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CONSTITUTION OF KENTUCKY

BILL OF RIGHTS

SECTION.

5. Right of religious freedom.

§ 5. Right of religious freedom.

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

Cross-References. Freedom of worship, Const., § 1.

Religious instruction in schools, KRS 158.170 to 158.260.

School money not to be used for sectarian schools, Const., § 189.

Kentucky Law Journal. Comment, Regulation of Fundamental Christian Schools: Free Exercise of Religion v. The State's Interest in Quality Education, 67 Ky. L.J. 415 (1978-79).

Northern Kentucky Law Review. Comments, Separation of Church and State: Education and Religion in Kentucky, 6 N. Ky. L. Rev. 125 (1979).

Opinions of Attorney General. Under subsection (2) of KRS 160.290, a school board may make regulations designed to protect the general welfare and safety of students and in doing so may take into account specific standards of moral conduct so that school dances could be eliminated as an approved school function by the board unless such ban were imposed for religious reasons, in which case it would violate this section and the first amendment to the federal Constitution. OAG 70-167.

Voluntary and spontaneous prayer meetings by students on school property not held during regular school hours constitute no violation of this section. OAG 72-386.

A local board of education may constitutionally conduct within its school speech therapy courses for parochial school pupils residing within the school district. OAG 75-639.

There is no statute that regulates the entrance age for a child to attend a nonpublic school and one could not constitutionally be enacted due to the Kentucky Supreme Court's view of this section and the proscription against state regulation of nonpublic schools. OAG 82-408.

NOTES TO DECISIONS

ANALYSIS

3. Schools.
4. — Religious beliefs of school administration.
5. — Compulsory attendance.
6. — Achievement testing.

7. — Maintenance.
8. — Student transportation.
9. — Place of worship.
19. Taxation.

3. Schools.

4. — Religious Beliefs of School Administration.

Where school administrator's use of her religious beliefs in exercising her administrative duties and in exercising authority over teachers was offensive to some of the staff, it did not invariably pose some substantial threat to public safety, peace or order, and thus, her behavior in this regard was protected conduct. *Hooks v. Smith*, 781 S.W.2d 522 (Ky. Ct. App. 1989).

5. — Compulsory Attendance.

While the state has an interest in the education of its citizens which could be furthered through compulsory education, the rights of conscience of those who desire education of their children in private and parochial schools should be protected. *Kentucky State Bd. for Elementary & Secondary Educ. v. Rudasill*, 589 S.W.2d 877 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792 (1980).

The language of this section concerning compulsory school attendance is intended to permit the Commonwealth to prepare its children to intelligently exercise the right of suffrage by compelling attendance at a formal school, public or private or parochial, for a legislatively determined period each year. *Kentucky State Bd. for Elementary & Secondary Educ. v. Rudasill*, 589 S.W.2d 877 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792 (1980).

If the legislature wishes to monitor the work of private and parochial schools in accomplishing the constitutional purpose of compulsory education, it may do so by an appropriate standardized achievement testing program, and if the results show that one or more private or parochial schools have failed to reasonably accomplish the constitutional purpose, the Commonwealth may then withdraw approval and seek to close them for they no longer fulfill the purpose of "schools." *Kentucky State Bd. for Elementary & Secondary Educ. v. Rudasill*, 589 S.W.2d 877 (Ky. 1979), cert. denied, 446 U.S. 938, 100 S. Ct. 2158, 64 L. Ed. 2d 792 (1980).

6. — Achievement Testing.

Requiring students to take the Kentucky Instructional Results Information System (KIRIS) examination did not violate students' constitutional rights of freedom of religion. *Triplett v. Livingston County Bd. of Educ.*, 967 S.W.2d 25 (Ky. Ct. App. 1997), cert. denied, 525 U.S. 1104, 119 S. Ct. 870, 142 L. Ed. 2d 771 (1999).

7. — Maintenance.

Contract by school district trustees to maintain sectarian school free of charge from public funds in return for sectarian school teaching common school pupils free of charge was in violation of this section. *Williams v. Board of Trustees*, 173 Ky. 708, 191 S.W. 507, 1917D L.R.A. 453 (1917).

8. — Student Transportation.

A county fiscal court's resolution which provided approximately 65 percent of the total cost of transporting non-public elementary school students was not unconstitutional where (1) funds were not paid directly to any private or parochial school and were, instead, paid to the individual local board of education operated transportation system of contracted bus and vehicle companies, (2) the benefit provided by the resolu-

tion went directly toward the safety and welfare of elementary age school children and not into the accounts of non-public schools, and (3) the resolution did not establish a tuition ceiling as a requisite to eligibility for the transportation subsidy. *Neal v. Fiscal Court*, 986 S.W.2d 907 (Ky. 1999).

9. —Place of Worship.

A public school opened with prayer and the reading without comment of passage from King James' translation of the Bible, during which pupils are not required to attend, is not a place of worship, nor are its teachers ministers of religion within the meaning of this section. *Hackett v. Brooksville Graded School Dist.*, 120 Ky. 608, 27 Ky. L. Rptr. 1021, 87 S.W. 792, 117 Am. St. R. 599, 69 L.R.A. 592 (1905).

19. Taxation.

KRS 158.115 authorizing county to use county funds to provide transportation for school children attending school in compliance with compulsory attendance laws, where children did not reside within reasonable walking distance of school and there were no sidewalks upon which they could travel, did not violate this section, notwithstanding that it would authorize transportation of children to parochial schools as well as public schools for it is simply an exercise of police power for the protection of children against the inclemency of weather and hazards of highway traffic. *Nichols v. Henry*, 301 Ky. 434, 191 S.W.2d 930, 168 A.L.R. 1385 (1945).

LEGISLATIVE DEPARTMENT

SECTION.

55. When laws to take effect — Emergency legislation.

59. Local and special legislation.

§ 55. When laws to take effect — Emergency legislation.

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

Cross-References. Date of approval or passage to be stated at end of act, KRS 6.240.

§ 59. Local and special legislation.

The General Assembly shall not pass local or special acts concerning any of the following subjects, or for any of the following purposes, namely:

First: To regulate the jurisdiction, or the practice, or the circuits of the courts of justice, or the rights, powers, duties or compensation of the officers thereof; but the practice in circuit courts in continuous session may, by a general law, be made different from the practice of circuit courts held in terms.

Second: To regulate the summoning, impaneling or compensation of grand or petit jurors.

Third: To provide for changes of venue in civil or criminal causes.

Fourth: To regulate the punishment of crimes and misdemeanors, or to remit fines, penalties or forfeitures.

Fifth: To regulate the limitation of civil or criminal causes.

Sixth: To affect the estate of cestuis que trust, decedents, infants or other persons under disabilities, or to authorize any such persons to sell, lease, encumber or dispose of their property.

Seventh: To declare any person of age, or to relieve an infant or feme covert of disability, or to enable him to do acts allowed only to adults not under disabilities.

Eighth: To change the law of descent, distribution or succession.

Ninth: To authorize the adoption or legitimation of children.

Tenth: To grant divorces.

Eleventh: To change the names of persons.

