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"NORTH CAROLINA—POWERFUL IN MORAL, INTELLECTUAL AND PHYSICAL RESOURCES—THE LAND OF OUR SIBS AND THE HOME OF OUR AFFECTIONS" [THREE DOLLARS A YEAR—IN ADVANCE]

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LAWS OF NORTH CAROLINA [Passed at the session of Assembly 1844-45.]

CHAPTER XXXVI.

An Act to consolidate and amend the acts heretofore passed on the subject of Common Schools.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That the net annual income of the Literary Fund, (exclusive of monies arising from the sale of Swamp Lands) shall annually be distributed among the several counties of this State, in the ratio of their Federal population, to be ascertained by the census next preceding such distribution.

Be it further enacted, That the Courts of Pleas and Quarter Sessions of the counties which have adopted the School system, shall, at the Term next preceding the first Monday of October, in each and every year, a majority of the Justices of the Peace of said county being present, appoint not less than five nor more than ten, superintendents of Common Schools, who shall hold their appointments for one year, and until others are chosen.

Be it further enacted, That the term of said superintendents shall commence on the first Monday of October, and they shall assemble at the office of the Clerk of the county court, on the day thereafter and appoint one of their number chairman.

Be it further enacted, That the Clerk of the county court shall be *ex officio* clerk of the Board of superintendents, and shall record in a book to be kept for that purpose, the proceedings of the board, and such other papers touching the subject of common schools, as the board may direct; and shall safely keep all papers which may be committed to his custody by said board.

Be it further enacted, That the share of the Literary Fund, to which each county may be entitled, under the provisions of this act, shall be due and payable on or before the first Monday of October, in each and every year, and shall be paid to the chairman of the board of superintendents or his lawful attorney, upon the warrant of the Comptroller.

Be it further enacted, That the Court of Pleas and Quarter Sessions of each and every county, a majority of the Justices being present, may in their discretion levy a tax in the same manner that other county taxes are now levied for other county purposes, which shall not be less than one half of the estimated amount to be received by said county for that year from the Literary Fund; and the sheriff is hereby required to collect and pay over the same to the chairman of the board of superintendents on the day of their first meeting as prescribed in the third section of this act; and his bond given to secure the payment of county taxes, shall contain a condition for the faithful collection and payment of the school taxes to the person authorized to receive the same; and for a breach of said condition by the sheriff, the chairman of the board of superintendents shall have the same remedies against him and his securities, as are given to the county trustee for enforcing the payment of ordinary county taxes: except that his right of action shall arise on the first day of November in each and every year, and the sheriff's penalty shall go to the use of common Schools in his county.

Be it further enacted, That the board of Superintendents shall have power to lay off in their counties school districts, and number the same, of such form and size as they may think most conducive to the convenience of the inhabitants of said county, and also to alter the boundaries of the same, causing said boundaries and such alterations to be recorded by their clerk in the book in which the record of their proceedings is kept.

Be it further enacted, That the free white men of the several School Districts, who are entitled to vote for members of the House of Commons, on the last Saturday in September in each and every year, shall vote by ballot for three men, to be entitled "The School Committee," whose term shall commence on the first Monday in October and continue for one year, and until others are chosen; and that said election shall be held at such convenient place in the school district severally, as the said superintendents may designate; and the three persons having the highest number of votes at such election, shall be declared elected as the "school committee" of their respective districts; and the superintendents shall have power to fill any vacancy which may occur in said committee by death, removal, or other cause. The chairman of the board of superintendents, whose term of service is to expire on the first Monday of October, shall give public notice in writing at three or more public places in each district, of the election to be held as provided in this section, at least ten days before the day of such election; and the said board of superintendents shall appoint two freeholders of the district to conduct such election of the "school committee." The said freeholders shall give to the board of superintendents whose term of service commences on the first Monday of October, on the day of their first meeting, as prescribed in the third section of this act, a certificate under their hands, of the number of votes received by each person; and the said board shall declare the three persons receiving the highest number of votes the "school committee," as herein provided: *provided, never-theless,* that whenever the districts fail to make an election, the board of superintendents shall appoint the school committee, who shall continue in office till others are chosen at the next annual election: And whenever the people, or any number of persons of any district, may consider themselves aggrieved by the committee, or any one of the committee-men of their respective districts, an appeal may be taken or had to the board of superintendents of common schools; and said board shall have power to appear and decide on the merits of all such complaints, and also have power to remove any committee-man, who, in their opinion, has violated his duty, and, in case of such removal, to appoint another in his stead.

