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Mississippi School Laws Annotated

THE CONSTITUTION OF THE STATE OF MISSISSIPPI

ADOPTED NOVEMBER 1, A.D., 1890

ARTICLE 8.

EDUCATION.

SEC.	
201.	Free public schools
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§ 201. Free public schools

The Legislature shall, by general law, provide for the establishment, maintenance and support of free public schools upon such conditions and limitations as the Legislature may prescribe.

SOURCES: *Laws, 1934, ch 362; Laws, 1960 ch 547; Laws, 1987, ch. 671, eff December 4, 1987.*

Editor's Note — The 1960 amendment to Section 201 of the Constitution was proposed by Laws 1960, ch 547, and, upon ratification by the electorate on Nov. 8, 1960, was inserted by Proclamation of the Secretary of State on Nov. 23, 1960, by virtue of the authority vested in him by Section 273 of the Constitution, as amended.

The 1987 amendment of Section 201 in Article 8 of the Mississippi Constitution of 1890 was proposed by Laws, 1987, Ch. 671 (House Concurrent Resolution No. 9), and upon ratification by the electorate on November 3, 1987, was made a part of the Constitution by proclamation of the Secretary of State on December 4, 1987.

Cross References — Public schools, see Code § 37-1-1 et seq.

JUDICIAL DECISIONS

1. Construction and application.
2. Handicapped children.
3. Uniformity—In general.
4. — Raising and use of school funds, uniformity.
5. — Establishment of and change in school districts, uniformity.
6. Schools of higher education.

1. Construction and application.

In the construction and erection of elementary and junior high schools and the preparation of school grounds, trustees of the city municipal separate school district were exercising power conferred

upon them by the Constitution and the legislature, and were not agents of the city. *Harrell v. City of Jackson*, 229 Miss. 815, 92 So. 2d 240 (1957).

Constitutional provision requiring establishment of free public schools, and statute making school attendance compulsory, did not preclude municipality from refusing complainant admission to city schools because of failure to submit to required smallpox vaccination. *Hartman v. May*, 168 Miss. 477, 151 So. 737, 93 A.L.R. 1408 (1934).

School facilities must be made available to every educable child, and all land in county must be embraced in some district; school district cannot be changed to deprive any educable child of school facilities within convenient reach. *Myers v. Board of Supvrs.*, 156 Miss. 251, 125 So. 718 (1930).

Constitutional provision relating to establishment of schools does not deprive legislature of power to pass laws authorizing trustees to make rules and regulations. *McLeod v. State*, 154 Miss. 468, 122 So. 737, 63 A.L.R. 1161 (1929).

This section plainly makes it the duty of the legislature to promote public education in the state by all suitable means, by taxation or otherwise, by establishing a uniform system of free public schools, and that they should do this as soon as practicable. *Miller v. State*, 130 Miss. 564, 94 So. 706 (1923).

2. Handicapped children.

Handicapped child's right to education is guaranteed by state constitution, Article VIII, § 201, which is effectuated under § 37-13-1, which provides for maintenance of uniform system of free public schools. *Jackson v. Franklin County Sch. Bd.*, 806 F.2d 623 (5th Cir. 1986).

3. Uniformity—In general.

The creation of a state normal school does not violate this section of the Constitution, as such is provided for in c 119 Laws 1910. *J. Livekar & Co. v. State*, 98 Miss. 330, 53 So. 681 (1910).

Legislative act appointing designated persons as trustees of a public school for a term of twenty years, and granting them power to fill vacancies, exclusive control and various other powers not conferred on trustees of public schools generally, violated the requirement of uniformity. *Ellis v. Greaves*, 82 Miss. 36, 34 So. 81 (1903).

While § 4008 of the code of 1892, regulating the election of trustees generally but excepting existing appointed trustees, did not supersede § 148 of the Laws of 1888 relative to the trustees of the Hazlehurst public school, nevertheless the act of 1888 in conferring extraordinary powers upon such trustees, was unconstitutional hereunder. *Ellis v. Greaves*, 82 Miss. 36, 34 So. 81 (1903).

It is not required that the manner of selecting county superintendent shall be uniform. *Wynn v. State*, 67 Miss. 312, 7 So. 353 (1890).

4. — Raising and use of school funds, uniformity.

Statute authorizing bond issue for building program by agricultural high school held not to violate constitutional provision against local laws for common school system. *Humphreys v. Hinds County Agric. High Sch.-Junior College*, 177 Miss. 1, 170 So. 530 (1936); *Wyatt v. Harrison-Stone-Jackson Agric. High Sch.-Junior College*, 177 Miss. 13, 170 So. 526 (1936).

The legislature may not authorize a diversion of the common school fund, but may (decided under § 1, art VIII, Constitution 1869) empower local authorities to provide schools outside the established system and pay therefor by taxation. *Otken v. Lamkin*, 56 Miss. 758 (1879); *Chrisman v. Mayor of Brookhaven*, 70 Miss. 477, 12 So. 458 (1892).

Appropriation to create a fund for the purchase of free textbooks to be distributed and loaned to pupils of elementary schools, whether private or public, sectarian or non-sectarian, was not a use or diversion of school or other educational funds within the constitutional prohibition against control of any part of the school or

other educational funds of the state by any religious or other sect, or against the appropriation of any funds toward the support of any sectarian school or school not conducted as a free school, in view of the fact that such fund was to be used for the benefit of the pupils themselves and in keeping with the duty of the state to educate the children. *Chance v. Mississippi State Textbook Rating & Purchasing Bd.*, 190 Miss. 453, 200 So. 706 (1941).

Bill by taxpayers against county superintendent of education and chancery clerk to enjoin issuance of pay certificates and warrants on school equalizing funds on the ground that such funds, designed to permit schooling beyond the four months' term, were wrongfully used to maintain the four months' term, held not to state cause of action. *Hodges v. Trantham*, 171 Miss. 374, 157 So. 715 (1934).

Equity will not grant preventative injunction if school equalizing funds had been unlawfully appropriated prior to filing of bill. *Hodges v. Trantham*, 171 Miss. 374, 157 So. 715 (1934).

All legislative power not prohibited by the Constitution directly, or by necessary implication, is vested in the legislature, and laws authorizing counties to levy an ad valorem tax to support common schools of four months' term are not unconstitutional. *St. Louis & S.F. Ry. v. Benton County*, 132 Miss. 325, 96 So. 689 (1923).

The act of the legislature creating what is known as a revolving fund for the public schools beyond the period of 4 months provided under § 205, was declared constitutional, that it did not violate this section, nor § 205, nor 206 of the Constitution. *Miller v. State*, 130 Miss. 564, 94 So. 706 (1923).

Chapter 255 Laws 1912, which provides for transportation of pupils in consolidated school districts and for the raising of funds to maintain such schools, does not violate this section of the Constitution. *Bufkin v. Mitchell*, 106 Miss. 253, 63 So. 458 (1913).

The school fund can only be applied to such schools as are within the uniform system devised. *Otken v. Lamkin*, 56 Miss. 758 (1879).