Twelfth: To give effect to invalid deeds, wills or other instruments.

Thirteenth: To legalize, except as against the Commonwealth, the unauthorized or invalid act of any officer or public agent of the Commonwealth, or of any city, county or municipality thereof.

Fourteenth: To refund money legally paid into the State Treasury.

Fifteenth: To authorize or to regulate the levy, the assessment or the collection of taxes, or to give any indulgence or discharge to any assessor or collector of taxes, or to his sureties.

Sixteenth: To authorize the opening, altering, maintaining or vacating of roads, highways, streets, alleys, town plats, cemeteries, graveyards, or public grounds not owned by the Commonwealth.

Seventeenth: To grant a charter to any corporation, or to amend the charter of any existing corporation; to license companies or persons to own or operate ferries, bridges, roads or turnpikes; to declare streams navigable, or to authorize the construction of booms or dams therein, or to remove obstructions therefrom; to affect toll gates or to regulate tolls; to regulate fencing or the running at large of stock.

Eighteenth: To create, increase or decrease fees, percentages or allowances to public officers, or to extend the time for the collection thereof, or to authorize officers to appoint deputies.

Nineteenth: To give any person or corporation the right to lay a railroad track or tramway, or to amend existing charters for such purposes.

Twentieth: To provide for conducting elections, or for designating the places of voting, or changing the boundaries of wards, precincts or districts, except when new counties may be created.

Twenty-first: To regulate the rate of interest.

Twenty-second: To authorize the creation, extension, enforcement, impairment or release of liens.

Twenty-third: To provide for the protection of game and fish.

Twenty-fourth: To regulate labor, trade, mining or manufacturing.

Twenty-fifth: To provide for the management of common schools.

Twenty-sixth: To locate or change a county seat.

Twenty-seventh: To provide a means of taking the sense of the people of any city, town, district, precinct or county, whether they wish to authorize, regulate or prohibit therein the sale of vinous, spirituous or malt liquors, or alter the liquor laws.

Twenty-eighth: Restoring to citizenship persons convicted of infamous crimes.

Twenty-ninth: In all other cases where a general law can be made applicable, no special law shall be enacted.

Cross-References. Practice in courts of continuous session, KRS ch. 451.

Northern Kentucky Law Review. Comments, Separation of Church and State: Education and Religion in Kentucky, 6 N. Ky. L. Rev. 125 (1979).

Opinions of Attorney General. There is a reasonable distinction which justifies the separate treatment given to the salaries of beginning teachers in the state-supported vocational schools, the state school for the deaf, and the state school for the blind, and therefore KRS 163.032 is not "special" legislation in violation of either this section or § 60 of the Kentucky Constitution. OAG 85-86.

The General Assembly may permit referenda on local school curriculum; however, in doing so, the General Assembly must not violate equal protection provisions and special and local legislation provisions of the Kentucky Constitution. OAG 00-3.

Cited: Sherrard v. Jefferson County Bd. of Educ., 294 Ky. 469, 171 S.W.2d 963 (1942); Cotton v. Walton-Verona Indep. Graded School Dist., 298 Ky. 478, 174 S.W.2d 712 (1943); Board of Educ. v. Board of Educ. of Lexington Indep. School Dist., 250 S.W.2d 1017 (Ky. 1952).

NOTES TO DECISIONS

ANALYSIS

- 5. Classification.
- 7. —Cities.
- 8. —Reasonable.
- 11. —Unreasonable.
- 25. Taxation.
- 26. Public property.
- 42. Schools.
- 46. General laws.

5. Classification.

Legislation establishing a classification, the wisdom of which is a legislative function, is not in violation of the Constitution prohibition against special legislation where the classification is based on natural and reasonable distinction. Board of Educ. v. Mescher, 310 Ky. 453, 220 S.W.2d 1016 (1949).

Law authorizing board of education in any county containing a city of the first class to impose occupational license fees is not special legislation prohibited by this section, although at present the statute applies in fact only to one (1) county. Sims v. Board of Educ., 290 S.W.2d 491 (Ky. 1956).

Classification of cities and counties on the basis of size and population alone for any purpose other than their organization or government is permissible only if size and population has an appreciable relevancy to the subject matter of the legislation. Board of Educ. v. Board of Educ., 522 S.W.2d 854 (Ky. 1975).

7. —Cities.

Law providing that use of escheats in cities of first class shall be for public schools in such cities and authorizing school board to sue for same is not special legislation within the meaning of this section notwithstanding that same privilege is not allowed to school boards of other cities. Commonwealth ex rel. Louisville Sch. Bd. v. Chicago, St. L. & N.O.R.R., 124 Ky. 497, 30 Ky. L. Rptr. 673, 99 S.W. 596 (1907).

8. —Reasonable.

Statutory provisions (KRS 160.040-160.210) that allowed special structuring of a new school board upon the merger of

the school district of a city of the first class with the county school district did not constitute forbidden local or special legislation where the reasons for treatment different from other mergers were justified by the factors of urbanization which differentiate school problems in cities of the first class. Board of Educ. v. Board of Educ., 522 S.W.2d 854 (Ky. 1975).

11. —Unreasonable.

An act violates this section if it contains no justification for the requirement that a county containing a city of the first class that also contains a city of some other class with an independent school district that would be required under such an act to use an entirely different procedure to annex adjacent areas to its independent school district from the procedure used by independent school districts in cities of the same class in all the remaining counties in the state. Board of Educ. v. Board of Educ., 472 S.W.2d 496 (Ky. 1971).

25. Taxation.

Law providing a minimum school tax rate of 36 mills for cities of second class was not unconstitutional as local or special legislation. City of Louisville v. Commonwealth, 134 Ky. 488, 121 S.W. 411 (1909).

Provisions of KRS 160.475 and 160.476, leaving it optional with county boards of education as to amount of tax necessary to operate district schools and to request county fiscal court to make levy accordingly, did not violate subsection Fifteenth of this section, since such act was general statute applicable to all fiscal courts and county public school districts equally throughout state. Harlan-Wallins Coal Corp. v. Cawood, 303 Ky. 544, 198 S.W.2d 218 (1946).

26. Public Property.

Law permitting cities of the second class to condemn land for proper public purposes does not constitute special or local legislation prohibited by this section. Shipp v. City of Lexington, 212 Ky. 702, 279 S.W. 1094 (1926).

42. Schools.

Special acts concerning school districts in towns and cities were repealed by the general law relating to common schools to extent that they were inconsistent with the general law. Hickman College v. Trustees Colored Common School Dist. No. A, 111 Ky. 944, 23 Ky. L. Rptr. 1271, 65 S.W. 20 (1901).

Act providing that any graded school district created by special act and having school fund other than that provided by general law shall have power to issue bonds with coupons attached not to exceed certain amount was not unconstitutional, since terms of act were applicable to all of separate class of schools to which it related. Smith v. Board of Trustees of Shelby Graded School Dist., 171 Ky. 39, 186 S.W. 927 (1916).

