

## Documents

### Caleb Mills and the Indiana Free School Law

Val Nolan Jr.\*

Historians have long assigned to Caleb Mills the leading role in Indiana's free school movement of the middle 1800's, a movement that culminated over one hundred years ago in the passage of the state's first truly systematic free school law.<sup>1</sup> Mills' most enduring claim to generalship in the victory lies in his six widely-read "Educational Messages" written under the nom de plume "One of the People."<sup>2</sup> Why he preferred to conceal his identity, and how and when his secret eventually became public are facts not revealed in the rather meager biographical materials.<sup>3</sup> A recently discovered letter<sup>4</sup> from Mills to John Barron Niles is interesting therefore, both because in it Mills divulges his identity as "One of the People" and because it reveals how thoroughly Mills was a fighter and not simply a philosopher of the revolution. A brief narrative will place the letter in its setting.

Despite the truly memorable educational article in its Constitution of 1816,<sup>5</sup> Indiana approached mid-nineteenth century with its ideal of free popular education still a lofty concept rather than a reality. Most common schools, where

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<sup>1</sup> Mills was only one, of course, of a group promoting the adoption of a better school system. Fassett A. Cotton in his *Education in Indiana* (Bluffton, Indiana, 1934), 44, holds that Robert Dale Owen was "largely responsible" for Indiana's eventual improvement. Logan Esarey, *History of Indiana* (2d ed.; 2 vols., Indianapolis, 1918), II, 681-714, gives a brief account of the progress of the free school movement and mentions other men prominent in the campaign. The best survey of early legislative efforts to give Indiana a school system is to be found in Richard C. Boone, *History of Education in Indiana* (New York, 1892), chapters III and IV.

<sup>2</sup> The messages, written over a period of years and printed as pamphlets or in Indianapolis newspapers, are readily accessible today only in Charles W. Moores, "Caleb Mills and the Indiana School System," *Indiana Historical Society Publications* (Indianapolis, 1895-), III (1905), 363-638.

<sup>3</sup> The best sources on the life of Mills are Moores; George I. Reed, *Encyclopedia of Biography of Indiana* (2 vols., Chicago, 1895-1899), I, 280; *A Biographical History of Eminent and Self-Made Men of the State of Indiana* (2 vols., Cincinnati, 1880), II, District 8, p. 36.

<sup>4</sup> This letter is part of a collection of John B. Niles' papers deposited in the Indiana University Library.

<sup>5</sup> Charles Kettleborough, *Constitution Making in Indiana* (3 vols., Indianapolis, 1916-1930), I, 112-15.

they existed at all, were locally maintained and therefore cheaply administered and poorly taught, their doors open for brief periods each year only to those who could afford and were willing to pay tuition.<sup>6</sup> County seminaries, on their level, were no better;<sup>7</sup> and Indiana University reached only a few.<sup>8</sup> Private academies<sup>9</sup> and colleges<sup>10</sup> brightened a little the gloom of the state's educational picture (some were good, and the mere existence of private schools indicated considerable interest in education); but they were not, of course, free. The harvest of such apathetic cultivation is not surprising. The 1840 census revealed that one of seven of Indiana's

<sup>6</sup> The completely inadequate physical conditions under which most common school education was conducted are described in the "First Annual Report of the Superintendent of Public Instruction," *Indiana Documentary Journal*, 1853, Part II, pp. 247-320, especially pages 297-99. See also, Esarey, *History of Indiana*, II, 681-714. A committee appointed by the Common School Convention held at Indianapolis, May 25-28, 1846, prepared "An Address in Relation to Free Common Schools" in which it pointed out that only 129,500 Indiana children, 37 per cent of those of school age, were attending common schools and added "Then again it will be remembered that those who attend school at all, generally do it only for a small part of the year." *Indiana Documentary Journal*, 1847, Part II, 161ff. The convention recommended as a reform measure that every district school in the state be open at least three months per year. *Ibid.*, 146.