5. — Establishment of and change in school districts, uniformity.

Territory cannot be taken from school district and added to consolidated district if insufficient territory is left to maintain school in remaining territory not added to any district. *Myers v. Board of Supvrs.*, 156 Miss. 251, 125 So. 718 (1930).

Statutes relating to separate schools for white and colored races, and relating to adding territory to consolidated districts, must be construed in pari materia; territory cannot be added to consolidated district if there is not adjacent territory left to constitute school district, unless omitted territory is added to another district. *Myers v. Board of Supvrs.*, 156 Miss. 251, 125 So. 718 (1930).

School authorities cannot so run boundaries of school district as to gerrymander educable children of district; proceeding to add territory to school district must be operated in fair, just and sensible manner. *Myers v. Board of Supvrs.*, 156 Miss. 251, 125 So. 718 (1930).

6. Schools of higher education.

Legislature's power to establish colleges and universities does not rest on constitutional grant. *State Teachers' College v. Morris*, 165 Miss. 758, 144 So. 374 (1932).

State teachers' college was not part of State's uniform system of free public schools. *State Teachers' College v. Morris*, 165 Miss. 758, 144 So. 374 (1932).

Legislature could establish and support, as part of teachers' college, practice schools teaching branches of learning within common school curriculum. *State Teachers' College v. Morris*, 165 Miss. 758, 144 So. 374 (1932).

In order for school to be within system of "free public schools" required by Constitution, establishment and control must be vested in public officials charged with duty of establishing and supervising that system of schools. *State Teachers' College v. Morris*, 165 Miss. 758, 144 So. 374 (1932).

"Schools," within constitutional provision respecting establishment of schools of higher grade, are those which are part of uniform system of free public schools supported from common school fund. *State Teachers' College v. Morris*, 165 Miss. 758, 144 So. 374 (1932).

State teachers' college may charge students attending its demonstration and practice school with tuition. *State Teachers' College v. Morris*, 165 Miss. 758, 144 So. 374 (1932).

High schools come within definition of "schools of higher grade" in constitutional provision relating to establishing schools. *McLeod v. State*, 154 Miss. 468, 122 So. 737, 63 A.L.R. 1161 (1929).

RESEARCH REFERENCES

ALR. Power of municipal or school authorities to prescribe vaccination or other health measure as a condition of school attendance. 93 A.L.R. 1413.

Schools: extent of legislative power with respect to attendance and curriculum. 39 A.L.R. 477, 53 A.L.R. 832.

Schools: free textbooks and other school supplies for individual use of pupils. 67 A.L.R. 1196.

Sectarianism in schools. 45 A.L.R.2d 742.

What is common or public school within contemplation of constitutional or statutory provisions. 113 A.L.R. 697.

CJS. C.J.S. Schools and School Districts §§ 3, 4, 6, 8, 74, 557, 571.

Law Reviews. Dill, Education law abstract: a survey of prominent issues in Mississippi's public schools. 13 Miss. C. L. Rev. 337 (Spring, 1993).

Draft of New Constitution for State of Mississippi, Constitutional Study Commission, 7 Miss. C. L. Rev. 1, Fall, 1986.

§ 202. State Superintendent of Public Education

(1) Until July 1, 1984, there shall be a Superintendent of Public Education elected at the same time and in the same manner as the Governor, who shall have the qualifications required by the Secretary of State, and hold his office for four (4) years, and until his successor shall be elected and qualified, who shall have the general supervision of the common schools and and of the educational interests of the state, and who shall perform such other duties and receive compensation as shall be prescribed by law. However, an election for the Superintendent of Public Education shall not be held at the general election in 1983, and the term of the Superintendent of Public Education who was elected at the general election in 1979 shall be extended to July 1, 1984, on which date it shall expire.

(2) From and after July 1, 1984, there shall be a State Superintendent of Public Education who shall be appointed by the State Board of Education, with the advice and consent of the Senate, and serve at the board's will and pleasure. He shall possess such qualifications as may be prescribed by law. He shall be the chief administrative officer for the State Department of Education and shall administer the department in accordance with the policies established by the State Board of Education. He shall perform such other duties and receive such compensation as shall be prescribed by law.

SOURCES: 1869 art VIII § 3; **Laws, 1982, ch. 616, eff January 28, 1983.**

Editor's Note — The 1982 amendment to Section 202 of Article 8 of the Constitution of 1890 was proposed by Laws, 1982, ch. 616, being Senate Concurrent Resolution No. 506 of the 1982 regular session of the Legislature and, upon ratification by the electorate on November 2, 1982, was inserted as a part of the Constitution by proclamation of the Secretary of State on January 28, 1983.

Cross References — Election of Governor, see MS Const Art. 5, § 140.

Impeachment, see MS Const Art. 4, § 50 et seq.

Qualifications of officers, see MS Const Art. 12, § 250 and Art. 14, § 265.

Secretary of state, see MS Const Art. 5, § 133.

RESEARCH REFERENCES

CJS. C.J.S. Schools and School Districts §§ 81 to 92, 174.

§ 203. State Board of Education

(1) Until July 1, 1984, there shall be a board of education, consisting of the Secretary of State, the Attorney General and the Superintendent of Public Education, for the management and investment of the school funds according to law, and for the performance of such other duties as may be prescribed. The superintendent and one (1) other of said board shall constitute a quorum.

(2) From and after July 1, 1984, there shall be a State Board of Education which shall manage and invest school funds according to law, formulate policies according to law for implementation by the State Department of Education, and perform such other duties as prescribed by law. The board shall consist of nine (9) members of which none shall be an elected official. The Governor shall appoint one (1) member who shall be a resident of the Northern Supreme Court District and who shall serve an initial term of one (1) year, one (1) member who shall be a resident of the Central Supreme Court District and who shall serve an initial term of five (5) years, one (1) member who shall be a resident of the Southern Supreme Court District and who shall serve an initial term of nine (9) years, one (1) member who shall be employed on an active and full-time basis as a school administrator and who shall serve an initial term of three (3) years, and one (1) member who shall be employed on an active and full-time basis as a schoolteacher and who shall serve an initial term of seven (7) years. The Lieutenant Governor shall appoint two (2) members from the state at large, one (1) of whom shall serve an initial term of four (4) years and one (1) of whom shall serve an initial term of eight (8) years. The Speaker of the House of Representatives shall appoint two (2) members from the state at large, one (1) of who shall serve an initial term of two (2) years and one (1) of whom shall serve an initial term of six (6) years. The initial terms of appointees shall begin on July 1, 1984, and all subsequent appointments shall begin on the first day of July for a term of (9) years and continue until their successors are appointed and qualify. An appointment to fill a vacancy which arises for reasons other than by expiration of a term of office shall be for the unexpired term only. The Legislature shall by general law prescribe the compensation which members of the board shall be entitled to receive. All members shall be appointed with the advice and consent of the Senate and no members shall be actively engaged in the educational profession except as stated above.

