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A study of some phases of law of interest to the public elementary school teachers of Massachusetts

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BOSTON UNIVERSITY
SCHOOL OF EDUCATION

Thesis

A STUDY OF SOME PHASES OF LAW OF INTEREST
TO THE PUBLIC ELEMENTARY SCHOOL TEACHERS
OF MASSACHUSETTS

Submitted by

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(B.S., Boston University, 1953)

In partial fulfillment of the requirements
for the degree of Master of Education

1960

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In sincere appreciation to Dr. William O'Keefe, of the Boston College Law School, who gave so generously of his advice and time and whose guidance was of so much help in the completion of this study.

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CHAPTER I

THE PROBLEM, ITS JUSTIFICATION AND SCOPE

One characteristic of a profession is that its legal status is defined by state law. This is done because of the profession's importance to the welfare of the people and the state. The state thus acknowledges that teachers are distinguished by preparation, experience and qualifications and so are granted certain rights and privileges which, in return, require an awareness on our part of these legal principles and the obligations that we, as teachers, have to society.

I. THE PROBLEM

Statement of the Problem. The purpose of this thesis is to attempt to find how much teachers know of their legal status as defined by state law, how clearly they understand their rights, privileges and obligations as defined by state legislatures and bring to light some phases of school law that are important to the elementary school teachers in the public schools of Massachusetts.

Importance of the study. It is hoped by the writer that through this study teachers will become more cognizant of the importance of state law as it concerns the elementary schools. It is important that teachers know their rights and realize that these rights should be carefully spelled out for their protection. It is also hoped that some of this information will be of interest to those instructing in schools of education and become part of the required training for a teaching certificate. If this thesis can help to acquaint administrators,

teachers and students of education with legal principles that exist and show that these are gleaned from court decisions, and that where court decisions show a lack of agreement the general rule is determined by the majority of courts; it will have served its purpose.

Justification and Scope. This thesis is not intended to be an exhaustive treatment of school law since it deals only with situations involving the elementary school teacher and his pupils.

There is much about school law that should be known by every school board member, every school administrator and every teacher. Unfortunately, the very people who should be most familiar with it are often too busy with their multitudinous duties to allow them the time to study or read widely in this field. Today, the legal services of the Massachusetts Teachers' Association are available. In serious problems, it is comforting to feel that sound legal advice and aid can be obtained freely; nevertheless, there are many instances where prompt decision is required. It would be well for teachers to have the knowledge to cope with the problem at hand in such a way that they would have no qualms or cause for later regrets. Knowing that there is no substitute for the legal advice of a competent attorney, it is still safe to assume that many teachers could and should be more aware of the legal principles especially applicable to public education.

In years past, possibly within a lifetime, the teacher was looked upon as a center of all learning in the community. It was assumed that the teacher was the best-educated, or at least, one of the

best-educated in the community. He was almost an oracle of all that was wise and just. Perhaps there were times when this went to extremes, but be that as it may, it eliminated some of the problems that face teachers of today. The passing years have seen this attitude undergo a complete change. It is sad but true that respect for the profession has gradually deteriorated to the point where teachers find themselves open to much criticism, and, in some localities, little short of contempt.

Today we are living in times when college degrees are no longer a rarity. A degree is not necessarily the measure of a man's intelligence. The degree also is sometimes considered by its holder to be a license to criticize or condemn, regardless of how much or how little he knows about the matter at hand. In education, indeed, a little knowledge can be a dangerous thing. Teachers need not be lawyers, but they should have sufficient understanding of the statutes in their own states, the reasoning behind certain statutes and their effect and probable interpretation, and of course they should know the school committee rulings in their particular locale. All these will help teachers to act positively and forcefully in a given situation and work for the best interests of education, and in so doing, raise the esteem and prestige of the profession. For where has it been found that vacillation or indecision has ever increased respect for any person or group? To act positively, it is necessary for one to know that he is stepping firmly in the right direction.

Teachers and administrators alike will encounter as many

legal situations as will architects and engineers who must study laws regarding contracts and specifications as a part of their training; doctors who must study medical jurisprudence; or economists who take courses in business law. Yet, students of education and many of our present day educators remain unfamiliar with the important groundwork of law which enters into the majority of controversies involving schools or teachers. The whole field of school law is very hazy in their minds. That this is so can be attributed in part to some of the more common fallacies being circulated about it.

In the course of this study, one elementary school principal freely admitted he knew very little about the subject and proved his point by adding, "Of course, there isn't too much to know. Laws are pretty well defined and what a teacher does or does not do is either right or wrong in the eyes of the law. There isn't much room for dispute." On the surface this statement may seem correct, but looking closely one finds much to be negated. While it is true that laws are pretty well defined, the fact remains that what is law in one state is not necessarily a law in other states. They differ from state to state and teachers do not stay within the bounds of any one state. Again, laws can be revoked, amended and passed in each session of the legislature. So it becomes necessary to keep abreast of the times, as the law is the expressed mind of the people and as such cannot remain static. Also, it is quite possible that the court may find one part of a statute valid and another part invalid. Should this happen, the courts hold that if each part is independent of the other, the invalid-

ity of one has no effect upon the validity of the other; therefore, the valid part is capable of enforcement.

Or should the constitutionality of a particular statute be questioned, the courts agree that all doubt should be resolved in favor of constitutionality rather than unconstitutionality. It is another principle of law that the Constitution of the United States takes precedence over the constitution of any individual state.

It is foolishness to have a vague idea that a statute concerning a situation makes a particular act legal because many laws are in the statutes in such a way that one cancels out the other. For example this past year discussion came up concerning the right of Massachusetts barber schools to use the name college. According to the statutes, corporations or institutions not having lawful authority to confer degrees are prohibited from using the designation "university" or "college". But the statutes also say: "any school or college where tuition or fees are charged for teaching the occupation of barbering shall be considered a barber school or barber college."

To say that what a teacher does is either right or wrong is also fallacious. This statement precludes all considerations of malfeasance, misfeasance and nonfeasance, the three basic considerations upon which court decisions rest in cases of teacher liability. Circumstances alter situations and it rests upon the judicious consideration of all circumstances to determine whether or not the given act of any teacher is legally right or wrong.

In brief, the writer feels that this survey is justified by

the fact that experienced, well-informed teachers who know their duties, rights and liabilities will serve more efficiently in their profession.

CHAPTER II

REVIEW OF THE LITERATURE

Literature on The Backgrounds of the Public School System

in America. Prior to the Revolutionary War, the educational facilities in the colonies were largely the responsibility of the local communities. Charity schools, private pay schools, and in some instances the apprenticeship system were the meager opportunities furnished by the various communities. After the War, education reached its lowest ebb. The new states had been left impoverished and the war's debt left little concern for matters of education. Political, social and economic conditions were critical and discouraging. Privations were many, the population was few, and the need of education was looked upon as a family matter or the obligation of the Church; but as a public concern it had little or no regard.

Thomas Jefferson, as a member of the Virginia legislature, appears to have been the first recorded person to submit a bill which contained a fairly creditable plan for a public school system in the state of Virginia. He also is on record as the first to make an effort towards the establishment of free schools in America. Jefferson's proposal was that all schools be districted and maintained through public taxation. In this way every child in the state could be educated. His bill includes the comment that this measure would ultimately "render the people safe, as they are the guardians of their own liberty."

Because of the local prejudices, narrowness and jealousies,

his plan was put aside. It succeeded, however, in giving other democratically-minded men food for thought and brought them to consider the larger interests of the whole America, rather than the limited view point of the times. More and more, it was brought out in public gatherings that education should be the right of all.

Education was necessary for everyone if the people were to appreciate, understand, and defend their civil, natural and political rights. Schools became regarded as the enemy of arbitrary government and as the surest basis of liberty and equality. The education of the boys and girls of the land was necessary to foster patriotism. Besides fostering patriotism, education would enable the youth of America to know and support its constitution, its laws and its government. These ideals were to be infused in every child from its infancy. To the present day, thinkers admit that these principles of Jefferson and the other leaders of his day, are the foundation upon which rests the security and welfare of the state. This is public education and the reason why public education remains a state function of prime concern. This also makes it clear that public schools are maintained neither for the benefit of the teachers, nor for the benefit of the pupils. Their paramount importance lies in the advance of the ends of the state and the preservation of our country. Therefore, attendance at school becomes a duty imposed upon pupils for the public good.

Although the Federal government, from its inception, has encouraged education, yet when the Founding Fathers wrote the Constitution, adopted in 1789 for the government of the new nation, there was

no mention of education. However, Article X of the Bill of Rights provides that powers not delegated to the Congress nor prohibited to the states, shall be reserved for the states and the people, and the Courts have so interpreted the Constitution. This does not mean that the Federal government must maintain a "hands-off" policy entirely. The Northwest Ordinance, of 1787, stated "religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged." Thus, schools have all been aided by the Federal government through the allocation of public lands, grants-in-aid, state institutions, school lunch programs, etc.

Public education, as a state and not a municipal function, has from the earliest days tried to be separate from all the local and municipal functions. The state is constantly on guard to see that an efficient system is maintained. Should the occasion demand, or the best interests of the state be promoted by so doing, the state will not hesitate to re-assume direct control. Under the police power of the state, private and sectarian schools are regulated and supervised to the extent that the children attending such schools develop the physical and mental traits the state deems to be necessary in its future citizens. Otherwise, the sectarian schools are not under the control of the state. The supervision here, is not so extensive as to break down the separation of the church and the state. It is well to bear in mind here, that in regards to the public schools, "separation of the church and state" as prescribed by the Bill of Rights,

does not mean "separation from God." Schools must show the same official respect and reverence for God as that shown by the President, the Congress, the Supreme Court, Armed Services and all other branches of our government. Every young American has the fundamental right to know all the facts connected with the spiritual origins and official customs of our nation. To eliminate, overlook or ignore any of them from his education is to shortchange him. The Declaration of Independence shows the foundations upon which our government was built by including four specific references to the dependence of our nation upon Almighty God:

- a) "...the laws of nature and of nature's God entitle them..."
- b) "...all men are....endowed by their Creator with certain unalienable rights...."
- c) "...to the Supreme Judge of the world...."
- d) "...with a firm reliance on the protection of Divine Providence."

Every President, without exception, has publicly recognized the dependence of this nation on Almighty God in his Inaugural Address. In July, 1956, a Joint Resolution was adopted by Congress establishing "In God We Trust" as the national motto. In June, 1954, President Eisenhower signed the bill making it a law to add the words "under God" to the pledge of allegiance to the flag. And when the president of the Freethinkers of America brought suit contending that this reference to God in the pledge violates federal and state constitutional guarantees of freedom of conscience, the New York State Supreme Court refused to order them stricken from the pledge of allegiance with the

comment that strict exclusion of references to God from our public papers would invalidate the President's oath of office, the Declaration of Independence and the oath of the court, all of which carry references to the Almighty. The further comment of Justice Bookstein who dismissed the suit, gives food for thought to all who are interested in the public system of education: "...the intent, design and purposes of the First Amendment," he said, "was to prevent and prohibit the establishment of a state religion. It was not intended to prevent or prohibit the growth and development of a religious state." Moral and spiritual values can thus be included in public education as in all other branches of American government. According to Supreme Court Justice Robert H. Jackson speaking before the Court in 1948, it would be difficult to respect a system of education which would leave the student wholly ignorant of the currents of religious thought that move the world society, for a part in which he is being prepared.

