bldg. & Constr. Trades Council v. Williams*, 331 So. 2d 647 (Ala. 1976); *Smith v. Dallas County Bd. of Educ.*, 480 F. Supp. 1324 (S.D. Ala. 1979); *Belcher v. Jefferson County Bd. of Educ.*, 474 So. 2d 1063 (Ala. 1985); *Hammock v. Keys*, 93 F. Supp. 2d 1222, 2000 U.S. Dist. LEXIS 4926 (S.D. Ala. 2000).

Sec. 257. Educational funds.

The principal of all funds arising from the sale or other disposition of lands or other property, which has been or may hereafter be granted or entrusted to this state or given by the United States for educational purposes shall be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific object of the original grants or appropriations.

Cross references. — County boards of education, acquisition of property, etc., § 16-8-40.

CASE NOTES

“Income”.

Illustrative cases.

Cited.

“Income”.

The word “income” as used in this section means gross income. It is defined as that which comes in, or is received, without reference to the outgoing expenditures. *Opinion of Justices*, 254 Ala. 188, 47 So. 2d 729 (1950).

Illustrative cases.

This provision does not prohibit the state treasurer under § 36-17-18 from investing, with the governor’s approval, in direct obligations of the United States, the funds held in the “sixteenth section land fund” and the “school indemnity land sales fund” in such an amount as he finds can not be applied either immediately or within a short time to the purpose for which those funds are held. *In re Opinion of Justices*, 252 Ala. 26, 39 So. 2d 294 (1949).

Under this provision, Ala. Const., Art. 14, § 260 and §§ 9-15-39 and 16-20-1, the income earned from the investment under § 36-17-18 of funds held in the “sixteenth section land fund” and the “school indemnity land sales fund” must be used for the public schools of the townships, each respectively and proportionately, considering the source of such investment in respect to the various townships. *In re Opinion of Justices*, 252 Ala. 26, 39 So. 2d 294 (1949).

Cited in *In re Opinions of Justices*, 229 Ala. 98, 155 So. 699 (1934); *County Bd. of Educ. v. State ex rel. Carmichael*, 237 Ala. 434, 187 So. 414 (1939).

Sec. 258. Donations, escheats.

All lands or other property given by individuals, or appropriated by the state for educational purposes, and all estates of deceased persons who die without leaving a will or heir, shall be faithfully applied to the maintenance of the public schools.

Editor’s note. This section has been amended by Amendment No. 111.

Cross references. — Escheats, generally, § 43-6-2 et seq.

CASE NOTES

Cited in *In re Opinions of Justices*, 229 Ala. 98, 155 So. 699 (1934); *City Bd. of Educ. v. Williams*, 231 Ala. 137, 163 So. 802 (1935).

Sec. 259. Poll taxes.

All poll taxes collected in this state shall be applied to the support of the public schools in the respective counties where collected.

Editor’s note. This section has been amended by Amendment No. 111.

Alabama Law Review. — Commentary: Education in Alabama: Is there a right to the three R’s? 43 Ala. L. Rev. 133 (1991).

CASE NOTES

Illustrative cases.
Cited.

Illustrative cases.

The payment of an excise and privilege tax on gasoline consumed in school buses used exclusively for the transportation of school children or teachers to and from school is, in a sense, an application and payment for an educational purpose, and is within constitutional provision requiring school funds and poll taxes to be used for public school maintenance and support. *County Bd. of Educ. v. State ex rel. Carmichael*, 237 Ala. 434, 187 So. 414 (1939).

Cited in *In re Opinions of Justices*, 229 Ala. 98, 155 So. 699 (1934).

Sec. 260. Application of other funds.

The income arising from the sixteenth section trust fund, the surplus revenue fund, until it is called for by the United States government, and the funds enumerated in sections 257 and 258 of this Constitution, together with a special annual tax of thirty cents on each one hundred dollars of taxable property in this state, which the legislature shall levy, shall be applied to the support and maintenance of the public schools, and it shall be the duty of the legislature to increase the public school fund from time to time as the necessity therefor and the condition of the treasury and the resources of the state may justify; provided, that nothing herein contained shall be so construed as to authorize the legislature to levy in any one year a greater rate of state taxation for all purposes, including schools, than sixty-five cents on each one hundred dollars' worth of taxable property; and provided further, that nothing herein contained shall prevent the legislature from first providing for the payment of the bonded indebtedness of the state and interest thereon out of all the revenue of the state.