Since act providing for a visitor for Negro but not white schools did not give the Negro race the benefit of a Negro visitor in addition to a trustee but only in place of a trustee, it is not unconstitutional under this section. Daviess County Board of Educ. v. Johnson, 179 Ky. 34, 200 S.W. 313 (1918).

Law requiring a county to pay the tuition of pupils authorized to attend the most convenient high school in their county of residence is not unconstitutional as special or local legislation. Madison County Board of Educ. v. Smith, 250 Ky. 495, 63 S.W.2d 620 (1933).

Law which exempts fifth and sixth-class city school districts from the obligation imposed on other districts to provide educational facilities for Negroes is unconstitutional as special legislation. Board of Educ. v. Board of Educ. of Midway Indep. Graded Common School Dist., 264 Ky. 245, 94 S.W.2d 687 (1936).

Exemption of incumbent members of board of education from meeting new educational qualifications does not make law local or special legislation. Commonwealth v. Griffen, 268 Ky. 830, 105 S.W.2d 1063 (1937).

The fundamental mandate of the Constitution and statutes is that there shall be equality and that all public schools shall

be nonpartisan and nonsectarian. *Wooley v. Spalding*, 293 S.W.2d 563 (Ky. 1956).

The phrase “standards promulgated by the state board of education” in subsection (3) of KRS 157.305 (now repealed) was a mandate to formulate and establish such reasonable and uniform regulations as were necessary to a just and proper administration of the act and thus this section was not violated. *Butler v. United Cerebral Palsy of N. Ky., Inc.*, 352 S.W.2d 203 (Ky. 1961).

Under KRS 157.305 (now repealed), exceptional children, for whose education the common schools were not adequate, were proper subjects of classification. *Butler v. United Cerebral Palsy of N. Ky., Inc.*, 352 S.W.2d 203 (Ky. 1961).

The ordinary duties of a school principal differ greatly from those of a school teacher, as administrative personnel have either fiscal management duties and educational supervisory duties, or both, with responsibilities which are quite different from those of classroom teachers; the role of an administrator in carrying out policy and in formulating overall policy is also quite different from that of a teacher, and it is certainly not beyond reason that the Legislature would deem it advisable not to give one whose supervisory and policy role is so different, the same kind of job protection given to a classroom teacher. *Hooks v. Smith*, 781 S.W.2d 522 (Ky. Ct. App. 1989).

The proper test to be applied under the equal protection clause and this section of the Kentucky Constitution is whether there is a rational basis for the different treatment of school administrators from that of school teachers. *Hooks v. Smith*, 781 S.W.2d 522 (Ky. Ct. App. 1989).

Statutory grant of authority under KRS 156.160 and KRS 189.540 to Department of Transportation to adopt regulations to govern the design and operation of school buses was not unconstitutional special legislation because it applied only to public and not to private or parochial school bus drivers; the statutes apply equally to a class and further a legitimate state interest in safe transportation of public school children. *Cornette v. Commonwealth*, 899 S.W.2d 502 (Ky. Ct. App. 1995).

46. General Laws.

Law vesting escheated property within cities of first class in board of education for use of schools was not unconstitutional as local or special legislation. *Commonwealth v. Thomas’ Adm’r*, 140 Ky. 789, 131 S.W. 797 (1910).

Law providing for escheat of property to a board of education does not violate this section as special legislation. *Shanks v. Board of Educ.*, 221 Ky. 470, 298 S.W. 1111 (1927).

KRS 160.045, granting owners of realty in territory which may become incorporated in any municipality and is located in county school district the right to demand that property be placed in school district in which greater part of municipality is located, does not violate the Constitution prohibiting special legislation where a general law can be made applicable. *Board of Educ. v. Mescher*, 310 Ky. 453, 220 S.W.2d 1016 (1949).

KRS 160.045 was not special legislation and did not violate subsection Twenty-ninth of this section. *Board of Educ. v. Mescher*, 310 Ky. 453, 220 S.W.2d 1016 (1949).

The mere fact that a legislative enactment works to the benefit of some and is sponsored by persons interested by no means makes that act special legislation. *Board of Educ. v. Mescher*, 310 Ky. 453, 220 S.W.2d 1016 (1949).

THE EXECUTIVE DEPARTMENT

SECTION.

OFFICERS FOR THE STATE AT LARGE

91. Constitutional State officers — Election — Qualifications — Term of office — Duties — Secretary of State

SECTION.

to record acts of Governor and report them to General Assembly.

93. Succession of elected Constitutional State Officers — Duties — Inferior officers and members of boards and commissions.

95. Time of election of elected Constitutional State officers.

96. Compensation of Constitutional State officers.

OFFICERS FOR THE STATE AT LARGE

§ 91. Constitutional State officers — Election — Qualifications — Term of office — Duties — Secretary of State to record acts of Governor and report them to General Assembly.

A Treasurer, Auditor of Public Accounts, Commissioner of Agriculture, Labor and Statistics, Secretary of State, and Attorney-General, shall be elected by the qualified voters of the State at the same time the Governor and Lieutenant Governor are elected, for the term of four years, each of whom shall be at least thirty years of age at the time of his election, and shall have been a resident citizen of the State at least two years next before his election. The duties of all these officers shall be such as may be prescribed by law, and the Secretary of State shall keep a fair register of and attest all the official acts of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto before either House of the General Assembly. The officers named in this section shall enter upon the discharge of their duties the first Monday in January after their election, and shall hold their offices until their successors are elected and qualified.

(Amendment, proposed by Acts 1992, ch. 168, § 11, and ratified November 3, 1992.)

Compiler’s Notes. The General Assembly in 1992 (Acts 1992, ch. 168, § 11) proposed an amendment to the Constitution which amendment was ratified by the voters at the regular election November 3, 1992. Prior to the amendment this section read:

“§ 91. Constitutional state officers — Election, qualification, term of office — Duties — Secretary of State to record acts of Governor and report them to General Assembly.

— A Treasurer, Auditor of Public Accounts, Register of the Land Office, Commissioner of Agriculture, Labor and Statistics, Secretary of State, Attorney General and Superintendent of Public Instruction, shall be elected by the qualified voters of the State at the same time the Governor is elected, for the term of four years, each of whom shall be at least thirty years of age at the time of his election, and shall have been a resident citizen of the State at least two years next before his election. The duties of all these officers shall be such as may be prescribed by law, and the Secretary of State shall keep a fair register of and attest all the official acts of the Governor, and shall, when required, lay the same and all papers, minutes and vouchers relative thereto before either House of the General Assembly. The officers named in this section shall enter upon the discharge of their duties the first Monday in January after their election, and shall hold their offices until their successors are elected and qualified.”

Section 19 of Acts 1992, ch. 168 provided: “It is further proposed as a part of this amendment and as a schedule of transitional provisions, for the purposes of this amendment,

and any other provision of the Constitution of Kentucky notwithstanding:

“(1) The Governor; Lieutenant Governor; Treasurer; Auditor of Public Accounts; Attorney General; Secretary of State; Commissioner of Agriculture, Labor and Statistics; Superintendent of Public Instruction; and Railroad Commissioners elected in 1991 shall be ineligible for election to the same office for the succeeding term. Those officers elected in 1995 shall be eligible for election to the next succeeding term.