LITERATURE ON THE SOURCES OF SCHOOL LAW.

School law is both broad and complex yet the several texts studied all maintain that its principles can and should be understood by the average layman. The following paragraphs will attempt to show the sources of this law. There are two main sources; constitutional and statutory enactments and court decisions. In Massachusetts, 90% of school law is based upon the latter. To know the law of his state, one should consult the constitution and statutes of that state. In Boston there is an excellent library in the State House open to the

public. Then too, almost every state department of education publishes from time to time a compilation of state laws relating to public school education. All of these are not adequate, some are incomplete; however, a number of state departments do publish the school laws and use the official state code. Massachusetts is among the latter. Using the state code means that in looking up a certain law numbered 190 in the state department publication, one would also find the identical law in number 190 of the state code of general laws. When this is true, the state department publication may be considered adequate, provided that it is not too far out of date to be of use. One point in favor of using state department publications is their availability to teachers. But every teacher should be certain that he is familiar with its codification plan before consulting it.

Some states recompile general statutes after each legislative session and this is usually every other year. Other states, while they do not do this, have pocket parts in the back cover of each of their volumes, into which is inserted at frequent intervals new laws and amendments to the statutes contained in the bound part of the volume. This latter is the case in Massachusetts. For actions later than the latest pocket parts, session laws must be used. In most states only the last session must be cited because pocket parts, or supplements, or revisions of the entire code bring the statutes up to within one year or two of any given date. Most of these volumes are annotated and contain under each section of the law, the history of the law or the statute or the section and citations to court cases in which it has been

mentioned.

There are, however, instances in which the statutes do not answer the question involved. In these instances courts resort to decisions rendered in similar cases following the reasoning found there. Thus, court decisions become a source of school law. Appellate courts, in some states in the intermediate as well as the highest court, record their opinions for future reference and these records are available to the public in the form of so-called reports. Each state publishes its own series. If a person is interested in a problem at large, or a general problem, he will want to read cases on that subject outside his own state. Because thousands of cases are reported each year, without mechanical devices to separate the cases in point, it would be impossible to record them all.

There are several mechanical systems for this work. First to be considered is the American Digest System which briefly, constitutes a device for finding all the cases on a point among the thousands of cases reported each year. This System consists of short synopses of each case, arranged in the order of an outline of topics. At the beginning of each synopsis is the name of the state; at the end of the synopsis is the reference to the case, its name, and where it can be found. The American Digest System includes a Table of Cases which lists the exact title alphabetically, and all the places where it is mentioned. Also included here are the key numbers of every point of law decided in each case and whether it has since that time been reversed, affirmed or modified. This System also includes the

Descriptive Word Index. For example, a teacher who desires reinstatement after having been dismissed from his position, might have the case indexed under the word Removal or Compensation or Contract or Mandamus. Thus, in the synopses and in the Descriptive Word Index, the case may be indexed in several places depending upon the various points involved in the case. In the reports of actual opinions, however, the case appears only once in each report although headnotes at the beginning itemize the points involved under all the key numbers. It is very necessary to read the entire opinion of the court in these digests in order to know their application. The court opinions may be found in the state reports, the National Reporter System, or possibly in the Annotated Reports which are described below.

Annotated Reports make it possible to read only the leading cases and omit those involving identical problems that are decided on the basis of decisions in leading cases. These consist of seven series of early English and American decisions. Except for historical studies, only the A.L.R. (American Law Reports) need be used in school law research.

The National Reporter System includes all cases from all courts of record, in all states, and gives the actual court opinion in each case. Using this system, it is possible to read all the cases in all the states on a particular point. With the use of the advance sheets a problem may be followed to within a month of any current date. It takes about a month for a decision to be reached by the court, processed and reported in the weekly bulletins.

When all of these have been searched for cases similar to the one a teacher has in point, the next question is whether there have been later cases to disapprove, modify or reverse the decisions, and to learn this the source to seek is Shepard's Citations to Cases.

Other many-volumed series of case law principles in encyclopedic form are "Corpus Juris", a running account with copious footnotes to cases in point. This has an annual supplement to bring it up to date. (One disadvantage is that the annual supplement to bring it up to date is not cumulative and it is therefore necessary to examine many volumes.) A second series, "Corpus Juris Secundum" is under way and it is intended that it should supplant the first. However, the footnotes are not included in the second and thus the original will not be completely superseded for historical studies.

American Jurisprudence is the second series of Ruling Case Law and is similar to "Corpus Juris" except that it is not all inclusive, as it has only the leading cases. For the purpose of research in school law problems, American Jurisprudence is recommended instead of "Corpus Juris"; at least for the present. If an exhaustive piece of research is contemplated, "Corpus Juris Secundum" will provide a greater fund of materials than American Jurisprudence. On the other hand, this latter is not sufficient for most research in school law by administrators, teachers, or others not concerned with the finer points and distinctions that would be of interest and concern to lawyers.

This has all been mentioned so that teachers will know where to look for information of a legal nature and what they can expect to

to find. Secondary sources of information may be unreliable or antiquated; may contain statutes that have been repealed or possibly declared unconstitutional, or quote court decisions which later have been overruled. If educators and students of education are to learn school law, they should first know how and where to find it. Referring to these aforementioned sources, they can anticipate or identify the most commonly recurring questions that often confront and tend to confuse those without legal training.

LIMITATIONS IN THE REVIEW OF LITERATURE

It has been previously stated in this chapter that secondary sources are not recommended for legal research work, because even when reliable, most are written in such a way as to be out of date in a relatively short time. Statutes and court decisions remain the original source of school law. Then, too, it is difficult to find many volumes on school law that provide new or original ideas. For the most part, these books are useful for background material only.

Another difficulty encountered in reviewing the literature is the fact that some authors tend to broaden their scope to such an extent that sweeping statements of fact are made regarding laws, and their interpretation for all the states, when in truth, these same laws are interpreted thusly in only some of the states. Several times a check with the "Annotated Laws of Massachusetts," Volume 2-A, Recompiled 1953, with its cumulative supplement of 1957, showed that definite statements of fact found in some of these texts, were not true in the

state of Massachusetts.

Regarding school law in the state of Massachusetts, the greatest help came from the small volume entitled, "Rights and Liabilities of Teachers", written by W. J. O'Keefe, and published by Sullivan Brothers, Lowell, 1940. A more up-to-date volume by the same author will soon be available. Until it is, this appears the most reliable text concerning school law as it is in the state of Massachusetts.

CHAPTER III

PROCEDURES USED IN GATHERING DATA

Procedures Used in Constructing the Questionnaire. The following procedures were used in gathering the data to carry on the study of school law as it relates to the public elementary school teacher of Massachusetts.

1. A background for the study was obtained by securing literature in books and periodicals related to school law in Massachusetts.
2. It was then decided to sent out approximately three-hundred questionnaires, with the hope that between two-hundred and two-hundred fifty would be completed and returned.
3. Dr. Chase, as director of the Seminar, contacted the Superintendent of Milton and Weymouth and asked their cooperation in the survey. Permission was kindly granted by both Superintendents and in this way the program was located.
4. A questionnaire was constructed for the purpose of securing the necessary data for the study. The following general areas were covered in the questionnaire:
 - a. Rights of teachers
 - b. Status of teachers and Certification
 - c. Dismissal of teachers

- d. Liability of teachers
- e. Tenure
- f. Suspension and expulsion of pupils
- g. Contracts
- h. Legal terminology

5. The questionnaire was then given to the twenty-eight members of the Seminar for comment and criticism. Each member filled out the answers and noted the time it took him to complete it. It was thus decided to eliminate ten questions (of the True-False type) and shorten the questionnaire to include but forty questions on these same areas. The average time taken on the fifty-question survey had been fifteen minutes. Shortening it to forty questions, the estimated required time would be from ten to twelve minutes for completion.
6. The revised questionnaire with an introductory note was now submitted to the three-hundred elementary school teachers in the public schools of Milton and Weymouth. The purpose of the introductory note was two-fold; first to explain that the questions were not intended to be an exhaustive treatment of school law and would only scratch the surface of such an extensive subject, and secondly; to request those taking part in the survey to check the answers without discussion among each other and without referring to any volumes they felt

might be of help. In short, the answers wanted were those that would be given naturally and honestly should these same questions arise in everyday conversation and the teachers be asked for their opinions on them.

7. Returns from the town of Milton were in within the week, it having been explained that time was an important factor.
8. Returns from the town of Weymouth were in within the fortnight.
9. The returns were tabulated. In the town of Milton there are five elementary schools and a total of seventy-two elementary teachers. Of the seventy-two forms sent out, fifty-eight were completed and returned. This represented eighty-three per cent of the total. In the town of Weymouth there are eighteen elementary schools with a total of two-hundred twenty elementary school teachers plus teachers of special classes. Of this number, one-hundred sixty-four returned completed questionnaires, or a total of seventy-five per cent.
10. When all the returns were counted the questionnaires were corrected and analyzed.
11. Conclusions were formulated based upon the findings of this study.

PROCEDURES USED IN BUILDING THE QUESTIONNAIRE

Having studied the literature and having decided upon the areas to be covered in the survey, questions were then constructed to include these areas. For the most part the true-false type question was omitted. In only one instance was it admitted. Two of the questions had a choice of four possible answers. The remaining thirty-seven questions were constructed to include a choice of but three answers. Wherever possible, one of these answers was definitely correct, one was definitely incorrect and the third was possibly correct in part. The purpose of this arrangement was to bring out the fact that a little knowledge may be as erroneous as no knowledge at all when dealing with the law. All questions referred to the law in Massachusetts, and in Massachusetts, case law is the basis for ninety per cent of all school law.

The teachers receiving the questionnaire were to check the answer they considered correct for each question and each correct answer received one point. The survey was completely anonymous; neither the names of the teachers or the names of the schools were asked in the returns.