Editor's note. This section has been amended by Amendment No. 111.

CASE NOTES

Authority of county board of education.
Authority of legislature.
Governmental powers.
"Taxable property".
Illustrative cases.
Cited.

Authority of county board of education.

There is no constitutional violation in levying both a one mill tax and a three mill tax within the county for school purposes. *Brittain v. Benefield*, 263 Ala. 171, 81 So. 2d 667 (1955).

Authority of legislature.

Legislature had authority to impose a gasoline excise tax on gasoline purchased and stored by school board for use in buses used to transport students. *State Tax Comm'n v. County Bd. of Educ.*, 235 Ala. 388, 179 So. 197 (1938).

Governmental powers.

The act of 1819 granting statehood to Alabama and requiring that certain lands be set aside for schools does not protect the land so restricted from a claim of adverse possession. *Alabama v. Schmidt*, 232 U.S. 168, 34 S. Ct. 301, 58 L. Ed. 555 (1914).

"Taxable property".

The phrase "taxable property" means property which the legisla-

ture has not constitutionally exempted from taxation. *State v. Birmingham S.R.R.*, 182 Ala. 475, 62 So. 77 (1913).

Illustrative cases.

Appropriation of funds to the state board of education for the further support and maintenance of the public schools of the state in order that a minimum school term could be provided was an appropriation from the general fund in the state treasury, not set apart and made a part of the public school fund to be apportioned and distributed by the educational authorities, but intercepted and apportioned by the Legislature to certain named counties as an emergency appropriation and not in violation of §§ 256 or 260 of the Constitution. *In re Opinions of Justices*, 215 Ala. 524, 111 So. 312 (1927).

Under this provision, Ala. Const., Art. 14, § 257 and §§ 9-15-39 and 16-20-1, the income earned from the investment under § 36-17-18 of funds held in the "sixteenth section land fund" and the "school indemnity land sales fund" must be used for the public schools of the townships, each respectively and proportionately, considering the source of such investment in respect to the various townships. *In re Opinion of Justices*, 252 Ala. 26, 39 So. 2d 294 (1949).

Cited in *Heustess v. Hearin*, 213 Ala. 106, 104 So. 273 (1925); *Pierson v. Phillips*, 214 Ala. 88, 106 So. 501 (1925); *Abramson v. Hard*, 229 Ala. 2, 155 So. 590 (1934); *Pullman Car & Mfg. Corp. v. Hamilton*, 229 Ala. 184, 155 So. 616 (1934); *In re Opinions of Justices*, 229 Ala. 98, 155 So. 699 (1934).

Sec. 261. Teachers' salaries.

Not more than four percent of all moneys raised or which may hereafter be appropriated for the support of public schools, shall be used or expended otherwise than for the payment of teachers employed in such schools; provided, that the legislature may, by a vote of two-thirds of each house, suspend the operation of this section.

CASE NOTES

Cited in *Heustess v. Hearin*, 213 Ala. 106, 104 So. 273 (1925); *State Tax Comm'n v. County Bd. of Educ.*, 235 Ala. 388, 179 So. 197 (1938).

Sec. 262. Superintendent of education.

The supervision of the public schools shall be vested in a superintendent of education, whose powers, duties, and compensation shall be fixed by law.

Editor's note. Amendment No. 284 provides for the appointment of a state superintendent of education by the state board of education, and repeals the provisions of article XIV of this Constitution in conflict therewith.

CASE NOTES

Duty of state officials.
Cited.

Duty of state officials.

State public school officials had an affirmative duty to require local school officials to disestablish dual athletic system based upon race. *Lee v. Macon County Bd. of Educ.*, 283 F. Supp. 194 (M.D. Ala. 1968).

Cited in *Williams v. State ex rel. Pickens County*, 230 Ala. 395, 161 So. 507 (1935).

Sec. 263. Sectarian or denominational schools.

No money raised for the support of the public schools shall be appropriated to or used for the support of any sectarian or denominational school.

CASE NOTES

Illustrative cases.