SOURCES: 1869 art VIII § 3; Laws, 1982, ch. 616, eff January 28, 1983.

Editor's Note — The 1982 amendment to Section 203 of Article 8 of the Constitution of 1890 was proposed by Senate Concurrent Resolution No. 506 of the 1982 regular session of the Legislature

and, upon ratification by the electorate on November 2, 1982, was inserted as a part of the Constitution by proclamation of the Secretary of State on January 28, 1983.

Cross References — State board of education generally, see Code § 37-1-1 et seq.

State common-school fund, see MS Const Art. 8, § 206.

JUDICIAL DECISIONS**1. In general.**

Statute requiring State Board of Education to furnish certified copy of apportionment of equalizing fund to counties and school districts by implication required board to keep written record of its acts and doings. *Trantham v. Russell*, 171 Miss. 481, 158 So. 143 (1934).

RESEARCH REFERENCES

CJS. C.J.S. Schools and School Districts §§ 81, 92, 174.

§ 204. County superintendents of education

There shall be a superintendent of public education in each county, who shall be appointed by the board of education by and with the advice and consent of the senate, whose term of office shall be four years, and whose qualifications, compensation, and duties, shall be prescribed by law: Provided, That the legislature shall have power to make the office of county school superintendent of the several counties elective, or may otherwise provide for the discharge of the duties of county superintendent, or abolish said office.

SOURCES: 1869 art VIII § 4.

Cross References — County superintendents of education generally, see Code § 37-5-61 et seq.

Impeachment, see MS Const Art. 4, § 50 et seq.

Qualifications of officers, see MS Const Art. 12, § 250 and Art. 14, § 265.

JUDICIAL DECISIONS

1. In general.
2. Power of legislature.

1. In general.

Allegations that party elected as county superintendent of education was not resident citizen of State and county for required time was allegations of facts. *Wilkins v. Large*, 163 Miss. 279, 141 So. 585 (1932).

2. Power of legislature.

The legislature has constitutional power under this section to fix the qualifications for a person to be eligible to hold the office of county superintendent of education. *State ex rel. Patterson v. Lee*, 218 So. 2d 434 (Miss. 1969).

This section vests in the legislature, as to county superintendents of education, the full legislative power of the state which is granted by Mississippi Const. § 33. *State ex rel. Patterson v. Land*, 231 Miss. 529, 95 So. 2d 764 (1957), error overruled 231 Miss. 529, 96 So. 2d 828.

Since this section otherwise provides for the appointment, or election, or abolition of the office of county superintendent of education, and vests in the legislature power to prescribe qualifications, compensation and duties of the office, Mississippi Const. § 250 does not affect the legislature's power in prescribing the qualifications for the office. *State ex rel. Patterson v. Land*, 231 Miss. 529, 95 So. 2d 764 (1957), error overruled 231 Miss. 529, 96 So. 2d 828.

Section 9, chapter 10, Laws of 1953 (Code 1942, § 6271-09), prescribing additional qualification requirements for county superintendents of education, is constitutional. *State ex rel. Patterson v.*

Land, 231 Miss. 529, 95 So. 2d 764 (1957), error overruled 231 Miss. 529, 96 So. 2d 828.

The term of office cannot be extended by the legislature. Burnham v. Sumner, 50 Miss. 517 (1874).

RESEARCH REFERENCES

CJS. C.J.S. Schools and School Districts § 93.

§ 205. Repealed

Repealed by Laws, 1987, ch. 671, eff December 4, 1987.

[1869, art. VIII, § 5]

Editor's Note — Former Section 205 empowered the legislature to establish and maintain free public schools and the term or terms thereof in each county of the state.

The repeal of Section 205 of Article 8 of the Mississippi Constitution of 1890 was proposed by Laws, 1987, Ch. 671 (House Concurrent Resolution No. 9), and upon ratification by the electorate on November 3, 1987, was deleted from the Constitution by proclamation of the Secretary of State on December 4, 1987.

§ 206. State common-school fund; additional tax levy by district

There shall be a state common-school fund, to be taken from the General Fund in the State Treasury, which shall be used for the maintenance and support of the common schools. Any county or separate school district may levy an additional tax, as prescribed by general law, to maintain its schools. The state common-school fund shall be distributed among the several counties and separate school districts in proportion to the number of educable children in each, to be determined by data collected through the office of the State Superintendent of Education in the manner to be prescribed by law.

SOURCES: 1869 art VIII § 6. See amendment No. 2, 1904 ch 173; Laws, 1989, ch. 589, eff August 1, 1989.

Editor's Note — The 1989 amendment to Section 206 of Article 8 of the Constitution of 1890 was proposed by House Concurrent Resolution No. 9 (Chapter 589, Laws, 1989) and, upon ratification by the electorate on June 20, 1989, was inserted as part of the Constitution by proclamation of the Secretary of State on August 1, 1989.

Cross References — Expenditures of school funds and school budgets generally, see Code § 37-61-1 et seq.

Funds for schools failing to meet accreditation standards, see Code § 37-17-6.

Minimum program of education generally, see Code § 37-19-1 et seq.

Tax levy for support of minimum education program, see Code § 37-57-1 et seq.

JUDICIAL DECISIONS

1. Construction and application.
2. History.
3. Provision for school funds.
4. Distribution of school funds.

1. Construction and application.

The language of this section is not a limitation on the power of the legislature but is an admonition, injunction or command to the legislature to make sufficient appropriation to maintain the public schools in each county for the four months' period. *St. Louis & S.F. Ry. v. Benton County*, 132 Miss. 325, 96 So. 689 (1923).

This section is mandatory in requiring the legislature to provide at least four months school funds distributed on a per capita basis

of educable children. *Miller v. State*, 130 Miss. 564, 94 So. 706 (1923).

2. History.

The section abrogated § 6 art 8, Constitution of 1869, by which fines were devoted to the common-school fund. *Foote v. Farmer*, 71 Miss. 148, 14 So. 445 (1893).

3. Provision for school funds.

Statute authorizing bond issue for building program by agricultural high school held not to violate constitutional provision against local laws for common school system. *Humphreys v. Hinds County Agric. High Sch.-Junior College*, 177 Miss. 1, 170 So. 530 (1936); *Wyatt v. Harrison-Stone-Jackson Agric. High Sch.-Junior College*, 177 Miss. 13, 170 So. 526 (1936).

Statute empowering counties to levy an ad valorem tax to support common schools, before, during, and after the expiration of, the four months' term did not contravene this section. *St. Louis & S.F. Ry. v. Benton County*, 132 Miss. 325, 96 So. 689 (1923).

Statute providing for the appropriation of a sum of money, in addition to that appropriated for the support and maintenance of the public schools of the state, for the purpose of equalizing public school terms, in the light of the positive duty of the legislature to encourage and promote public education in the state, did not contravene this section, since this section does not prohibit aid to the schools for a term in excess of the four months' period named therein. *Miller v. State*, 130 Miss. 564, 94 So. 706 (1923).

