

**DIGEST OF NEW HAMPSHIRE
SCHOOL LAW, ADAPTED TO
THE GENERAL LAWS AND
AMENDMENTS THERETO**

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by New Hampshire School Law

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NEW HAMPSHIRE SCHOOL LAW

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CHAPTER I.

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1. The selectmen in each town shall assess *annually*, upon the polls and ratable estate taxable therein, a sum to be computed at the rate of three hundred and fifty dollars for every dollar of the public taxes apportioned to such town, and so for a greater or less sum.—G. L., c. 85, s. 1, p. 205.

2. The town, at any legal meeting for the purpose, may raise a sum exceeding the amount aforesaid, which shall be assessed in the same manner.—G. L., c. 85, s. 2, p. 205.

Where "the vote not having in terms appropriated any particular sum for schools, any portion of it intended for that purpose must be taken to be in addition to the sum the selectmen were required to assess."—*Tucker v. Aiken*, 7 N. H. 129.

3. Such sum, *when collected*, shall be appropriated to the *sole* purpose of keeping an English school or schools within such town, for teaching reading, writing, English grammar, arithmetic, geography, together with such other branches of English education as are adapted to the advancement of the school, including the purchase of necessary fuel for the school, and occasional repairs, as specified in this title.—G. L., c. 85, s. 3, p. 205.

4. Any town not divided into school-districts, and any town in which all the school-districts are or shall be united, may take and use part of the school-money, not exceeding *ten* per cent., for the conveyance *to and from* school of pupils residing *not less* than one mile and a half from the school.—G. L., c. 86, s. 24, p. 208.

5. Any school-district, by a *major* vote at *any* legal school-meeting in the district, may authorize the prudential committee of said district to use a part of the school-money appropriated to the district for school purposes, not exceeding *ten* per cent., for the conveyance *to and from* the school

of pupils living *more* than one mile and a half from school.—G. L., c. 86, s. 25, p. 208.

School-districts having *less* than *twelve* scholars to attend *any* term of school, may, by vote, at their annual or *other* legal meeting called for that purpose, authorize the prudential committee to provide for the attendance of pupils at the schools of adjoining districts, *the selection of such schools to be approved by the school-committee of the town*. And in such cases the prudential committee is authorized to appropriate an amount not exceeding *ten* per cent., as in section twenty-four provided, and to divide the remainder of the money appropriated for the term in the district among the adjoining districts in proportion to the pupils by them received.—G. L., c. 86, s. 26, pp. 208 and 209.

All money appropriated under the provisions of sections twenty-four and twenty-five of this chapter [secs. 4 and 5, ch. 1, Digest] shall be expended under the order and at the discretion of the officers charged with the prudential affairs of the district.—G. L., c. 86, s. 27, p. 209.

6. The superintending school-committee *and* selectmen in the several towns in the state are hereby authorized and empowered to purchase for the use of their common-schools so many copies of the map of New Hampshire as they may deem best, not exceeding *one* copy for *each* school; and the maps so purchased shall be paid for out of *any* money appropriated for school purposes.—G. L., c. 89, s. 13, p. 217; see 22 *post*.

7. The selectmen shall assign to each district a proportion of the money *thus* assessed, according to the valuation of the district for the year, *or in such other manner as the town, at the annual meeting, shall direct, and shall pay over the same to the prudential committee of the district*.—G. L., c. 85, s. 4, pp. 205 and 206.

The power of selectmen to apportion school-money among the several school-districts in a town is a continuing power, to be exercised from time to time whenever it may be necessary from changes made in the district, *in order to give to each district the benefit of the tax paid by its members*.—School-District v. Sanborn, 26 N. H. 24.

If the assignment is to be made between two districts, newly constituted out of one old district, before any part of it has been expended for the common benefit upon the schools, the whole money is to be divided. If a part of the money which belongs to the old district has been expended, or, which is the same thing, has been applied to the common benefit of the entire district in supporting the schools, then only the residue of the money is to be divided.—Same case, p. 24.

The selectmen, after the money has been paid to the prudential committee, have no

legal interest, and can maintain no action for it or in reference to it.—*School-District v. Sherburne*, 48 N. H. 56.

8. Every district situate in *two or more* towns shall be entitled to its just proportion of school taxes, income of school funds, and literary fund in each town, according to the valuation of persons and property taxable therein.—G. L., c. 86, s. 13, p. 207.

Whether this includes the dog and railroad tax, has never been determined.

