

**THE GENERAL STATUTES
OF THE COMMONWEALTH
OF MASSACHUSETTS**

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The General Statutes of the Commonwealth of Massachusetts by Various

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VARIOUS

**THE GENERAL STATUTES
OF THE COMMONWEALTH
OF MASSACHUSETTS**

THE
GENERAL STATUTES
OF THE
Commonwealth of Massachusetts
RELATING TO THE
PUBLIC SCHOOLS,
WITH THE
ALTERATIONS AND AMENDMENTS
To 1876.

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NOTICE

Soon after the publication of the General Statutes, Mr. Boutwell published as a part of the Twenty-fourth Report of the Secretary of the Board, the school laws as then just revised, with a valuable commentary. This report gave valuable aid to the teachers and to all persons having the supervision of the schools. The edition becoming exhausted, a pamphlet edition of the school laws was published in 1867, embracing all the amendments made up to the time of publication, without note or comment, except that references to the early amendments, to the Acts and Resolves previous to the General Statutes, and to the decisions of the supreme court, were noted in the margin.

Although a large edition was printed, it is now exhausted; moreover, numerous and important changes in the laws have been made in the interim, making it difficult to ascertain the state of the laws in many important particulars, so that there is an urgent demand for another revised edition. To meet this demand is the main business of this Report.

In preparing this edition I have endeavored to incorporate the amendments with the text of the several chapters, wherever this could be done without a change of the language of the amendment; when this was not practicable, the amendment is printed as a whole immediately following the section or sections to which it applies. In either case the new matter is enclosed in brackets, thus [], with marginal references to chapter quoted and the date thereof.

Following each chapter will be found brief comments upon the more important sections, taken in considerable part from the twenty-fourth report, also enclosed in brackets.

In addition to these are the decisions of the supreme judicial court, in such cases as have arisen for adjudication. This is a new, and, I cannot but think, a valuable feature.

The comments and decisions are printed at the close of each chapter, and the several sections to which they refer are indicated by their number thus—(Sect. 4.)

LAWS RELATING TO PUBLIC SCHOOLS.

ANCIENT LAWS.

"Forasmuch as the good Education of Children is of Singular
Laws of 1642, behoofe and benefit to any Commonwealth, and whereas
June 14th. many Parents and Masters are too indulgent and negligent of their duty in that kind ;

"It is Ordered, that the chosen men for managing the prudentials of every Town, in the several Precincts and quarters where they dwell, shall have a vigilant eye over their neighbors, to see, First that none of them shall suffer so much Barbarism in any of their families, as not to endeavor to teach, by themselves or others, their Children and Apprentices, so much learning as may enable them to read perfectly the English tongue, and a knowledge of the Capital Laws, upon penalty of twenty shillings for each neglect therein."

"It being one chiefe project of thatould deluder, Sathan, to keepe
Mass. Col. Rec. men from the knowledge of the Scriptures, as in former
ords, vol. 2, p. times by keeping them in an unknowne tongue, so in
203, Nov. 11, these latter times by perswading from the use of tongues,
1647. that so at least the true sence and meaning of the originall might be clouded by false glosses of saint seeming deceivers, that learning may not be buried in the grave of our fathers in the church and commonwealth, the Lord assisting our endeavors

"It is therefore ordered, that every township in this jurisdiction, after the Lord hath increased them to the number of 50 householders, shall then forthwith appoint one within their towne to teach all children as shall resort to him to write and read, whose wages shall be paid either by the parents or masters of such children, or by the inhabitants in generall, by way of supply, as the major part of those that order the prudentials of the towne shall appoint ; provided those that send their children be not oppressed by paying much more than they can have them taught in other townes ;—And it is further ordered that where any towne shall increase to the number of 100 families or householders they shall set up a grammar schoole, the master thereof being able to instruct youth so farr as they may be sited for the university ; provided that if any towne neglect the performance hereof above one yeare, every such towne shall pay 5^s to the next schoole till they shall perform this order."

CONSTITUTION OF MASSACHUSETTS.

Provisions Relating to Schools.

[Chap. 6, Sect. 2.]

"Wisdom, and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments among the people."

Duty of legislatures and magistrates in all future periods.

[Amendments, Art. 18.]

"ART. XVIII. All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools, shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect for the maintenance exclusively of its own school."