Each educable child is the unit upon which the state distributes its bounty to the county, and the legislature is not authorized to adopt another or different basis which ignores the constitutional unit. For this reason c 5 Laws 1912, creating a supplemental common school fund for the use of counties which had exhausted state common school funds and could not complete the four months' term, is void. *State Bd. of Educ. v. Pridgen*, 106 Miss. 219, 63 So. 416 (1913).

4. Distribution of school funds.

Equity will not grant preventative injunction if school equalizing funds have been unlawfully appropriated prior to filing bill. *Hodges v. Trantham*, 171 Miss. 374, 157 So. 715 (1934); *Haniel v. Rice*, 176 Miss. 462, 169 So. 687 (1936), § 205, supra.

Bill by taxpayers to enjoin issuance of pay certificates and warrants on equalizing fund, held not to state cause of action. *Hodges v. Trantham*, 171 Miss. 374, 157 So. 715 (1934).

The provision for per capita distribution hereunder refers solely to the funds provided for the four months' term named in this section; it was not intended that the per capita distribution should apply to any school funds outside of the funds necessary to carry on the schools for the four months. *Miller v. State*, 130 Miss. 564, 94 So. 706 (1923).

For proper distribution of the poll tax funds see *City of Jackson v. Hinds County*, 104 Miss. 199, 61 So. 175 (1913).

RESEARCH REFERENCES

CJS. C.J.S. Schools and School Districts § 9.

§ 206A. Establishment of education improvement trust fund

There is hereby created and established in the State Treasury a trust fund which may be used, as hereinafter provided, for the improvement of education within the State of Mississippi. There shall be deposited in such trust fund:

(a) The state's share of all oil severance taxes and gas severance taxes derived from oil and gas resources under state-owned lands or from severed state-owned minerals;

(b) Any and all monies received by the state from the development, production and utilization of oil and gas resources under state-owned lands or from severed state-owned minerals, except for the following portions of such monies:

(i) All mineral leasing revenues specifically reserved by general law in effect at the time of the ratification of this amendment for the following purposes: (A) management of a state leasing program; (B) clean-up, remedial or abatement actions involving pollution as a result of oil or gas exploration or production; (C) management or protection of state waters, land and wildlife; or (D) acquisition of additional waters and land; and

(ii) Monies derived from sixteenth section lands and lands held in lieu thereof or from minerals severed from sixteenth section lands and lands held in lieu thereof; and

(iii) Monies derived from lands or minerals administered in trust for any state institution of higher learning or administered therefor by the head of any such institution;

(c) Any gift, donation, bequest, trust, grant, endowment or transfer of money or securities designated for said trust fund; and

(d) All such monies from any other source whatsoever as the Legislature shall, in its discretion, so appropriate or shall, by general law, so direct.

The principal of the trust fund shall remain inviolate and shall be invested as provided by general law. Interest and income derived from investment of the principal of the trust fund may be appropriated by the Legislature by a majority vote of the elected membership of each house of the Legislature and expended exclusively for the education of the elementary and secondary school students and/or vocational and technical training in this state.

SOURCES: Laws, 1985, ch. 546, eff November 20, 1986.

Editor's Note — The insertion of Section 206A in Article 8 of the Mississippi Constitution of 1890 was proposed by Laws, 1985, Ch. 546 (House Concurrent Resolution No. 35), and upon ratification by the electorate on November 4, 1986, was inserted as part of the Constitution by proclamation of the Secretary of State on November 20, 1986.

Laws, 1986, ch. 399, § 2, effective July 1, 1986, provides as follows:

"Upon the effective date of this act, any funds, including interest earned thereon, to the credit of the special fund for the administration of the Mineral Lease Division of the Department of Natural Resources and to the credit of the Gulf and Wildlife Protection Fund, which are in excess of the amounts set forth in Section 29-7-3 to be used for the purposes prescribed therein, shall be transferred into the Education Trust Fund created in Section 206A, Mississippi Constitution of 1890."

Cross References — Investment of the Education Improvement Trust Fund, see Code § 7-9-101 et seq.

Amounts to be credited to trust fund created by this section out of oil and gas severance taxes collected, see Code § 27-25-506.

RESEARCH REFERENCES

C.J.S. C.J.S. Schools and School Districts § 10.
C.J.S. Taxation §§ 1059, 1086.

§ 207. Repealed

Repealed by Laws, 1977, ch. 587, eff December 22, 1978.

Editor's Note — Former Section 207 provided that separate schools be maintained for "children of the white and colored races."

The repeal of Section 207 of Article 8 of the Constitution of 1890 was proposed by Laws, 1977, Ch. 587 (Senate Concurrent Resolution No. 557) and upon ratification by the electorate on November 7, 1978, was deleted from the Constitution by proclamation of the Secretary of State on December 22, 1978.

§ 208. Control of funds by religious sect; certain appropriations prohibited

No religious or other sect or sects shall ever control any part of the school or other educational funds of this state; nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school.

SOURCES: 1869 art VIII § 9.

Cross References — Financial assistance to children attending nonsectarian private schools, see Code § 37-51-1 et seq.

Minimum program of education generally, see Code § 37-19-1 et seq.

Textbooks generally, see Code § 37-43-1 et seq.

Transportation of school pupils generally, see Code § 37-41-1 et seq.

JUDICIAL DECISIONS

1. Construction and application.
2. School.
3. Funds.
4. Loaning textbooks.

1. Construction and application.

Hospital's contract with state commission on hospital care involving state grants of aid and providing for maintenance of teaching facilities, such training being an incident and overall plan to render the hospital an efficient aid in its duty to furnish hospital care, the expense to be borne solely by the hospital but under the control and supervision of commission, does not violate the constitutional prohibition against the appropriation of funds towards support of sectarian schools. *Craig v. Mercy Hospital-Street Mem.*, 209 Miss. 427, 45 So. 2d 809 (1950), error overruled, 209 Miss. 490, 47 So. 2d 867 (1950).

Legislature's power to establish colleges and universities does not rest on constitutional grant. *State Teachers' College v. Morris*, 165 Miss. 758, 144 So. 374 (1932).

2. School.

Word "school" is constitutional provision prohibiting appropriation of funds to sectarian schools or schools not conducted as free schools does not include State owned and supported schools. *State Teachers' College v. Morris*, 165 Miss. 758, 144 So. 374 (1932).

3. Funds.

"Funds" in constitutional provision prohibiting appropriation of funds to sectarian schools or schools not conducted as free schools, means public funds of some character. *State Teachers' College v. Morris*, 165 Miss. 758, 144 So. 374 (1932).

4. Loaning textbooks.

The loaning of free textbooks under a statute so providing irrespective of whether the school was public or private, under circumstances wherein the state retained full control and ownership over such books and their preservation was fostered by the exaction of suitable compensation for their loss or damage, did not constitute a direct or indirect aid to the respective schools which the pupils attended, although school attendance should be compulsory. *Chance v. Mississippi State Textbook Rating & Purchasing Bd.*, 190 Miss. 453, 200 So. 706 (1941).

