

## BOARD OF CONTROL

### CHAPTER 61.

[S. B. No. 197—Joint Educational Committee]

#### NORMAL SCHOOLS.

AN ACT to Provide for a State Board of Normal School Trustees, the Organization, Meetings and Compensation of Such Board and the Purpose, Maintenance and Government of the Normal Schools of the State, and Repealing Sections 1074 to 1091, Inclusive, of the Revised Codes of North Dakota of 1905, as Amended by Chapters 100 and 240 of the Session Laws of North Dakota of 1907, Relating to Normal Schools.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. SCHOOLS DESIGNATED.] The normal schools established and located at Valley City in the county of Barnes and Mayville in the county of Traill, the normal school authorized and located at Minot in the county of Ward, and any other normal schools as they may hereafter be established and located, shall be the normal schools of the state.

§ 2. PURPOSE OF SCHOOLS.] The purpose of the state normal schools shall be to prepare teachers in the science of education and the art of teaching for the public schools of the state. Said schools shall in all things be free from political and sectarian control.

§ 3. INTEREST AND INCOME.] All proceeds accumulating in the interest and income fund arising from the sale or rental of the lands granted or hereafter to be granted by the state for any of the several normal schools are hereby pledged for the establishment and maintenance of such schools.

§ 4. SEPARATE FUNDS.] All moneys arising from interest and income, appropriation, and taxation, or in any other manner, and belonging to any of the several schools, shall be deposited with the state treasurer and kept by him in separate funds to be known by the names of the different schools to which they belong and to be used exclusively for the benefit of such schools.

§ 5. GOVERNMENT AND CONTROL.] The government and control of the state normal schools shall be vested in a board of trustees to be known as the state board of normal school trustees.

§ 6. CONSTITUTION OF BOARD.] The board of trustees shall consist of one member for each school who shall reside within the vicinity of such school, of three members from the state at

large, and of the superintendent of public instruction, provided that no two members shall be from the same county and that the superintendent of public instruction shall be ex-officio president of the board.

§ 7. APPOINTMENT AND TERM.] The governor shall by and with the advice and consent of the senate appoint during the twelfth legislative assembly the members for the three schools now in existence or authorized and the three members at large, all of whom as well as the superintendent of public instruction, shall hold office on the board of trustees from the first Tuesday in April of the year nineteen hundred and eleven; provided that two of the members for the three schools now in existence or authorized and one of the members at large shall be appointed for a term of two years, that one of the members for the three schools now in existence or authorized and two of the members at large shall be appointed for a term of four years, that as additional schools may be established, their first resident members shall be appointed for terms of either two or four years as may be necessary to keep the board as evenly divided as possible at the regular times of appointment between new and holdover members, and that all other appointments, except those to fill out unexpired terms which the governor shall also make, shall be for the regular term of four years.

§ 8. WHAT EVIDENCE ADMISSIBLE. IMMUNITY FROM PROSECUTION.] shall cause to be issued to each of the appointive members of the board a commission under the great seal of the state. A majority of the entire membership of the board shall constitute a quorum for the transaction of business. The board shall elect a secretary from among the members at large of the board.

§ 9. MEETINGS AND COMPENSATION.] The board shall hold an annual meeting in June and shall hold other regular meetings monthly, excepting in the discretion of the board for July, August, and September, and all such meetings, including the annual meeting, shall be held at one of the normal schools or at the capitol of the state. The board may hold at its discretion special meetings, of which due notice stating the special purpose shall be given, and which may be held at any place within the state, but it shall not meet to exceed fifteen times a year. The members, except the superintendent of public instruction who shall receive only his actual and necessary expenses, shall receive three dollars for each day employed and the actual and necessary expenses incurred, in attending the meetings of the board and in the performance of all duties connected therewith, which per diem and expenses shall be paid out of the state treasury upon the voucher of the board as provided by law.

§ 10. MONEYS, GROUNDS, BUILDINGS AND EXPENSES.] The board shall direct the disposition of all moneys arising from interest

and income, appropriation, and taxation, or in any other manner, and belonging to the different schools. It shall have supervision and control of the grounds, buildings and equipment of the different schools, including all care and construction, and all expenses incurred therewith and under the direction of the board shall be audited and allowed by the board.

§ 11. FACULTIES AND EMPLOYEES.] The board shall elect the members of the faculties and engage the employees of the different schools, fix their salaries, prescribe their duties and for sufficient cause remove any of them at any time.

§ 12. RULES, INSPECTION AND COURSES OF STUDY.] The board shall make the necessary rules and regulations for its government and control of the normal schools and it shall, as a whole, or by committee, visit and inspect each school at least twice a year. It shall determine the yearly calendar and courses of study for the different schools, which courses of study shall be uniform for each of the several schools and embrace the academic and professional branches usually taught in state normal schools; provided that none of such courses of study shall extend more than two years beyond the course of study prescribed in a high school of the first class.

§ 13. FACULTIES AND RULES.] The faculty of each school shall consist of the president and the teachers. It shall make all needful rules and regulations for the immediate educational administration of the school, especially as relating to program, classification, attendance, discipline, instruction, morals, decorum, health, records, and other things pertaining to the welfare of the students.

§ 14. PRESIDENT, DUTIES, EXPENSES.] The president of each school shall be the chief executive of the school and shall see that all rules and regulations made by the board and the faculty are enforced. All teachers and employees of the school shall be under his supervision. He shall at such times as the board may designate, recommend, after careful investigation as to their qualifications, suitable persons for the various positions in the school. He may be the accounting officer and the purchasing agent for the school under such regulations as the board may make. He shall attend the meetings of the board of trustees, and at such meetings he shall have voice without vote. For attendance at such meetings he shall receive only actual and necessary expense, which shall be paid as herein provided for members of the board.

§ 15. PRESIDENT AND ANNUAL REPORT.] The president of each school shall make to the board at its annual June meeting, a complete report showing the condition of the school at the time and throughout the previous year, and containing recommendations of such things as the welfare of the school demands. The report shall contain a complete financial statement and informa-

tion concerning the various things pertaining to the welfare of students and as herein described.

§ 16. BOARD AND BIENNIAL REPORT.] The board shall make to the governor on or before the fifteenth day of October next preceding each biennial session of the legislature, a complete report based upon the annual reports of the presidents of the different schools for the two years previous.

§ 17. DIPLOMAS.] The board of trustees and the faculty of each school shall issue diplomas of appropriate grade to all persons completing any of the courses of study in the school, known to possess good moral character, and having met all other requirements made by the board and the faculty, which diplomas shall set forth the above mentioned facts and be designated state normal school diplomas.