9. Every collector of taxes shall, on the *first Saturday of every month*, pay into the town treasury all moneys by him collected up to that time, and shall submit his tax-book and list to the treasurer of said town for his inspection and computation. The treasurer shall give a receipt to the collector for all money paid by him to the treasurer, *who shall make all the disbursements thereof under the written authority of a majority of the selectmen*, and all money received by the selectmen shall be paid by them immediately to the treasurer, who shall give them a receipt therefor, and his official bond shall be holden for the safe-keeping and disbursement of the same, as in this section provided for the disbursement of money received from the collector of taxes, and the selectmen and town treasurer shall in all cases keep separate accounts of all money received and paid by them, and all money hired for the use of any town, or received from any source, except that collected by the collector of taxes, shall be received by the selectmen, and be paid by them immediately to the treasurer.—G. L., c. 40, s. 9, pp. 117 and 118.

Under this provision, all disbursements must be made by the treasurer himself, under the written order of two or more of the selectmen.—*School-District v. Morrill*, March T., 1890.

10. When the guardian and ward reside in the *same* town, the selectmen shall assign the tax assessed upon the ward's *personal* property to the school-district in which the ward lives and has his home.—G. L., c. 85, s. 5, p. 206.

11. If the selectmen of any town *neglect* to assess, assign, or pay over the school-money as aforesaid, they shall pay for *each neglect* a sum equal to that so neglected to be assessed, assigned, or paid over, to be recovered by action of debt, in the name and for the use of the district, by the prudential committee.—G. L., c. 85, s. 6, p. 206.

This provision applies to school-money raised by taxation. The selectmen are bound to assess the amount required by law, whether the town votes to raise it or not.

They are bound to assign, it according to the valuation of the district for the year, unless the town lawfully directs it to be assigned in some other way.

Wherever the town directs an assignment, it should be done each year at the annual meeting.

Every board of selectmen that neglects to assess, assign, and pay over is liable, under this provision; but the supreme court have recently decided that the phrase "pay over," in connection with the provisions of sec. 8 *ante*, means "draw an order in writing on the treasurer."—*School-District v. Merrill*, March T., 1880.

This does not apply to the literary fund, railroad money, and dog tax, till they have been duly appropriated for school purposes by vote of the town.—*School-District v. Merrill*, March T., 1880.

12. No money can be raised or appropriated at any special town-meeting except by ballot, nor unless the entire vote is equal to one half the voters of the town as shown by the check-list.—G. L., c. 37, s. 4, p. 112.

When the town fails to act, the selectmen are bound to make their assessment, and commit the same to the collector seasonably. They should also require him to collect and pay over the money within a reasonable time. Having done this in good faith, it has never been the understanding of the legal profession in this state, that it was their duty to borrow money on the credit of the town to divide among the school-districts for school purposes, or to pervert trust funds to such use, or to so appropriate the funds of the town raised or collected for other, or even for general, purposes.

Nor has it ever been decided, that when the selectmen properly assessed and assigned say two thousand dollars to the twenty school-districts in town, in their due proportions of from twenty-five to five hundred dollars, and but twenty dollars had been "collected," that the selectmen were liable as for "neglect" for not paying the infinitesimal proportion thereof to each district upon demand; nor that the first district making demand under such circumstances was entitled to the whole sum so "collected;" nor that the remaining districts could recover for non-payment to them; nor that districts that had neglected or refused to pay their taxes could force the selectmen to pay them the money which had been "collected" of other districts.

13. If the money so assigned and paid over to the prudential committee of any district is not expended by him according to law, he shall be fined a sum not exceeding twice the sum so unexpended, or not legally expended, for the use of the district.—G. L., c. 85, s. 7, p. 206.

These provisions of the statute clearly recognize the money in the hands of the committee as his, in law, and not the money of the district. It is his only in a qualified sense as the money of an estate in the hands of an administrator is his.—*Barrett v. School-District*, 37 N. H. 448.

The criminal prosecution is not intended as a remedy for the district to enforce their rights. The law does not leave it to the option of the school-district whether the money assigned to them shall be applied to the support of schools. It is a matter of general public concern; and the design of the criminal prosecution is, not to take from school-districts the right to recover their money from the delinquent committee by the ordinary legal remedy, but to compel school-districts and school-committees to appropriate the money raised for that purpose to the support of schools, in accordance with the policy of the law which imposes the duty of providing instruction in the public schools, whether the districts desire it or not.—*School-District v. Sherburne*, 48 N. H. 57.

No court has yet held that this money can be used to pay counsel fees in the suits brought to recover, or in the prosecution of criminal proceedings, or to pay other debts of the district.

14. Any district may raise money for the support of schools, in addition to the tax required by law, and to pay debts of the district, which, on certificate by the clerk, shall be assessed and collected as other school taxes.—G. L., c. 86, s. 18, p. 208.

But such certificate does not protect the selectmen.—*Hogers v. Bowen*, 42 N. H. 102.