“(2) The term of office of Commonwealth’s Attorneys and Circuit Clerks elected in 1993 shall be for a single term of seven years. The regular election for those offices shall then be held in 2000 and every six years thereafter.

“(3) The term of office of District Judges, Mayors, County Judges/Executive, and local officers who regularly serve a four-year term and who are scheduled to be elected in 1993 shall be for a single term of five years. The regular election for those offices shall then be held in 1998 and every four years thereafter.

“(4) The term of office for local officers who regularly serve a two-year term and who are scheduled to be elected in 1993 shall be for a single term of three years. The regular election for those offices shall then be held in 1996 and every two years thereafter.

“(5) The term of office for Circuit Judges and Judges of the Court of Appeals elected in 1999 shall be for a single term of seven years. The regular election for those offices shall then be held in 2006 and every eight years thereafter.

“(6) The term of office for mayor, magistrate, or other officer not specifically provided for in subsection (4) of this section elected in 1995 shall be extended for one year and subsequent elections for offices subject to the provisions of this subsection shall be held in even-numbered years.

“(7) No person holding elective office upon the effective date of this amendment shall have the duration of his current term extended. However, if the next election of any officer not specifically provided for in this section is scheduled to appear on the ballot in an odd-numbered year, the duration of that term of the officer elected shall be extended for one year. The election for any office subject to the provisions of this subsection shall subsequently be held in even-numbered years.”

Cross-References. Attorney general, KRS ch. 15.

Auditor of public accounts, KRS ch. 43.

Commissioner of agriculture, KRS ch. 246.

Official acts to be attested by secretary of state, KRS 14.040.

Register of land office, secretary of state to perform duties of, KRS 56.230 to 56.320.

Secretary of state, KRS ch. 14.

Superintendent of public instruction, KRS ch. 156.

Treasurer, KRS ch. 41.

Cited: Booth v. Board of Educ., 191 Ky. 147, 229 S.W. 84 (1921).

§ 93. Succession of elected Constitutional State Officers — Duties — Inferior officers and members of boards and commissions.

The Treasurer, Auditor of Public Accounts, Secretary of State, Commissioner of Agriculture, Labor and Statistics, and Attorney General shall be ineligible to reelection for the succeeding four years after the expiration of any second consecutive term for which they shall have been elected. The duties and responsibilities of these officers shall be prescribed by law, and all fees collected by any of said officers shall be covered into the treasury. Inferior State officers and members of boards and commissions, not specifically provided for in this Constitution, may be appointed or elected, in such manner as may be prescribed by law, which may

include a requirement of consent by the Senate, for a term not exceeding four years, and until their successors are appointed or elected and qualified.

(Amendment, proposed by Acts 1992, ch. 168, § 12, and ratified November 3, 1992.)

Compiler’s Notes. The General Assembly in 1992 (Acts 1992, ch. 168, § 12) proposed an amendment to the Constitution which amendment was ratified by the voters at the regular election November 3, 1992. Prior to the amendment this section read:

“§ 93. **Constitutional state officers not to succeed themselves — Duties — Fees — Inferior state officers — Term.** — The Treasurer, Auditor of Public Accounts, Secretary of State, Commissioner of Agriculture, Labor and Statistics, Attorney General, Superintendent of Public Instruction and Register of the Land Office shall be ineligible to re-election for the succeeding four years after the expiration of the term for which they shall have been elected. The duties and responsibilities of these officers shall be prescribed by law, and all fees collected by any of said officers shall be covered into the treasury. Inferior state officers, not specifically provided for in this Constitution, may be appointed or elected, in such manner as may be prescribed by law, for a term not exceeding four years, and until their successors are appointed or elected and qualified.”

The General Assembly in 1992 (Acts 1992, ch. 168, § 12) proposed an amendment to the Constitution which amendment was ratified by the voters at the regular election November 3, 1992. Prior to the amendment this section read:

Section 19 of Acts 1992, ch. 168 provided: “It is further proposed as a part of this amendment and as a schedule of transitional provisions, for the purposes of this amendment, and any other provision of the Constitution of Kentucky notwithstanding:

“(1) The Governor; Lieutenant Governor; Treasurer; Auditor of Public Accounts; Attorney General; Secretary of State; Commissioner of Agriculture, Labor and Statistics; Superintendent of Public Instruction; and Railroad Commissioners elected in 1991 shall be ineligible for election to the same office for the succeeding term. Those officers elected in 1995 shall be eligible for election to the next succeeding term.

“(2) The term of office of Commonwealth’s Attorneys and Circuit Clerks elected in 1993 shall be for a single term of seven years. The regular election for those offices shall then be held in 2000 and every six years thereafter.

“(3) The term of office of District Judges, Mayors, County Judges/Executive, and local officers who regularly serve a four year term and who are scheduled to be elected in 1993 shall be for a single term of five years. The regular election for those offices shall then be held in 1998 and every four years thereafter.

“(4) The term of office for local officers who regularly serve a two-year term and who are scheduled to be elected in 1993 shall be for a single term of three years. The regular election for those offices shall then be held in 1996 and every two years thereafter.

“(5) The term of office for Circuit Judges and Judges of the Court of Appeals elected in 1999 shall be for a single term of seven years. The regular election for those offices shall then be held in 2006 and every eight years thereafter.

“(6) The term of office for mayor, magistrate, or other officer not specifically provided for in subsection (4) of this section elected in 1995 shall be extended for one year and subsequent elections for offices subject to the provisions of this subsection shall be held in even-numbered years.

“(7) No person holding elective office upon the effective date of this amendment shall have the duration of his current term extended. However, if the next election of any officer not specifically provided for in this section is scheduled to appear

on the ballot in an odd-numbered year, the duration of that term of the officer elected shall be extended for one year. The election for any office subject to the provisions of this subsection shall subsequently be held in even-numbered years.”

Cross-References. Fees to be paid into treasury, KRS 41.070.

When officers to enter upon duties, KRS 61.030 (see cross-references under Const., § 91).

§ 95. Time of election of elected Constitutional State officers.

The election under this Constitution for Governor, Lieutenant Governor, Treasurer, Auditor of Public Accounts, Attorney General, Secretary of State, and Commissioner of Agriculture, Labor and Statistics, shall be held on the first Tuesday after the first Monday in November, eighteen hundred and ninety-five, and the same day every four years thereafter. (Amendment, proposed by Acts 1992, ch. 168, § 13, and ratified November 3, 1992.)

Compiler’s Notes. The General Assembly in 1992 (Acts 1992, ch. 168, § 13) proposed an amendment to the Constitution which amendment was ratified by the voters at the regular election November 3, 1992. Prior to the amendment this section read:

“§ 95. Time of election of constitutional state officers. — The election under this Constitution for Governor, Lieutenant Governor, Treasurer, Auditor of Public Accounts, Register of the Land Office, Attorney General, Secretary of State, Superintendent of Public Instruction, and Commissioner of Agriculture, Labor and Statistics, shall be held on the first Tuesday after the first Monday in November, eighteen hundred and ninety-five, and the same day every four years thereafter.”

