

ANALYSIS OF

THE RELATIONSHIP OF THE STATE BOARD OF EDUCATION AND
THE STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

Prepared by Dr. Edwin F. Klotz

Senate Education Subcommittee Hearing - November 27, 1967

Senator John G. Schmitz, Chairman

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My name is Edwin F. Klotz. I am an Administrative Consultant in the Bureau of National Defense Education, State Department of Education.

I am also an historian by training and profession.

I understand, Mr. Chairman, that my role here this morning is to present a sort of historical perspective to the problem identified in Senate Resolution No. 357 which appeared in the Senate Journal on July 24, 1967, p. 3922. I have therefore examined the "conflict" as described in the various Reports cited in that Resolution, as well as the recommendations of the latest Arthur D. Little Report. Since Dr. Rafferty and others will later testify concerning the administrative aspects of the "conflict," I wish to use my time to explore the essential questions within a frame of reference that has perhaps not been used before.

As Al Smith used to say: "Let's look at the Record

The "record" will show that the "conflict" we are discussing can be traced to statutory changes made by the Legislature in 1913 which placed the elected Superintendent of Public Instruction "under the direction of the Board."¹ The sharing of policy and of powers by the elected Superintendent initiated by the act of 1913 soon developed into the "double-headed" educational system described by the "Jones Report" of 1919. As recently as August 1965 a witness appeared before the Assembly Interim Committee on Education and described California's state educational system as "a schizophrenic type of organization."²

In other words, the "conflict" you are examining today is one that has plagued the Legislature and the people of California for 64 years. It is apparent to anyone who reads the transcript of the San Diego hearings of 1965 that three major divisions of opinion can be identified over the years concerning this issue.

The first is that the conflict can be resolved simply by having the Superintendent appointed by the State Board, a change which would require a Constitutional amendment. This has been the position

¹ See page 8 for a text of the entire section of this statute.

² Assembly Interim Committee on Education, "Discussion of the Selection of the State Superintendent of Public Instruction and the State Board of Education," Transcript of Proceedings, State Building, San Diego, August 27-28, 1965.

of professional educators and appointed Commissions ever since the "Jones Report" of 1919,³ which was in fact written by Ellwood Cubberly, Dean of the School of Education at Stanford University at the time. The same position was made in the "Suzzallo Report,"⁴ chaired by the Chancellor of the University of Buffalo; so did the "Strayer Report,"⁵ named after George D. Strayer, of Columbia Teachers College. The appointment of the Superintendent was suggested as the solution to California's educational leadership problems by all the professional educators who appeared before the Assembly Interim Committee in 1965. An appointed superintendent and an appointed Board was advocated by Doctors of Education Hollis Allen and Conrad Briner in their study for the recently appointed Constitution Revision Commission.⁶ (I should add what you no doubt know: that the recommendations of Doctors Allen and Briner concerning this matter were incorporated by the Constitution Revision Commission and will thus be an item soon to appear before the Legislature.)

Lastly, the Arthur D. Little Company for whom Dr. Briner also served as a consultant, recommended the appointment of both the Superintendent and the State Board.⁷

³ Report of the Special Legislative Committee on Education, as Authorized by Senate Concurrent Resolution No. 21, by the Forty-third Session of the Legislature of California, California State Printing Office, Sacramento, 1920.

⁴ State Higher Education in California, Report of the Carnegie Foundation for the Advancement of Teaching, Recommendations of the Commission of Seven, June 24, 1932.

⁵ There were actually several "Strayer Reports" dealing both with the Department and with Higher Education. The report referred to here is The Administration, Organization and Financial Support of the Public School System, State of California, A Report of the Study Required by Chapter 36, Statutes of 1944 (Fourth Extraordinary Session), As Submitted to the Legislature January 22, 1945 with Amendments and Appendices, State Reconstruction and Reemployment Commission, 631 J Street, Sacramento 14, California, February 1945.