§ 18. DIPLOMAS AS LICENSES.] All diplomas issued as herein described shall have value as teachers licenses according to the provisions of the certification laws of the state.

§ 19. REPEAL.] Sections 1074, 1075, 1076, 1077, 1078, 1079, 1080, 1081, 1082, 1083, 1084, 1085, 1086, 1087, 1088, 1089, 1090 and 1091 of the Revised Codes of North Dakota of 1905, as amended by chapters 100 and 240 of the Session Laws of North Dakota of 1907, are hereby repealed.

§ 20. EMERGENCY.] Whereas, an emergency exists in that if this act becomes a law it will become necessary for the board provided herein to be appointed by the governor with the advice and consent of the senate, therefore this act shall be in full force and effect upon its passage and approval.

Approved March 3, 1911.

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## CHAPTER 62.

[H. B. No. 271—Hoge.]

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### BOARD OF CONTROL.

AN ACT To Create a State Board of Control, and Provide for the Management and Control of the Charitable, Reformatory and Penal Institutions of the State, and to Make an Appropriation Therefor, and for the Defining of Certain Offenses and Providing Penalties Therefor.

*Be It Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. NOMINATION. TERM OF OFFICE. CONFIRMATION. SALARIES. REMOVAL. VACANCIES.] The governor shall, prior to the adjournment of the Twelfth Legislative Assembly, nominate and, with the consent of two-thirds of the members of the Senate in exe-

cutive session, appoint three electors of the state, two of whom shall be of the political party having a plurality, and one of the political party having the next highest number of members in the legislative assembly, and no two of whom shall reside at the time of their appointment in the same congressional district, after such district shall be defined, as members of a board to be known as a "board of control of state institutions." Said members shall hold office for a term of two years. Subsequent appointment shall be made as above provided, except to fill vacancies and shall be for a period of two years. The board shall at all times be subject to the above limitations and restrictions. No nomination shall be considered by the senate until the same shall have been referred to a committee of five, not more than three of whom shall belong to the same political party, to be appointed by the president of the senate without the formality of a motion, which committee shall report to the senate in executive session, which report shall be made at any time when called by the senate. The consideration of nominations by the senate shall not be had on the same legislative day the nominations are referred. The chairman of the board for each biennial period shall be the member whose term first expires and each member thereof shall receive a salary of three thousand dollars (\$3,000.00) per annum. The governor may remove any member of the board for malfeasance or nonfeasance in office or for any cause that renders him ineligible to appointment or incapable or unfit to discharge the duties of his office, and his removal when so made, shall be final.

§ 2. OATH, BOND, EXAMINATION. NOT EXCUSED FROM TESTIFYING.] Each member of the board shall take the oath, and qualify, as required by section 402, revised codes of 1905, and shall devote his whole time to the duties of his office. Before entering on the duties of his office, each member shall give an official bond of the sum of twenty-five thousand dollars (\$25,000.00) conditioned as provided by law, signed by sureties, to be approved by the governor as to the sufficiency of surety, and by the attorney general as to form, and when so approved, said bond shall be filed in the office of the secretary of state. No member of the board of control shall be eligible to any other lucrative office in the state during his term of service or for one year thereafter or to any position in any state institution during the term of which he was appointed, nor within one year after his term shall have expired. The said board of control shall be subject to the examination of the state auditing board. The claim that any testimony or evidence sought to be elicited or procured on such examination may tend to criminate the person giving or producing it, or expose to public ignominy, shall not excuse him from testifying or producing evidence, documentary or otherwise; but no person shall be prosecuted or subjected to penalty or forfeiture for and on account of any matter or thing concern-

ing which he may testify or produce such evidence, provided that he shall not be exempt from prosecution and punishment for perjury committed in so testifying.

§ 3. OFFICES. SECRETARY. SALARY. SUPPLIES.] The board shall be provided by the proper authorities with suitably furnished offices at the seat of government, and shall employ a competent secretary, who shall receive a salary not to exceed two thousand dollars (\$2,000.00) per annum, and may also hire a stenographer and such other employes as may be necessary to properly transact the business within the duties of said board with dispatch. The board shall, by the proper authorities, be also furnished with all necessary books, blanks, stationery, printing, postage stamps, and such other office supplies as are furnished other state officers. It shall present to each legislative assembly an itemized account of its expenditures, to the end that the legislature, may, for the future, fix the maximum amount of such expenditures.

§ 4. APPROPRIATION.] There is hereby appropriated from any funds in the state treasury not otherwise appropriated the sum of \$15,000.00 annually, or as much thereof as may be necessary to carry out the provisions of this act.

§ 5. TRAVELING EXPENSES. GOVERNOR'S APPROVAL.] In addition to the salaries paid the members of the board and the secretary, or other employees, they shall be entitled to the necessary traveling expenses, by the most convenient and practicable route, incurred in going from Bismarck to the different institutions, or to other places, in the state, when on official business.

No expenditure for traveling expenses to other states shall be made by the board, or by any officer or agent thereof, or by any officer, employee, or agent of any state institution under the control of this board, unless the authority to make such trip is granted at a meeting of the board of control upon a written resolution, adopted by the board, which shall state the purpose of such trip and the reason the same is deemed necessary. Said resolution, if adopted, shall then be submitted to the governor for his written approval, and if he does not approve the same such trip shall not be made at the expense of the state.

§ 6. ITEMIZED STATEMENT.] Before any expenses of the members of said board, any officer, or agent thereof, or before any expenses incurred by others under the direction of the board, or the expenses of any officer or any employe of any institution under the charge of the board, shall be paid, a minutely itemized statement of every item of expenditure shall be presented to the proper authority duly verified, which verification shall aver that the expense bill is just, accurate and true and is claimed for cash expenditures, or cash disbursements, truly and accurately made, or payment thereof shall not be made. The expense bills of the members of the board, the secretary and its other em-

ployees, when so verified, shall be presented to the state auditing board for their written audit, before payment is made. The salaries and such actual expenses of the board, and the secretary and other officers, and the salaries of employees, shall be paid monthly by the state treasurer, upon the warrant of the state auditor.

§ 7. OFFICIAL SEAL.] The board shall have an official seal, and every commission, order or other paper executed by the board may, under its direction, be attested with its seal affixed, by the secretary, or any member of the board.