Appropriation to create a fund for the purchase of free textbooks to be distributed and loaned to pupils of elementary schools, whether private or public, sectarian or non-sectarian, was not a use or diversion of school or other educational funds within the prohi-

bition of this section, in view of the fact that such fund was to be used for the benefit of the pupils themselves and in keeping with the duty of the state to educate the children. *Chance v. Mississippi State Textbook Rating & Purchasing Bd.*, 190 Miss. 453, 200 So. 706 (1941).

The privilege of requisition by qualified private or sectarian schools for the loan of such books to its pupils does not place in such schools the "control [of] any part of the school or other educational funds" of the state. *Chance v. Mississippi State Textbook Rating & Purchasing Bd.*, 190 Miss. 453, 200 So. 706 (1941).

RESEARCH REFERENCES

ALR. Constitutionality, under state constitutional provision forbidding financial aid to religious sects, of public provision of school bus service for private school pupils. 41 A.L.R.3d 344.

Furnishing free textbooks to sectarian school or student therein. 93 A.L.R.2d 986.

Giving of invocation with religious content at public-school-sponsored events to which public is invited or admitted as violation of establishment clause of First Amendment. 98 A.L.R. Fed. 206.

Right of school authorities to release pupils during school hours for purpose of attending religious education classes. 2 A.L.R.2d 1371.

Schools: free textbooks and other school supplies for individual use of pupils. 67 A.L.R. 1196.

Sectarianism in schools. 45 A.L.R.2d 742.

Validity and construction of public school regulation of student distribution of religious documents at school. 136 A.L.R. Fed. 551.

CJS. C.J.S. Schools and School Districts §§ 809, 810.

Lawyers' Edition. Establishment and free exercise of religion clauses of Federal Constitution's first Amendment as applied to public schools—Supreme Court Cases. 96 L. Ed. 2d 828.

Law Reviews. McMillan, With Religious Speech, Funding is Fundamental: *Rosenberger v. Rector and Visitors of University of Virginia*, 115 S. Ct. 2510 (1995), 17 Miss. C. L. Rev. 149, Fall, 1996.

§ 209. Institutions for education of deaf, dumb and blind

It shall be the duty of the legislature to provide by law for the support of institutions for the education of the deaf, dumb, and blind.

SOURCES: 1869 art XII § 27.

Cross References — Appointment of interpreters for deaf persons in judicial proceedings and custodial situations, see Code § 13-1-301 et seq.

Schools for the blind and deaf generally, see Code § 43-5-1 et seq.

Vocational rehabilitation for the blind generally, see Code § 37-33-51 et seq.

RESEARCH REFERENCES

CJS. C.J.S. Schools and School Districts §§ 700 to 702, 717, 719.

§ 210. Sale of public school supplies

No public officer of this state, or any district, county, city, or town thereof, nor any teacher or trustee of any public school, shall be interested in the sale, proceeds, or profits of any books, apparatus, or furniture to be used in any public school in this state. Penalties shall be provided by law for the violation of this section.

Editor's Note — Senate Concurrent Resolution No. 514, enacted as Chapter 655, Laws, 1984, adopted by the Senate on April 26, 1984, and the House of Representatives on April 25, 1984, proposed to repeal section 210 of the Mississippi Constitution of 1890. The proposed repeal was submitted to the electorate on November 6, 1984, but was rejected.

Cross References — Prohibitions against public officers having interest in public contracts, see MS Const Art. 4, §§ 107 and 109.

RESEARCH REFERENCES

CJS. C.J.S. Schools and School Districts §§ 393, 394, 399.

§ 211. Sixteenth section lands

(1) The Legislature shall enact such laws as may be necessary to ascertain the true condition of the title to the sixteenth section lands in this state, or lands granted in lieu thereof, in the Choctaw Purchase, and shall provide that the sixteenth section lands reserved for the support of township schools, except as hereinafter provided, shall not be sold nor shall they be leased for a longer term than ten (10) years for lands situated outside municipalities and for lands situated within municipalities for a longer term than ninety-nine (99) years, for a gross sum; provided further, that existing leases of the sixteenth section lands situated in the municipalities of the state may, for a gross sum, be extended for a term of years not exceeding ninety-nine (99) years from the date of such extension, but the Legislature may provide for the lease of sixteenth section lands for a term of years not exceeding twenty-five (25) years for forest and agricultural lands and not exceeding forty (40) years for all other classifications of such lands for a ground rental, payable annually, and in the case of uncleared lands may lease them for such short terms as may be deemed proper in consideration of the improvement thereof, with right thereafter to lease for a term or to hold on payment of ground rent; provided however, that land granted in lieu of sixteenth section lands in this state and situated outside of the county holding or owning same may be sold and the proceeds from such sale may be invested in a manner to be prescribed by the Legislature; but provided further, however, that the Legislature, for industrial development thereon, may authorize the sale, in whole or in part for a gross sum or otherwise, of sixteenth section lands, or lands granted in lieu thereof situated within the county; and the Legislature shall either provide for the purchase of other lands within the county to be held for the benefit of the township schools in lieu of the lands sold or shall provide for the investment of the proceeds of such sale for the benefit of the township schools, or the Legislature may provide for both purchase of other lands to be so held and investment of proceeds for the benefit of the township schools; and the Legislature, for industrial development thereon, may authorize the granting of leases on sixteenth section lands, or lands granted in lieu thereof, in whole or in part, for a gross sum or otherwise, for terms not to exceed ninety-nine (99) years, and the Legislature shall provide for the investment of the proceeds of such leases for the benefit of the township schools. The Legislature may authorize the lease of not more than three (3) acres of sixteenth section lands or lands granted in lieu thereof for a term not exceeding ninety-nine (99)

years for a ground rental, payable annually, to any church, having its principal place of worship situated on such lands, which has been in continuous operation at that location for not less than twenty-five (25) years at the time of the lease.

(2) Notwithstanding any limitation on the terms of leases provided in subsection (1) of this section, the Legislature may provide, by general law, for leases on liquid, solid or gaseous minerals with terms coextensive with the operations to produce such minerals.

SOURCES: 1817 art VI Sec 20; Laws, 1942, ch 329; Laws, 1944, ch 343; Laws, 1961, 1st Ex Sess ch 10; Laws, 1986, ch. 643; Laws, 1992, ch. 730, eff December 8, 1992.

Editor's Note — The 1961 amendment to Section 211 of the Constitution was proposed by Laws 1961, 1st Ex ch 10, and, upon ratification by the electorate on Oct. 3, 1961, was inserted by Proclamation of the Secretary of State on Oct. 16, 1961, by virtue of the authority vested in him by Section 273 of the Constitution.

The 1986 amendment to Section 211 of Article 8 of the Constitution of 1890 was proposed by Senate Concurrent Resolution No. 537 (Chapter 643) of the 1986 regular session of the Legislature and, upon ratification by the electorate on November 4, 1986, was inserted as a part of the Constitution by proclamation of the Secretary of State on November 20, 1986.