Statute which established student assistance program which provided state grants for eligible students for post secondary education, which prohibited the use of the money for sectarian purposes, does not violate Ala. Const., art. 14, § 263 because the statute does not appropriate money, and the grants it provides for are not for the support of the individual schools but are for the benefit of the individual students and the state educational system, and all grants are entirely for secular purposes. *Alabama Educ. Ass'n v. James*, 373 So. 2d 1076 (Ala. 1979).

Sec. 264. State university; trustees.

The state university shall be under the management and control of a board of trustees, which shall consist of two members from the congressional district in which the university is located, one from each of the other congressional districts in the state, the superintendent of education, and the governor, who shall be ex officio president of the board. The members of the board of trustees as now constituted shall hold office until their respective terms expire under existing law, and until their successors shall be elected and confirmed as hereinafter required. Successors to those trustees whose terms expire in nineteen hundred and two shall hold office until nineteen hundred and seven; successors to those trustees whose terms expire in nineteen hundred and four shall hold office until nineteen hundred and eleven; successors to those trustees whose terms expire in nineteen hundred and six shall hold office until nineteen hundred and fifteen; and thereafter their successors shall hold office for a term of twelve years. When the term of any member of such board shall expire, the remaining members of the board shall, by secret ballot, elect his successor; provided, that any trustee so elected shall hold office from the date of his election until his confirmation or rejection by the senate, and, if confirmed, until the expiration of the term for which he was elected, and until his successor is elected. At every meeting of the legislature the superintendent of education shall certify to the senate the names of all who shall have been so elected since the last session of the legislature, and the senate shall confirm or reject them, as it shall determine is for the best interest of the university. If it reject the names of any members, it shall thereupon elect trustees in the stead of those rejected. In case of a vacancy on said board by death or resignation of a member, or from any cause other than the expiration of his term of office, the board shall elect his successor, who shall hold office until the next session of the legislature. No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such.

Editor's note. This section has been revised by Amendment No. 399. For cases decided subsequent to the amendment, see notes under Amendment No. 399.

CASE NOTES

Construction with other law.
Illustrative cases.
Cited.

Construction with other law.

Section 267 of the state constitution, when read in conjunction with this provision, applies to the removal of the state university located at Tuscaloosa when the constitution was adopted, and not to the Mobile Medical College, a mere subsidiary located in another congressional district. *Stevens v. Thames*, 204 Ala. 487, 86 So. 77 (1920).

Illustrative cases.

An act removing the medical college of the University of Alabama from Mobile to Tuscaloosa when the American Medical Association ascertains the status of the college does not violate this provision by depriving the trustees of the University of their discretion in the management and control of the University because the act related to a matter within the legislative power of the state. *Stevens v. Thames*, 204 Ala. 487, 86 So. 77 (1920).

Cited in *Cox v. Board of Trustees*, 161 Ala. 639, 49 So. 814 (1909); *Opinion of Justices*, 417 So. 2d 946 (Ala. 1982).

Sec. 265. State university; funds for maintenance.

After the ratification of this Constitution there shall be paid out of the treasury of this state at the time and in the manner provided by law, the sum of not less than thirty-six thousand dollars per annum as interest on the funds of the University of Alabama, heretofore covered into the treasury, for the maintenance and support of said institution; provided, that the legislature shall have the power at any time they deem proper for the best interest of said university to abolish the military system at said institution or reduce the said system to a department of instruction, and that such action on the part of the legislature shall not cause any diminution of the amount of the annual interest payable out of the treasury for the support and maintenance of said university.

Cross references. — University fund, University of Alabama, § 16-47-4.

CASE NOTES

Cited in *Cox v. Board of Trustees*, 161 Ala. 639, 49 So. 814 (1909); *Abramson v. Hard*, 229 Ala. 2, 155 So. 590 (1934).

Sec. 266. Alabama Polytechnic Institute; trustees.