A BRIEF DESCRIPTION OF THE QUESTIONNAIRE

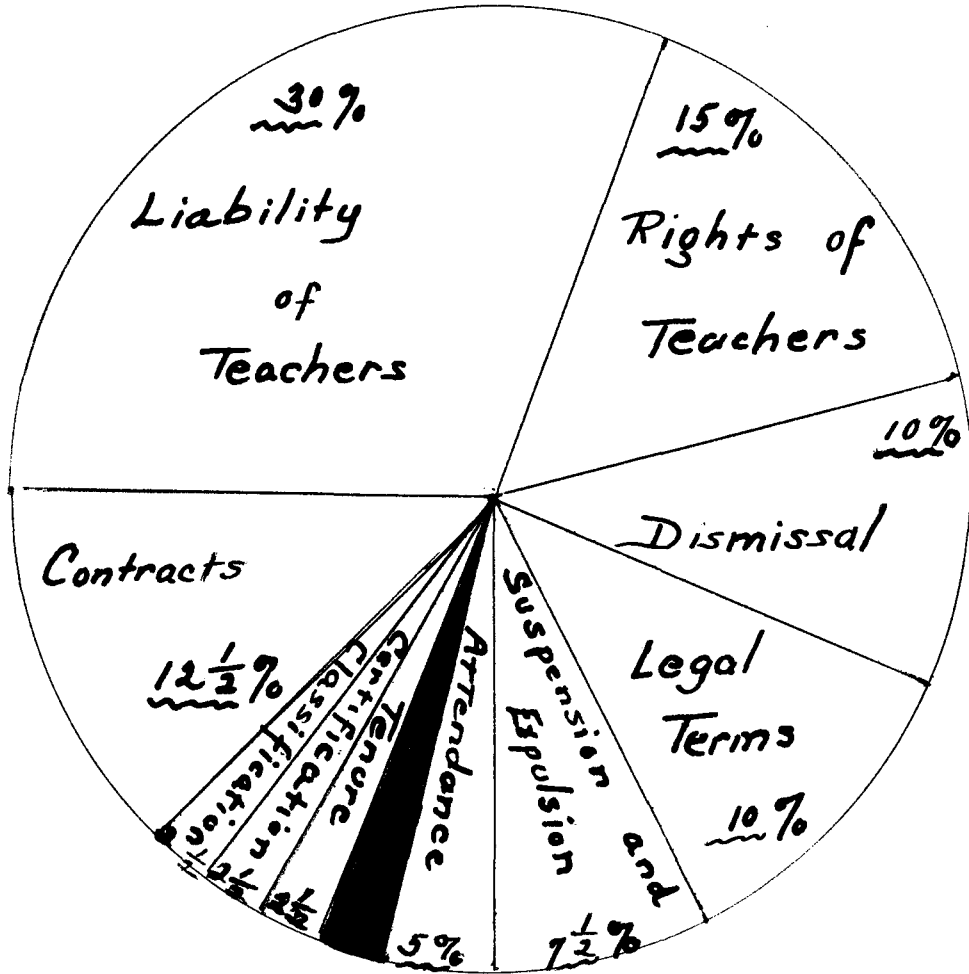
Figure I, on page 23, shows the various categories and the percentage of the whole survey occupied by each. As was stated in the preceding chapter, the greatest number of questions had to do with the liability of teachers in various circumstances. This category alone represents thirty per cent of the questionnaire.

The second largest category is that dealing with Teachers' Rights, and this contains one-half as many questions as were included under the heading Liability. This is due to the belief that every teacher should be aware of the possible far-reaching effects of his actions, and also aware of the consideration and respect due him as a member of the teaching profession.

Contracts, Legal Terminology and Dismissal occupy third place with each of these categories having approximately the same number of questions. Suspension and Expulsion, and Compulsory Attendance have received only a limited treatment, not because they are unimportant but only because it was necessary to keep the questionnaire from becoming too lengthy.

An estimated $2\frac{1}{2}\%$ of the survey (but one question each) was given to Certification, Classification, Tenure and Retirement of teachers. (It has earlier been mentioned that due to an error in the text, which escaped notice until after the surveys had been sent out, question #7 which indirectly referred to Retirement was omitted in the scoring and tabulation of results.)

FIGURE 1



DISTRIBUTION OF QUESTIONS
AMONG THE VARIOUS
CATEGORIES

Figure II, a bar graph, shows all the categories and lists as well the individual numbers of the questions contained in that category and gives the percentage of correct responses obtained by the respective questions. For example, question #1, regarding the classification of teachers as public officers or public employees received a total of ninety-eight percent correct responses. This represented the highest number of correct responses given to any question in the survey.

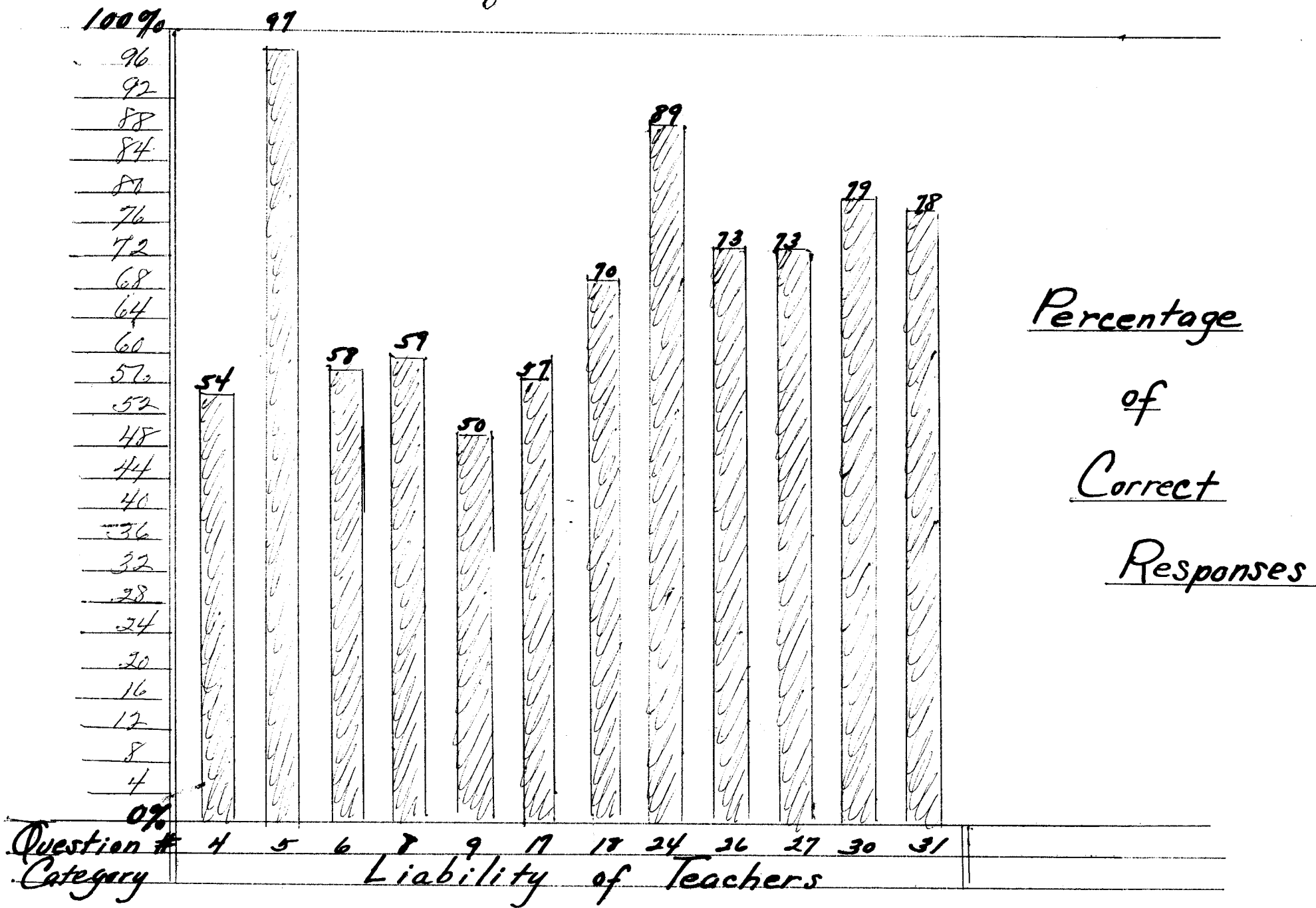
Ninety-seven percent of the teachers surveyed knew the correct answer to question #5 in the category Liability of Teachers; while eighty-nine percent had the correct answer for question #24 in the same category.

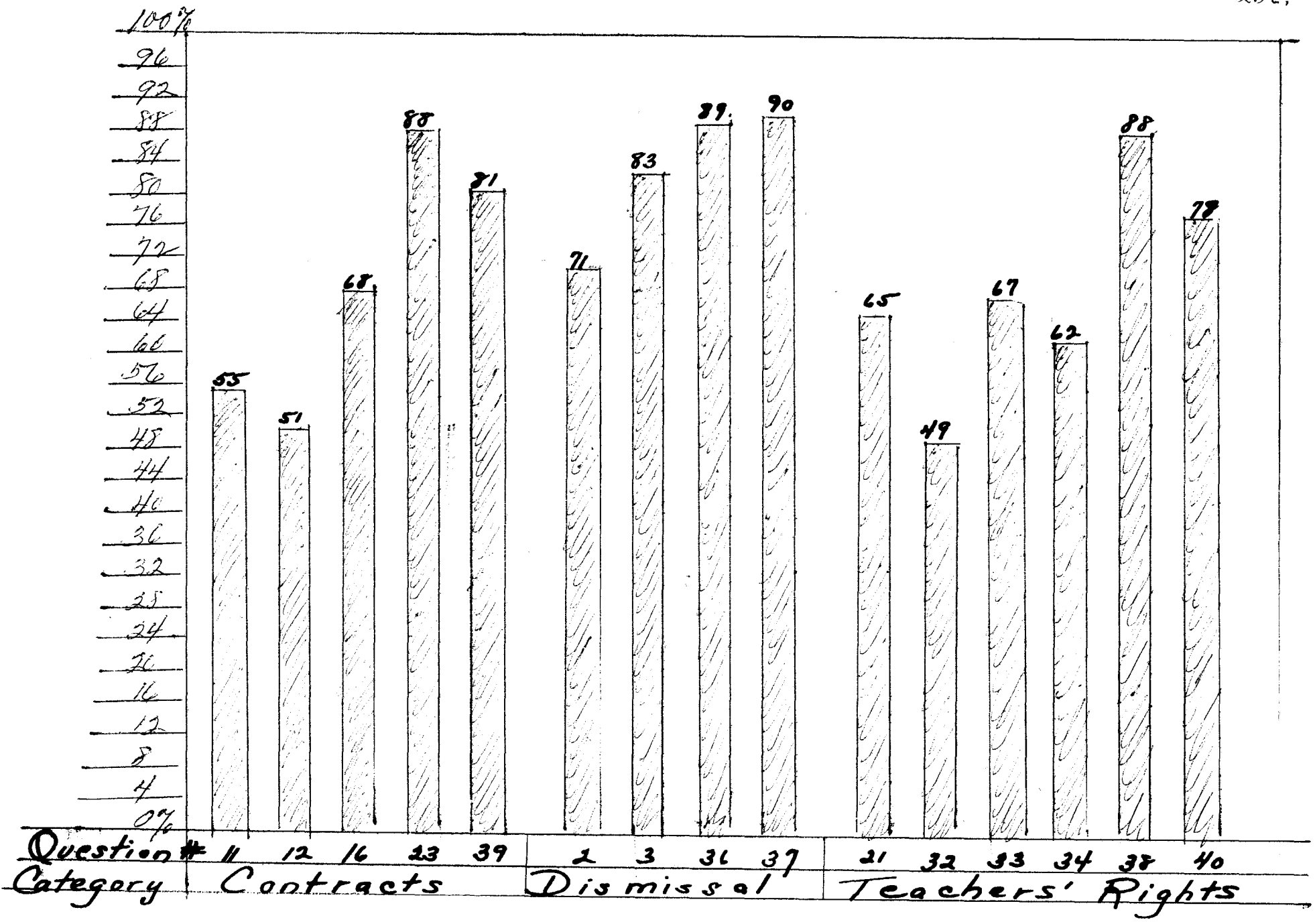
The lowest percentage of correct responses for any given item was obtained by question #32, concerning the Rights of Teachers. Of those answering the questionnaire, only forty-nine percent chose the right answer. Fifty-one percent were wrong.