The 1992 amendment of Section 211 in Article 8 of the Mississippi Constitution of 1890, was proposed by Laws, 1992, ch. 591 (Senate Concurrent Resolution No. 552), and upon ratification by the electorate on November 3, 1992, was inserted as part of the Constitution by proclamation of the Secretary of State on December 8, 1992.

Cross References — Acquisition and disposition of school district property generally, see Code § 37-7-401 et seq.

Lease of school trust lands for ground rental, see Code § 29-3-69.

Provisions of Coastal Wetlands Protection Act inapplicable to wetlands conveyed by state for industrial development, see Code § 49-27-7.

Sixteenth sections and lieu lands generally, see Code § 29-3-1 et seq.

JUDICIAL DECISIONS

1. Construction and application.
2. Lease duration.
3. Rights of way.
4. Appropriation of lands.
5. Sale for taxes.
6. Sale or lease of minerals, timber, and the like.
7. Exchange of school lands.
8. Improvements to leased property.
9. Accretions.

1. Construction and application.

Prior to the adoption of this constitutional provision, the legislature had authority to execute a trust as to sixteenth section lands for school purposes in its discretion. *Lambert v. State*, 211 Miss. 129, 51 So. 2d 201 (1951).

The phrase "in the Choctaw Purchase" was used to distinguish sixteenth sections of all lands in the state from sixteenth sections in the Chickasaw Cession and to refer to all lands in the state outside the Chickasaw Cession. *Smith v. McCullen*, 195 Miss. 34, 13 So. 2d 319 (1943).

Section 6613, Code 1942, conferring jurisdiction upon chancery courts to determine what school lands are subject to lease, does not vest power in the chancery court to make a lease of sixteenth section lands, since such power is vested by this section of the Constitution in the legislature, and the legislature has already enacted laws pursuant to this section of the Constitution. *Smith v. McCullen*, 195 Miss. 34, 13 So. 2d 319 (1943).

This section prohibits the state from parting with the possession and control of 16th section lands, except for a definite and compara-

tively short period of time. *Mutual Life Ins. Co. v. Nelson*, 184 Miss. 632, 186 So. 636 (1939).

2. Lease duration.

Miss Const § 211, as amended February 4, 1944, to increase the lease duration limit of Sixteenth Section lands reserved for the support of township schools from 25 years to 99 years, is not self-executing and, therefore, had no effect until 1946 when the legislature amended the Mississippi Code to conform to the provisions mandated by § 211. Thus, a 99-year lease of Sixteenth Section land executed in 1945 was void. *Oktibbeha County Bd. of Educ. v. Town of Sturgis*, 531 So. 2d 585 (Miss. 1988).

3. Rights of way.

Mississippi Legislature did not violate supremacy clause or any provision of state constitution in granting title to right-of-way over Sixteenth Section School land to railroad pursuant to 1882 charter, and railroad and its successor in interest, rather than county board of education, owned right-of-way; state law placed no binding trust obligation or other burden on Sixteenth Section lands such as would bar legislature from enacting charter in 1882. *Madison County Bd. of Educ. v. Illinois Cent. R.R.*, 939 F.2d 292 (5th Cir. 1991).

An uncompensated grant by the state of an easement or right of way across a sixteenth section would be in violation of the constitution. *Willmut Gas & Oil Co. v. Covington County*, 221 Miss. 613, 71 So. 2d 184 (1954), appeal dismissed, 348 U.S. 891, 75 S. Ct. 215, 99 L. Ed. 700 (1954), overruled on other grounds, *State v. Michigan Wis. Pipeline Co.*, 360 So. 2d 684 (Miss. 1978).

The Railroad Company acquired no vested right of the right of way over sixteenth section lands where its right of way had not been surveyed and laid out prior to the enactment of § 211 of the Constitution. *Yazoo & Miss. V. Ry. v. Sunflower County*, 125 Miss. 92, 87 So. 417 (1921).

4. Appropriation of lands.

The provisions of this section were not designed to prevent laying out highways through sixteenth sections, and no means of compensation has been specifically provided therefor; and it was the intention, as it has been practiced, to permit highways to be laid through sixteenth sections for the general good and for the special benefit of the inhabitants without the necessity of condemnation proceedings. *Bailey v. Pierce*, 194 So. 743 (Miss. 1940).

Constitutional prohibition of sale of sixteenth section school land did not take from legislature power to appropriate such land to levee purposes, with or without compensation to township school fund, under constitutional mandate to construct system of levees. *Washington County v. Board of Miss. Levee Comm'rs*, 171 Miss. 80, 156 So. 872 (1934).

5. Sale for taxes.

Sale of leasehold estate of sixteenth section lands to the state for nonpayment of taxes merged the unexpired term thereof in the greater fee simple title of the state and extinguished it, so that the state land commissioner was without power to sell such leasehold and issue a patent therefor. *McCullen v. Mercer*, 192 Miss. 547, 6 So. 2d 465 (1942).

All attempts to sell Chickasaw school lands for taxes were void as such lands have never been subject to tax. *Edwards v. Butler*, 89 Miss. 179, 42 So. 381 (1906).

6. Sale or lease of minerals, timber, and the like.

The board of supervisors may permit purchaser of timber on school lands to enter the land to remove the timber and to burden the land with the support thereof until removed, but they cannot grant him an indefinite time. *L.N. Dantzer Lumber Co. v. State*, 97 Miss. 355, 53 So. 1 (1910); *State ex rel. Att'y Gen. v. Dunnam*, 67 So. 461 (Miss. 1915); *State ex rel. Att'y Gen. v. Blodgett*, 110 Miss. 768, 70 So. 710 (1915).

A chancellor's ruling that the 25-year limitation of Mississippi Constitution Article VIII § 211 had no application to an oil or gas lease, which was based on the economic reality that a mineral lessee must be allowed to maintain a lease for an indefinite period of time to maximize profits and was an attempt to redress perceived economic hardships with equitable principles, would be reversed since § 211 clearly limits 16th section land leases (including mineral leases) to a maximum term of 25 years, and it the judiciary's responsibility to interpret the law, not institute economic

policies. Should the perceived economic hardships of § 211 be real, the onus is upon the legislature to redress such economic inadequacies, and Mississippi Constitution Article XV, § 273 provides the exclusive means for amendment. Additionally, § 29-3-63, which provides the holder of a lease of 16th section land with a prior right, exclusive of all other persons, to re-lease or extend an existing lease, diminishes the perceived harsh consequences which might result from the enforcement of § 211 against all oil, gas and mineral leases of 16th section land. *Chevron U.S.A., Inc. v. State*, 578 So. 2d 644 (Miss. 1991).

Statutes providing for the lease by county authorities upon approval of the state of sixteenth section school lands for oil, gas and mineral exploration and development and for entry on such lands for such purposes, were not unconstitutional as authorizing a sale of minerals in situ, as a part of the realty, in violation of this section, since the constitutional prohibition extended only to lands, using the term in the restricted sense as meaning only the soil and not the soil and everything above and below it. *Pace v. State ex rel. Rice*, 191 Miss. 780, 4 So. 2d 270 (1941).