The Alabama Polytechnic Institute, formerly called the Agricultural and Mechanical College, shall be under the management and control of a board of trustees, which shall consist of two members from the congressional district in which the institute is located, and one from each of the other congressional districts in the state, the state superintendent of education, and the governor, who shall be ex officio president of the board. The trustees shall be appointed by the governor, by and with the advice and consent of the senate, and shall hold office for a term of twelve years, and until their

successors shall be appointed and qualified. The board shall be divided into three classes, as nearly equal as may be, so that one-third may be chosen quadrennially. Vacancies occurring in the office of trustees from death or resignation, and the vacancies regularly occurring in the year nineteen hundred and five shall be filled by the governor, and such appointee shall hold office until the next meeting of the legislature. Successors to those trustees whose terms expire in nineteen hundred and three shall hold office until nineteen hundred and eleven; successors to those whose terms expire in nineteen hundred and five shall hold office until nineteen hundred and fifteen; and successors to those whose terms expire in nineteen hundred and seven shall hold office until nineteen hundred and nineteen. No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such.

Editor's note. This section has been repealed by Amendment No. 161. As to board of trustees of Auburn University (formerly Alabama Polytechnic Institute), see Amendment No. 161.

CASE NOTES

Miscellaneous.

The Alabama Polytechnic Institute is a state institution, and the power of eminent domain is therefore derived from the sovereign state, and needs no express statutory declaration. *Denson v. Alabama Polytechnic Inst.*, 220 Ala. 433, 126 So. 133 (1930).

Sec. 267. Location of certain schools.

The legislature shall not have power to change the location of the state university, or the Alabama Polytechnic Institute, or the Alabama Schools for the Deaf and Blind, or the Alabama Girls' Industrial School, as now established by law, except upon a vote of two-thirds of the legislature taken by yeas and nays and entered upon the journals.

CASE NOTES

Construction with other law.
Cited.

Construction with other law.

This provision, when read in conjunction with § 264 of the state constitution, applies to the removal of the state university located at Tuscaloosa when the constitution was adopted, and not to the Mobile Medical College, a mere subsidiary located in another congressional district. *Stevens v. Thames*, 204 Ala. 487, 86 So. 77 (1920).

Cited in *Flowers v. State*, 2 Ala. App. 65, 56 So. 98 (1911).

Sec. 268. School census.

The legislature shall provide for taking a school census by townships and districts throughout the state not oftener than once in two years, and shall provide for the punishment of all persons or officers making false or fraudulent enumerations and returns; provided, the state superintendent of education may order and supervise the taking of a new census in any township, district, or county, when-

ever he may have reasonable cause to believe that false or fraudulent returns have been made.

Cross references. — Census for schools, generally, § 16-4-15. Quadrennial school census, § 16-8-31.

Sec. 269. Special assessments.

The several counties in this state shall have power to levy and collect a special tax not exceeding ten cents on each one hundred dollars of taxable property in such counties, for the support of public schools; provided, that the rate of such tax, the time it is to continue, and the purpose thereof, shall have been first submitted to a vote of the qualified electors of the county, and voted for by three-fifths of those voting at such election; but the rate of such special tax shall not increase the rate of taxation, state and county combined, in any one year, to more than one dollar and twenty-five cents on each one hundred dollars of taxable property; excluding, however, all special county taxes for public buildings, roads, bridges, and the payment of debts existing at the ratification of the Constitution of eighteen hundred and seventy-five. The funds arising from such special school tax shall be so apportioned and paid through the proper school officials to the several schools in the townships and districts in the county that the school terms of the respective schools shall be extended by such supplement as nearly the same length of time as practicable; provided, that this section shall not apply to the cities of Decatur, New Decatur, and Cullman.

Editor's note. This section has been amended by Amendment No. 111. Prior to such amendment, Amendment No. 52 negated the proviso at the end of this section applicable to the cities of Decatur, New Decatur and Cullman.

Related statutes. Acts 1988, 1st. Ex. Sess., No. 88-868: "Notwithstanding the provisions of any law to the contrary, all special taxes levied for any school purpose or school purposes generally, including taxes levied under the provisions of Section 269 or Amendments Nos. 3 or 111 of the Constitution of Alabama of 1901, or the provisions of Title 52, Section 235 of the Code of Alabama 1940, or Section 16-13-108 of the Code of Alabama 1975, or the predecessor or successor of either thereof, which special taxes were approved by an election at which a majority of the votes were cast in favor of said tax, are ratified, confirmed and validated for the term approved by the voters, including any term in excess of 30 years. Any such special tax heretofore levied for a period in excess of 30 years is given effect as if the term approved by the voters had been authorized on the date of such election. All warrants heretofore or hereafter issued as preferred claims against such special taxes shall be entitled to a claim against such taxes of the period approved by the voters."