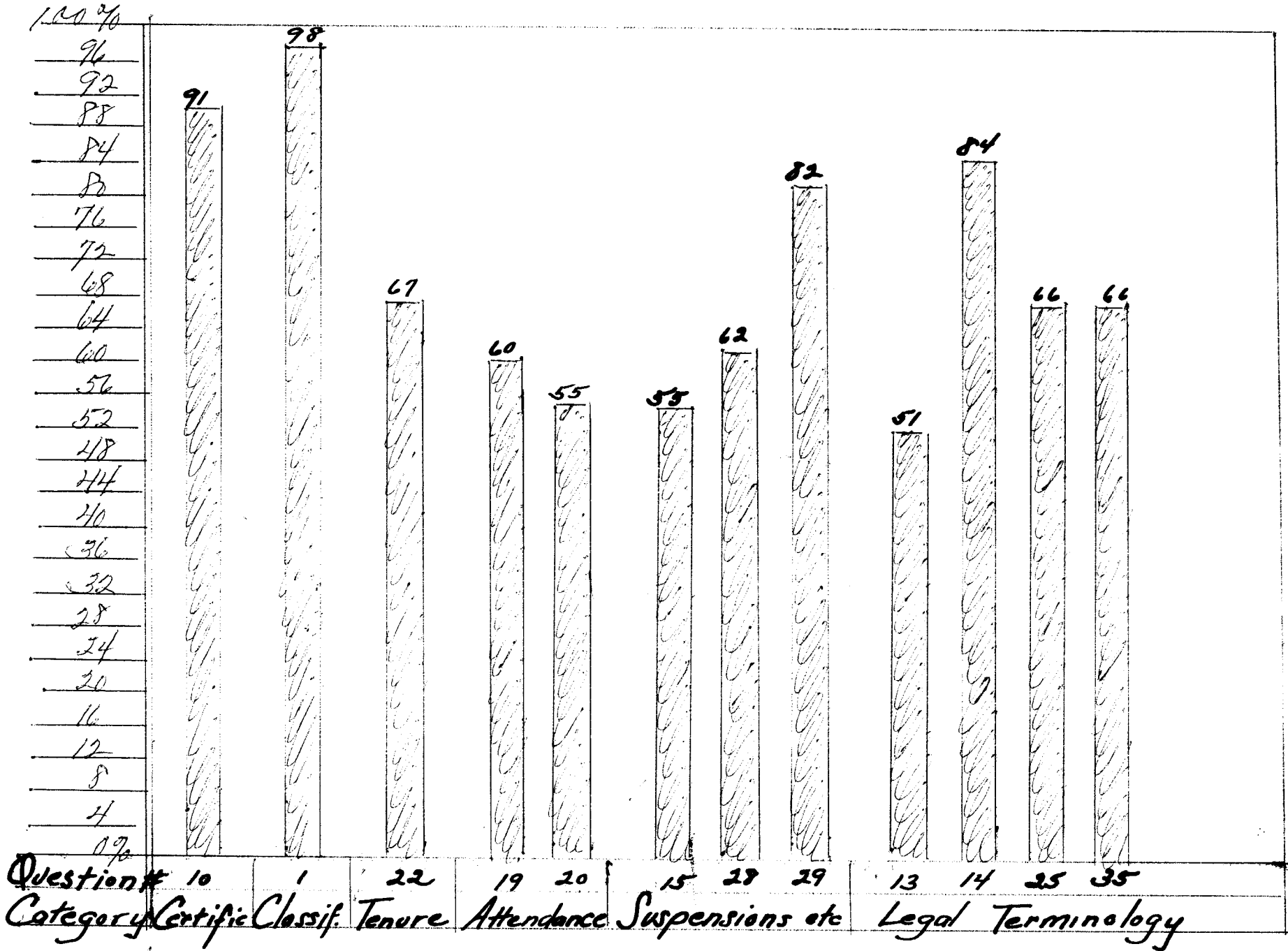
In most instances it can be observed that where the categories had one or two questions whose answers were relatively well-known, there would be in the same category questions for which the percentage of correct answers ranged from fifty to seventy percent.

Figure 2.

23b.







DETAILED EXPLANATIONS OF ANSWERS TO THE
QUESTIONNAIRE

Question:

1. Teachers and administrators in the public schools are classed as:

- * a) public employees
- b) public officers

Answer: Teachers and administrators in the public schools are classed as public employees except for tort liabilities when they enjoy the status of public officers. As public employees they are not employees of the local municipalities, but of an agency of the state. (School Committee, School Board, etc.) Therefore, it is more correct to say public employees in answering this question.

2. If a teacher is dismissed because of bias on the part of a School Committee member, he may:

- a) have the case reviewed by the Commissioner of Education.
- * b) take the case directly into court.
- c) have no recourse as the decision of the School Committee is final.

Answer: If a teacher is dismissed because of bias on the part of a School Committee member, he or she may have the case reviewed by the court. In some states there may be a review by the County Board of Education (but not in Massachusetts). In Massachusetts, up until 1958 the case was heard initially by the School Committee; the decision of which body could be reviewed by the court. If there is undeniable evidence of bias as the cause of dismissal, the case may be taken directly into court.

In 1958, a statute was passed in Massachusetts, requiring the

Court to hear "de novo" a case tried by the School Committee. (Serious objections can be raised against this statute which will mean twice the expense to the teacher and will also lead School Committees to raise serious objections which they might not have raised in their own hearings.)

To say that the decision of the School Committee is final would be definitely wrong, since all decisions of all administrative bodies are subject to judicial review, unless the statute creating the administrative body declares its decisions to be final.

3. If a tenure teacher refuses to answer questions concerning his relationship with the Communist Party on the grounds that it may tend to incriminate him, the School Board may dismiss him:

- * a) because membership in a subversive organization is now legal grounds for dismissal.
- b) may not dismiss him, as we all have the constitutional right to invoke the Fifth Amendment.
- c) may not dismiss him, as it is not a crime to belong to the Communist Party.

Answer: Re-worded this question might read: "If a School Board or Committee asks a teacher whether or not he has had any relationship with the Communist Party and the teacher refuses to reply on the grounds that it may incriminate him, may the School Board dismiss him?" (The word tenure was included in the questionnaire before the word teacher because it is easier to dismiss a teacher under yearly contract than to do so with a teacher on tenure.)

The answer to this question is given in the case of FAXON vs. SCHOOL COMMITTEE OF BOSTON, which is in line with similar cases in other states. The teacher could be dismissed for refusing to answer the question since the Committee or Board has the absolute right to receive

a categorical "yes" or "no" to their question. The reason is that the public schools are training schools of citizenship and that a member of the subversive organization might well defeat the purpose of the Constitution and the Legislation thereunder, by teaching subversive principles. The School Board or Committee cannot take this chance. Thus they are entitled to a definite answer on this question. This is not to be compared with invoking the Fifth Amendment, which the teacher has a constitutional right to do. As put by the School Board, the purpose of this question is to determine the fitness of the teacher to present subject matter required in our form of government. If the teacher is in sympathy with the Communist Party he will hesitate to answer the question; if not, he has nothing to hide and will have no need to hedge. Or as one Judge put it, the teacher has the right to invoke the Fifth Amendment under the Constitution -- but the same Constitution does not give him the right to remain a teacher.

4. The "Save Harmless" statutes, as incorporated into the laws of New York, New Jersey and Wyoming, would:

- * a) be most beneficial in Massachusetts.
- b) encourage negligence on the part of teachers.
- c) be of little value in Massachusetts.

Answer: The State Legislature of Massachusetts is giving consideration this year to the "Save Harmless" statutes. At present, should an accident happen to a pupil while under the supervision of a teacher, suit could not be brought against the city or town, nor against the School Committee. The only one who could be sued is the teacher, who may be completely blameless for the accident or injury to the child.

This puts the teacher to the expense and irritation of litigation. The "Save Harmless" statutes, such as are already in effect for drivers of Massachusetts municipal vehicles, could be beneficial. There is no evidence that these statutes, in the states where they are law, encourage negligence by the teachers in their supervision of pupils. (These statutes mean the local government (School Board) assumes the financial responsibility involved in litigation.)

5. When a child is injured on the playground, and the teacher on duty allows him to continue bleeding without applying First Aid, or allowing it to be applied, because she knows the child to be a Christian Scientist whose parents object to treatment due to their strong belief in Faith Healing:
 - a) in the absence of doctor or nurse the teacher owes her charges the duty of First Aid care and refusing it, could be held liable for negligence.
 - * b) the teacher is not negligent about this matter because at no time should a teacher apply or attempt medical treatment of a child.
 - c) the teacher will receive no blame as the wishes of the parents come first.

Answer: In accident cases, the teacher should NEVER attempt to play the role of doctor or nurse, if either are available; but IN THEIR ABSENCE he can exercise the parental right of giving some approved treatment as the case requires, but must leave a call for medical treatment as soon as it can be rendered and if the situation permits calling the parent, this must be done.

N.B.: If the parents cannot be contacted for any reason and the nurse or physician is not available, emergency treatment may be applied by a teacher. There is at present, only one case on record in the courts of the United States, of the type mentioned in this

question. (However, it is well to know that there are communities in Massachusetts where a blue slip in the child's personal folder, indicates the religious faith as that of Christian Scientist, so that for minor, everyday mishaps NO TREATMENT OF ANY KIND shall be given by teacher, doctor or nurse.)

According to law, the teacher acts "in loco parentis" -- accordingly when a doctor is called to treat a child the parents must pay the doctor's fee. An outside doctor (one other than the regular school physician) will only be called when the school physician is unavailable at the time, and the child is seriously ill or injured, and the parents unable to be reached.