Be it further enacted, That each committee of the several school districts shall be, and is hereby constituted a body corporate, by the name and style of "School Committee of District number — of the County of —," as the case may be; and in that name shall be capable of purchasing and holding real and personal estate for school purposes; of selling and transferring the same; and prosecuting and defending all suits for and against said corporation.

Be it further enacted, That whenever suit is brought against any "school district," the process shall be by summons; a copy of which shall be left with some one of the committee of said district.

Be it further enacted, That it shall be the duty of the school committee to designate and purchase or lease, or receive by donation a suitable site for a school house, as near the central part of each district as may be convenient; to hire, purchase, build or receive by donation a school house of such form and dimensions as they may deem suitable.

Be it further enacted, That the school committee shall, in one month after their appointment, report in writing to the chairman of the board of superintendents the number and names of the white children in their districts, of five and under twenty-one years of age.

Be it further enacted, That it shall be the duty of the school committees to contract with a suitable teacher for their respective districts, for such time as the monies to which said district may be entitled, will permit; and strict regard shall be had to the qualification and moral character of said teacher: it shall be the duty of the teacher, at the end of the time for which he was employed, to give to the committee the number and names of the children who may have gone to his school, specifying the number of days each one went; and upon his rendering this statement, the committee shall pay him by giving an order on the chairman. And no committee-man, whilst acting as such, shall be a teacher in any common school.

Be it further enacted, That any branch of English education may be taught in said schools: and all white persons over the age of four years shall be permitted to attend the school of their district, as scholars, and receive instruction therein: *Provided,* That the children in any one district may, by the consent of two or more superintendents, attend the schools in any adjoining district.

Be it further enacted, That it shall be the duty of said school committees to visit the schools from time to time, and generally to perform all such duties as they may deem necessary to the successful operation of said schools; and said committees shall have power to unite with individuals or other districts for the purpose of raising a sum sufficient to carry on their schools for the longest time.

Be it further enacted, That within one month after the school committee shall have reported to the chairman the number of children in their respective districts, the chairman shall call a meeting of the board, who shall determine how many teachers are necessary for each district of their county; and the monies received from the Literary Fund and from the county taxes, shall be distributed among the school districts of their county in the ratio of the number of teachers required.

Be it further enacted, That it shall be the duty of the chairman of the board of superintendents to give notice, by written publication at the court house door of each county, of the amount due each school district in the county in which publication shall be made, soon after the money is first received.

Be it further enacted, That the Board of Superintendents shall have power, and they are hereby authorized, to make such other regulations relating to the schools of their county, not inconsistent with the provisions of this Act, as they may deem necessary to the usefulness of said schools.

Be it further enacted, That the school committees shall annually, on or before the first Monday of October of each and every year, make a report to the Board of Superintendents, shewing the number and names of children in their respective districts who have received instruction at their schools the preceding year; the length of time the same was kept up; the name of the teacher and the amount paid him; and such other facts in relation to their schools as they may deem expedient.

Be it further enacted, That it shall be the duty of the Board of Superintendents to keep a true and just account of all monies received and expended by them, during the year for which they shall have been chosen, when and of whom received, and for what and to whom paid, and the balance, if any remaining on hand; and shall lay the same before the Committee of Finance of their respective counties; and if no Committee of Finance, then before the clerk of the county court, together with the vouchers in support of the charges therein made, on or before the second Monday of October, in each year; which account it shall be the duty of the said Committee of Finance, or the clerk of the county court, as the case may be, to carefully examine, and if found correct, to certify the same: and the chairman shall annually, within fifteen days after the first day of November, report in writing to the President and Directors of the Literary Fund, or to such other officer or Board as may be appointed by the General Assembly to manage said fund, a copy of the above account together with the number of children in his county—the number who may have been taught in the schools of his county the preceding year; for what time the schools may have been kept up in the several districts; with such other facts and suggestions as he may deem useful; and he shall make two additional copies of said report—one of which he shall file with the clerk of the board, to be recorded in the Book in which are kept all the proceedings of the board, and the other he shall put up for public inspection in some conspicuous place in the court house of his county.

Be it further enacted, That if in settling their accounts as required by the foregoing section, any balance shall be found remaining in the hands of the said board of superintendents, or any of them, the same shall immediately be paid by them or him, to his or their successors in office: and if the payment of the same be improperly delayed, it shall be the duty of such successors in office, to bring suit in their name of office, in the Superior or county court of their county, for its recovery with interest.

Be it further enacted, That if the Board of Superintendents, or any member thereof, in this State, shall misapply to purposes unconnected with Common Schools, any of the school funds placed in the possession of the said Board, or any member thereof, the person or persons so offending and assenting thereto, if he be a member of said Board, shall be deemed guilty of a misdemeanor in office, and shall be subject to indictment in the County or Superior Court of the County where the offence shall have been committed, and on conviction thereof shall be fined or imprisoned at the discretion of the Court.