⁶ A Study of the Educational Provisions of the California State Constitution, prepared for the Constitution Revision Commission of the California State Legislature by Hollis P. Allen and Conrad Briner, Claremont Graduate School and University Center.

⁷ A New Organizational System for State-Level Educational Administration: A Recommended Response to Emerging Requirements for Change in California (A Report to the California State Board of Education), submitted by Arthur D. Little, Inc., California State Department of Education, Sacramento, 1967.

On the one hand, there is substantial evidence to prove that professional educators and appointed study commissions consistently urge a drastic change of the present structure by separating the office of superintendent from the elective process.

On the other hand there is just as persistent a view that such a change would deprive the people of a right they have cherished and continue to guard. Though seldom championed publicly at the present time, there is a vast amount of evidence that this non-organized opinion has held stubbornly to the view that only through the medium of a popularly elected state school official can the average voter and taxpayer continue to have some voice in the control of the schools to which parents are obligated by law to send their children. A housewife put forward this opinion at the San Diego hearings in 1965, and both Assemblymen John Collier and E. Richard Barnes articulated the view when they asserted "(we) don't think the public is going to buy a proposal to take away from them the right to elect one."⁸ Though housewives are unorganized, this position has been upheld by the people at the polls several times since 1921 when constitutional amendments were offered which would change the structure to allow for an appointed Superintendent. The last time, in 1958, the people of California rejected the idea of an appointed Superintendent by a majority of over a million and a half votes.

There is, however, a third body of opinion which has been around at least since the Constitutional Convention of 1879. This opinion was expressed by a Republican Women's group at San Diego in 1965 and received considerable sympathy from members of the Assembly Committee. This view holds that if an elected State Board of Education were provided for, it could then safely appoint the State Superintendent.

It was a simple fear of bureaucratic control of education that upset the Republican women. Their views were those of Raymond Moley whom they quoted from Newsweek: "The related dangers are first, centralization of control over the content of education, and second, the educational philosophy of those who do the controlling."⁹ By having elected Board officials, they argued, this danger would be lessened.

Experts at San Diego in 1965 produced studies and surveys demonstrating that the trend among States in the U. S. since the 1930's has been towards the position of an appointive superintendent regardless of how the State Board is created. These studies reveal that there are as many ways of establishing an administrative structure for Education as there are States of the Union. In New York, for instance, the Legislature elects its State Board of Regents, which in turn has jurisdiction over all educational agencies from Kindergarten to the University. This body also appoints its chief executive officer. The State of Washington on the other hand, allows its local school boards to elect the State School Board, but retains its elected Chief school officer. In two large states of the Union, Illinois and Wisconsin, the people do without any State School Board, but do elect their school officer.

⁸ Ibid, p-57

⁹ Ibid, p-117

I think a look at the record in California would reveal that Californians, since 1849, have used, or have examined, nearly every one of those systems extant today in some part of the country.

For instance, when the section for electing the State Superintendent of Public Instruction came before the Committee of the Whole on September 22, 1849, John McDougal of Sacramento rose to "move an amendment that it be left to the Legislature to elect these Superintendents."¹⁰

Immediately McCarver, also from Sacramento, retorted that he "was decidedly in favor of placing everything in the hands of the people, and particularly the subject of School Commissioners."

McDougal then withdrew his amendment and Section 1, Article I, was approved without further discussion. Nevertheless a great deal of further discussion revolved around funding of the school program. McCarver's position was that the power to handle the enormous funds that would accrue from the sale of federal lands "should be placed in the hands of a School Commissioner and held sacred for the purposes of education" and for no other purpose. Robert Semple heartily agreed and outlined for the first time in California history the case for the equalization of funds for education.¹¹

"...It is the duty of members of this House to unite together and secure that reputation, character, and ability in our public teachers which can only be obtained by a liberal and permanent fund. It is the basis of a well-regulated school system that it shall be uniform throughout the State; that any surplus funds collected in one district shall not be appropriated in that district, but that the aggregate fund from all the districts shall be appropriated strictly to school purposes, and distributed equally throughout the State. It is important then...that proper means be taken to secure responsible commissioners for the faithful and legitimate appropriation of this fund..."