6. According to statute, A School Board is liable for injuries to pupils and personnel, resulting from faulty construction or poor repair:
- a) in every state.
 - * b) in no state.
 - c) in Massachusetts only.

Answer: In most states, including Massachusetts, there is no liability on the municipality in which the school is located; and in Massachusetts there is no statute visiting liability on the municipality. In Massachusetts, the members of the School Board are liable only for misfeasance or malfeasance.

7. The most prolific source of school litigation has always been:
- a) excessive punishment
 - b) retirement laws
 - c) breaches of contract
 - d) field trips

Answer: This question was excluded from the tabulation after it was

found that the question was too broad in scope. According to the text the correct answer to this would be retirement laws. But further study showed that what was the most prolific source of litigation in one state is not the most prolific source in another. This is a prime example of secondary texts, too broad in scope, that try to quote a rule for all states.

In the Massachusetts statutes, it was found that from 1925 - 1958, the majority of cases, about fifty in number, revolved about tenure dismissal. As this was not included in the four choices of answers, the question was entirely discounted in the returns.

8. When a teacher is negligent in the performance of his duties, the courts of Massachusetts will not hold him liable, because there is no liability in cases of:

- a) malfeasance
- b) misfeasance
- * c) nonfeasance

Answer: The correct answer is nonfeasance. Misfeasance means negligent acts of a positive character. (The act of itself is not wrong. But the act done at the wrong time or in the wrong manner is wrong.) Malfeasance means the doing of acts inherently wrong, or made unlawful by statute. Nonfeasance means no action was taken one way or the other, even though something should or could have been done.

9. If a classroom teacher is assigned a student teacher and allows the student teacher to assume full control of the class for a definite time - and in that time an accident occurs in which one of the children is hurt:

- a) the responsibility for that accident would be the classroom teacher's.

- * b) The responsibility in such a case would be the student teacher's.
- c) the responsibility in such a case would be the principal's.

Answer: You are not responsible for the actions of the student teacher, whether or not she is teaching under your direct or indirect supervision.

10. As the law stands today in Massachusetts, your teaching certificate:

- a) depends upon periodic renewals.
- b) is capable of expiring from non-use.
- * c) is valid for life.

Answer: A teaching contract in Massachusetts, is valid for life unless voided for reasons of morals, health or citizenship.

11. A teaching contract, in Massachusetts, is valid:

- a) only if it is in writing.
- b) with just a verbal agreement.
- * c) either verbally or in writing.

Answer: A teaching contract is valid either verbally or in writing, for one year in Massachusetts. It is much wiser to have the contract in writing with the terms of the contract clearly stated. It is true, that the courts of Massachusetts have upheld many oral contracts, however.

12. In Massachusetts, a case came before the courts wherein a teacher sued for breach of contract as he had received a salary schedule for the ensuing year. In your opinion, the salary schedule received:

- * a) acted as a bona fide contract with the teacher in question.
- b) could not be considered in any way a contract.
- c) had no binding effect on either the teacher of the School Board employing him.

Answer: The salary schedule for the ensuing year acted as a bona fide contract with the teacher in question. The case of CALLAHAN vs. TOWN OF WOBURN was decided thusly; and this established the precedent.

13. A citation in the legal sense is :

- a) a warning
- b) commendation
- * c) a reference to books.

Answer: A citation is a reference to books, legal periodicals, cases or statutes.

14. Common law refers to:

- * a) usages and customs
- b) laws enacted by legislatures
- c) laws for common people.

Answer: Common law is not found in legislative or constitutional provisions. It is merely law pronounced by the judges in deciding cases and their judgement is based on a particular set of facts.

15. Expulsion from school for refusal to salute the American flag for religious objections:

- a) was legal until 1943.
- b) is legal since 1943.
- c) was never legal.

Answer: Until 1943, it was a law in Massachusetts, that anyone who refused to salute the American flag, whether for conscientious reasons or not, was to be expelled from the public schools. Subsequent court actions changed the law and made those who refused for religious reasons exempt from court action and expulsion.

16. Since June, 1957, it is a law that women teachers are to be paid at the same rate as men teachers, if they have the same training and are doing the same work. Because of this:

- a) it is illegal for towns to pay teachers according to the number of their dependents.
- * b) if towns pay both men and women teachers according to the number of dependents, it is legal.
- c) it is illegal to pay in such a manner as it is discriminatory.

Answer: If towns pay both men and women according to their dependents it is legal. The town of Medford, Mass. is one such example.

17. When a child is injured on a field trip:

- a) the teacher is absolutely liable as field trips are not a "must" and the teacher assumes full responsibility when he takes a class out of the school building.
- * b) the teacher is not always liable as his duty is only that of adequate supervision.
- c) the teacher is not liable - the parent relieves him of responsibility by signing a permission slip for the child to go on the field trip.

Answer: The teacher is not liable as his only duty is that of adequate supervision. However, if it can be proven that without any doubt the supervision was inadequate for either the situation or the number of children on the trip, then he must assume full responsibility. It is safe to assume that teachers who do take their classes on field trips are generally very careful to make sure that the class is well supervised from the time it leaves the building until its return.

18. If parents come into school for "relief" positions on a volunteer basis so as to free the teachers for actual teaching:

- a) the fact that they are in the schools on a volunteer basis in itself frees them from any liability they might incur due to inadequate supervision or the like.

- * b) because they assume the position, voluntarily or not, they also assume the responsibilities attached to it.
- c) the parents cannot be held responsible as whatever happens during their period of supervision can be classed as either a pure accident or something due to contributory negligence.

Answer: Parents who come into the schools to help out in any way, in assuming the duties also assume the responsibilities attached thereto. All parents who volunteer their services, should in all fairness to themselves be told this fact.

19) Admission to the public schools:

- a) is the right of every citizen.
- b) is a federal constitutional right.
- c) is every child's natural right.
- * d) is a duty and a privilege.

Answer: Admission to the public schools is the qualified right of every citizen. Qualified, in this instance, means it is the right of every citizen providing the rules and regulations governing school attendance are complied with. To be more specific, it is the duty and the privilege of every citizen. Thus the fourth choice is the correct answer.

20. When a child's parents are living separately, without a legal separation, and the child is living with the mother:

- * a) his legal place of residence is where his father lives.
- b) his legal place of residence is where his mother lives.
- c) he has no legal place of residence.

Answer: The child's legal place of residence is the father's domicile. But, should the wife be living apart from the husband for just cause, she may establish her own place of residence, and should she be granted the custody of the child, the same becomes the child's legal place of

residence. In this question, however, it is stated that there is no legal separation and no mention is made of the mother obtaining legal custody of the child, thus it follows that the child's legal place of residence is, in this particular instance, the father's domicile.

21. In Massachusetts, teachers not on tenure:
- a) may be dismissed without a cause and without a hearing.
 - b) must be given cause but no hearing.
 - * c) are legally entitled to both cause and hearing.

Answer: In Massachusetts, more and more are the courts becoming stricter about due process of law. Strictly speaking, teachers may be dismissed at the end of their yearly contract (before April 15) without a hearing. Cause, contrary to the belief of many, must be given. If the hearing is refused, the School Committee leaves itself open to the charge that the teacher was dismissed without due process of law.

22. In Massachusetts the permanent tenure laws:
- a) are for the protection of those who make teaching a life work.
 - b) are a contract protected by the Contract Clause of the Federal Constitution.
 - * c) may be changed if the interests of the state so dictate.

Answer: The "permanent tenure" laws were not made for the protection of teachers, not even for those who intend to make teaching a life work. They were made for the protection of the public school system, so that good teachers could not be summarily dismissed at the whim of the School Committee or for purely political reasons. Therefore, since their objective is the protection of the public schools of the state, they may be changed if the interests of the state so dictate.

23. You are assumed to have had your contract renewed for the ensuing year if you are not notified to the contrary by the previous:

- a) March 15th.
- * b) April 15th.
- c) May 15th .

Answer: Legally, if you have not received oral or written notification to the contrary, by April 15, you are assumed to have been hired for the following year.

24. If a child is injured during school time, while outside the school on an errand for the teacher, the teacher:

- * a) may be held liable for damages as children should never be out of the sight of the teacher.
- b) will not be held responsible since if the child is old enough to attend school, he is old enough to do an errand.
- c) will only be held responsible if the child is under seven years of age.

Answer: In the strictest sense, if a child is of such age and mentality that a teacher could expect him to take care of himself on the streets, then the teacher is not responsible. The errand that the child is sent on, however, should never be a personal one for the teacher - but if supplies run short for a domestic science lesson, for example, or a class play, etc., the teacher might legitimately send a child of sufficient age and mentality to the store. However, it has been the attitude of the courts and this is well to note, that the younger the child, the more supervision is required. Therefore, the correct ^{answer} to this question would be that the teacher may be held liable for damage as children should never be out of sight of the teacher.

It is incorrect to say that if a child is old enough to attend school, he is old enough to do an errand because it could depend

upon the type errand involved, at how great a distance he was sent, the number and size of the street crossings involved, and whether or not the child has had any experience in doing errands for his own family. Age is not the sole factor to be considered here; reasonable maturity is also a requisite.

To say the teacher will only be held responsible if the child is under seven is also incorrect as there are many children of seven and over who lack the necessary caution in crossing streets, or have not had any experience in doing errands at home. In this day of two-car families and car pools, oftentimes the child is delivered to the door of the school and called for at dismissal time. If errands are needed at home, mother or daddy will pick them up either going to or coming from school with the children or hop into the car if something was forgotten and drive down to the store for it. Thus the children do not get the experience and are in an unfamiliar situation.

In the case of young children, or inexperienced children, or children of low mentality, they should NEVER be out of sight of the teacher. Although it is not as yet a statute, the safest rule for all to follow is that children should never be out of sight of the teacher.

25. Ultra vires actions are:

- a) acts against lawful authority.
- * b) acts beyond the scope of authority.
- c) legal acts.

Answer: Ultra vires acts are acts beyond the scope of the authority of the particular legal entity.

26. If, on a school day, a youngster climbs a fence separating the school yard from a pond -- even though he has been warned by both his parents and school authorities that the pond is deep -- and in retrieving a ball goes beyond his depth and is drowned:
- a) the parents may collect damages for the death of the child for the pond is a hazard and should not have been right next to the school.
 - * b) the parents may not collect damages as contributory negligence on the part of the child acts as a deterrent to damages.
 - c) the parents may collect damages as the teacher on duty at the time should have prevented the child from going over the fence.

Answer: Contributory negligence on the part of anyone serves as a deterrent to recovery of damages. In this instance the second answer is the correct choice.

27. In 1945, the parents of a six year old girl, killed by a car after alighting from the school bus, sued the bus driver and the school board. The bus driver had stopped on the opposite side of the street from the home of the little girl and allowed the child to cross alone in front of the bus. In doing so, she was killed instantly when struck by an oncoming car. Should a similar situation arise in Massachusetts:

- * a) there would be no liability and therefore no judgement would be rendered.
- b) there would be no liability on the part of the School Board, but definite liability on the part of the bus driver.
- c) both School Board and bus driver would be found guilty and required to pay damages for the death of the child.