Be it further enacted, That it shall not be lawful for any county court in this State, to tax any free person of colour, for the support and maintenance of any common school or schools.

Be it further enacted, That it shall not be lawful for any committee to receive into their hands any of the funds set apart for the support of common schools: but whenever it shall become necessary for any such com-

mittee to incur any expense in the purchase of a piece of land on which to erect a school house, or to rent, build, or repair a school house, it shall be lawful for such committee to state an account for such expense, and to draw on the chairman of the Board of Superintendents for the same, which account shall accompany the draft so drawn, and shall be paid by the said chairman; provided the school district they represent shall have in the hands of the chairman a sum sufficient to pay the same.

Be it further enacted, That it shall be the duty of the several County Courts of this State to require the Chairman of the Board of superintendents of common schools, before he enters upon the duties of his office, to give bond with good and sufficient security in such sum as they may deem reasonable and adequate, conditioned for the faithful application of the funds that may come to his hands, and the discharge of all his duties; which bond shall be payable to the State of North Carolina, and shall be approved and received by a majority of the superintendents, and shall be filed by them with the clerk of the County Court; and the said chairman shall be allowed to retain not exceeding two and one half per centum of the monies which shall pass through his hands, as a compensation for his services.

Be it further enacted, That the president and directors of the literary fund shall prepare proper forms to enable the chairman of the board of Superintendents and the school committee men to make the returns required of them by this act, and shall cause the same to be printed and distributed to the counties which have voted or may hereafter vote, for schools; and shall defray the expense incident to the printing and distribution of said forms, out of the Literary Fund.

Be it further enacted, That if any superintendent or committee man appointed agreeably to the provisions of this act, such superintendent or committee man having accepted the appointment, or any clerk of the county court, shall refuse or neglect to perform the duties required of him by law, he shall forfeit and pay the sum of fifty dollars, to be recovered by action of debt, in the name of the State, in any court of record in this State; and such penalty, when recovered, shall be paid over to the chairman of the board of superintendents of the county in which said default may occur, to be applied as the other monies which shall come to his hands from the literary fund and the county; and it shall be the duty of the county attorney for the State to prosecute suit in all such cases, for and on behalf of his county.

Be it further enacted, That if the chairman shall fail or neglect to pay, on demand, any draft which he may by law be bound to pay, he shall be liable to suit before any tribunal having cognizance thereof, in the name of the person in whose favour said draft may be drawn; and the plaintiff shall be entitled to recover, over and besides the amount of said draft, twelve per centum damages for its unlawful detention.

Be it further enacted, That a majority of the Board of superintendents, and a majority of a school committee, shall be competent to do any duty required of the Board and of a Committee in this act.

Be it further enacted, That the superintendents and committee men now in office in the several counties, shall so continue and remain until others are chosen as required by this act.

Be it further enacted, That the teachers and pupils of any common schools shall be exempt from performing military duty, working on the road, or serving as Jurors whilst engaged in teaching in said schools, or attending them as scholars.

Be it further enacted, That the President and Directors of the Literary fund shall cause to be printed copies of this act, and shall distribute the same to the counties which have or may hereafter vote for schools, in the proportion of twenty-five copies for every member in the House of Commons; and shall forward the same to the Chairman in the several counties at the time the Acts of the present General Assembly may be distributed; and the expense incident to the printing and distribution shall be paid out of the Literary Fund.

Be it further enacted, That it shall be the duty of the sheriffs of the counties in this State, which have not adopted the common school system, as established by law, when they advertise the next election for members of the General Assembly, to give notice at the same time, by public advertisement in every election precinct, that an election will be held to ascertain the voice of the people upon the subject of common schools, and all persons who may be entitled to vote for a member of the House of Commons, shall be entitled to vote in said election: and every voter in favor of schools, will deposit his vote with the word "school" upon his ticket: and those opposed to it, will vote "No school" upon their tickets: And it shall be the duty of the poll-keepers to count the votes given at each precinct for "School" or "No school," and to return the same to the sheriff who shall count together all the votes and certify the numbers for "school," and "No school," separately, to the President and Directors of the Literary Board, within thirty days after said election and to the County Court of his county next ensuing said election: and any sheriff failing to comply with the requisitions of this Act shall suffer all the pains and penalties imposed by law for failing to discharge his duty in any election for members of Assembly.