§ 8. INSTITUTIONS UNDER CONTROL.] The board of control shall have full power to manage, control, and govern, subject only to the limitations contained in this act, the state hospital for the insane; the state penitentiary; the North Dakota blind asylum; the school for the deaf and dumb; the school for the feeble minded; the state reform school and such other charitable and reformatory and penal institutions as have been or may hereafter be created or established according to law. The board of control so appointed and qualified shall within ten days after their appointment establish an office in the state capitol building at Bismarck and shall thereafter have full access to all the state institutions, mentioned in this section and to all books, accounts, vouchers, supplies and equipments of each of said institutions for the purpose of familiarizing themselves with the conditions, needs and requirements thereof, and subject to the limitations in this act contained, the said board shall assume full control of said institutions on the first day of July A. D. 1911. Provided, however, that this act shall not apply to the Soldiers Home.

§ 9. POWERS. DUTIES. ANNUAL STATEMENT.] The board of trustees and commissioners now charged with the government of the institutions named in section eight hereof shall after the first day of July A. D. 1911, have no further legal existence, but all trustees now in the office shall continue in office until said date. The powers possessed by the boards of trustees with reference to the management and control of the state institutions named in section eight of this act, shall on the first day of July, A. D. 1911, cease to exist in such boards of trustees and shall become vested in the board of control; and the said board of control is, on the first day of July, 1911, without further process of law, authorized and directed to assume and exercise all the powers heretofore vested in or exercised by the several boards of trustees with reference to the several institutions of the state herein named. All duties imposed on the boards of trustees or any other governing body, by statute, to establish a uniform system of books and accounts for said state institutions, and to cause the same to be examined annually by a skilled accountant, and to annually require a settlement with the officers of each state institution, are transferred from such trustees or other governing bodies to the board of control as far as affecting the

institutions herein named. Nothing herein contained shall limit the general supervisory or examining powers vested in the governor by the laws or constitution of the state, or that are vested by the governor in any committee appointed by him.

The board shall prepare annually for publication a statement of the cost for the preceding year of maintaining each of said institutions including improvements, itemized so far as practicable, and so arranged as to show the cost of the various kinds of provisions, supplies and other expenditures, separately.

§ 10. INVESTIGATION. WITNESSES. CONTEMPT OF COURT.] It shall be the duty of the said board, or a committee thereof, to visit and inspect at least once in six months, the institutions named, and investigate the financial condition and management of such institutions; and in aid of any investigation the board shall have the power to summon and compel the attendance of witnesses; to examine the same under oath, which any member thereof shall have the power to administer; and shall have access to all books, accounts, papers and property, material to such investigation, and may order the production of any other books or papers material thereto. Witnesses other than those in the employ of the state shall be entitled to the same fees as in civil cases in the district court. The claim that any testimony or evidence sought to be elicited or produced on such examination may tend to criminate the person giving or producing it, or expose him to public ignominy, shall not excuse him from testifying or producing evidence, documentary or otherwise; but no person shall be prosecuted or subjected to any penalty or forfeiture for and on account of any matter or thing concerning which he may testify or produce such evidence; provided, that he shall not be exempted from prosecution and punishment for perjury committed in so testifying, and it shall be the duty of the board to cause the testimony so taken to be transcribed and filed in the office of the secretary of the board at the seat of government within ten days after the same is taken, or as soon thereafter as practicable and when so filed the same shall be open for inspection of any person. Any person failing or refusing to obey the orders of the board issued under the provisions of this section, or to give or produce evidence when required, shall be reported by the board to the district court or any judge thereof, and shall be dealt with by the court or judge as for contempt of court.

§ 11. MONTHLY VISITATION. MAY APPOINT A WOMAN. EXAMINE ACCOUNTS.] The board, by a committee, or its secretary shall visit the hospital for the insane once each month and in making such visits shall examine the accounts of the steward and certify their approval on the same page with the monthly balance and shall be vested with and exercise the powers and functions now granted any visiting committee or board to such hospitals except that the discharge of employees for cause shall be left with



the superintendent as hereinafter provided. If the board deem it prudent, it may appoint a woman, whose duty it shall be to visit such hospital, when directed by the board, and to report to the board, and who shall be paid three dollars (\$3.00) per diem and mileage at the rate of 5 cents per mile, from the funds of the institution visited, with proper audit of the bill for such services and expenses by the board, in the manner provided for payment of current expenses of institutions.

§ 12. BIENNIAL REPORT.] The board shall make its biennial reports to the governor of its observations and conclusions respecting each and all of the institutions named in section eight of this act, covering the biennial period ending June the 30th, preceding the regular session of the legislative assembly. Said biennial report shall be made not later than October 15th in the year preceding the meeting of the legislative assembly, and shall also contain the reports which the executive officers of the several institutions are now or may be by the board required to make, also a statement of visitations to the several institutions, when and by whom made.

§ 13. BOOKS AND ACCOUNTS.] It shall keep at its office a proper and complete system of books and accounts with each institution, which shall show every expenditure authorized and made thereat, and said book shall exhibit an account of each extraordinary or special appropriation made by the legislature, with each item of expenditure thereof.

§ 14. UNIFORM SYSTEM OF RECORDS AND ACCOUNTS. EXPERT HELP.] It shall prescribe the forms of records and the kind of accounts to be made and kept by the institutions heretofore specified. In providing for the books of accounts the said board shall establish as uniform a system as possible, compelling similar institutions to keep similar books in the financial operations of such institutions; and the board shall institute and require the keeping of a perfected system of accounts, and requisitions showing the purchase, storing and consumption of supplies for subsistence, construction or other purposes. The board shall, within six months after the passage of this act, determine the kinds and qualities of provisions and supplies for the several institutions subject to its charge.

§ 15. BIENNIAL ESTIMATES OF SPECIAL APPROPRIATION.] It shall prepare for the use of the legislature, biennial estimates of appropriations necessary and proper to be made for the support of the said several institutions, and for the extraordinary and special expenditures for buildings, betterments or other improvements.

§ 16. SUGGESTIONS FOR LEGISLATION.] The board shall incorporate in its biennial report required by section twelve of this act, suggestions to the legislature, respecting legislation for the benefit of the several institutions, or for the dependent, defective

or criminal classes of the state. The board and its secretary shall on request, attend the meetings of legislative committees to which such questions may be submitted for consideration, and furnish such committees such information in regard to its doings and the conduct of such institutions as may be demanded.