Answer: Unless it was proven that the bus driver had told the little girl to cross at that particular moment, and this in spite of the fact that he'd seen the oncoming car - or unless other facts not appearing on the surface of this statement could prove without a doubt that the bus driver had caused the little girl's death - there would be no

liability and therefore no judgement would be rendered. In the case on record, not in Massachusetts, it was thus decided.

28. When a pupil of school age is expelled from school for serious violations of school law, he must:

- a) stay at home in the care of his parent or guardian.
- b) go to work.
- * c) attend a private school.

Answer: The law requires compulsory attendance until the sixth grade has been completed; and if after this, the child cannot keep up with his studies, he must attend a continuation or vocational school until he has reached the age of sixteen. If a child is expelled for serious violations, it becomes up to the parents to comply with these laws.

Thus the third choice is the correct answer to this question.

29. When a parent refuses to have his child vaccinated, the School Board:

- * a) may legally exclude the child until vaccinated.
- b) may have the child vaccinated by the School Doctor without the consent of the parents.
- c) may not exclude the child as the parents have the full say over the child's health and medical care.

Answer: The first answer is correct. Unless the child is not a fit subject for vaccination the School Board may exclude the child. In an epidemic, however, such is not the case. The child must then be excluded until such time as he becomes well enough to be vaccinated.

30. In a situation where a policeman comes to the school and asks to take a child to the station house for questioning, what is the correct thing to do?

- a) the teacher or principal should release the child as the policeman represents the law.
- * b) the child is not to be released until the parents are contacted.

- c) the child is not to be released until after school hours and the police must go to the child's house to seek him.

Answer: During school hours the child is not to be dismissed from school without the knowledge and consent of the parents.

31. If a pupil in the kindergarden gets off the school bus at the wrong stop, becomes lost and either physically or emotionally upset as a result of this predicament, the teacher:
- a) can be held liable for negligence as she should make sure the child knows the correct stop.
 - * b) cannot be held liable as the teacher is only responsible for them during the time she is with them.
 - c) may not be held liable as it would be the fault of the school bus driver.

Answer: The teacher is only responsible for the children during the actual time she is with them or is supposed to be with them.

32. To accuse a teacher of never paying his bills on time:
- * a) would be actionable in a court of law because you are defaming the character of a professional person.
 - b) would not be actionable because his private credit is unrelated to his professional ability.
 - c) would only be actionable if he was refused employment or advancement because of your remarks.

Answer: The first answer is the correct one. The teaching profession is held in great respect by the law. Anyone commenting loosely about a teacher's private life or ability is risking a court case. The courts through the years, have taken a dim view of belittling teachers, as there is no other profession with greater influence upon the future citizens of our state and country. Respect is necessary and this respect is upheld by the law.

33. An unofficial derogatory statement made by one teacher about another:

- a) is actionable and suit may be easily brought for slander.
- b) is only actionable if detrimental to the profession of the one slandered.
- * c) is actionable because of the profession of the one slandered.

Answer: The explanation of the previous question and its answer provides the reasoning behind the answer to this question. The third answer is correct.

34. Separate salary schedules for white and negro teachers are forbidden in the;

- a) 10th Amendment.
- b) 12th Amendment.
- * c) 14th Amendment.

Answer: While the 13th Amendment made the negro free, the 14th Amendment specifically states that the negro is a citizen with the citizen's right to the full protection of the law. This implies that he is not to be discriminated against in matters of salary as well as in all other matters but is to have equal status with the white citizens.

35. "Incompetency" as used in the tenure law means:

- a) lack of educational qualifications.
- b) inability to control a class.
- c) any reason that prevents performance of duty - including maternity leave and prolonged illness.

Answer: Any reason that points to unsatisfactory performance of one's duties is considered incompetency. Expectant mothers can get leave of absence within reasonable limits - not for five years in a row as was recently attempted by one before the Massachusetts courts.

36. A teacher may be discharged for:

- a) participating in any political activity.
- * b) bringing political activity into the classroom.
- c) actively campaigning against a school-board member.

Answer: A teacher shall never bring political activity or opinions into the classroom.

37. To prevent discharge, a teacher must:

- * a) obey all rules and regulations of the school board, present and future.
- b) obey the rules and regulations that were in effect at the time his contract was signed.
- c) obey only those regulations he feels to be reasonable and just.

Answer: To prevent discharge ON PERSONAL GROUNDS is implied here as it is common knowledge that sound morals, health and citizenship are essential qualifications. Thus the correct answer to this question is that the teacher must obey all rules and regulations of the school board under reasonable conditions. The word regulations in the preceding sentence should have the word reasonable before it. By "reasonable regulations" is meant those which have some tendency to advance the cause of education in the community. "Enforced under reasonable conditions" means that acts of God may prevent such reasonable regulations from being enforced without breaking the contract. An "act of God" is any storm, fire or epidemic, flood, etc., etc., which is beyond the control of man.

38. A sabbatical leave, for study, is the privilege of every teacher after seven years of service:

- a) in every state.
- b) in Maine, Massachusetts and California only.
- * c) in some states but not all.

Answer: A sabbatical leave is the privilege of every teacher in some states but not all. In some states, as in Massachusetts, the privilege is allocated by the individual communities at their discretion.

39. If your teaching contract calls for thirty days notice upon resignation:
- a) you may resign on shorter notice for professional improvement.
 - b) you may resign with no claim to references.
 - * c) your resignation need not be accepted thus prohibiting you from entering into another contract in that time.

Answer: Your resignation need not be accepted and thus you will not be able to enter into another contract until the thirty days have expired.

40. In March of 1957, the 15th to be exact, a statute was added to the laws of Massachusetts, and this statute says:
- a) teacher may never see the contents of their personal folders that are kept in the central office and serve as a record of their ability or lack of it as a teacher.
 - b) teachers may now inspect the contents of these aforementioned folders if they so wish.
 - * c) teachers may inspect the contents if they request it in writing and do not remove the same from the office.

Answer: The third choice is the correct answer. Teachers may now see what their strengths and weaknesses by asking in writing and inspecting their records in the central office, without removing the records from the same.

CHAPTER IV

INTERPRETATION OF THE DATA

Re-statement of the Problem. The purpose of this study was to bring to light those phases of school law of interest and concern to the elementary teachers in the public schools of Massachusetts. The survey was also to determine, insofar as possible, those facets of school law with which teachers seem to be most familiar, as well as those which are not so well-known.

Results of the Study. From scoring the questionnaire and tabulating the results, the following information has been obtained. Table 1 shows the frequency distribution of all the test scores. It can be found on the next page. The highest score achieved was twenty-seven. This means that out of a possible thirty-nine correct answers, twenty-seven was the highest number of correct responses with only four teachers of the two-hundred forty-two taking the test, attaining this score. One teacher made a score of two, or had two answers out of the possible thirty-nine correct. This, incidentally, was the lowest score tabulated. The median score was 17.2 which means that 50% of the teachers tested made a higher score and 50% made a lower score than this. The majority of teachers had between fifteen and twenty-one answers correct out of the possible thirty-nine.

TABLE 1
FREQUENCY DISTRIBUTION

<u>SCORE</u>	<u>No. of Teachers Attaining This Score</u>
26 - 27	4
24 - 25	10
22 - 23	20
20 - 21	40
18 - 19	42
16 - 17	43
14 - 15	32
12 - 13	17
10 - 11	4
8 - 9	6
6 - 7	2
4 - 5	0
2 - 3	1
0 - 1	1
	<u>Total:</u> 222

TABLE 3
THE INDIVIDUAL QUESTIONS AND THE NUMBER
OF CORRECT AND INCORRECT ANSWERS FOR EACH.

*indicates the correct answer

Question	Possible Answers				No. Correct Responses	No. Incorrect Responses
	a	b	c	d		
1.	* 217	5	--	--	217	5
2.	23	*157	42		157	65
3.	* 185	22	15		185	37
4.	* 117	23	82		117	105
5.	* 165	50	7		165	57
6.	90	* 129	3		129	93
7.	Not included in the tabulation and analysis.					
8.	24	66	* 132		132	90
9.	67	* 112	43		112	110 -
10.	--	21	* 201		201	21
11.	82	20	* 120		120	102 -
12.	* 113	54	55		113	109 -
13.	46	63	* 113		113	109 -
14.	* 186	34	2		186	36
15.	* 123	37	62		123	99
16.	9	* 150	63		150	72
17.	72	* 127	23		127	95
18.	64	*154	4		154	68

TABLE 3
(cont'd.)

Question	Possible Answers				No.	No.
	a	b	c	d	Correct Responses	Incorrect Responses
19.	47	42	--	* 133	133	89
20.	* 122	100	--		122	100
21.	71	6	* 145		145	77
22.	62	13	* 147		147	75
23.	28	* 182	12		182	40
24.	*197	15	10		197	25
25.	72	* 146	4		146	76
26.	9	* 161	52		161	61
27.	* 159	49	14		159	63
28.	81	5	* 136		136	86
29.	* 182	3	37		182	40
30.	19	* 174	29		174	48
31.	33	* 172	17		172	50
32.	* 110	16	96		110	112
33.	22	94	*106		106	116
34.	43	44	* 135		135	87
35.	24	51	* 147		147	75
36.	25	* 197	--		197	25
37.	* 199	5	18		199	23
38.	15	12	* 195		195	27
39.	23	19	*180		180	42
40.	33	17	* 172		172	50

hundred-five of the two-hundred twenty-two surveyed did not know about them. Many of the questionnaires had question marks beside question number 4 and the remark "never heard of them."

Question 9 also bears some looking into - one-hundred ten teachers had this wrong while one-hundred twelve made the right choice of answer. The majority of those who answered incorrectly felt that the principal would be responsible for the actions of the student teacher, possibly because the principal consents to the student teacher training in his building. Those who marked the teacher as being responsible presumably were thinking of the fact that most teachers have a choice of whether or not they will accept a student-teacher.

One-hundred nine teachers did not recognize the ensuing year's salary schedule as a bona fide contract binding in full force. One-hundred thirteen made the right choice of answer here. This was covered in question 12.

In answering question 13, forty-six teachers felt that a citation was a warning, while sixty-three considered it a commendation. Given the question on expulsion from school for refusal to salute the flag for religious objections, thirty-seven teachers felt it is still legal and sixty-two felt it had never been legal. One-hundred twenty-three marked the correct answer.

Seventy-two teachers are unaware that some towns in Massachusetts at the present date pay teachers according to the number of their dependents. The wisdom or merit of such a practice is not under discussion here. One-hundred fifty teachers knew that such a system is

legal if both men and women are paid in the same manner.