The objection that statutory provision permitting lease of sixteenth section lands for oil, gas and mineral exploration and development, and for entry upon such lands for such purposes, was unconstitutional because the lease might under its terms remain in force so long as oil and gas should be produced from the land and therefore longer than the 25 years prescribed by this section, is obviated by the statute providing that conveyances purporting to convey or pass a greater estate in the grantor might lawfully convey or pass, shall operate and pass such a right or estate as the grantor might lawfully convey. *Pace v. State ex rel. Rice*, 191 Miss. 780, 4 So. 2d 270 (1941).

7. Exchange of school lands.

Statutes (§ 6781, Code 1930) providing for the exchange of school lands for other lands is plainly obnoxious to this section, as against the contention that this section of the Constitution should be construed as prohibiting a sale for a cash consideration but not an exchange of land. *Mutual Life Ins. Co. v. Nelson*, 184 Miss. 632, 186 So. 636 (1939).

8. Improvements to leased property.

Where sixteenth section lands, partly located in a municipality, were leased by the board of supervisors to a nonprofit corporation, and under a contract with the power company, the nonprofit corporation undertook the construction of a reservoir on the leased premises and the power company was to use the water therein in connection with the operation of his electric generating plant, and the capitalized value of the leased land per acre upon the completion of the proposed improvements would greatly exceed the present capitalized value per acre, and there was no taking or removing of the soil from the premises, the construction of the reservoir would not constitute waste; nor did the fact that the leased lands were formerly used almost exclusively for agricultural purposes mean that it would be unlawful to construct the proposed improvements, or that the land should be used for commercial or residential purposes, especially in view of the fact that there had been no development of the lands, so that the chancellor's action in refusing to enjoin the construction of the proposed improvements and in confirming the lease was proper. *Dodds v. Sixteenth Section Dev. Corp.*, 232 Miss. 524, 99 So. 2d 897 (1958).

9. Accretions.

Where accretions washed against and on and became attached to school land in lieu of sixteenth section and to the plantation abutting on Mississippi River, and where the owners of the plantation and board of county supervisors entered into contracts fixing the lines and apportioning accretions between them this was not a sale of sixteenth section or new lands. *Board of Supvrs. v. Giles*, 219 Miss. 245, 68 So. 2d 483 (1953).

RESEARCH REFERENCES

CJS. C.J.S. Schools and School Districts § 8.

§ 212. Interest rate on Chickasaw School Fund and other educational trust funds

The rate of interest on the fund known as the "Chickasaw School Fund," and other trust funds for

educational purposes for which the state is responsible, shall be fixed, and remain as long as said funds are held by the state, at six per centum per annum from and after the close of the fiscal year A.D. 1891; and the distribution of said interest shall be made semi-annually, on the first of May and November of each year.

JUDICIAL DECISIONS

1. In general.

Claim that sale of Chickasaw Cession School Lands and unwise investment of proceeds had abrogated state's trust obligation to hold those lands for benefit of school children in perpetuity are barred by Eleventh Amendment, however, allegation that state's unequal distribution of benefits of school lands is denial of equal protection is not so barred, as essence of equal protection claim is present disparity in distribution of benefits of state held assets and not state's past actions, and alleged differential treatment violates equal protection only if not rationally related to legitimate state interest; differential financing resulting from disparity and distribution of benefits of state held assets is attributable to state decision to divide state resources unequally among school districts, and if not rationally related to legitimate state interests is unconstitutional and resolution of this question is dependent upon whether federal law requires state to allocate economic benefits of school lands to schools and townships in which those lands are located and whether such federal law is itself constitutional. *Papasan v. Allain*, 478 U.S. 265, 106 S. Ct. 2932, 92 L. Ed. 2d 209 (1986).

This section is not self-executing; there must be a legislative appropriation. *State ex rel. Barron v. Cole*, 81 Miss. 174, 32 So. 314 (1902).

RESEARCH REFERENCES

CJS. C.J.S. Schools and School Districts § 13.

TITLE 25

PUBLIC OFFICERS AND EMPLOYEES; PUBLIC RECORDS

Chapter 11

Social Security and Public Employees' Retirement and Disability Benefits

Article 1. Social Security Benefits.25-11-1
Article 3. Additional State Retirement and Disability Benefits.25-11-101

ARTICLE 1.

SOCIAL SECURITY BENEFITS.

SEC.
25-11-1. Citation.
25-11-3. Purpose and declaration of policy.
25-11-5. Definitions.
25-11-7. Federal-state agreement.
25-11-9. Contributions by state employees.
25-11-11. Coverage of employees of political subdivisions and instrumentalities.
25-11-13. Contribution fund.
25-11-15. Administration and operation of Public Employees'

Sec.	Retirement System, federal-state agreement, and Articles 1 and 3.
25-11-17.	Rules and regulations.
25-11-19.	Studies and reports.
25-11-21.	Former laws remain in force.

§ 25-11-1. Citation.

Articles 1 and 3 shall be known and cited as the Public Employees' Retirement Law of 1952.

SOURCES: Codes, 1942, § 7446-25; Laws, 1952, ch. 299, § 25, eff January 1, 1953.

Cross References — Provisions of the supplemental legislative retirement plan, the benefits of which are in addition to the benefits provided by this article, see §§ 25-11-301 through 25-11-319.

Administration and operation of Public Employees' Retirement System, federal-state agreement, and Articles 1 and 3, see § 25-11-15.

Eligibility for membership in retirement system, see § 25-11-105.

§ 25-11-3. Purpose and declaration of policy.

In order to extend to employees of the state and its political subdivisions and of the instrumentalities of either, and to the dependents and survivors of such employees, the basic protection accorded to others by the old-age and survivors insurance system embodied in the Social Security Act, it is hereby declared to be the policy of this state, subject to the limitations of Articles 1 and 3, that such steps be taken, and they are hereby expressly authorized, as to provide such protection to employees of the state and its political subdivisions and of the instrumentalities of either on as broad a basis as is permitted under applicable federal law. It is also the policy of the legislature that the protection afforded employees in positions covered by a retirement system on the date an agreement under this article is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

SOURCES: Codes, 1942, § 7446-01; Laws, 1952, ch. 299, § 1; Laws, 1956, ch. 346, § 1, eff April 1, 1956.

Cross References — Appointment as special judge or senior judge as affecting retirement benefits, see §§ 9-1-105 and 9-1-107.

General municipal employees' retirement act, generally, see §§ 21-29-1 et seq.

Firemen's and policemen's disability relief fund, generally, see §§ 21-29-101 et seq.

Provisions of the supplemental legislative retirement plan, the benefits of which are in addition to the benefits provided by this article, see §§ 25-11-301 through 25-11-319.

Rule that closing of schools is not to affect teacher retirement benefits, see §§ 37-65-15, 37-65-113.