§ 17. PLANS AND SPECIFICATIONS. LIMITED TO AMOUNT OF APPROPRIATION. PENALTY.] It shall prepare plans for all betterments, improvements or buildings costing more than one thousand dollars (\$1,000.00) for which it may recommend an appropriation. But when an appropriation for any amount has been made, there shall be no expenditure thereof until the board has secured suitable plans and specifications prepared by a competent architect, and accompanied by a detailed statement of the amount, quality and description of all the material and labor required for the completion of said structure; and no plan or plans shall be adopted, and no betterments, improvements or buildings constructed, that contemplate the expenditure of more money for completion than the amount appropriated by the legislature therefor, unless exempted from the provisions of this section by the act making such appropriation. In no event shall the board direct or permit an expenditure for any purpose in excess of the amount appropriated by law, or contemplated by the statute, and the members of said board, its officers and agents, are not subject to the provisions of section 9101, 9102, 9103 and 9104, revised codes of 1905, but any violation of the provisions of either of the said sections of the code above named by any member of said board, its officers or agents, shall be deemed a misdemeanor and on conviction the offender shall be fined in any sum not less than two hundred dollars (\$200.00) nor more than five thousand dollars (\$5,000.00) in the discretion of the court, or imprisoned in the county jail not exceeding one year, or by both such fine and imprisonment.

§ 18. REPORT TO GOVERNOR.] It shall investigate and report to the governor any abuses or wrongs alleged to exist in the state institutions referred to in this act.

§ 19. WHAT TO INSPECT.] The board or any member thereof at the stated visits to any of the institutions under its control shall inspect every part of each institution, and all the places, buildings and grounds belonging thereto, or used in connection therewith. They shall make an examination of the general and special dietary, the stores, and methods of supply; as far as circumstances may permit, they shall see every inmate of the charitable institutions, especially those admitted since the preceding visit, and shall give such as may require it, suitable opportunity to converse with the members of the board apart from the officers and attendants. They shall, if deemed necessary, examine under oath the officers and attendants, guards and other employees, and make such inquiries as will determine their fitness for their respective duties.

§ 20. RECOMMENDATIONS. QUARTERLY CONFERENCES.] The board shall, during the first six months after its creation, meet in conference as often as it may determine, the superintendents, wardens and other executive officers of each of the said institutions, or as many thereof as it deems practicable, and consider in detail all questions of management and the methods to be adopted to secure the economical management of the several institutions, as it may deem necessary or advisable, and the board is vested with power to enforce such recommendations and directions. After six months from the creation of the board, a consultation and conference of the superintendents, wardens and chief executive officers shall be held quarterly with the board at its office in Bismarck at a time to be designated by the board, at which meeting all matters concerning the government and management of the institutions shall be considered and discussed, and the chairman of the board of control shall preside at such meetings, and full minutes thereof shall be preserved by the secretary of such board, who shall be secretary of said meeting.

§ 21. RECORD. TRANSFER. MANAGING OFFICER.] The board shall keep in its office accessible only to the members, secretary and proper clerks, except by the consent of the board, or on the order of a judge or court of record, a record showing the residence, sex, age, nativity, occupation, religion, civil condition and date of entrance or commitment of every person, patient, inmate, or convict in the several institutions governed by the board, the date of discharge of every such person from the institution, and whether such discharge was final, and the condition of the person at the time he left the institution. The record shall also indicate if a person is transferred from one institution to another, and to what institution; and if dead, the date and cause of death. This information shall be furnished to the board by the several institutions, and such other obtainable facts as the board may from time to time require. It is the duty of a managing officer of each institution, who shall be appointed by the board, within ten days after the commitment or entrance of a person, patient, inmate or convict to the institution, to cause a true copy of his entrance record to be made and forwarded to the office of the board of control. When a patient or inmate leaves, or is discharged, transferred, or dies in any institution, the superintendent or person in charge shall, within ten days thereafter, send such information to the office of the board, all of which information shall be furnished on forms which the board may prescribe.

§ 22. STATE ARCHITECT.] The board may, if deemed advisable and expedient for the best interest of the state, employ an architect who shall be skilled in the most improved methods of sanitation, and competent to prepare plans, specifications, estimates and details for the buildings, betterments, and every item or equipment which may be necessary in any of the institutions,

whose duty shall be to perform the work usually done by architects in preparing plans and specifications. Said architect shall also perform such other labor as may be designated by the board, and shall receive a compensation to be by the board fixed, which, including expenses, shall in no event exceed one thousand five hundred dollars (\$1,500.00) per annum. In cases of sufficient magnitude, the board may secure the advice of a consulting architect, or secure additional skilled assistant before the adoption of the plans of the state architect, but the expense thereof shall not exceed five hundred dollars (\$500.00) in any one year.

§ 23. INSTITUTION OFFICERS. TERM OF OFFICE. REMOVAL. QUALIFICATIONS.] It shall be the duty of the board to appoint a superintendent, warden, or other chief executive officer of each institution under the control of the board. The tenure of office of said officers shall be two years from the date of their appointment, and the superintendent, warden, or other chief executive officer now in charge of the several institutions placed under the control of this board and who is now holding under an election, appointment or contract for a definite term except the local treasurers, shall continue in office until the expiration of such term or contract, all other offices shall be filled by appointment by said board. The superintendent, warden or other chief executive officer of any of the institutions named, may be removed by the board for misconduct, neglect of duty, incompetency or other proper cause, showing his inability or refusal to properly perform the duties of his office, but such removal shall be had only after an opportunity is given such person to be heard before such board upon preferred written charges, but the removal, when made, shall be final. The officers of the several institutions shall have the qualifications and perform the duties now imposed and required by them by the statute, except as the same are modified or abrogated in this act. In case there is an alleged or seeming conflict between the powers of the superintendents or other executive officers and the board of control, the determination of such question by the board shall be final.

§ 24. POWER TO INVESTIGATE QUESTION OF INSANITY.] The board shall have the power to investigate the question of insanity and condition of any person committed to any state hospital, and shall discharge any person so committed or restrained, if, in its opinion, such person is not insane, or can be cared for after such discharge without danger to others, and with benefit to the patient, but in determining whether such patient shall be discharged, the recommendation of the superintendent of such hospital shall be secured. The granting of this power to the board to serve as a commission for the determination of the insanity of a person is merely permissive, and does not repeal or alter

any statute respecting the discharge or commitment of inmates to state hospitals.

§ 25. COLLECTION OF INFORMATION. BULLETINS. FORMS.] The board shall gather and present information embodying the experience of charitable, reformatory and penal institutions, in this and other countries, regarding the best and most successful methods of caring for the insane, delinquent and criminal classes. And it shall encourage and urge the scientific investigation of the treatment of insanity and epilepsy by the medical staff of the insane hospital, and the institution for the feeble minded, and shall publish, from time to time, bulletins, and reports of the scientific and clinical work now done in said institutions or which it may require to be done therein. It shall also provide for the several institutions the forms for statistical returns to be made by them in their annual and other reports.