At the Constitutional Convention of 1878-79, both the question of the State Board and the office of the Superintendent were debated at great length. Here, in these lengthy debates the intention of the Constitutional Fathers is clarified. It is significant that the Constitution of 1879 left out any section regarding a State Board, but did on the other hand examine in depth the office of the Superintendent and the kind of man they felt should hold that office.

A State Board of Education was created by the Legislature as early as 1852 when it became obvious that the Superintendent needed help to survey and conduct the sale of lands to obtain the funds needed to run the schools. The Legislature decreed that the Governor, the Surveyor General and the Superintendent of Public Instruction decide these important issues. But, as with the evolution of most social and political institutions, the Board gradually acquired other duties: selecting textbooks, establishing

¹⁰ J. Ross Browne, Report of the Debates in the Convention of California on the Formation of the State Constitution, Washington, 1850, pp-202-203

¹¹ Browne, op. cit., p-204

the criterion for teachers examinations and credentials, deciding the required courses of study, etc. Gradually, the President of the University and the Principals of the teachers colleges (normal schools) were added to provide professional advice to the Superintendent.

It is apparent from the discussions during the Constitutional Convention of 1878-79 that the people of California were worried by the idea of authority granted to a professional group over whom the public had little control. This seems to be the reason why efforts were made to put the powers of the Board in the hands of the people. Some proposed that the Governor appoint 2 members from each congressional district to serve on the Board, to be confirmed by the Senate. Others suggested that 2 laymen be elected at large from each Congressional district. In the first case the Superintendent would be an ex officio member and President of the Board; in the second place only an ex officio member.

When the Committee of the Whole discussed Article IX section by section some novel ideas were advanced, usually "in the interest of economy. One gentleman wanted to abolish the Superintendent's office because it was an extravagance and have an elected Board perform all the duties with the Secretary of State acting as ex officio member to deal with the county superintendents. In response, Joseph Winans of the Third Congressional District, argued: "...a State Board...will lack that responsibility which comes from unity, and they will not be able to discharge executive duties which pertain to an officer of this kind...I do not believe that an educational system which abolishes its head will work well...I believe (an elected school officer) to be indispensable to a proper administration of the affairs of the educational department."¹²

Campbell of Alameda County seconded Winans remarks adding:

"...The office of Superintendent of Schools is absolutely necessary, not merely because it is necessary to have a head of the school department of the State, but because there are duties to be performed by that officer which cannot be performed by any Board of Education... You must have a head to your school department..."¹³

And Schell of the Fourth Congressional District declared that:

"...I do not believe that the people of this State desire or would indorse any radical change in the educational system of this State, and particularly in this regard. The system has worked well, and I believe is perfectly satisfactory to the people of this State. Now, sir, unless the people demand this change, why should we attempt to make any change in regard to the matter..."¹⁴

The arguments in favor of an elected State Superintendent grew stronger. One delegate insisted that the Superintendents be put "on a

¹² Debates and Proceedings of the Constitutional Convention of the State of California, convened at the City of Sacramento, Saturday, September 28, 1878, Three Volumes, Sacramento, 1880. p-1091.

¹³ Ibid, p-1091.

¹⁴ Ibid, p-1092.

level with the Secretary of State." Another ridiculed the idea of: "A system by which we distribute nearly two million dollars in the State every year, and no head to that department!"

