

provided, however, that all county school commissioners heretofore appointed under this section, as amended by chapter 79 of the acts of 1900, shall serve out the terms for which they were respectively appointed and designated; and provided further, that at the time of making the appointment of the three additional school commissioners for Montgomery county, as herein provided, the governor shall designate the terms of years of each of the said additional commissioners. The term of office of the said commissioners, after the expiration of the term for which first appointed, shall be a term of six years; said persons shall be men of high character, integrity and capacity. Two of said appointees for the counties of Baltimore, Carroll, Frederick, Dorchester, Washington and Montgomery and one of said appointees for each of the other counties shall be selected and appointed by the governor from the political party which at the last preceding election for governor cast next to the highest number of votes in the State, so that said minority party shall always have a proper representation upon each of said boards. The governor may remove for incompetency, neglect of duty or misconduct any person so appointed by him as commissioner of public schools after giving due notice to such person of the charges made against him and a reasonable opportunity to be heard in his own defense. In case of vacancy by death, removal from the county, removal from office by the governor, resignation or disqualification from any cause, the governor shall fill such vacancy with an appointee from the same political party as that of the person whose position shall have become vacated.

The board of county school commissioners is required to act strictly within its delegated authority, and to apply its funds accordingly. *Wiley v. School Commissioners*, 51 Md. 405. See also, *Weddle v. School Commissioners*, 94 Md. 342.

The history of this section traced. In this section the legislature was careful to declare the power given to belong, not to the individuals, but to the corporation—see notes to section 23. *School Commissioners v. Goldsborough*, 90 Md. 202 (decided prior to the act of 1900, ch. 29, and the act of 1906, ch. 353).

Mandamus is the appropriate remedy to obtain possession of an office. Powers and rights of a *de facto* officer. *School Commissioners v. School Commissioners*, 77 Md. 288.

When a vacancy exists. If there is no vacancy, there can be no appointment. When the governor is authorized to fill a vacancy for the balance of an unexpired term, such appointment is not within the state constitution, article 2, section 11, providing that the commissions of officers appointed during the recess of the legislature shall only continue in force until the end of the next session. Unless there is some law to the contrary, an officer who is appointed for a definite term holds over until his successor qualifies. When an appointment is made to fill a vacancy, the appointee holds in the same manner as the person whose place he takes. *Ash v. McVey*, 85 Md. 126; *School Commissioners v. Goldsborough*, 90 Md. 204. (Both cases decided prior to the act of 1900, ch. 29, and the act of 1906, ch. 353).

Article 2, section 13, of the state constitution relative to newly appointed civil officers being nominated to the senate within fifty days from the commencement of each regular session, construed in connection with the appointment of school commissioners under the act of 1888, ch. 58. *Merrill v. School Commissioners*, 70 Md. 270.

The act of 1900, ch. 29, repealed this section as it then existed and re-enacted it so as to require the governor to appoint a new board of school commissioners for each county in the state. *Duer v. Dashiell*, 91 Md. 666.