§ 26. INSANE PATIENTS, RESIDENCE UNKNOWN.] Before the county authorities shall send to a hospital for the insane a patient whose residence is unknown, and whose maintenance is charged to the state, such authorities shall notify the board, which shall immediately inquire as to the residence of such person, and the propriety of his commitment to the state hospital. If the residence of said person is found to be in another state or country, the board shall see that he is sent to his residence, or, if he is to be confined in the state hospital, the board shall direct an attendant from the hospital to convey the patient thereto. No patient to be maintained at state expense shall be received at the state hospital without the formal order of the board of control.

§ 27. QUESTIONABLE COMMITMENT.] The superintendents for the hospital for the insane and the institution for the feeble minded are required to immediately notify the board if there is any question as to the propriety of the commitment or detention of any person received at such institution, and said board, upon such notification, shall inquire into the matter presented, and take such action as may be deemed proper in the premises.

§ 28. PROTECTION AGAINST FIRE. MEANS OF ESCAPE.] It shall be the duty of the board to compel the superintendent, warden or other chief executive officer of each of the institutions under the control of the board, to provide at each institution, adequate and ready means of protection against fire, and to construct proper means of escape for the inmates and attendants where the same are not already constructed, and to establish and enforce rigid rules and regulations, by which the danger of fire shall be minimized, and prevent as far as possible, injury to the persons of inmates, and loss or destruction, by any cause, of the property of the state.

§ 29. OFFICIAL BONDS.] It shall be the duty of the board of control to require its secretary and each officer and employe of said board and of every institution under its control, who may

be charged with the custody or control of any money or property belonging to the state, and who is not now required by the statute to give bond, to give an official bond, properly conditioned, and signed by sufficient sureties, in a sum to be fixed by the board, which bond shall be approved by the board, and filed in the office of the secretary of state.

§ 30. INVENTORY OF STOCKS AND SUPPLIES.] The board shall require within thirty days after its organization and on July 1st and January 1st, of each year thereafter, the chief executive officer of each institution under its charge to make a complete, minute and accurate inventory of the stock and supplies on hand, the amount and value thereof, which inventory shall be under the following heads: live stock, produce of the farm on hand, carriages and vehicles, agricultural implements, machinery, mechanical fixtures, real estate, beds and bedding in inmates department, other furniture in inmates department, personal property of the state in superintendent's department, ready made clothing, dry goods, provisions and groceries, drugs and medicines, fuel, library and all other property under such other heads as the board may deem proper. A like inventory shall be submitted by the proper officer of each institution to the board when the semi-annual report of said officer is submitted to the board.

§ 31. GIFTS OR GRATUITIES. PENALTIES.] No member of the board of control, or officer, agent or employee thereof, and no superintendent, officer, manager or employe of any of the institutions under the charge and control of said board shall directly or indirectly, for himself or any other person or for any institution under the charge of said board, receive or accept any gift or gratuity from any person or persons, firm or corporation, who are dealers in goods, merchandise or supplies which may be used in any of said institutions, or from any employe, servant or agent of such person or persons, firm or corporation. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction be punished as provided in section 9103, revised codes, 1905, and such violation shall be cause for his removal from office.

§ 32. CONTENTS OF BIENNIAL REPORT, DAILY RECORD.] The board shall publish in its biennial report to the legislature the name and salary of every employe of said board, the name and salary of each officer and employe in the several institutions subject to its control. It shall be the further duty of the board to require the proper officer of each institution to keep in a book prepared for the purpose, a daily record, to be made each day, of the time and number of hours of service of each employe, and the monthly pay roll shall be made from such time book, and shall be in accord therewith. When an appropriation is based on the number of inmates in or persons at an institution, the board shall require

a daily record to be kept of the persons actually residing at and domiciled in such institutions.

§ 33. POLITICAL INFLUENCE OR CONTRIBUTION PROHIBITED.] Any member or officer of the board of control, or any officer or employe of a state institution subject to this board who, by solicitation or otherwise, exerts his influence directly or indirectly, to induce other officers or employes of the state to adopt his political views, or to favor any particular person or candidate for office, or who shall in any manner contribute money or other thing of value to any person for election purposes, shall be removed from his office or position by the proper authorities.

§ 34. ASSISTANTS, DISCHARGED.] The superintendent, warden, or other chief executive officer of the several institutions, shall appoint all assistants, guards and employes required in the management of the institution, the number of whom shall be determined by the board. It is hereby declared a misdemeanor for the members of the board, or any officer thereof, to exert any influence, by solicitation or otherwise, on the managing officer of an institution in the selection of any employe or assistant. The said chief executive officer may at his pleasure discharge any person employed, but shall keep in the record of employes the date of such discharge, and shall place opposite his name the reason therefor.

§ 35. INSTITUTIONS SALARIES.] The board shall, prior to July 1st, 1911, and annually thereafter, fix, with the written approval of the governor, the annual or monthly salaries of all the officers and employes in the several institutions, except such as are fixed by the legislative assembly. The board shall classify the officers and employes into grades and the salaries and wages to be paid in each grade shall be uniform in similar institutions in this state. The schedule of wages so fixed shall become operative on July 1st of each year. Provided, however, that the salaries of officers and employes of said state institutions, except the local treasurers thereof, who are now holding for a definite term, and a salary fixed by law or by contract according to law shall remain the same until the expiration of such term. The salaries and wages shall be included in the monthly estimates as hereinafter provided, and paid in the same manner as other expenses of the several institutions. Officers entitled to food supplies for their families shall receive such allowance from the supplies furnished for the patients and inmates of the institution. The word "family" shall be construed to mean only the wife and minor children of an officer.

§ 36. LOCAL TREASURER ABOLISHED.] The treasurers of the institutions placed under the management of the board of control will be relieved of their duties, and all such offices will be abolished on July 1st, 1911. Such local treasurers shall account to the proper authorities, for all moneys, books, records, vouchers

or other evidence of property belonging to his office, and in his possession. It shall be the duty of the state treasurer to receive all moneys and evidence of indebtedness in the hands of said treasurer, and a failure on the part of any such local treasurer to properly account to the state treasurer on July 1, 1911, without further process of law, shall be by the said state treasurer immediately reported to the attorney general for such action as may be proper in the premises.

§ 37. **MONEYS REMITTED TO STATE TREASURER.]** All moneys belonging to the state, derived from any source at any of the institutions under the control of this board, accounted for and remitted to the state treasurer on the first day of each month, and all funds for necessary expenditures of such institutions shall be drawn from the state treasury as provided by this act.