Section 19 of Acts 1992, ch. 168 provided: “It is further proposed as a part of this amendment and as a schedule of transitional provisions, for the purposes of this amendment, and any other provision of the Constitution of Kentucky notwithstanding:

“(1) The Governor; Lieutenant Governor; Treasurer; Auditor of Public Accounts; Attorney General; Secretary of State; Commissioner of Agriculture, Labor and Statistics; Superintendent of Public Instruction; and Railroad Commissioners elected in 1991 shall be ineligible for election to the same office for the succeeding term. Those officers elected in 1995 shall be eligible for election to the next succeeding term.

“(2) The term of office of Commonwealth’s Attorneys and Circuit Clerks elected in 1993 shall be for a single term of seven years. The regular election for those offices shall then be held in 2000 and every six years thereafter.

“(3) The term of office of District Judges, Mayors, County Judges/Executive, and local officers who regularly serve a four-year term and who are scheduled to be elected in 1993 shall be for a single term of five years. The regular election for those offices shall then be held in 1998 and every four years thereafter.

“(4) The term of office for local officers who regularly serve a two-year term and who are scheduled to be elected in 1993 shall be for a single term of three years. The regular election for those offices shall then be held in 1996 and every two years thereafter.

“(5) The term of office for Circuit Judges and Judges of the Court of Appeals elected in 1999 shall be for a single term of seven years. The regular election for those offices shall then be held in 2006 and every eight years thereafter.

“(6) The term of office for mayor, magistrate, or other officer not specifically provided for in subsection (4) of this section elected in 1995 shall be extended for one year and subsequent

elections for offices subject to the provisions of this subsection shall be held in even-numbered years.

“(7) No person holding elective office upon the effective date of this amendment shall have the duration of his current term extended. However, if the next election of any officer not specifically provided for in this section is scheduled to appear on the ballot in an odd-numbered year, the duration of that term of the officer elected shall be extended for one year. The election for any office subject to the provisions of this subsection shall subsequently be held in even-numbered years.”

Cross-References. Time of election of public officers generally, Const., § 148.

§ 96. Compensation of Constitutional State officers.

All officers mentioned in Section 95 shall be paid for their services by salary, and not otherwise.

Cross-References. Compensation of constitutional state officers, KRS 64.480.

Maximum limit on salaries, Const., § 246.

SUFFRAGE AND ELECTIONS

SECTION.

152. Vacancies — When filled by appointment, when by election — Who to fill.

155. School elections not governed by Constitution.

§ 152. Vacancies — When filled by appointment, when by election — Who to fill.

Except as otherwise provided in this Constitution, vacancies in all elective offices shall be filled by election or appointment, as follows: If the unexpired term will end at the next succeeding annual election at which either city, town, county, district or State officers are to be elected, the office shall be filled by appointment for the remainder of the term. If the unexpired term will not end at the next succeeding annual election at which either city, town, county, district or State officers are to be elected, and if three months intervene before said succeeding annual election at which either city, town, county, district or State officers are to be elected, the office shall be filled by appointment until said election, and then said vacancy shall be filled by election for the remainder of the term. If three months do not intervene between the happening of said vacancy and the next succeeding election at which city, town, county, district or State officers are to be elected, the office shall be filled by appointment until the second succeeding annual election at which city, town, county, district or State officers are to be elected; and then, if any part of the term remains unexpired, the office shall be filled by election until the regular time for the election of officers to fill said offices. Vacancies in all offices for the State at large, or for districts larger than a county, shall be filled by appointment of the Governor; all other appointments shall be made as may be prescribed by law. No person shall ever be appointed a member of the General Assembly, but vacancies therein may be filled at a special election, in such manner as may be provided by law.

Cross-References. How and by whom vacancies filled, Const., § 76; KRS 63.150 to 63.220.

Special election to fill vacancy in general assembly, KRS 118.730.

Opinions of Attorney General. School board elections are not county wide and consequently do not qualify as regular elections embracing the entire county as required by this section. OAG 70-266 and 70-347.

The only possible regular election to fill a vacancy in a city office in November 1970 would be a school board election and that would qualify only if it embraced the entire city. OAG 70-606.

A school district election would not qualify as a state election so that a person appointed to fill a vacancy in the office of police judge could run for the unexpired term where the school district boundaries did not embrace the entire city. OAG 70-631.

Where there was a vacancy on the city council filled by appointment prior to a regular school board race, the vacancy on the council would have to be placed on the ballot even though no candidate filed for the unexpired term. OAG 70-732.

If there were parts of the city that were not included in either or both of two (2) school elections there would be no regular election embracing the entire city within the meaning of this section of the Constitution and no election could be held for the unexpired term of a city council member and, accordingly, an appointee could serve out the remainder of the unexpired term ending in January, 1980, since the next regular election for city council would be at the November, 1979, election. OAG 78-229.

If there were school elections in both the county and independent school districts in 1978 and their territory is adjacent to each other and at the same time (by the combined elections) takes in the entire City of Murray though neither alone embraces the City of Murray, the terms of § 152 would be complied with in that there would be regular elections at which all of the voters of the city would participate though they would not be entitled to vote for the same officers and, consequently, a vacancy on the city council would have to be filled in those November elections rather than allowing an appointee to finish the term. OAG 78-229.

Where an appointment has been made to fill a vacancy, and an election must be made to fill the unexpired term, it must occur at the same time as the next regular election embracing the entire area where the vacancy occurred, and this may include a school board election, provided the school district covers the entire jurisdiction, but does not include a federal election. OAG 78-439; OAG 78-451.

This section requires that all vacancies in elective offices must be filled at the next regular election embracing the area in which the vacancies have occurred, and although federal elections do not qualify, school elections can qualify if all of the qualified voters of the city will be entitled to vote in the school election. OAG 78-552, 78-566.

A person elected to office may resign from office at any time and for any reason, and such resignation of itself does not in any way affect his qualifications to hold office or his right to change his mind and decide to run for the unexpired term to which he was elected. OAG 79-65.

Where upcoming school board race would not embrace entire magisterial district, as would be required in order to qualify as a regular election embracing the magisterial district under the terms of this section, and there were no other regular state or local elections embracing the county (federal elections for members of Congress not qualifying as state elections under the terms of this section), vacancy in the office of justice of the peace in the magisterial district could not be filled at the coming November 1982 election, and the Governor's appointee to fill this vacancy would have to serve until the 1983 general election, at which time an election for statewide officers would have to be held. OAG 82-257.

City council vacancy existing in April, 1982, could not be filled for the unexpired term unless there was no regular

election in the fall of 1982 embracing the city. If there was such an election as, for example, a school board election or an election for the Supreme Court, then this section would require the vacancy to be filled at that time for the unexpired term; if there was no qualifying election under the terms of the Constitution, then the mayor's appointee would serve for the remainder of the term. OAG 82-351.

Where a person is elected to fill a vacancy for an unexpired term, such person is entitled to take office immediately after his election or as soon thereafter as he receives his certificate of election and qualifies; he would then hold office for the remainder of the unexpired term. OAG 84-244.