School money not to be applied for sectarian schools.

The foregoing amendment has received a judicial construction by the supreme court, so important in its bearings upon questions constantly arising, that I give, in addition to the reporter's abstract of the opinion of the court, the principal facts of the case presented for adjudication. (See *Jenkins and others v. Inhabitants of Andover and others*, 103 Mass. Rep., p. 94.)

The facts are in brief as follows:—Benjamin H. Punchard, an inhabitant of Andover, made the following bequest in his last will: "The residue of my property, not exceeding fifty thousand dollars, I give and bequeath to the town of Andover,

for the purpose of founding a free school, forty thousand dollars for a permanent fund for the support of said school, and ten thousand dollars for the necessary buildings, etc. . . . Said school shall be under the direction of eight trustees, of whom the rector of Christ Church to be one, also the ministers of the South Parish and West Parish to be members also, the remaining five to be chosen by the inhabitants of Andover in town meeting, to serve for three years, two of whom to be taken from Christ Church Parish, two from the South Parish Society, and one from the West Parish Society; said school to be free for all youths resident in Andover, under the restrictions of the trustees as to age and qualifications; no sectarian influence to be used in the school, the Bible to be in daily use, and the Lord's prayer, in which the pupils shall join audibly with the teacher in the morning at the opening; the said trustees also to determine and decide whether the school shall be for males only, or for the benefit of both sexes; said school to be located in the South Parish of Andover, and to be free to all the parishes equally." The will was proved in 1850. The persons designated as trustees were incorporated in 1851, and the school established. The town was released from its obligations to maintain a High School, the purpose being that the Punchard Free School should be to the people a High School such as the statutes required.

The school-house was burned, and by vote in town meeting, the inhabitants procured the enactment of the following :—

[Chap. 206, Laws, 1860.]

"SECT. 1. The town of Andover is hereby authorized to raise by taxation and to appropriate a sum not exceeding twenty-five thousand dollars, to aid the trustees of the Punchard Free School in erecting and furnishing a suitable edifice to be used and occupied in place of a high school for said town; also, to raise and appropriate annually, a sum not exceeding two thousand dollars, in any one year to aid in defraying the annual expenses of said Punchard Free School.

"SECT. 2. Said town shall hereafter have and exercise a perpetual right to choose a majority of the board of trustees of said school, and said school shall be under the order and superintendence of said trustees, and they shall perform all the duties and exercise all the powers in relation to said Punchard Free School, now performed and exercised by the general school committee in relation to the public schools of said town.

"SECT. 3. Said Punchard Free School shall at all reasonable times be open to the inspection and examination of the general school committee of said town, that they may ascertain its condition and management, and they shall include a report thereof in their annual report to the town. They shall also have the right to recommend for admission to said school such pupils of the public schools as they may deem qualified therefor."

Under the authority granted by this Act, at a town meeting July 6, 1869, the following votes were passed:—

"*Voted*, That it is expedient that the town aid in rebuilding the Punchard Free School.

"*Voted*, That the town aid the trustees of the Punchard Free School in rebuilding their school-house recently destroyed by fire, to an amount not exceeding the sum of twenty-five thousand dollars, said aid to be furnished said trustees under the direction of a committee of five to be appointed by the selectmen, who shall see that the rights of the town in the property of said house be sufficiently secured.

"*Voted*, That the money hereby appropriated be raised by loan, and paid in instalments by taxation of not more than five thousand dollars and the interest in any one year, unless the town shall otherwise order."

In an action brought by certain parties against the inhabitants of Andover and others for an injunction to restrain from doing or attempting to do anything under or by virtue of the above votes, it was decided by the supreme court that—

"A town has no authority independently of statute law; nor, under the eighteenth article of amendment of the Constitution of the Commonwealth, can take authority by statute, to raise by taxation and appropriate money to support a school, as a public school, which is founded by a charitable bequest that vests the order and superintendence of it in trustees, who, though a majority of them are to be chosen by the inhabitants of the town, yet are limited to be members of certain religious societies.

"The statute of 1869, chapter 396 is unconstitutional and invalid, so far as it purports to authorize the town of Andover to raise by taxation and appropriate money to aid the trustees of the Punchard Free School to build a school-house 'to be used and occupied in place of a high school for said town,' and to aid in defraying the annual expenses of said school."

The injunction was made perpetual.