§ 38. **TRIPPLICATE ESTIMATES, REVISION. PURCHASE OF SUPPLIES.]** The superintendent, warden or other chief executive officer, as may be designated by the board of control, shall, on or before the fifteenth day of February, May, August and November cause to be prepared triplicate estimates in minute detail, including estimated cost of each item, of all the expenditures required for the institution for the ensuing quarterly period beginning on the 1st day of January, April, July and October. Such estimates shall also include a statement of the source and amount of all the revenues received by the said institution and accounted for to the state treasurer on the first day of each month. Two of said triplicate estimates shall be sent to the officer of the board and the third shall be kept by said superintendent, warden, or other chief executive officer. The board may revise the estimates for supplies or other expenditures, either as to quantity, quality or the estimated cost thereof, and shall certify that it has carefully examined the same, and that the articles contained in such estimate, as approved or revised by it, are actually required for the use of said institution. When the estimates have been so certified and revised, a copy of such revised estimate, duly certified shall be sent to the institution, and another copy retained by the board. The certified copy sent to the institution shall be sufficient authority to the management of the institution to purchase the supplies enumerated in said estimate, at prices not to exceed those therein named, and not otherwise. Said supplies shall be so purchased as to permit at least thirty days time to pay therefor, and the steward, clerk or other officer of the institution designated by the board, shall require itemized bills to be rendered by the person who furnished supplies, in duplicate, for all purchases, whether made upon contract or otherwise, which shall be in the following form:  
The State of North Dakota, on account of the.....  
institution (date)

To.....Dr. (here insert an itemized  
account of goods or property purchased).



The State of..... }  
 County of..... } ss :

I, ....., on oath, say that the foregoing bill of account is correct and just, and wholly unpaid; that the exact consideration therein charged for was received by the said institution; that neither the same nor any part thereof have since been commuted, and that neither bonus, commission or discount, nor any other consideration, directly or indirectly has been given or stipulated within my knowledge or belief, because of the purchase thereof, as herein set forth, or for any other reason. (To be signed by the person having personal knowledge of the facts herein set forth).

Sworn to and subscribed before me this.....day of .....

I hereby certify that the above account is correct, and that the articles therein charged have been received in good order by the.....institution.

Steward, clerk or other designated officer.

It shall be endorsed as follows:

No..... Institution \$.....

Passed upon by the board of control on the.....  
 day of....., and ordered paid.

Secretary of the Board of Control.

§ 39. MONTHLY STATEMENT. AFFIDAVIT.] The steward, clerk or other officer, who may be designated by the board, shall prepare a monthly statement showing purchases and expenditures of every kind for the preceding month, which shall be signed by such officer, approved by the chief executive officer of the institution, and filed with the board on a day certain to be fixed by said board. Attached thereto shall be the affidavit of such steward, clerk or officer, as the case may be, stating that the goods and other articles therein specified were purchased and received by him or under his direction at the institution, and were purchased at a fair, cash market price, on credit not exceeding thirty days, and that neither he nor any person in his behalf had any pecuniary or other interest in the purchases made, or receive-

ed any pecuniary or other benefit therefrom, directly or indirectly, by commission, percentage, deductions, or in any other manner whatever, and that the articles contained in such bill conformed in all respects to the invoiced goods received and ordered by by him, or the samples from which the goods were purchased, both in quality and quantity. If any invoice or statement, or any part thereof, is found objectionable, the board shall endorse its disapproval thereon, with its reasons therefor, and return it to the management of the institution, and when the matter complained of is corrected, said statement and invoice shall be returned to the board.

§ 40. PAY ROLL. TRIPPLICATE ABSTRACT. STATE TREASURER.] When the monthly statement is so made, provided and verified, it shall be forwarded to the board of control, together with the original invoices of the purchases and a complete and itemized statement of every expense of said institution, including the receipted payroll, for the examination and audit of the board, which board shall fix the regular time for the auditing of the accounts of the institution for the preceding month. The monthly payroll of each institution shall show the names of each officer and employe, when first employed, the monthly pay, time paid for, the amount of pay, and any deductions for the careless loss or destruction of property. This requirement shall be observed in all cases, and in no event shall a substitute be permitted to receive compensation in the name of the employe for whom he is acting. When the said accounts are audited, the secretary of the board of control shall, under the seal of the board, prepare in triplicate, an abstract showing the name, residence and amount due each claimant, and the institution and the fund thereof on account of which the payment is made. He shall deliver one copy thereof to the state auditor, another to the state treasurer and the third shall be retained in the office of the board. Upon such certificate the state auditor shall, if the institution named has sufficient funds, issue his warrant upon the state treasurer for the gross amount as shown by such certified abstract. The state auditor, upon being furnished by the board with a certified copy of such abstract as herein provided, shall send checks on the state treasurer to the several persons for the amounts of their respective claims, as certified by the board of control. The state treasurer shall preserve in his books a record of each check and remittance in the proper manner, showing the date of the issuance of each check, the name of the person to whom it was made payable, and such other data as may be evidence for the state, showing the payment of such indebtedness. The payroll of each institution can be paid by a single check, sent to the steward, clerk or other officer designated by the board of control. If the state treasurer shall require more clerical help because of this enactment, the state auditing board may authorize him to employ an assistant.

§ 41. CONTINGENT FUND.] The board of control may permit a contingent fund, not to exceed in any institution three thousand dollars (\$3,000.00) to remain in the hands of the managing officer of such institution, from which expenditures may be made in case of actual emergency requiring immediate action to prevent loss or danger to the institution or the inmates thereof.

A full, minute and itemized statement of every expenditure made during the month from such fund, shall be submitted by the proper officer of said institution to the board, under such rules and regulations as may be by said board established. If necessary, the board shall make proper requisition upon the state auditor for a warrant on the state treasurer to secure the said contingent fund for each institution.

§ 42. BLANKS AND FORMS.] The board of control shall formulate and furnish to each institution, proper blanks and forms for all statements and accounts necessary to furnish the information required of such institution.

