

new election offices created by a Legislature chosen at an election held by persons appointed by the board provided in the section? Such a Legislature eight years after the Ninth section took effect provided for the creation of the corporation called the Board of Education of Salt Lake City and gave it power to call elections, to vote on the issuance and sale of bonds and to appoint judges thereof, and to receive and canvass the returns; such board and the judges appointed by it were given all authority necessary to such election. If the power given and the duties specified with respect to such elections constitute election offices, then they are new ones, and of a Corporation brought into existence eight years after the act of Congress in question took effect.

At the time the act of Congress under consideration took effect election offices existed in the various counties and municipalities in this territory. A portion of the language of the first sentence of the Ninth section considered alone would indicate an intent to empower the board to appoint persons to execute the duties of election offices that might afterwards be made, as well as those then existing. But the other language connected with this found in the section declaring the offices vacant and giving the Board the power to appoint until other provision be made by the legislature for filling the offices declared vacant, and requiring the performance to be under existing laws should be considered with it.

The offices which the Board, known as the Utah Commission, was authorized and required to appoint persons to execute were those offices which the legislature was authorized to provide by law for filling, and they were the ones made vacant by the first clause of section nine.

The election offices created by the legislative enactment of March 3rd, 1890, were not made vacant by the ninth section of the Act of Congress of March 22nd, 1882. The latter section was designed to vacate the offices then in existence, not to prohibit any legislature whose members might be selected at elections conducted by persons appointed by the Board from making laws by which such vacant offices might be filled.

The persons filling the election offices at the time the Act of Congress took effect were deemed unsuitable, and the laws for filling them, then in force, were believed to be objectionable.

To remove and replace such unsuitable election offices and to render nugatory such objectionable laws was the purpose of section nine. So far that section evinced an intention to deny to the people of the Territory to which it applied, for a time, the right to have their election offices filled by persons selected by them, or the right through the legislature to provide by law for filling them. Only to that extent does the section limit the political action of the people of the Territory or the political action of the counties or other municipalities in its borders with respect to their local affairs. Doubtless the belief of Congress was that the public good demanded that the people of this Territory should for a time be deprived so far of the

principle of local self government enjoyed by the citizens in the other Territories and in the States.

A law denying to the people of one territory privileges extended to all others should be strictly construed.

We are of the opinion that the section above quoted did not give the defendants the power to call the election to vote on the issuance of school bonds and the sale thereof or to appoint the judges of such election or to receive or canvass the returns.

Reference has been made to Section 23 of an Act of Congress in force March 3rd, 1887. This section in effect merely requires the laws enacted by the Territorial Legislature mentioned in the section above quoted to be approved by Congress before taking effect.

Our attention has also been called to an irreconcilable repugnancy between certain provisions of sections 102 and 103 of article 15 of an act of the Territorial Legislature, Session Laws 1890, p 128, relating to elections to determine whether bonds shall be issued and sold; and sections 122, 123, 124 and 125 of the same act. The two sections first mentioned contain among others the following provisions that "Fifteen days before an election for school trustees for levying taxes, for voting on the issue of bonds, or for any other purpose named in the article, the City Council of the several cities shall appoint from each municipal ward three judges of such election. These sections also require the elections to be held in the municipal wards of the city at the time and place designated in the notice."

Section 122 provides that the Board of Education may, when in their judgment it is advisable, call a meeting and submit to a vote of the district the proposition to issue and sell bonds to raise money to purchase school sites, and to purchase or build school houses.

Sections 123 and 124 are as follow: "The meeting provided for * * * shall be called by publishing a notice signed by the president and clerk of the Board of Education * * * Such notice shall contain: First, the time and place of holding such election; second, the names of three judges to conduct the same; third, the hours during the day (naming not less than eight hours) for which the polls will be open; fourth, the amount and denomination of the bonds and the rate of interest, and the number of years (not exceeding twenty) the whole or any part of said bonds are to run; fifth, for what purpose it is proposed to issue the bonds.

The Board of Education shall appoint three judges to conduct the election. * * * At such elections the ballots shall contain the words *Bonds Yes, or Bonds No*. Section 125 requires the returns to be canvassed by the Board of Education, and makes it the duty of that body to file with the clerk of the county a certified copy of the order of the Board and of the notice, and an affidavit showing when and where published, and also a statement showing the number of inhabitants and the value of the taxable property in the district and that the amount of bonds proposed to be issued does not exceed two per cent of the value of such taxable property and also facts showing that all

matters in relation to the issue thereof were lawfully conducted. Sections 102 and 103 provide for calling and holding elections to vote for trustees, levying taxes, and other elections, as well as those for voting on the issuance and sale of bonds. Their provisions are more general. While those sections make it the duty of the Board of Education to call the elections, appoint the judges, canvass the returns, and make certificates, etc., are very specific, they provide alone for elections to vote on propositions to issue and sell bonds.

They evince greater care in their preparation and more deliberation than the sections first referred to, so far as they relate to the issuance and sale of bonds. To hold that the latter govern elections to vote on the issue and sale of bonds does not invalidate sections 102 and 103 so far as they provide for elections other than to vote on the proposition for the issue and sale of bonds.

The intention of the Legislature is clear when all the provisions of the act relating to such elections are considered together. It is that these sections were intended to provide for holding all other elections mentioned in them except the one relating to bonds. As to the provisions relating to all other elections there is no conflict.

And the provisions relating to other elections do not depend on those relating to elections for the issuance and sale of bonds.

The latter may fall and the former stand.

The provisions of sections 102 and 103 may stand so far as they are not in conflict with the more special provisions of sections 122, 123, 124 and 125. The provisions of the two first sections, so far as they relate to elections to vote on the issuance and sale of bonds, and no further, are repealed by the latter sections.

Sutherland on Statutory Construction, sec. 160.

Endlich on the Interpretation of Statutes, sec. 216.

The Court holds that the election to decide upon the issuance and sale of the bonds in question should be called and conducted according to the provisions of sections 122, 123, 124 and 125 above referred to. And we further hold that the qualifications of voters must be determined by the laws of the United States when any conflict arises between them and the laws enacted by the Territorial Legislature.

We are of the opinion that the judgment appealed from is erroneous.

Judgment reversed.

We concur,

Miner, J.

Blackburn, J.

Attorney Baldwin said that as none of the members of the Utah Commission were now present, and he himself did not know what action they would wish to take in this matter, he would ask the court to grant appeal to the Supreme Court of the United States.

Judge Judd—I shall oppose any such application. We do not think this is an appealable case under the acts of Congress, and before the court passes on that question I should like to be heard.

Green River has an active board of trade and it is now proposed to incorporate the town.