Jacob Freud of San Francisco proclaimed:

"Why, sir, the office of Superintendent of Public Instruction should be on a par with the other officers of the like character in the State. He should receive as much as the Attorney General. He should receive as much as the Secretary of State, for he should be a man above them all. The people of this State do not want that kind of economy in their school system, and the people of this State will not thank gentlemen on this floor for trying to cut down and belittle their school system..."¹⁵

duties: Congressman Biggs declared, after describing the superintendent's

"...I look upon the position of Superintendent as one of the most important in the State."¹⁶

John Wickes of Nevada County described his ideal Superintendent in more detail:

"...in point of salary he should rank as high as any other State officer. I believe that he should be a first class school teacher...He must be a man versed in the ancient and modern classics, and must be acquainted with the departments of the higher mathematics, with the history of our world, with the natural sciences, with grammar, etymology, and orthography of our language..."¹⁷

John West of Los Angeles adds:

"...We have growing up the future statesmen, legislators, judges, lawyers, if you please, professional men, farmers and workingmen, and their intelligence and usefulness and their position in society depends very much upon the character or influence of the Superintendent of Public Instruction, and the system of education inaugurated by that superintendency.." ¹⁸

Joseph Winans then concluded:

"...The State Superintendent of Public Instruction must combine most peculiar and diverse qualities. He must be an educated man; a man of study; a man who has pursued his studies as long as it takes to make a Supreme Judge. Besides, he must be a man of executive capacity, or he cannot carry out the entire details of this most expansive and ramifying institution which devolves upon him..."¹⁹

¹⁵ Ibid, p-1092

¹⁶ Ibid, p-1093

¹⁷ Ibid, p-1093

¹⁸ Ibid, p-1095

¹⁹ Ibid, p-1097

There was much more debate at that Convention in 1879 on the general subject and the meaning of education which would be exciting to pursue had we the time.²⁰ But I believe the passages quoted here are those most pertinent to an analysis of the significance of the post of Superintendent of Public Instruction as understood and defined by the men who wrote the two constitutions. Thus by the time Section 7 of Article IX referring to the State Board was read before the Committee of the Whole, the philosophy of the men of the Convention had been crystalized. James Caples of Sacramento rose and said simply: "I move to strike out section seven." The motion was carried without further debate or argument.

The Constitutional Convention of California in 1879 clearly intended to provide the people of California with a highly qualified and popularly elected Constitutional officer in charge of the schools system, as well as to decentralize as much as possible other matters relating to the schools. Many of the duties once allotted to the ex officio state boards were transferred to the county school superintendents or to the county boards of supervisors, such as the selection of textbooks and the examination and credentialing of teachers. Nevertheless, the demands of public education being what they are, the Legislature saw fit just a few years after 1879 to again create an ex officio board to handle those items which involve the judgment of the public that it served. To satisfy this demand an amendment to the Constitution was framed and adopted by the people in 1912 providing for the appointment or the election of a State Board of Education. It reads as follows:

"SEC. 7. The Legislature shall provide for the appointment or election of a state board of education, and said board shall provide, compile, or cause to be compiled, and adopt, a uniform series of text-books for use in the day and evening elementary schools throughout the state. The state board may cause such text-books, when adopted, to be printed and published by the superintendent of state printing, at the state printing office; and wherever and however such text-books may be printed and published, they shall be furnished and distributed by the state free of cost or any charge whatever, to all children attending the day and evening elementary schools of the state, under such conditions as the legislature shall prescribe. The text-books, so adopted, shall continue in use not less than four years, without any change or alteration whatsoever which will require or necessitate the furnishing of new books to such pupils, and said state board shall perform such other duties as may be prescribed by law. The legislature shall provide for a board of education in each county in the state. The county superintendents and county boards of education shall have control of the examination of teachers and the granting of teachers' certificates within their respective jurisdictions."

²⁰ The discussion on Section 1, for instance, of the meaning given to the word "moral." One amendment offered declared: "The Standard of moral instruction in our public schools shall be that set forth in the Bible, precluding sectarianism." p-146.

The Legislature of the succeeding session created a State Board of lay citizens by the appointment method and then proceeded to define its duties and its relationship with the State Superintendent. The essential section (1518) of this law reads as follows:

"The superintendent of public instruction shall be secretary of the board. Such secretary shall have charge of all correspondence and keep a record of its proceedings. The superintendent of public instruction shall act as the executive officer of the state board of education. It shall be the duty of the state board of education to determine all questions of policy; it shall be the duty of the superintendent of public instruction to execute, under direction of the board, the policies which have been decided upon, and to direct, under such general rules and regulations as the state board of education may adopt, the work of all assistant superintendents of public instruction, and such other appointees and employees of the board as may be provided by law."