Be it further enacted, That should a majority of the qualified voters of any of the said counties vote in favor of schools, then such county shall be entitled to draw from the Literary Fund, by warrant from the Comptroller, in favor of the Chairman of the Board of superintendents of such county, the portion to which such county is properly entitled, to place it on a footing of equality with the counties which have already received their portion of the said fund—and shall be entitled to all the benefits, privileges and advantages, and subject to all the duties and responsibilities of the laws passed for the regulation and government of common schools.

Be it further enacted, That the President and Directors of the Literary Fund, shall vest so much of said fund as counties not accepting the school system, would have been entitled to receive under the ratio prescribed for its distribution, in the stock of any of the Banks of this State, or to loan the same, upon such terms as may, in their opinion, be best calculated to improve the value thereof; and the County Courts of such counties shall take no action on the subject of "common schools" until a majority of the people of such county shall have voted for the system agreeably to the provisions of this Act.

And be it further enacted, That this act shall be in force from and after its ratification.

[Ratified the 9th of January, 1845.]

CHAPTER XXXVII.

An Act to provide for the education and maintenance of the poor and destitute deaf mutes and blind persons in this State.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That there shall be annually appropriated, out of the proceeds of the Literary Fund, five thousand dollars for the maintenance and education of such poor and destitute deaf mutes and blind persons, as are unable to pay for such maintenance and education, to be selected in the mode that shall be prescribed by the Literary Board: *provided,* that such selection shall be made with a due regard to the claims of every portion of the State.

Be it further enacted, That the sums hereby appropriated shall be expended, at the discretion of the Literary Board, either by hiring teachers to open schools in this State, or by placing such pupils as may be selected by them to such institutions of the sister States, for the instruction of the deaf and dumb and the blind, as they may deem most advisable, due regard being had to the expense of instruction and maintenance in said institutions.

Be it further enacted, That the Justices of the several Courts of Pleas and Quarter Sessions, at the terms of their respective Courts when the taxes are laid, may levy, in the same manner as taxes are now by law levied for the support of the poor, seventy five dollars for the support and maintenance of every such deaf mute and blind person as shall be selected from their respective counties, by the Literary Board, for the purpose of education.

[Ratified this 8th of January, 1845.]

CHAPTER XXXVIII.

An Act concerning the admissibility of evidence against the sureties of officers and others.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That in actions brought upon the official bonds of Clerks of the County and Superior Courts, Clerks and Masters in Equity, Sheriffs, Coroners, Constables, and other public officers, and also upon the bonds of Executors, Administrators and Guardians, where it may be necessary for the plaintiff to prove any official default of any of the said officers, any receipt or acknowledgment of such officer, or any other matter or thing which by law would be admissible and competent for or toward proving the same as against such officer himself, shall in like manner be admissible and competent against all or any of his securities, who may be defendants with or without such officer in said actions.

Be it further enacted, That every person who shall be by the Court of Pleas and Quarter Sessions of any County admitted and sworn into the office of Sheriff or Coroner of such county, or into the office of a Constable or one of the Constables of such county or of any district in such county, shall be held, deemed and taken, by force of such admissions, to be rightfully in such office until, by judicial sentence upon a *quo warranto* or other proper proceedings, he shall be ousted therefrom, or his admission thereto be in due course of law declared void; and all bonds which have been, or may hereafter be, taken by any Court of Pleas and Quarter Sessions, upon the admission of any person to either of the said offices, shall be held and deemed to be valid and effectual in law to all intents and purposes, notwithstanding any defect, insufficiency or irregularity whatever in the election, appointment or admission of such person, or in any of the proceedings of such Court in relation thereto.

Be it further enacted, That this act shall go into effect from and after its ratification.

[Ratified the 31st of December, 1844.]

CHAPTER XXXIX.

An Act extending the time for perfecting titles to lands heretofore entered.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That all persons who have made entries of vacant lands and paid the purchase money to the State for the same, since the first day of January, one thousand eight hundred and forty, shall have until the first of January, one thousand eight hundred and forty seven, to perfect their titles to the same by grants.

Be it further enacted, That all persons who have heretofore made entries of lands according to law, within the time aforesaid, and have not paid the purchase money into the Treasury, shall have until the said first of January, one thousand eight hundred and forty seven, to make said payment and perfect their titles to said lands: *Provided,* that nothing in this act contained shall be so construed as to affect the titles of persons who have heretofore obtained grants for said lands, or the rights of junior enterers, or to extend to swamp lands in the Eastern portion of the State.

Be it further enacted, That this act shall be in force from and after its ratification.

[Ratified this 4th day of January, 1845.]

CHAPTER XL.

An Act to secure to citizens of this State the right of fishing in the navigable waters of the State.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That no person or persons shall hereafter use or cause to be used, in any of the navigable waters of this