Alabama Law Review. — Commentary: Education in Alabama: Is there a right to the three R's? 43 Ala. L. Rev. 133 (1991).

Tax reform issues in Alabama. 43 Ala. L. Rev. 541 (1992).

CASE NOTES

General comment.
Construction with other law.
Illustrative cases.
Cited.

General comment.

Money raised by local taxation authorized by the Constitution for local school purposes cannot be diverted to any other purpose. First

Nat'l Bank v. Walker County Bd. of Educ., 243 Ala. 576, 11 So. 2d 297 (1943).

Construction with other law.

The language of the amendment in § 1 of Article 19 (now see Amendment 3) operates as an amendment of § 269 in respect to the maximum prescribed amount of taxation. Pierson v. Phillips, 214 Ala. 88, 106 So. 501 (1925).

Constitution deals with the right of electors, and not freeholders, to determine the matter, and the added words of the statute "who are also freeholders," in § 16-13-160 should properly be disregarded as surplusage unauthorized by Art. 14, § 269 of the constitution. Southern Ry. v. Webb, 232 Ala. 324, 167 So. 729 (1936).

Illustrative cases.

Act to extend the boundaries of the city of Decatur so as to include other territory embracing the city of Albany was constitutional, notwithstanding that separate and distinct constitutional provisions related to the two municipalities separately and distinctly; the effect of the merger was to destroy the existence of Albany as a distinct municipality, as for the future, and therefore to remove it from all existing statutory or constitutional provisions and automatically to make applicable thereto such provisions as relate to the city of Decatur. The city of Decatur in acquiring this territory in legal effect assumed all the burdens of Albany. In re Opinion of Justices, 216 Ala. 339, 113 So. 245 (1927).

Cited in Williams v. State ex rel. Pickens County, 230 Ala. 395, 161 So. 507 (1935); Opinion of Justices, 469 So. 2d 110 (Ala. 1985).

Sec. 270. Applicability to Mobile County.

The provisions of this article and of any act of the legislature passed in pursuance thereof to establish, organize, and maintain a system of public schools throughout the state, shall apply to Mobile county only so far as to authorize and require the authorities designated by law to draw the portions of the funds to which said county shall be entitled for school purposes and to make reports to the superintendent of education as may be prescribed by law; and all special incomes and powers of taxation as now authorized by law for the benefit of public schools in said county shall remain undisturbed until otherwise provided by the legislature; pro-

vided, that separate schools for each race shall always be maintained by said school authorities.

Editor's note. This section has been revised by Amendment No. 111. For cases decided subsequent to the amendment, see notes under Amendment No. 111, Sec. 270.

CASE NOTES

General comment.

Construction with other law.

Duty of the Board of School Commissioners.

When applicable.

Cited.

General comment.

The limitation on legislative power embodied in this section is restrictive in its scope and purpose, and is to be strictly construed. Board of Sch. Comm'rs v. Hahn, 246 Ala. 662, 22 So. 2d 91 (1945).

The school system of Mobile County is left open and subject to the discretion and plenary power of the legislature, without the constitutional mandate to continue its existence. Board of Sch. Comm'rs v. Hahn, 246 Ala. 662, 22 So. 2d 91 (1945).

Construction with other law.

Section 270 of the Constitution of 1901 does not preclude the application of § 16-8-10 to Mobile County. The reports required by this section to be made to the state superintendent of education are contemplated by § 270; thus that constitutional provision is not offended by § 16-8-10. Mobile County Bd. of Sch. Comm'rs v. Mobile County Educ. Ass'n, 394 So. 2d 922 (Ala. 1981).

Duty of the Board of School Commissioners.

Board of School Commissioners, under Alabama law, has primary responsibility for the administration and supervision of public schools in Mobile County. Bell v. Board of School Comm'rs, 450 F. Supp. 162 (S.D. Ala. 1978).

When applicable.

This section does not inhibit the application of the teacher tenure provisions of said chapter to the teachers of Mobile County. Board of Sch. Comm'rs v. Hahn, 246 Ala. 662, 22 So. 2d 91 (1945).