Most of the present duties assigned to the Board and to the Superintendent in the Education Code stem from this statute of 1913. From this moment arose the "conflict" described by so many critics and referred to in your Senate Resolution. And yet most of these reports and commissions cited fail to explore the vital issue which is still before the people of California and which was discussed in depth at the two previous constitutional conventions.

The essential question is this: Was it the intention of those who framed the Constitutional Amendment in 1912 to reverse the relationship between the elected superintendent and the new lay Board?

If the answer to this question should be "no," then we must ask: "Why then did the Legislature enact a statute the following year granting those powers to the Board and debilitate the powers of the Superintendent?" My researches concerning these questions are limited inasmuch as the Legislature in those days did not keep records of hearings. But some facts are available.

Superintendent of Public Instruction Edward Hyatt opened his Twenty-sixth Biennial Report with the statement that "in the election of November 5, 1912, the people by a very decisive vote amended the Constitution so that the State should manufacture and deliver free to the children in the elementary schools all textbooks used in such schools."²¹

It would take some time to establish a board for this purpose, Hyatt observed. He meantime requested an opinion of the Attorney General who asserted "that the Superintendent of Public Instruction must take the place of the State Board of Education until the new Board was provided for; that he should order the textbooks manufactured and proceed to distribute them in the elementary schools."

²¹ Twenty-Sixth Biennial Report of the Superintendent of Public Instruction for the School Year ending June 30, 1913, and June 30, 1914, California State Printing Office, 1914, p-7.

The next year Hyatt complained that "the duties of the Superintendent of Public Instruction as prescribed by law are many and varied and they seem at times to spread him out pretty thin." But there is nothing in his remarks which would indicate alarm or the realization of a reversal of the status of the Superintendent in his relationship with the State Board. The major issue was that of textbooks. Apparently the phrase in the constitutional amendment "the Board shall perform such other duties as may be prescribed by law" was not intended to demean the office of the Superintendent. When the only other constitutional amendment was adopted in 1946 affecting the State Board (Section 2.1) the language again did not diminish the status of the Superintendent:

Sec. 2.1 The State Board of Education, on nomination of the Superintendent of Public Instruction, shall appoint one Deputy Superintendent of Public Instruction and three Associate Superintendents of Public Instruction who shall be exempt from State civil service and whose terms of office shall be four years.

Nevertheless the "policy statements which originated with the 1913 Statute are still found in Education Codes Sections 252 and 352 Together they bring the "conflict" you are concerned with to a head.

Section 252. The Superintendent of Public Instruction shall execute, under direction of the State Board of Education, the policies which have been decided upon by the board and shall direct, under general rules and regulations adopted by the State Board of Education, the work of all appointees and employees of the board.

Section 352. The Department of Education shall be administered through:

(a) The State Board of Education which shall be the governing and policy determining body of the department.

(b) The State Director of Education in whom all executive and administrative functions of the department are vested and who is the executive officer of the State Board of Education.

But I will leave it to Dr. Rafferty and others here today to describe how these sections have interfered with the orderly administration of the State Department of Education.

My comments on the proposals by the Arthur D. Little Report²² must necessarily be brief. I will say that there is much that should be applauded in that ponderous study, which was made at the request of the Board. However, there are assumptions made as a preliminary to this study which, considering the record, are difficult to explain. They are in accord with previous study commissions in the preference for an appointed Superintendent, as well as an appointed Board. But they go further in ignoring the traditional role of the Superintendent as I have outlined it from the record. Page 12, last paragraph, for instance asserts:

²²There are in fact several Arthur D. Little Reports commissioned by the State Board of Education, amounting to a total of over 700,000 dollars. Moreover, there is another contract with them presently under negotiation

"Since the Board is responsible for governing the State's public school system and its administrative agency, the State Department of Education, the chief administrative officer of the Department and the executive officer of the Board should be fully responsible to the Board."