NOTES TO DECISIONS

ANALYSIS

5. Appointment.
6. Election.
14. — School board.

5. Appointment.

The provision that "all other appointments shall be made as may be prescribed by law" controls the appointment of school board members to fill vacancies in a school district that is not larger than the county. *Glass v. City of Hopkinsville*, 225 Ky. 428, 9 S.W.2d 117 (1928).

6. Election.

14. — School Board.

Election for school board members, in scattered districts and parts of districts within a county, was not an election for city, town, county, district, or state officers at which an election to fill a vacancy in an office elected by the entire county could be held. *Brumleve v. Ruth*, 302 Ky. 813, 195 S.W.2d 777 (1946). See *White v. Hubbard*, 302 Ky. 820, 195 S.W.2d 781 (1946).

A person appointed under KRS 160.190 to fill a vacancy on the school board would be entitled to serve for the balance of the unexpired term. *Shields v. Wilkins*, 449 S.W.2d 220 (Ky. 1969).

§ 155. School elections not governed by Constitution.

The provisions of Sections 145 to 154, inclusive, shall not apply to the election of school trustees and other common school district elections. Said elections shall be regulated by the General Assembly, except as otherwise provided in this Constitution.

Cross-References. School elections, KRS 160.200 to 160.260.

NOTES TO DECISIONS

Cross-References. The note to Const., § 147 under heading "24. — School Election" reads: "From Const., § 155 as applied to § 147, it was clear that the secret ballot was not intended as requirement in common-school district elections. *Moss v. Riley*, 102 Ky. 1, 43 S.W. 421 (1897)."

ANALYSIS

1. In general.
2. Bond issuance.
3. School officers.
4. Right to vote.
5. School districts.
6. Time of elections.
7. Corrupt practice act.
8. Filling of vacancies.

1. In General.

Under this section, common school district elections were not required to be held on regular election day. *Sisk v. Gardiner*, 25 Ky. L. Rptr. 18, 74 S.W. 686 (1903).

This section confers on the Legislature full power to regulate everything relating to the management and control of the common schools of this state. *Shields v. Wilkins*, 449 S.W.2d 220 (1969).

This section would indicate that Const., §§ 145 to 154 should not apply to school elections. *Shields v. Wilkins*, 449 S.W.2d 220 (1969).

2. Bond Issuance.

In the absence of statutory limitation, school trustees may submit for election more than once in the same year the question of issuing bonds, even though such issue was previously defeated. *McKinney v. Board of Trustees*, 144 Ky. 85, 137 S.W. 839 (1911).

A school district bond issue election held on day other than the regular election day provided by law, and at which the vote was viva voce instead of by ballot, was not for those reasons invalid. *Smith v. Board of Trustees*, 171 Ky. 39, 186 S.W. 927 (1916).

Legislature can confide to school board the power to order and conduct an election on the question of issuance of school bonds without any restriction requiring it to be held on a day of general election. *Rogan v. Board of Educ.*, 192 Ky. 770, 234 S.W. 443 (1921).

3. School Officers.

The Legislature has the liberty to determine everything relating to the management and control of the schools of the state, including the right to determine who may vote for school superintendent and other school officers. *Crook v. Bartlett*, 155 Ky. 305, 159 S.W. 826 (1913).

4. Right to Vote.

This section confers on the Legislature full power to regulate everything relating to the management and control of the common schools of the state, and the Legislature has the power to give women the right to vote in them. *Stuessy v. City of Louisville*, 156 Ky. 523, 161 S.W. 564 (1913).

Illiterate women, no less than illiterate men, may exercise their right to vote at school elections. *Prewitt v. Wilson*, 242 Ky. 231, 46 S.W.2d 90 (1932).

5. School Districts.

The city of Louisville being a school district, an election therein on a tax measure is a school district election, and under the regulation of the General Assembly. *Stuessy v. City of Louisville*, 156 Ky. 523, 161 S.W. 564 (1913).

6. Time of Elections.

School elections of every character are not required to be held on a regular election day. *Clark v. Board of Trustees*, 164 Ky. 210, 175 S.W. 359 (1915). See *Sisk v. Gardiner*, 25 Ky. L. Rptr. 18, 74 S.W. 686 (1903); *Weil, Roth & Co. v. Paris*, 176 Ky. 841, 197 S.W. 461 (1917).

The Legislature is at liberty to fix the time for regular or general election of school trustees on a day other than the first Tuesday after the first Monday in November. *Norton v. Letton*, 271 Ky. 353, 111 S.W.2d 1053 (1937).

7. Corrupt Practice Act.

Members of school board, like all other elected county and district officers, are subject to the provisions of the corrupt practice act, KRS 123.030 (repealed). *Ridings v. Jones*, 213 Ky. 810, 281 S.W. 999 (1926). See *Hart v. Rose*, 255 Ky. 576, 75 S.W.2d 43 (1934).

Although this section relieved Legislature of necessity of applying corrupt practice measures to schools, it did not forbid Legislature from such application; thus, corrupt practice act

could apply to school elections. *Hart v. Rose*, 255 Ky. 576, 75 S.W.2d 43 (1934).

8. Filling of Vacancies.

The selection of a person to fill a vacancy in a common school district office is synonymous with an election within the meaning of this section. *Shields v. Wilkins*, 449 S.W.2d 220 (1969).

MUNICIPALITIES

SECTION.

157. Maximum tax rate for cities, counties, and taxing districts.

157b. Adoption of budget required for cities, counties, and taxing districts — Expenditures not to exceed revenues for fiscal year.

158. Maximum indebtedness of cities, counties, and taxing districts — General Assembly authorized to set additional limits and conditions.

165. Incompatible offices and employments.

§ 157. Maximum tax rate for cities, counties, and taxing districts.

The tax rate of cities, counties, and taxing districts, for other than school purposes, shall not, at any time, exceed the following rates upon the value of the taxable property therein: For all cities having a population of fifteen thousand or more, one dollar and fifty cents on the hundred dollars; for all cities having less than fifteen thousand and not less than ten thousand, one dollar on the hundred dollars; for all cities having less than ten thousand, seventy-five cents on the hundred dollars; and for counties and taxing districts, fifty cents on the hundred dollars.

(Amendment, proposed by Acts 1994, ch. 168, § 2, and ratified November 8, 1994.)

Compiler's Notes. The General Assembly in 1994 (Acts 1994, ch. 168, § 2) proposed an amendment to this section, which amendment was ratified by the voters at the regular election November 8, 1994 and became effective November 8, 1994. Prior to this amendment this section read:

“§ 157. Maximum tax rate for cities, counties and taxing districts — Indebtedness exceeding income provided for year not to be incurred without popular vote.