Old age assistance, see §§ 43-9-1 et seq.

Medical assistance for the aged, see §§ 43-13-1 et seq.

Medicaid, see §§ 43-13-101 et seq.

Mississippi employment security law, generally, see §§ 71-5-1 et seq.

RESEARCH REFERENCES

ALR. Misconduct as affecting right to pension or retention of position in retirement system. 76 A.L.R.2d 566.

Acceptance of, or assertion of right to, pension or retirement as abandonment of public office or employment. 76 A.L.R.2d 1312.

Validity and effect of retroactive change in rate of employee's contribution to public pension fund. 78 A.L.R.2d 1197.

Effect of divorce, remarriage or annulment on widow's pension or bonus rights or social security benefits. 85 A.L.R.2d 242.

Rights in survival benefits under public pension or retirement plan as between designated beneficiary and heirs, legatees, or personal representative of deceased employee. 5 A.L.R.3d 644.

Mandatory retirement of public officer or employees based on age. 81 A.L.R.3d 811.

Am Jur. 60A Am. Jur. 2d, Pensions and Retirement Funds §§ 1603, 1606, 1630.

70A Am. Jur. 2d, Social Security and Medicare §§ 1 et seq.

46 Am. Jur. Proof of Facts 2d 97, Extent of Disability Under Social Security Act.

CJS. 70 C.J.S., Pensions §§ 1 et seq.

81 C.J.S., Social Security and Public Welfare §§ 2 et seq.

§ 25-11-5. Definitions.

For the purposes of this article:

(a) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act. The amount by which an eligible employee's salary is reduced pursuant to a salary reduction agreement authorized under Section 25-17-5 shall be excluded from the term "wages", provided such exclusion does not conflict with federal law, including federal regulations and federal administrative interpretations thereunder, pertaining to the Federal Insurance Contributions Act or to Internal Revenue Code Section 125 cafeteria plans. If any salary reduction amounts excluded from "wages" under the prior sentence are determined to be "wages" by the Social Security Administration or the Internal Revenue Service and payroll tax deficiencies are assessed, the deficiencies shall be borne by the eligible employee and the adopting state agency or local governmental entity and not by the Public Employees' Retirement System of Mississippi as state administrator.

(b) The term "employment" means any service performed by an employee in the employ of the state, any political subdivision thereof, or any instrumentality of either for such employer, except (i) service which in the absence of an agreement entered into under this article would constitute "employment" as defined in the Social Security Act; or (ii) service which under applicable federal law may not be included in an agreement between the state and the Secretary of Health, Education and Welfare entered into under this article; or (iii) service in positions covered by a retirement system established by the state or by a political subdivision or an instrumentality of either on the date the agreement referred to in Section 25-11-7 or any modification of such agree-

ment is made applicable to the coverage group (as defined in Section 218(b)(5) of the Social Security Act) to which the employee performing such services belongs. Service which under the Social Security Act may be included in an agreement only upon certification by the Governor in accordance with Section 218(d)(3) of that act shall be included in the term "employment" if and when the Governor issues, with respect to such service, a certificate to the Secretary of Health, Education and Welfare pursuant to Section 25-11-11(5) of this article.

Services, the compensation for which is on a fee basis, may, to the extent permitted by applicable federal law, be excluded in any plan or agreement approved under or authorized by this article.

(c) The term "employee," in addition to its usual meaning, includes an officer of a state, a political subdivision thereof, or an instrumentality of either, and all school employees.

(d) The term "board" means the Board of Trustees of the Public Employees' Retirement System of Mississippi as provided by Section 25-11-15 of this article.

(e) The term Secretary of Health, Education and Welfare includes any individual to whom the Secretary of Health, Education and Welfare has delegated any functions under the Social Security Act with respect to coverage under such act of employees of states and their political subdivisions and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator or any individual to whom he had delegated any such function.

(f) The term "political subdivision" includes any county, municipality, or other political subdivision within the State of Mississippi to which has been delegated certain functions of local government, and employees thereof who are eligible to become a coverage group under the terms of the Social Security Act.

(g) The term "instrumentality," when referring to an instrumentality of the state or political subdivision, includes only a juristic entity which is legally separate and distinct from the state or such subdivision and whose employees are not by virtue of their relation to such entity employees of the state or such subdivision.

(h) The term "applicable federal law" refers to such provisions of federal law (including federal regulations and requirements issued pursuant thereto), as provide for extending the benefits of Title II of the Social Security Act to employees of states, political subdivisions, and their instrumentalities.

(i) The term "Social Security Act" means the Act of Congress approved August 14, 1935, Chapter 531, 49 Stat 620, officially cited as "The Social Security Act," as such act has been and may from time to time be amended.

(j) The term "Federal Insurance Contribution Act" means subchapter A of Chapter 9 of the Federal Internal Revenue Code of 1939 and subchapters A and B of Chapter 21 of the Federal Internal Revenue Code of 1954, as such Codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by Section 1400 of such Code of 1939 and Section 3101 of such Code of 1954.

SOURCES: Codes, 1942, § 7446-02; Laws, 1952, ch. 299, § 2; Laws, 1956, ch. 346, § 2; Laws, 1986, ch. 513, § 6; brought forward, 1987, ch. 345, § 6, eff from and after July 1, 1987.

Editor's Note — Section 49-7-2 provides that "Social Security Administration" shall be construed to include Railroad Retirement Board.

Cross References — Coverage of employees of political subdivisions and instrumentalities, see § 25-11-11.

Additional definitions applicable to this article, see § 25-11-103.

Membership of retirement system, see § 25-11-105.

Application of the definitions of this section to the supplemental legislative retirement plan, see § 25-11-303.

Federal Aspects — Section 125 of the Internal Revenue Code of 1954, see 26 USCS § 125.

Federal Insurance Contributions Act, see 26 USCS §§ 3101 et seq.

Social Security Act generally, see 42 USCS §§ 301 et seq.

Social Security Act, Title II, see 42 USCS §§ 401 et seq.

Section 218 of the Social Security Act, see 42 USCS § 418.

§ 25-11-7. Federal-state agreement.

(1) The board, with the approval of the governor, is hereby authorized to enter on behalf of the state into an agreement with the Secretary of Health, Education and Welfare, consistent with the terms and provisions of this article, for the purpose of extending the benefits of the federal old-age and survivors insurance system to employees of the state or any instrumentality of any one or more of the foregoing, with respect to services specified in such agreement which constitute "employment" as defined in section 25-11-5 of this article. Such agreement may contain such provisions as the board and the Secretary of Health, Education and Welfare shall agree upon, but except as may be otherwise required by or under applicable federal law as to the services to be covered, such agreement shall provide in effect that:

(a) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of the Social Security Act;

(b) The state will pay to the Secretary of the Treasury at such time or times as may be prescribed by the applicable federal law or by regulation promulgated thereunder, contributions with respect to wages (as defined in section 25-11-5 of this article) equal to the sum of the taxes which would be imposed by the Federal Insurance Contributions Act if the services covered by the