

this is not to provide a law, but to provide for the execution of a system of public schools. Does not every board of school commissioners in the State provide systems of education for their respective counties without the action of the legislature?

The PRESIDENT. The committee in this report recognize the authority of the legislature. But they go further and say that if the legislature does not choose to adopt the suggestions of this general superintendent, then his system shall become the law. Does the gentleman from Baltimore city (Mr. Cushing) pretend to say that any judicial department would ever decide that to be law?

Mr. CUSHING. If the people agree to it by their sovereign will, the judiciary cannot help it.

Mr. STOCKBRIDGE. The question will be reduced to just this: whether the law will be constitutional, or the constitution illegal. If the constitution is held to be illegal, then of course there is an end of the matter.

The PRESIDENT. The difficulty is that this constitution does not prescribe the system. All it says is that the superintendent shall recommend a system, and if the legislature does not adopt the recommendation of the superintendent, then it becomes the law of the land.—The law of the land will then be, not the constitution, but the recommendation of the superintendent.

Mr. STOCKBRIDGE. If there be the power in this convention, whereby by a vote of the people to create a superintendent of public instruction, there is the power in this convention to prescribe the duties of that officer.

The PRESIDENT. No doubt about that.

Mr. STOCKBRIDGE. And having prescribed that he shall prepare a certain plan, there is the power to say what force and effect that plan shall have; to say that it shall be a recommendation to the legislature, or to say at once that the plan devised by him shall be the public school system of this State. That is a power which this convention has the right to exercise. And when this convention shall recommend a thing, and the people shall agree to it, I do not care what the legislature may see fit to say afterwards about the legality or illegality of that act; it is constitution; it is not law. And if the legislature chooses to go in the teeth of the constitution, then the act of the legislature will go by the board, and not our act.

Now, although I was not partial to the details of either the second or the fourth section, yet I submit that if we see fit to adopt them, and the people ratify them, they are law. And if we see fit to vest in the State superintendent the power to prepare a system, and to say that the plan or system so digested by him shall be the public common school system of the State, without ever being referred to the legislature, it is competent for us to do so. And if we

do say so, and the people approve it, the system which he so proposes, and so sets in operation under the guarantee of the constitution, is the law of the State, and the highest law.

The PRESIDENT. It requires but few words to set this matter right. According to this report this superintendent is to report—to whom? He is required under the constitution to make a report. The gentleman from Baltimore city (Mr. Stockbridge) says that even before his report is made the people ratify it. How can they ratify the report of the superintendent before it is made?

Mr. STOCKBRIDGE. I did not say that they would ratify the report. I said this: that if we submit any recommendation to the people, and the people ratify it, then that recommendation becomes the law of the State. I said nothing, not one word, about their ratifying an act of the superintendent subsequently performed. I did not refer to it, or speak of it. I spoke of the ratification of the constitution. I said that if we in the constitution confer certain powers, and the people ratify that grant of powers, then the exercise of those powers, even without any reference to the general assembly, becomes the law of the State.

The PRESIDENT. Then there is no distinction between what I said, and what the gentleman said. I say that the plan is recommended by the superintendent of public education, vested as he is with certain powers under this constitution. That plan is to be reported by him to the legislature, and it is discretionary with the legislature to adopt it or not. If they reject it, then you have no plan.

Mr. CUSHING. It is discretionary with the legislature if we say it shall be discretionary.

The PRESIDENT. You cannot make any law of this State by any other authority than the legislature. The legislature represents the sovereignty of the people. And no individual, or body of individuals, and no department of the government other than the legislature can make a law.

Mr. CUSHING. We can give anybody the power.

The PRESIDENT. The gentlemen might as well say they make law for all future generations.

Mr. STOCKBRIDGE. We do.

The PRESIDENT. We make an organic law for future generations. But we do not prescribe the details by which that organic law is to be carried out.

Mr. CUSHING. We can, if we please.

The PRESIDENT. That is for the action of the legislature to be submitted to the people of the State for their adoption or rejection, at every period at which the legislature is chosen, and whenever it acts. One legislature can make one system, and another legislature can repeal it.