This statement not only ignores the Constitutional status of the Superintendent but also disregards the intent of the Founding Fathers, as the record shows it to be. It is in conflict as well with sections of the Education Code which assigns specific responsibilities to the State Director of Education.²³

One must ask why a chart in the Little Report reflecting the present structure (page 7) (to contrast it with the structure proposed by the Study, p-8) eliminates the electorate as the basic authority for the Superintendent and pictures him simply as Executive Secretary to the Board. By contrast, the official organizational chart of the State Department of Education in 1936 depicted the relationship of the two bodies in an entirely different light: *

DEPARTMENT OF EDUCATION

AS ORGANIZED MAR. 1, 1936

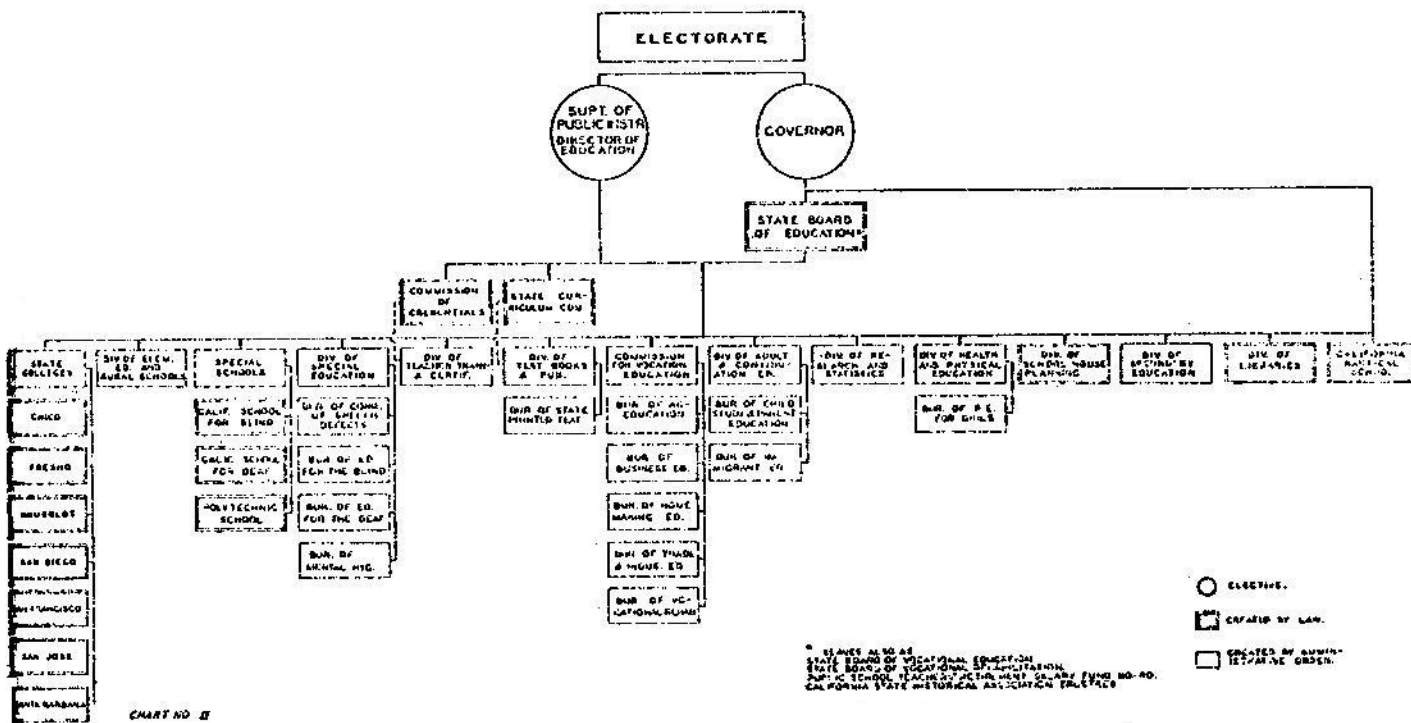


CHART NO. 2

²³Section 357. The Department of Education is the successor to, and is vested with all the duties, powers, purposes, responsibilities, and jurisdiction of the State Board of Education as they existed on July 30, 1921, of the board of directors of the California School for the Deaf and of the several officers, deputies, and employees of such bodies and offices. Section 359. The Department of Education shall be in possession and control of all records, books, papers, offices, equipment, supplies, moneys, funds, appropriations, land, and other property, real or personal, now or hereafter held for the benefit of the bodies, offices, and officers whose duties, powers, purposes, responsibilities, and jurisdiction are transferred to and vested in the Department of Education.

*California State Government: An Outline of Its Administrative Organization from 1850 to 1936, by Elsey Hurt, Bureau Public Administration, University of California, (Distributed by Supervisor of Documents, Sacramento, 1936) p-33

You will note that as late as 1936 the Legislature established the office of the Superintendent on a par with that of the Governor, both answerable to the public, and with the Board of Education reflecting a line of responsibility in cooperation with the Superintendent.

Those who wrote the Little Report for the State Board call it "A New Organizational System for State Level Educational Administration," with a subtitle "A Recommended Response to Emerging Requirements for Change in California." We are told that "The new organizational system...derives from an analysis of the functional requirements of the system and from a synthesis of the things the system must do. Stated differently, we determined emerging requirements for various functional capacities in California's State-level system of educational administration, and then we designed an organizational system specifically to satisfy these requirements."²⁴

In other words, the Little Report cannot be compared with any previous report since it is not limited to management efficiency. Consultants for Arthur D. Little have stated goals ("emerging requirements") for California's educational system, and then erected a structure to fit those goals. You can read a summary of those goals on pages 2 and 3 of the Report which I assume they put in an order of importance.