Cited in Tucker v. State ex rel. Poole, 231 Ala. 350, 165 So. 249 (1935); Morgan v. Board of School Comm'rs, 248 Ala. 22, 26 So. 2d 108 (1946); Mobile, Alabama-Pensacola, Fla. Bldg. & Constr. Trades Council v. Williams, 331 So. 2d 647 (Ala. 1976).

|

TITLE 16

EDUCATION

CHAPTER

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- 61B. Education Technology Fund, §§ 16-61B-1 through 16-61B-2.
- 61C. Alabama Science in Motion Act, §§ 16-61C-1 through 16-61C-6.
- 61D. Office of Information Technology, §§ 16-61D-1 through 16-61D-6.
62. Black Heritage Museum of West Alabama Act, §§ 16-62-1 through 16-62-6.
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CHAPTER 1
GENERAL PROVISIONS

Sec.

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§ 16-1-1. Definitions.

For purposes of this title, the following words and phrases shall have the meanings respectively ascribed to them by this section:

- (1) **SCHOLASTIC DAY.** Shall not be less than six hours of actual teaching, exclusive of all recesses or intermission periods unless otherwise ordered by the county or city board of education. County

and city boards of education and the Alabama Institute for Deaf and Blind shall be required to provide each teacher employed a minimum of 30 minutes of time free of instructional or supervisory responsibilities each teaching day. This provision shall not be interpreted to deprive any teacher of benefits exceeding the minimum requirements of this act.

(2) **SCHOLASTIC WEEK.** Shall consist of five school days each week.

(3) **SCHOLASTIC MONTH.** Shall constitute 20 school days.

(4) **SCHOLASTIC YEAR.** Shall begin with the first day of July and end with the thirtieth day of June each year.

(5) **FISCAL YEAR.** From October first to September thirtieth, inclusive.

History. Acts 1984, No. 84-323.

Editor's note. The words "this act" in subdivision (1) mean Acts 1984, No. 84-323.

Related statutes. Acts 1991, No. 91-323, §§ 1, 2, 25, 26 and 28: "Section 1. This act shall be known and may be cited as 'The Alabama Education Improvement Act of 1991.'

"Section 2. The legislature hereby acknowledges those national education goals established by the President and the nation's governors as standards applicable to public education in this state. As its statement of Alabama's commitment to education improvement, the legislature finds the following education goals to be worthy of recognition herein:

"(1) By the year 2000, all children in Alabama should start school ready to learn.

"(2) By the year 2000, the high school graduation rate should be increased to at least 90 percent.

"(3) By the year 2000, Alabama students should leave grades four, eight and twelve having demonstrated competency over challenging subject matter including English, mathematics, science, history and geography, and every school in Alabama should ensure that all students learn to use their minds well so that they may be prepared for responsible citizenship, further learning and productive employment in our modern society.

"(4) By the year 2000, Alabama students should be among the country's leaders in mathematics and science achievement.

"(5) By the year 2000, every adult Alabamian should be literate and should possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

"(6) By the year 2000, every school in Alabama should be free of drugs and violence and should offer a disciplined learning environment conducive to learning.

"The legislature further recognizes that fundamental changes must be made in this state's public education system to prepare both children and adults to meet the challenges and opportunities of an increasingly competitive society and world. This act sets goals and standards for student performance in Alabama schools that merit serious pursuit. Attainment of these goals will require a serious reexamination of every aspect of Alabama's education system and some profound changes in our public schools. With the enactment of the following legislation, the State of Alabama responds to the mandate of its citizenry.

"Section 25. Any and all mandates contained in the provisions of this act shall be mandated only to the extent that funds are appropriated or otherwise made available for the purposes of implementing such mandate.

"Section 26. It is the intent of the legislature that any board, commission, council or similar body designated or created pursuant to this act shall have equitable representation of minorities in proportion to their percentage of the population of the state of Alabama.

"Section 28. The provisions of this act shall not discriminate on the basis of race, sex, religion or national origin."

Cross references. — This law is referred to in: § 16-22-11.

Am. Jur. 2d. — 68 Am. Jur. 2d, Schools, § 1 et seq.
C.J.S. — 78 C.J.S., Schools and School Districts, § 2 et seq.
ALR. — Validity of state regulation of curriculum and instruction in private and parochial schools. 18 ALR4th 649.