— The tax rate of cities, towns, counties, taxing districts and other municipalities, for other than school purposes, shall not, at any time, exceed the following rates upon the value of the taxable property therein, viz: For all towns or cities having a population of fifteen thousand or more, one dollar and fifty cents on the hundred dollars; for all towns or cities having less than fifteen thousand and not less than ten thousand, one dollar on the hundred dollars; for all towns or cities having less than ten thousand, seventy-five cents on the hundred dollars; and for counties and taxing districts, fifty cents on the hundred dollars; unless it should be necessary to enable such city, town, county, or taxing district to pay the interest on, and provide a sinking fund for the extinction of, indebtedness contracted before the adoption of this Constitution. No county, city, town, taxing district, or other municipality, shall be authorized or permitted to become indebted, in any manner or for any purpose, to an amount exceeding, in any year, the income and revenue provided for such year, without the assent of two-thirds of the voters thereof, voting at an election to be held for that purpose; and any indebtedness contracted in violation of this section shall be void. Nor shall such contract

be enforceable by the person with whom made; nor shall such municipality ever be authorized to assume the same.”

Section 5 of Acts 1994, ch. 168 provides: “It is further proposed as a part of this amendment and as a transitional provision for the purposes of this amendment, that any contract or legally binding obligation of a local government shall remain unaffected until the contract or obligation is renegotiated or expires.”

Cross-References. City taxes, levy of, KRS 91.260 to 91.280, 92.280 to 92.320.

County taxes, levy of, KRS 68.090.

County tax in excess of 50 cents per hundred for maintenance of tubercular institution, KRS 68.090.

Improvements, financing through special assessments, KRS 91A.200 to 91A.290.

School taxes, levy of, KRS 160.460 to 160.477.

Taxation by cities and counties, Const., § 181.

Opinions of Attorney General. By exempting school districts from the scope of application of the act, and by permitting termination by a taxing district on a year-to-year basis of a contractual arrangement with an agency, Acts 1986, ch. 13, which repealed the Tax Increment Act, KRS 99.750, and enacted KRS 99.751, 99.756, 99.761, 99.766 and 99.771 (now see KRS 65.490 et seq.), has remedied the constitutional problems under this section and Const., § 184 that the Supreme Court in *Miller v. Covington Development Authority*, 539 S.W.2d 1 (Ky. 1976), found with the Tax Increment Act. OAG 86-48.

Cited: *City of Lexington v. Board of Educ.*, 193 Ky. 566, 236 S.W. 1030 (1922).

NOTES TO DECISIONS

Many of the decisions under this section regarding indebtedness were decided prior to the 1994 amendment of this section which deleted that portion of the section prohibiting an entity from becoming indebted in amount exceeding yearly income and revenue. Now see Const., § 157b.

ANALYSIS

8. School purposes.
10. Indebtedness.
13. —Not debts.
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37. —Invalid expenditures.
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8. School Purposes.

The tax rate provided for cities and towns of less than 10,000 population applies to an indebtedness for school purposes as well as for strictly municipal purposes. *City Council v. Powell*, 101 Ky. 7, 16 Ky. L. Rptr. 174, 27 S.W. 1 (1894).

The limitation on indebtedness in this section also applies to debts incurred for school purposes. *Commonwealth v. Louisville & N. R.R.*, 105 Ky. 206, 20 Ky. L. Rptr. 127, 48 S.W. 1092 (1899).

The tax rates of this section do not place a limit on rates that may be levied for school purposes but the debt limit does include indebtedness for school purposes. *Walsh v. City of Pineville*, 152 Ky. 556, 153 S.W. 1002 (1913).

The limitations imposed by this section have no application to the property tax voted for school purposes under authority

of a valid election. *Christopher v. Robinson*, 164 Ky. 262, 175 S.W. 387 (1915).

The provisions of this section fixing tax rates for other than school purposes were not intended as an exception to the debt limits of Const., § 158, which limits no city, town, county, taxing district and municipality can exceed even for school purposes. *Booth v. Board of Educ.*, 229 Ky. 719, 17 S.W.2d 1013 (1929).

There is no constitutional limitation on tax rates for school purposes. *Bell v. Board of Educ.*, 343 S.W.2d 804 (Ky. 1961).

10. Indebtedness.

13. —Not Debts.

Issuance of bonds by a county board of education was not the creation of a debt in violation of this section where anticipated tax revenues on which the anticipated tax revenues on which the school budget was based were reduced as a result of judicial decisions with respect to methods of computing assessed valuations of certain property. *Bell v. Board of Educ.*, 343 S.W.2d 804 (Ky. 1961).

15. —Created Before Constitution.

This section does not forbid an indebtedness to be incurred where all the necessary steps had been taken pursuant to a statute and prior to the adoption of the Constitution. *Ludlow v. Board of Educ.*, 16 Ky. L. Rptr. 805, 29 S.W. 854 (1895).

18. —Estimation of Amount.

The validity of a note of a board of education given in exchange for warrants previously issued must be determined by the financial status of the school district when the original indebtedness was created. *Citizens Bank v. Rowan County Bd. of Educ.*, 274 Ky. 481, 118 S.W.2d 704 (1938).

19. —Debts of School Boards.

Where a board of education was authorized by statute to issue bonds and hold an election for approval, the indebtedness is that of the board alone and the debt of the city is not considered in determining when the limits of this section are reached. *Rogan v. Board of Educ.*, 192 Ky. 770, 234 S.W. 443 (1921).

The outstanding indebtedness of a municipality may not be taken into consideration in determining whether a graded school district has reached the constitutional limitation on indebtedness. *Fall v. Read*, 194 Ky. 135, 238 S.W. 177 (1922). See *Dayton v. Board of Educ.*, 201 Ky. 566, 257 S.W. 1021 (1924).

An indebtedness of a municipality is not to be taken into account in estimating the indebtedness of a school board of the district which covers the same territory. *Dayton v. Board of Educ.*, 201 Ky. 566, 257 S.W. 1021 (1924).

23. —Annexed or Merged Entities.

A county school board would not be permitted to assume the debts of another school district which it had absorbed, assuming such debt would create a total indebtedness in excess of the income for that year. *Owsley County Bd. of Educ. v. Owsley County Fiscal Court*, 251 Ky. 165, 64 S.W.2d 179 (1933).

This section does not relieve a county school board from liability for a judgment against an independent school district which had been merged with the county district by order of the state board of education. *Board of Educ. v. Nelson*, 268 Ky. 83, 103 S.W.2d 691 (1937).

A county board of education could be liable for the debts of an independent school district when the district was merged and issue bonds to satisfy the indebtedness, since it was a debt which the board did not voluntarily incur. *Bales v. Holt*, 270 Ky. 272, 109 S.W.2d 632 (1937).

If the question of incurring an indebtedness and issuing general obligation bonds had been submitted to the voters in accordance with this section and had received the required two-thirds (2/3) vote in favor, then property in the district at

the time the vote was taken would remain liable for the tax required to pay the indebtedness, regardless of the transfer of the property to another school district. *Board of Educ. v. Board of Education of Lexington Independent School Dist.*, 250 S.W.2d 1017 (Ky. 1952).

24. —Approval of Voters.

Under this section county school district has no right to anticipate more than one (1) year's taxes at a time without a two-thirds ($\frac{2}{3}$) vote of the people. *Board of Educ. v. Board of Educ. of Lexington Independent School Dist.*, 250 S.W.2d 1017 (Ky. 1952).