The dangers of field trips have been well-publicized in many teachers' magazine articles these past years and this perhaps explains why seventy-two teachers felt that the teacher conducting the field trip is absolutely liable for whatever accident happens to a child on such a trip. Twenty-three are unaware that the permission slip does not absolve them of any liability. One-hundred twenty-seven knew that neither of these two statements is correct.

In regards to question eighteen, sixty-four teachers thought that volunteering their services kept parents from accepting liability for any mishap occurring during their time of supervision. Parents should be reminded before assuming any duties in the schools that in accepting the duty they accept the responsibility which it entails.

One-hundred teachers felt the mother's address would be the child's legal place of residence in answer to question 20, although it was specifically stated that there was no legal separation. One-hundred twenty-two marked the right choice.

Seventy-one teachers felt that non-tenure teachers in Massachusetts could be dismissed without cause and without a hearing. Six teachers felt that although they must get the cause of the dismissal, no hearing is necessary for non-tenure teachers. The third choice given - both cause and hearing are required - is the correct one.

One-hundred twelve teachers gave the wrong answer and one hundred ten marked the correct answer to question 32. Of those wrong,

sixteen felt that a teacher's private credit is unrelated to his professional ability while ninety-six felt that to malign his credit would only be actionable if he was refused employment or advancement because of such remarks.

Question 33 fared much the same as question 32. One-hundred sixteen wrong answers were given while one-hundred six teachers knew that an unofficial derogatory statement is actionable because of the profession of the one slandered.

CHAPTER V

SUMMARY AND CONCLUSIONS

The purpose of this study was to learn how much teachers know of their legal status as defined by state law, how clearly they understand their rights, privileges and obligations defined by state legislature, and insofar as possible to determine certain areas of school law with which teachers seem to be most familiar and those areas which are not so well-known.

To achieve these goals a questionnaire was constructed and distributed among all the elementary school teachers in two neighboring towns - a total of two hundred twenty-two teachers. The questionnaire was composed of forty questions one of which was subsequently cancelled because of the broadness of its scope. The questions covered the following general areas:

- a. Rights of teachers
- b. Status and certification
- c. Dismissal of teachers
- d. Liability of teachers
- e. Tenure
- f. Suspension and expulsion of pupils
- g. Contracts
- h. Legal terminology

Only one question was of the true-false type. Two were multiple choice with four possible answers. The remaining thirty-six questions were constructed to include a choice of but three answers.

An attempt was made in these, to have one of the answers definitely correct, one definitely incorrect and the third either a popular misconception or an answer correct only in part.

The teachers receiving the questionnaire were to check the answer they considered correct for each question and each correct answer received one point. The survey was completely anonymous; neither the names of the teachers nor the names of the schools were asked in the returns. The average number of correct responses ranged between seventeen and eighteen. While one cannot say what the score on such a questionnaire ought to be, one can conclude that when two hundred twenty-two teachers have an average score of little more than seventeen in a survey where the highest score was thirty-nine, teachers in general do not know as much as they could and should about School Law.

There were four teachers out of two hundred twenty-two who knew the answers to only seven questions or less. Seventy-four teachers made a score between twenty and twenty-seven, the latter figure being the highest score attained by any teacher. The remaining one hundred forty-one teachers ranged from eight correct through nineteen correct answers.

The ten best-known questions were as follows and in this order:

Question #1. This had to do with the status of teachers. Two hundred seventeen out of two hundred twenty-two had the correct answer. Only five had this answer wrong.

Question #10. This concerned certification. Two hundred one teachers knew the right answer.

Question #27. This question on the dismissal of teachers had a total of one hundred ninety-nine correct answers and twenty-three incorrect ones.

Question #24 and #36. Each of these questions had one hundred ninety-seven correct answers. Question #24 deals with the liability of teachers and Question #36 concerns the political activity of teachers.

Question #14. One hundred eighty-six teachers knew the definition of common law. Thirty-six were wrong.

Question #3. This questioned the right of a School Board member to ask questions concerning the teacher's relationship with the Communist Party. To be more specific, it questioned the right of the School Board to dismiss a teacher who refused to answer such questions. It was interesting to note that one hundred eighty-five teachers had the right answer, twenty-two felt that the teacher had the right to invoke the Fifth Amendment (wrong), and fifteen others (also wrong) felt that he could not be dismissed as it is not a crime to belong to the Communist Party.

Question #23 and #29. In each case, one hundred eighty-two teachers were correct and forty were incorrect. Question #23 had to do with the date of contract renewal and question #29 with the right of the School Board to exclude a child whose parents refuse to have him vaccinated.

Question #39. The right to enter into another contract without giving the full thirty day notice if required by your present contract was questioned here. One hundred eighty teachers knew that this was impossible. Forty-two incorrectly thought there could be extenuating circumstances.

The ten least-known questions (those receiving the greatest number of incorrect answers) were as follows and in this order:

Question #33. This brought forth one hundred sixteen incorrect answers and only one hundred six correct answers. It had to do with the rights of teachers and the respect due them because of their profession.

Question #32. This question was on the same area, the rights of teachers. One hundred twelve teachers gave incorrect answers and one hundred ten were correct.

Question #9. One hundred ten answers were incorrect. In this question the liability of a teacher in the case of accident was discussed.

Question #12 and #13. Each of these had one hundred nine incorrect responses. Question #12 dealt with contracts and #13 with legal terminology.

Question #4. This brought one hundred five incorrect answers and one hundred seventeen correct ones. This dealt with the Save Harmless statutes which came up before the legislature in 1959.

Question #20. This had one hundred wrong answers. It concerned the child's legal place of residence.

Question #15. Ninety-nine teachers did not know that expulsion from school for refusal to salute the American flag because of religious objections has not been legal since 1943.

Question #6. This questioned the liability of the School Board for injuries to pupils or personnel resulting from faulty construction or poor repair. It received ninety-three incorrect answers.

Question #8. This questioned the liability of the teacher and the teacher's rights in cases of misfeasance, malfeasance and nonfeasance. Ninety incorrect answers were given.

In each case (the top ten and the lowest ten) it is interesting to note the range of answers. Most teachers will freely admit that the whole subject of school law is very hazy in their minds. Research has shown the writer that many injustices have been visited upon teachers as a result of their ignorance of their rights and privileges. A knowledge of school law would help to free the minds of teachers and administrators alike and give them more confidence in their daily associations. When under attack, familiarity with school law helps teachers and all educators to be more competent and resolute, for it gives them the personal knowledge that the law is on their side. This confidence saves much in the way of worry, time and money.

The following suggestions are made:

1. Teachers' colleges might require a course on School Law.
2. Because a basic course alone, although helpful, would be insufficient, School Departments might provide in-service courses on the average of every three years to keep teachers abreast of changes in the laws and up-to-the-minute legislation affecting the profession.
3. On the same day a teacher signs his contract he should be provided with a copy of the Rules and Regulations of the School Committee so as to familiarize himself with it before taking on his duties.

In trying to test the familiarity of the public elementary school teacher with school law, this survey because of the broadness of its scope, was unable to determine how familiar the teachers were with any one particular phase of the law. The instrument in its present form can show only the general knowledge or lack of knowledge of the broader issues. However, it did create among the teachers participating in the survey and those with whom they later discussed it, a greater awareness of the complexities of the law.

SUGGESTIONS FOR FURTHER STUDY.

1. A future study might require personal views and subjective answers, instead of supplying multiple-choice responses. Common misconceptions will then be more apparent and guesswork will be kept to a minimum.

2. The questionnaire could be built to include the junior and senior high school level and even teachers at the college level.

3. A study might compare the responses of those having less than four years of teaching experience with the responses of those teaching ten years or longer; or those in the administrative positions with those in the teaching field.

BIBLIOGRAPHY

- Edwards, Newton. "Authority Over Education is Shifting Toward the Central Government," The Nation's Schools. Chicago: University of Chicago Press, 1933.
- Edwards, Newton. The Courts and The Public Schools. Chicago: University of Chicago Press, 1933.
- Garber, Lee O. Handbook of School Law. New London, Conn.: Arthur C. Croft Publishers, 1954.
- Garber, Lee O. Yearbook of School Law. Danville, Illinois: Interstate Printers and Publishers, 1958.
- Hamilton, R. R. and P. R. Mort. The Law and Public Education. Foundation Press, 1941.
- Hechinger, Frederic. The Big Red Schoolhouse. Doubleday and Co., 1959.
- Marke, David Taylor. Educational Law. New York: Oceana Publications, 1949.
- Martin, George. Evolution of the Massachusetts Public School System. New York: D. Appleton & Company, 1902.
- Moreland, Carroll C. Equal Justice Under Law: The American Legal System. New York: Oceana Publications, 1957.
- Mottla, Gabriel and Fernald Hutchins (comp.). Annotated Laws of Massachusetts. Rochester, New York: Lawyers Cooperative Publishing Co., 1953, Vol. II A.
- National Education Association and U. S. Office of Education. Annual & Biennial Compilations of Laws and Court Decisions With Analysis of School Law Topics. 1956, 1958.
- O'Keefe, William Joseph. Rights and Liabilities of Teachers. Lowell, Mass.: Sullivan Brothers, 1940.
- Punke, Harold H. "Case, Injury and Tort Liability in Pupil Transportation," The American School Board Journal. October, November, December, 1955, and February, 1956.
- Remmlein, Madaline Kinter. School Law. McGraw-Hill Book Company, Inc., 1950.
- Trusler, Harry Raymond. Essentials of School Law. Milwaukee, Wisconsin: Bruce Publishing Company, 1952.

APPENDIX

January 8, 1959.

Mr. David W. Woodbury,
Superintendent of Schools,
Milton, Massachusetts.

Dear Dave:

Miss Catherine M. Bates, an elementary teacher in Milton, is a member of my Seminar in Elementary School Administration this year. She is undertaking a very interesting thesis on the knowledge that elementary school teachers have of school law that concerns them. Miss Bates has the background to do this kind of thesis for she has had course work with Dr. O'Keefe of Boston College. Furthermore, she has conferred with him about this particular study.

I hope that she may have your permission to give the instrument she has devised to the elementary teachers in Milton. I am enclosing some samples from the instrument. Within a few days Miss Bates will make an appointment with you to discuss the possibility.

I am sure that you must be enjoying your work in Milton. I am sorry that my work is now such that our paths do not cross as they once did. My very best wishes to you.

Sincerely yours,

W. Linwood Chase
Professor of Education

Enc. 1

SEMINAR ON ELEMENTARY ADMINISTRATION

THE FAMILIARITY OF THE PUBLIC SCHOOL TEACHER WITH SCHOOL LAW. (Thesis Check List)

INTRODUCTION:

One characteristic of a profession is that its legal status is defined by state law. This is done because of the profession's importance to the welfare of the people and to the state. It is thus acknowledged that teachers are distinguished by preparation, experience and personal qualifications, and so granted certain rights and privileges which in return, require an awareness of these legal principles and the obligations we, as teachers, have to society.