CASE NOTES

School year.
 Succeeding year.
 Illustrative cases.
 Cited.

School year.

The term "school year" as used in § 16-28-4 means "scholastic year" as that term is defined in this section, and does not refer to the period of time during which schools are actually open for the instruction of pupils. *Marshall County Bd. of Educ. v. State ex rel. Williams*, 252 Ala. 547, 42 So. 2d 24 (1949).

Succeeding year.

The definition of "succeeding year" in § 16-24-5 is the same as "succeeding scholastic year." Therefore, that notice must be given before July 1 in order to comply with the procedural requirements of § 16-24-5. *Estill v. Alabama State Tenure Comm'n*, 650 So. 2d 890 (Ala. Civ. App. 1994).

Illustrative cases.

To require the defendants to give the plaintiff a hearing prior to taking action to deny her tenure would be to confer upon the plaintiff rights she would not have had had she first been employed at the start of a school year and the defendant school board complied with § 16-24-12, in notifying the plaintiff of its intent to deny her tenure by not rehiring her. *James v. Board of School Comm'rs*, 484 F. Supp. 705 (S.D. Ala. 1979).

Cited in *Johnson v. Cain*, 430 F. Supp. 518 (N.D. Ala. 1977); *Dulany v. Board of School Comm'rs*, 512 F. Supp. 685 (S.D. Ala. 1981); *Wells v. Geneva County Bd. of Educ.*, 646 So. 2d 98 (Ala. Civ. App. 1994).

§ 16-1-1.1. Repealed: Acts 1995, No. 95-314.

§ 16-1-2. School building construction; elimination of fire hazards.

In order to eliminate the causes of school fires and other conditions which jeopardize the health and safety of school children:

(1) The county or city superintendent of education shall notify the State Superintendent of Education within 10 days after the beginning of the construction of a building; and, upon the request of the county or city superintendent of education, the State Superintendent of Education or his agent shall inspect said building during construction for the purpose of seeing that plans and specifications upon which the contract was let are being complied with.

(2) A county or city superintendent of education shall not recommend and a county or city board of education shall not approve for payment more than 90 percent of the contract price of the building constructed by the county or city board of education until the State Superintendent of Education or his agent has made a final inspection of said building for the purpose of seeing that the plans and specifications upon which the contract was let have been complied with in full. The State

Superintendent of Education or his agent must make final inspection of a school building within 10 days after being notified by the county or city board of education that the building is ready for final inspection. When the State Superintendent of Education or his agent makes a final inspection of a building and finds that it has been completed in accordance with said plans and specifications, the State Superintendent of Education must within five days after said final inspection give the county or city board of education written notice that the building has been completed in accordance with plans and specifications. If the State Superintendent of Education or his agent in making final inspection finds that the building has not been completed in accordance with plans and specifications, the State Superintendent of Education shall not authorize acceptance of said building until it has been completed in accordance with the plans and specifications on which the contract was let or until the contractor or his bondsmen makes an adjustment satisfactory to the county or city board of education and the State Superintendent of Education. Final acceptance of a building cannot be made by a county or city board of education and the final payment of 10 percent of the contract price of such building cannot be made until the State Superintendent of Education has given written notice to the county or city board of education that said building has been completed in accordance with the plans and specifications upon which the contract was let.

(3) Contracts for architectural services and for school building construction shall be made by county and city boards of education on contract forms prescribed by the State Superintendent of Education, into which forms the contracting parties shall write the terms and conditions of the contract agreed upon.

(4) Representatives of the Department of Finance charged with the responsibility of inspecting buildings insured in the State Insurance Fund shall at all times have the authority to inspect for fire hazards school buildings insured in the State Insurance Fund. Reports of said inspections shall be made to the county or city superintendent of education, the State Superintendent of Education and the Director of Finance of the State Department of Finance. If a board of education fails within 30 days to eliminate a potential fire hazard, or hazards, in a school building insured in the State Insurance Fund when notified to do so by a representative of the State Department of Finance charged with the responsibility of inspecting buildings insured in the State Insurance Fund, upon the recommendation of the State Superintendent of Education, the Director of Finance shall have the authority to order the affected building vacated and closed until said potential fire hazard, or hazards, are eliminated.