<sup>7</sup> Discussion of the county seminaries may be found in Boone, *History of Education in Indiana*, chapter V, and throughout Mills' "Educational Messages." Of the seminaries, Esarey concludes: "There was no uniformity in the management, course of study, length of term, method of instruction, textbooks, or any other material consideration connected with these seminaries. Like the common schools, while most of the seminaries were of no value, some rendered long and meritorious service to the community. Lack of funds, dishonest trustees and factional quarrels make up the burden of their history." *History of Indiana*, I, 333-34.

<sup>8</sup> Theophilus A. Wylie, *Indiana University, Its History from 1820, when founded, to 1890* (Indianapolis, 1890), stated that the enrollment was 64 students in 1840, 115 in 1843. Records of enrollment and class attendance in the Office of Records and Admissions, Indiana University show the 1845 enrollment as 104, that of 1846 as 115. There was some disagreement in the Constitutional Convention of 1850-1851 as to the enrollment of the University. *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Indiana 1850* (2 vols., Indianapolis, 1850), II, 1864.

<sup>9</sup> These institutions are named and discussed in Boone, *History of Education in Indiana*, chapters VI and VII.

<sup>10</sup> Private colleges in Indiana prior to 1850, the dates of their foundations, and the religious sects that controlled them were: Hanover, 1827, Presbyterian; Wabash, 1832, "Christian in spirit" but non-denominational; Franklin, 1834, Baptist; Earlham, 1837, Quaker; Asbury (DePauw), 1837, Methodist; Concordia, 1839, German Evangelical Lutheran; St. Mary of the Woods, 1840, Catholic; University of Notre Dame, 1844, Catholic; and Taylor University, 1846, Methodist. The histories of these institutions are briefly reviewed in Cotton, *Education in Indiana*, chapter IV-VI.

adults could not read or write, and its illiteracy rate exceeded that of all northern and of three slave states.<sup>11</sup>

"Among all those who saw the calamitous ignorance of the people and were ambitious of better things for the State . . . was one whose contributions to the question were sufficiently definite and sound to be recognized as the chief factor in its solution."<sup>12</sup> On the day following the opening of the 1846 session of the General Assembly, *The Indiana State Journal* carried "An Address to the Legislature" over the signature "One of the People."<sup>13</sup> The writer pointed to Indiana's lamentable inadequacy in the vital field of education, then passed to concrete consideration of particular evils and of remedies. Public funds at that time devoted to schools came largely from the federal land grant of one section in each congressional township.<sup>14</sup> The money derived from these sections was not consolidated and then distributed equally throughout the state; instead each township kept whatever it could realize from its own section. Thus the very communities that most needed public assistance and could least afford to support schools from local funds, *i.e.*, communities where land values were low and farms poor, in fact received the least help from the land donation; prosperous townships got the highest incomes from their more valuable lands. Such inefficient use of the funds must be rectified, said the Address, by equal state-wide distribution. Furthermore and even more significant, the really basic support for free schools must be raised by taxation. Finally, only if higher schools improve will well-trained teachers be available; therefore let the county seminaries and the state university be reorganized. Sell all the physical facilities of the seminaries and of the university; distribute the interest on the proceeds to one private

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<sup>11</sup> *Sixth Census of the United States, 1840*, pp. 373-74, 475. Of a total population of 685,866 (678,698 whites), illiterate whites over 20 years of age numbered 38,100. For the most readily accessible table of illiteracy statistics for 1840 (taken from Caleb Mills' statistics, themselves derived from the census), see Boone, *History of Education in Indiana*, 88.

<sup>12</sup> Boone, *History of Education in Indiana*, 91.

<sup>13</sup> *Indiana State Journal*, December 8, 1846, reprinted in Moores, "Caleb Mills," *Indiana Historical Society Publications*, III, 397.

<sup>14</sup> The composition of the school fund in 1852 is discussed by Esarey, *History of Indiana*, II, 694. A detailed analysis of the fund, with a history of its component parts, is presented in Boone, *History of Education in Indiana*, chapter XIII-XVI.

seminary in each county and to every college whose governors will agree to maintain certain stipulated standards, to train teachers, and to devote the money received to provide prospective teachers with free tuition.