*The questions in this instrument are merely a means of bringing to light some of the most commonly recurring questions that rise up to plague teachers and in so doing put forth for our consideration the complexities of the law and the reasoning behind it. This is not intended to be an exhaustive treatment and may only scratch the surface as it deals solely with situations involving the elementary school teacher and his/her pupils.

Every effort has been made to frame the questions so that your answer may be given quickly and easily. It will be appreciated if you do not discuss these questions with other members of your faculties until all are answered, as such discussion may cancel out the usefulness of this instrument, should it be distributed throughout your school system.

Thank you.

*All questions contained herein refer to the law as it stands in the state of Massachusetts.

REVISED SURVEY QUESTIONNAIRE:

PLACE A CHECK BESIDE THE ANSWER YOU FEEL IS CORRECT FOR EACH OF THE FOLLOWING:

1. Teachers and administrators in the public schools are classed as:
 - a) public employees
 - b) public officers

2. If a teacher is dismissed because of bias on the part of a School Committee member, he or she may:
 - a) have the case reviewed by the Commissioner of Education
 - b) take the case directly into court.
 - c) have no recourse because the decision of the Committee is final.

3. If a tenure teacher refuses to answer questions concerning his/her relationship with the Communist Party on the grounds that it may tend to incriminate him/her, the School Board may dismiss him/her:
 - a) because membership in a subversive organization is now legal grounds for dismissal.
 - b) may not dismiss him/her, as we all have the constitutional right to invoke the Fifth Amendment.
 - c) may not dismiss him/her, as it is not a crime to belong to the Communist Party.

4. The "Save Harmless" statutes, as incorporated into the laws of New York, New Jersey and Wyoming, would:
 - a) be most beneficial in Massachusetts.
 - b) encourage negligence on the part of teachers.
 - c) be of little value in Massachusetts.

5. When a child is injured on the playground, and the teacher on duty allows him/her to continue bleeding without applying First Aid or allowing it to be applied, because she knows the child to be a Christian Scientist whose parents object to treatment due to their strong belief in Faith Healing:
 - a) in the absence of doctor or nurse the teacher owes her charges the duty of First-Aid care and so refusing it could be held liable for negligence.
 - b) the teacher is not negligent because at no time should a teacher attempt medical treatment of a child.
 - c) the teacher will receive no blame as the wishes of the parents come first.

6. According to statute, a School Board is liable for injuries to pupils and personnel, resulting from faulty construction or poor repair:
 - a) in every state.
 - b) in no state.
 - c) in Massachusetts only.

7. The most prolific source of school litigation has always been:
 - a) excessive punishment.
 - b) retirement laws.
 - c) breaches of contract.
 - d) field trips.

8. When a teacher is negligent in the performance of his/her duties, the courts of Massachusetts will not hold him/her liable, because there is no liability in cases of:
 - a) malfeasance
 - b) misfeasance
 - c) nonfeasance

9. If a classroom teacher is assigned a student teacher and allows the student teacher to assume full control of the class for a definite period of time - and during that time an accident occurs in which one of the children is hurt:
 - a) the responsibility for that accident would be the classroom teacher's.
 - b) the responsibility in such a case would be the student teacher's.
 - c) the responsibility in such a case would be the principal's.

10. As the law stands today, in Massachusetts, your teaching certificate:
 - a) depends upon periodic renewals.
 - b) is capable of expiring from non-use.
 - c) is valid for life.

11. Your teaching contract is valid:
 - a) only if it is in writing.
 - b) with just a verbal agreement.
 - c) either verbally or in writing.

12. In Massachusetts, a case came before the courts wherein a teacher sued for breach of contract as he/she had received a salary schedule for the ensuing year. In your opinion, the salary schedule received:
 - a) acted as a bona fide contract with the teacher in question.
 - b) could not be considered in any way as a contract.
 - c) had no binding effect on either the teacher or the School Board employing her/him.

13. A citation, in the legal sense, is a:
 - a) warning
 - b) commendation
 - c) reference to books.

14. Common law refers to:
 - a) usages and customs.
 - b) laws enacted by legislatures.
 - c) laws for the common people.

15. Expulsion from school for refusal to salute the American flag for religious objections:
 - a) was legal until 1943
 - b) is legal since 1943.
 - c) was never legal.

16. Since June, 1957, it is a law that women teachers are to be paid at the same rate as men teachers, if they have the same training and are doing the same work. Because of this:
 - a) it is illegal for towns to pay teachers according to the number of their dependents.
 - b) if towns pay both men and women teachers according to the number of dependents, it is legal.
 - c) it is illegal to pay in such a manner as it is discriminatory.

17. When a child is injured on a field trip:
- a) the teacher is absolutely liable as field trips are not a "must" and the teacher assumes full responsibility when he/she takes a class out of the school building.
 - b) the teacher is not always liable as her/his duty is only that of adequate supervision.
 - c) the teacher is not liable - the parent relieves him/her of responsibility by signing a permission slip for the child to go on the field trip.
18. If parents come into a school for "relief" positions on a volunteer basis so as to free the teachers for actual teaching:
- a) the fact that they are in the schools on a volunteer basis in itself frees them from any liability they might incur due to inadequate supervision or the like.
 - b) because they assume the position, voluntarily or not, they also assume the responsibilities attached to it.
 - c) they (the parents) cannot be held responsible as whatever happens during their period of supervision can be classed as either a "pure" accident or something due to contributory negligence.
19. Admission to the public schools:
- a) is the right of every citizen.
 - b) is a federal constitutional right.
 - c) is every child's natural right.
 - d) is a duty and a privilege.
20. When a child's parents are living separately, without a legal separation and the child is living with the mother:
- a) his legal place of residence is where his father lives.
 - b) his legal place of residence is where his mother lives.
 - c) he has no legal place of residence.
21. In Massachusetts, teachers not on tenure:
- a) may be dismissed without a cause and without a hearing.
 - b) must be given cause but no hearing.
 - c) are legally entitled to both cause and hearing.
22. In Massachusetts, the "permanent tenure" laws:
- a) are for the protection of those who make teaching a life work.
 - b) are a contract protected by the Contract Clause of the Federal Constitution.
 - c) may be changed if the interests of the state so dictate.
23. You are assumed to have had your contract renewed for the following year if you are not notified to the contrary by the previous:
- a) March 1st.
 - b) April 1st.
 - c) May 1st.
24. If a child is injured during school time, while outside the school doing an errand for the teacher, the teacher:
- a) may be held liable for damages as children should never be out of the sight of the teacher.
 - b) will not be held responsible since if the child is old enough to attend school, he/she is old enough to do an errand.
 - c) will only be held responsible if the child is under seven years of age.

25. Ultra vires actions are:
- a) acts against lawful authority.
 - b) acts beyond the scope of authority.
 - c) legal acts.
26. If, on a school day, a youngster climbs a fence separating the school yard from a pond -- even though he has been warned by both his parents and school authorities that the pond is deep -- and in trying to retrieve his ball goes out beyond his depth and is drowned:
- a) the parents may collect damages for the death of the child as the pond is a hazard and should not have been right next to the school.
 - b) the parents may not collect damages as contributory negligence on the part of the child acts as a deterrent to recovery of damages.
 - c) the parents may collect damages as the teacher on duty at the recess time should have prevented the child from going over the fence.
27. In 1945, the parents of a six year old girl, killed by a car after alighting from a school bus, sued the bus driver and the School Board. The bus driver had stopped on the opposite side of the street from the little girl's home and allowed the child to cross alone in front of the bus. In doing so, she was killed instantly when struck by an oncoming car. Should a similar situation arise in Massachusetts:
- a) there would be no liability and therefore no judgment would be rendered.
 - b) there would be no liability on the part of the School Board, but definitely liability on the part of the bus driver.
 - c) both School Board and bus driver would be found guilty and required to pay damages for the death of the child.
28. When a pupil of school age is expelled from school for serious violations of school law, he must:
- a) stay at home in the care of his parent or guardian.
 - b) go to work.
 - c) attend a private school.
29. When a parent refuses to have his child vaccinated, the School Board:
- a) may legally exclude the child until vaccinated.
 - b) may have the child vaccinated by the School Doctor without the consent of the parents.
 - c) may not exclude the child as the parent has the full say over the child's health and medical care.
30. If a policeman comes to the school and asks to take a child to the station for questioning:
- a) the teacher or principal must release the child as the policeman represents the law.
 - b) the child is not to be released until his/her parents are contacted.
 - c) the child is not to be released until after school and the policeman must go to the child's house to seek him/her.
31. If a pupil in the kindergarten gets off the bus at the wrong stop (school bus, that is) gets lost, and becomes either physically or emotionally hurt as a result of this predicament, the teacher:
- a) can be held liable for negligence as she should make sure the child or the bus driver knows the correct stop for each child.
 - b) cannot be held liable as she is only responsible for them during the time she is with them.
 - c) may not be held liable as it would be the fault of the bus driver.

32. To accuse a teacher of never paying his bills on time:
- would be actionable in a court of law because you are defaming the character of a professional person.
 - would not be actionable because his private credit is unrelated to his professional ability.
 - would only be actionable if he was refused employment or advancement because of your remarks.
33. An unofficial derogatory statement made by one teacher about another:
- is actionable and suit may be easily brought for slander.
 - is only actionable if detrimental to the profession of the one criticized.
 - is actionable because of the profession of the one slandered.
34. Separate salary schedules for white and Negro teachers are forbidden in the:
- 10th Amendment.
 - 12th Amendment.
 - 14th Amendment.
35. "Incompetency" as used in the tenure law means:
- lack of educational qualifications.
 - inability to control a class.
 - any reason that prevents performance of duties -- including maternity leave and prolonged illness.
36. A teacher may be discharged for:
- participating in any political activity.
 - bringing political activity into the classroom.
 - actively campaigning against a school-board member up for re-election.
37. To prevent discharge, a teacher must:
- obey all rules and regulations of the School Board, present and future.
 - obey the rules and regulations that were in effect at the time his/her contract was signed.
 - obey only those regulations he/she feels to be reasonable and just.
38. A sabbatical leave, for study, is the privilege of ever teacher after seven years of service:
- in every state.
 - in Maine, Massachusetts, and California, only.
 - in some states, but not all.
39. If your teaching contract calls for 30 days notice upon resignation:
- you may resign on shorter notice for professional improvement.
 - you may resign with no claim to references.
 - your resignation need not be accepted thus prohibiting you from entering into another contract in that time.
40. In March of 1957 (March 15th, to be exact) a statute was added to the law of Massachusetts, and this statute says:
- teachers may never see the contents of their personal folders that are kept in the central office and serve as a record of their ability or lack of ability as a teacher.
 - teachers may inspect the contents of such folders if they so ask.
 - teachers may inspect the contents if they request it in writing and do not remove same from the office.