25. —Two-thirds Vote.

A prospective indebtedness may be approved by two-thirds ($\frac{2}{3}$) of the voters voting on the question and it is not necessary to have the assent of two thirds ($\frac{2}{3}$) of the electorates or two-thirds ($\frac{2}{3}$) who vote for the candidates in the election. *Montgomery County Fiscal Court v. Trimble*, 104 Ky. 629, 20 Ky. L. Rptr. 827, 47 S.W. 773, 42 L.R.A. 738 (1898), overruling in part *Belknap v. Louisville*, 99 Ky. 474, 18 Ky. L. Rptr. 313, 36 S.W. 1118, 59 Am. St. 478, 34 K.L.R. 256 (1896); *Owensboro v. Baker*, 18 Ky. L. Rptr. 324, 37 S.W. 1129 (1896); *McGoodwin v. Franklin*, 18 Ky. L. Rptr. 752, 38 S.W. 481 (1896). See *Worthington v. Board of Educ.*, 24 Ky. L. Rptr. 1510, 71 S.W. 879 (1903); *Board of Educ. v. City of Winchester*, 120 Ky. 591, 27 Ky. L. Rptr. 994, 87 S.W. 768 (1905); *Kentucky Light & Power Co. v. James H. Williams & Co.*, 124 S.W. 840 (1910); *Inglehart v. Dawson Springs*, 143 Ky. 140, 136 S.W. 210 (1911); *Logan v. Gilbert*, 151 Ky. 659, 152 S.W. 778 (1913); *Fowler v. Oakdale*, 158 Ky. 603, 166 S.W. 195 (1914).

32. —Valid Expenditures.

Where a school district employed a contractor to build a schoolhouse and the total price was beyond the amount of funds available, there was no proof that the debt was invalid where there was no contract executed and the builder agreed not to do any more than could be paid from yearly revenue. *Cockrell v. Board of Trustees*, 237 Ky. 280, 35 S.W.2d 310 (1931).

Payment of increased teachers' salaries from a capital outlay item of the education budget was not improper where it was within the limits and constituted a part of the anticipated revenues. *Dunn v. Allen*, 308 Ky. 774, 215 S.W.2d 957 (1948).

35. —Contracts.

A contract by which the board of education sold a school building for a fixed consideration to a corporation organized to purchase the building, with option by the board to lease and rebuy the building but with no obligation to do so, did not require the board to incur an indebtedness in excess of that authorized by this section and Const., § 158, without a vote of the voters thereon. *Waller v. Georgetown Bd. of Educ.*, 209 Ky. 726, 273 S.W. 498 (1925).

A contract between a school corporation and a corporation where the corporation was to build a school to be rented by the city for the term of one (1) year with an option to renew from year to year for a yearly rent within the constitutional debt limit was valid. *Kirkpatrick v. City Bd. of Educ.*, 234 Ky. 836, 29 S.W.2d 565 (1930). See *Holman v. Glasgow Graded Common School Dist.*, 237 Ky. 7, 34 S.W.2d 733 (1931).

Where a lease entered into by a school board was for one (1) year with options to renew on a year-to-year basis, this did not create an indebtedness for more than a year and such yearly rent was not in excess of anticipated revenue; therefore, there was no violation of this section. *Davis v. Bd. of Educ.*, 260 Ky. 294, 83 S.W.2d 34 (1935).

37. —Invalid Expenditures.

Approval of \$3,800 for school improvements by the school trustees was improper where the revenue was only \$2,800 and the voters had disapproved a bond issue for these improve-

ments. *Flanders v. Board of Trustees*, 170 Ky. 627, 186 S.W. 506 (1916).

Where the Legislature increased the maximum rate of levy but the board of education did not request the fiscal court to impose this new maximum, then the board was without power to issue bonds to fund a floating indebtedness. *Hockensmith v. County Bd. of Educ.*, 240 Ky. 76, 41 S.W.2d 656 (1931).

A board of education may not fund an indebtedness by issuing bonds when the fiscal court failed to act on the board's request for an additional levy. *Downey v. Board of Educ.*, 243 Ky. 66, 47 S.W.2d 931 (1932).

The mere fact that a school board has exceeded the amount of its realized annual revenue does not violate the constitutional debt limitation where the board stays within the amount of its budget, if its excess expenditure over realized income is within the amount which the board might reasonably have anticipated would be received by it from the tax levy, but where board did not reduce the amount of its budgets, notwithstanding repeated annual experience of failing to realize revenue called for by its budgets, it did not keep its expenditures within required reasonably anticipated amount. *Fiscal Court v. Lincoln County Bd. of Educ.*, 273 Ky. 174, 115 S.W.2d 891 (1937).

A board of education could not validly issue bonds with maturity dates antedating the issuance, thereby making them past due and payable with accumulated interest at the time they are issued. *Abbott v. Oldham County Bd. of Educ.*, 272 Ky. 654, 114 S.W.2d 1128 (1938).

39. —Contracts.

A contract by which a school district was to pay for the building of a school through the levy of a tax for four (4) years was invalid where the contract was not authorized by the voters. *Grady v. Pruit*, 111 Ky. 100, 23 Ky. L. Rptr. 506, 63 S.W. 283 (1901).

The acts of school trustees in contracting an indebtedness for the building of a schoolhouse in excess of the revenues, and in levying a tax to pay the debt, are void. *Howard v. Trustees*, 31 Ky. L. Rptr. 399, 102 S.W. 318 (1907).

A contract by which a board of education agreed to rent of building for seven (7) years at the end of which time the building would be conveyed to the board was invalid as not having been approved by the electorate even though each yearly rental could be paid out of the annual revenue. *Billings v. Bankers' Bond Co.*, 199 Ky. 490, 251 S.W. 643 (1923).

A contract by a board of education to convey property to a private corporation which was in its effect a mortgage of the property is invalid as a creation of indebtedness under this section. *Hardin v. Owensboro Educ. Ass'n*, 244 Ky. 390, 50 S.W.2d 968 (1932).

A plan to convey property to the fiscal court which would lease the school building to be constructed to the school board for a year-to-year lease with rent sufficient to amortize the mortgage and then reconvey the building to the board was invalid. *Fiscal Court v. Board of Educ.*, 268 Ky. 336, 104 S.W.2d 1103 (1937).

A plan by which a school board was to convey school properties to a nonprofit corporation which would erect a new school building to be leased to the board for a period of years after which the board was to become owner of the property conveyed to the corporation was invalid. *Weeks v. Board of Educ.*, 282 Ky. 241, 137 S.W.2d 1094 (1940).

If a board of education incurs an indebtedness by contracting for construction of a school, and its cost exceeds its income and revenue for the current year, the contract is unenforceable unless it has been approved by two thirds ($\frac{2}{3}$) of the voters of the area affected. *Hacker Bros. Constr. Co. v. Board of Educ.*, 590 S.W.2d 897 (Ky. Ct. App. 1979).

Where a construction company was attempting to maintain an action on the basis that it had a valid contract with the school board, the contract was unenforceable because the approval of the voters of the county was not obtained, as