In summary, the question still before the people of California is how best to establish the responsibility for school policy and for the administration of the largest tax supported and mandatory public school system in the nation . . . indeed, in a large part of the world. Certainly solutions provided by our forefathers are not necessarily valid for contemporary conditions. There are few advocates today of a return to electing the superintendent on a party ticket . . . which was abolished in 1914. And yet the very nature of the problem pleads the case for "political" involvement in settling these public issues. As Chairman Charles Garrigus of the Assembly Interim Committee on Education said in 1965, "We are just going to have to admit that politics and education are married, irrevocably, through the tax monies that are spent on education."²⁵

The various opinions expressed at the San Diego sessions in 1965 no doubt motivated Assemblymen Collier to introduce Bill 2520 in 1967 designed to return the Superintendent to his full constitutional powers and to reduce the Board of Education to an advisory role.

I would like to close this Analysis with a statement by the eminent educator, Henry Suzzallo, who was President of the Carnegie Foundation when the "Suzzallo Report" was written. I believe this statement reflects the position of many educators as well as of many citizens who have become awakened in recent years to the need for more involvement in education:

"It is one of the complaints of the schoolmaster that the public does not defer to his professional opinion as completely as it does to that of practitioners in other professions.

²⁴Arthur D. Little Report, Ibid, p-1

²⁵Ibid, p-59 The word "are" is underlined in the original text

"At first sight it might seem as though this indicated a defect either in the public or in the profession; and yet a wider view of the situation would suggest that such a conclusion is not a necessary one.

"The relations of education to the public are different from those of any other professional work. Education is a public business with us, in a sense that the protection and restoration of personal health or legal rights are not. To an extent characteristic of no other institution save that of the state itself, the school has power to modify the social order. And under our political system, it is the right of each individual to have a voice in the making of social policies as, indeed, he has a vote in the determination of political affairs.

"If this be true, education is primarily a public business, and only secondarily a specialized vocation. The layman, then, will always have his right to some utterance on the operation of the public schools."²⁶

²⁶ Henry Suzzallo, introduction to "Moral Principles in Education, Houghton Mifflin Company (1909).