§ 43. DUTIES OF INSTITUTION OFFICERS.] The stewards of the hospitals for the insane, the clerks of the prisons and the proper officer of the other institutions who shall be designated by the board, shall have charge of and be accountable for all the supplies and stores of such institutions and shall be charged therewith at their invoice value, and shall in conjunction with the chief executive officer of each institution make or direct all purchases for such institution as may be ordered by the board, under the estimates as hereinbefore provided. Such officer shall issue all the stores upon requisition approved by the superintendent or other officer designated by the board which shall be his voucher therefor. He shall present monthly to the board of control an abstract of all expenditures, together with the accounts and payrolls for the preceding month, and shall examine and register all goods delivered, according to their amount and quality, and if found to correspond with the samples, and in good order, and correct in charge, he shall certify the bills as herein provided. He shall quarterly take an account of the subsistence, supplies and stock in his possession and under his control, and transmit a copy of such invoice, duly verified to the board, and at the close of the biennial period he shall make a consolidated report of all purchases, and all other transactions of his department, to the state board. If it shall appear that there is any shortage in the stores of the institution, the board shall appoint a committee from its number to investigate the cause thereof, and if it shall appear that the said shortage resulted from unavoidable loss, without the negligence of such steward, clerk or other designated officer, then such officer shall be credited therewith; otherwise he shall be charged with the amount thereof, and shall be required to pay the same into the state treasury within sixty days after the determination of the loss, if default shall be made in said payment, he shall forfeit

his office, and suit shall be instituted upon his official bond to recover same.

§ 44. RULES. ADDITIONAL DUTIES.] The board of control is authorized to make its own rules for the proper execution of its powers, and may require the performance of additional duties by the officers of the several institutions, so as to fully enforce the requirements, intents and purposes of this enactment, and particularly so much thereof as relates to the making of the estimates, and furnishing proper proofs of the expenditures or use of all stocks of subsistence and supplies.

§ 45. CONTRACTS.] Contracts may be entered into under the direction of the board of control by the proper officers of one or more of the institutions for staples and other articles of supplies, as may be found feasible by the board for the institutions to purchase in bulk for use of consumption for periods longer than thirty days. Such contracts shall not, however, be made except in conformity with the provisions of this act relating to estimates. If thought advisable, such contracts may be executed by the representatives of one institution, who may be designated by the board to act for other institutions.

§ 46. PURCHASE OF SUPPLIES.] It shall be the duty of the board to make specific rules and regulations respecting the manner in which supplies shall be purchased and contracts made for the several institutions, so as to insure the competition and publicity necessary to secure the economical management of each institution. Jobbers or others desirous of selling supplies to an institution, shall by filing with the chief executive officer of such institution, or with the secretary of the board, a memorandum showing their address and business, be afforded an opportunity to compete for the furnishing of the supplies under such limitations and rules as the board may prescribe. In purchasing all supplies, local dealers shall have the preference, when such can be given without loss to the state. When samples are furnished the same shall be properly marked and preserved for six months after purchase of such merchandise.

§ 47. LETTING OF CONTRACTS. LABOR OF INMATES UTILIZED.] Contracts for the erection, repairs or improvements of buildings, grounds or properties of the institutions under charge of this board, and for which appropriations have been or may be made by the legislature, must be let for the whole or for any part of the work to be performed, by the chief executive officer of the institutions, subject, however, to the same rules and regulations as herein provided for the furnishing of estimates by said institution to, and the approval and revision thereof, by the board of control. If the cost of the erection or betterment is not in excess of one thousand dollars (\$1,000.00) the board may permit the management of the institution to construct the same by day's labor, without contracting the work. All plans or speci-

cations for said erection, repairs and improvements, shall be prepared by the architect of the board, under the board's direction. The board shall determine to what extent and to what length of time, and by what means advertisements are to be inserted in newspapers for proposals for said erection, repairs or improvements. All contracts shall be awarded by the management of the institution to the lowest responsible bidder, subject to the provisions of this act, and the approval of the board, prior to the execution of the contract. The management of the institution has the right to reject any and all bids and to re-advertise, upon the approval of the board. A preliminary deposit of money or certified check upon a solvent bank in such amount as the board may prescribe, shall be required as an evidence of good faith, upon all proposals for the construction of said buildings, repairs and improvements, which deposit or certified check shall be held by the management of the institution under the direction of the board. The provision of this section which requires all work to be let by contract, shall not be mandatory as to the labor on the construction work at the penitentiary, but the board shall establish such rules, and enforce the provisions of this act so that the construction work at the penitentiary shall be performed in a manner agreeable thereto, with the strictest accountability exacted in the consumption of all supplies for construction purposes, and in the expenditure of the public moneys on proper representations the board is authorized to so construct the erections, betterments and improvements at other penal and charitable institutions, that the work of inmates may be utilized, if it is found to be advantageous to the state, and a substantial saving made, but the attempt to use such labor shall not permit a substantial departure from the requirements of this section; and in no case shall any expenditure be made except on estimates submitted to and approved by the board, as provided herein. No payment shall be authorized for construction purposes until satisfactory proof has been furnished to the board of control, by the proper officer or supervising architect, that the contract has been complied with by the parties; and all payments shall be made in a manner similar to that in which the current expenses of the several institutions are paid.

§ 48. BUILDING COMMISSION ABOLISHED.] The said board shall succeed to and be vested with all the powers of any building commission and all duties thereof will be performed by said board, and all legislation affecting the powers, duties or obligations of any building commission shall, so far as applicable apply with equal force to the said board of control. All outstanding obligations of any such commission shall be executed and performed by the board of control, but this shall not prevent said board from selecting all its agents or employees in the work of construction, which shall be executed in a manner agreeable to and pursuant to the provisions of this act.

§ 49. REPEALED.] Existing laws relating to the institutions referred to in this act, which are not inconsistent with the provisions of this act, shall remain in force, and all acts or parts of acts in conflict with, or inconsistent with this act, are hereby repealed.

§ 50. EMERGENCY.] Whereas, an emergency exists in this that this act is deemed of immediate importance in order that the board hereby created may be in a position to take full control on July 1st, 1911, therefore, this act shall be in full force and effect on and after its passage and approval.

#### GOVERNOR'S MESSAGE.

Bismarck, March 17, 1911.

To the Honorable, the Secretary of State:

I file herewith House Bill No. 271, entitled an act to create a State Board of Control and provide for the management and control of the charitable, reformatory and penal institutions of the state and to make an appropriation therefor, and for the defining of certain offenses and providing penalties therefor.

I approve this bill for the reason that I am of the opinion that after such portions of the act as are unconstitutional are stricken out, there will still remain a good law that can be enforced.

Section 1 of the act provides that "the members of the board of control shall be electors of the state, two of whom shall be of the political party having a plurality and one of the political party having the next highest number of members in the legislative assembly, and the board shall at all times be subject to such limitations and restrictions." This provision violates two sections of the constitution, viz., Section 211, which reads as follows: "Members of the legislative assembly and judicial departments, except such inferior officer as may be by law exempted, shall, before they enter on the duties of their respective offices take and subscribe the following oath or affirmation: 'I do solemnly swear (or affirm as the case may be) that I will support the constitution of the United States and the constitution of the state of North Dakota; and that I will faithfully discharge the duties of the office of.....according to the best of my ability, so help me God' (if an oath), (under pain and penalty of perjury, if an affirmation), and no other oath, declaration or test shall be required as a qualification for any office or public trust." And that part of section 20 which reads as follows, viz.: "nor shall any citizen or class of citizens be granted privileges or immunities which upon the same terms shall not be granted to all citizens."

Section 211 of our constitution is exactly the same as the

constitution of Michigan on the same subject and was construed by the supreme court of Michigan in the case of Attorney General vs. Board of Councilmen of the City of Detroit, 58 Mich. 213. The statute under consideration in said case provided for the board of commissioners to appoint ward registers and inspectors who were to perform the duties formerly imposed on the boards made up of aldermen and their appointees of persons elected by the voters. The board thus provided for is required to be composed of four members, resident electors of the city, and two members thereof to be from each of the two leading political parties in the said city, and are required two weeks before the time fixed by law for the meeting of the boards for registration of voters, to appoint two qualified electors from each voting district from each of the two leading political parties in said city to act as registers and formulate a district board of registration. Campbell, J., construing this act in connection with the constitution said,—“And it would be entirely meaningless if the voters choice of candidates for any office must be made from any particular party or number of parties, but the constitution has made this more specific (although this was hardly necessary) by providing, after giving the form of official oath, that no other oath, declaration or test shall be required as a qualification for any office or public trust. Not only is it evident from the other provisions in this clause that all the exemptions referred to are such as would be applicable in all sorts of offices, but the use of the word test is especially significant because its recognized legal meaning in our constitution is derived from the English Test Acts, all of which related to matters of opinion and most of them to religious opinion. Such has been the general understanding of the framers of constitutions. If this were not so and if the power of the legislature in imposing conditions of office is at the same time only restrained by express clauses applying in terms to officers, and to no one else, it would not be difficult for any dominant party controlling the legislature “to perpetuate its power until overthrown by revolution, and such discriminations are as repugnant to the rights of the voters in selecting as to the rights of those chosen in assuming office, and this clause is but an additional assertion of a principle found in other parts of the constitution, expressed or clearly implied.

And Morse, C. J., in a concurring opinion said: “But such a law is also directly in conflict with the plain letter of the constitution. Section 1, Article 28 of that instrument, after prescribing the form of the official oath of members of the legislature and all other offices, executive and judicial, concludes as follows, ‘and no other oath, declaration or test shall be required as a qualification for any office or public trust.’ In my opinion there can be no doubt but this law subjects the officers of registration and election in Detroit to a political test. If the two

leading parties in that city be Democratic and Republican, then any citizen who cannot by reason of his political conscience ally himself to one or the other of these parties is debarred by law of the right of holding one of these offices. If the National and Prohibition parties should be the two leading ones, then the Republican or Democrat would be ostracized. There can be no true republican government under political or religious test in holding office. The political or religious liberty of the citizen being at the foundation of republican institutions. If this law had provided in express terms that these various members should be equally divided between Democrats and Republicans, its repugnance to the constitution would be plainly apparent to all. As it is, it accomplishes by indirect language the same result."

The opinion of Chief Justice Campbell in *People v. Hurlbut*, 24 Mich. 90-92, correctly applies the principle, "that no person can be prevented from holding office because of his political opinion."

That part of Section 20 of the state constitution quoted is construed by the supreme court of Indiana in the case of *City of Evansville et al v. State ex rel Blind et al*, 118 Indiana 426. The act of the Indiana legislature in question in this case classified the citizens of two cities to which it applied as to the positions of employment on the police force and in the fire department, by requiring that all officers and employes be selected from the two leading political parties found in the cities:

"It is well known that the members of probably a half dozen political parties reside in these cities and that a large number of citizens who belong to no particular political party reside therein. All of these persons are disqualified for positions or employment in either of the departments named. If it is competent for the legislature to require as a test for position or employment under the provisions of the act under consideration membership in a political party or organization, it is difficult to understand why a religious or any other test may not be made. We are of the opinion that in so far as the act creates a residence qualification or prescribes a political test it contravenes the constitution. It is not only in violation of the spirit but of the letter of Section 23, Article 1. Upon a question so clear it would hardly seem necessary to cite authorities, but see *Cooley Constitutional Limitations*, 5th Edition 483. *Brown v. Hayward*, 4 Heisk 357. *Leithan v. Commonwealth*, 79 Va. 196. *Attorney General v. Board etc.* 55 Am. Rep. 675."

Section 23 of the Indiana constitution reads as follows: "The general assembly shall not grant to any citizen or class of citizens privileges or immunities which upon the same terms shall not equally belong to all citizens," almost the exact language of that part of Section 20 of our Constitution and precisely the same in substance and meaning.

In the case of *Rogers v. Common Council of Buffalo*, 123 N.



Y. 185, the supreme court of New York in commenting on the case of Attorney General v. City of Detroit 58 Mich. 213 supra said:

"The provision in that case was for the appointment of election inspectors consisting of two persons from each of the two leading political parties and it was held to be a violation of the constitution of Michigan. There the law recognized two political parties, and made it a necessity for appointments to be made from and confined to members of those parties. An individual not a member of either was not eligible to appointment."

This is practically what House Bill No. 271 provides when it says that "the members of the Board of Control shall be three electors of the state, two of whom shall be of the political party having the plurality and one of the political party having the next highest number of members in the legislative assembly." By this act it means that two shall be appointed from the Republican party and one from the Democratic party and the representatives of all other political parties in the state are disqualified. This is providing a political test and is in conflict with Section 211 of the constitution, and it is granting privileges to members of the Republican and Democratic parties that are withheld from the representatives of other political parties.

This law is an exact copy of an Iowa law except that the Iowa law provides that no more than two members of the board shall belong to any one political party. This provision in the Iowa law is a non-partisan measure and is constitutional. It does not deprive the appointing power of appointing any citizen otherwise qualified to the office. It does not say that two members of the board shall belong to one political party. It simply says that no more than two members shall belong to one political party, and while such laws are constitutional, the courts hold them directory only.

While the provisions in this act requiring the political test are unconstitutional and void, such provisions do not invalidate the whole act. It is a well recognized rule of construction that if parts of a law which are unconstitutional can be stricken out or ignored and still leave a good law with all the necessary provisions for its enforcement, the law is valid in spite of the unconstitutional provisions. The political test in this act is in no sense necessary for the effectiveness or the enforcement of the law and could be stricken out or ignored and still leave a good valid law, for which reason I approve this act.

JOHN BURKE,  
Governor.