Eight days after the address appeared, Governor James Whitcomb in his annual message to the legislature urged that body to revise the entire school system and place it under the charge of a state superintendent.<sup>15</sup> The General Assembly passed no such statute, but it indicated its interest by adopting a joint resolution calling upon the friends of education in Indiana to meet at Indianapolis in a convention to consider the school problem.<sup>16</sup>

Mills' second address,<sup>17</sup> to the 1847 legislature, expanded upon many of the points already made, called taxation a necessity not only as a money raising device but also as the most effective way to insure public interest in education, and explored problems of requisite buildings, adequate salaries for teachers, books, and integrated school superintendence. Probably at least partly in response to the messages,<sup>18</sup> the General Assembly ordered a referendum to determine the public will on a free school bill introduced at the session;<sup>19</sup>

<sup>15</sup> *Indiana Documentary Journal*, 1846, Part I, 83, 91-92.

<sup>16</sup> *Indiana House Journal*, 1846, p. 387; *Indiana Senate Journal*, 1846, pp. 360, 387. The work of the convention that met on May 25, 1847, and of subsequent meetings of that body, is discussed in Boone, *History of Education in Indiana*, chapter VIII; Esarey, *History of Indiana*, II, 683ff.

<sup>17</sup> Printed as a pamphlet, "Read, Circulate and Discuss. An Address to The Legislature of Indiana," and distributed to legislators on December 6, 1847. Reprinted in Moores, "Caleb Mills," *Indiana Historical Society Publications*, III, 429.

<sup>18</sup> *Ibid.*, 388. It would be well here to call attention again to the fact that Mills was only one of many influential men who were active in championing the school movement. For example the Common School Convention was attended by many men with a deep and effective interest in education. Among its committees was one which, working with a committee of the General Assembly, drafted a school bill for submission to the legislature. The Common School Convention met on December 10, 1847, to review the report of this drafting committee. This report may be found in the *Indiana Documentary Journal*, 1847, Part II, 145. The report of the committee of the legislature is on page 355. Simultaneously, another group from the Common School Convention prepared a public appeal for support for the free school movement, see page 161.

<sup>19</sup> This is the bill whose origin is discussed in footnote 18. It passed the House of Representatives but was amended by the Senate to call for a referendum to determine the public will concerning its passage; the Senate proposed this delay because it felt it had insufficient time to consider the bill. *Laws of Indiana, General*, 1847-1848, pp. 48-49; *Indiana House Journal*, 1847, pp. 243, 250, 304, 310, 440-42, 452, 634, 652, 665, 680; *Indiana Senate Journal*, 1847, pp. 507, 528, 553, 574, 575, 655; Esarey, *History of Indiana*, II, 687-88.

the referendum vote was in favor of the bill.<sup>20</sup> The third address<sup>21</sup> analyzed this vote by counties, pointing to the close correlation between a county's high illiteracy rate and its hostility to the bill. The 1848 legislature to which the third message was addressed passed a new school law<sup>22</sup> adopting taxation as a means of support of common schools and equalizing the periods of instruction in all schools in each congressional township. But this step forward was largely vitiated by a local option provision whereby each county could decide for itself whether to operate under the new system. The act also failed to consolidate the school funds and to require equal distribution. The fourth address<sup>23</sup> was therefore a criticism of this statute, which had meanwhile been rejected by twenty-nine counties.<sup>24</sup>

"One of the People" directed his fifth appeal, in the form of four letters in *The Indiana Statesman*,<sup>25</sup> to the men who assembled in Indianapolis in October, 1850, to draft a new constitution for the state. Like so many in his time and since, he sought to incorporate the details of the particular project close to his heart in the fundamental law of the state, where it would be relatively secure from future legislative tampering. The only real novelty of this address, which reiterated all the familiar arguments, was a proposal to divide the permanent public education money into three parts, the

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<sup>20</sup> Fifty-nine counties favored free schools, thirty-one opposed. Of 140,410 votes cast, 78,523 favored, 61,887 opposed. See Mills' analysis in Moores, "Caleb Mills," *Indiana Historical Society Publications*, III, 501 ff. A county by county analysis is presented in Boone, *History of Education in Indiana*, 106-8.

<sup>21</sup> Part of this address appeared in the *Indiana State Journal*, December 11, 1848; the entire address appeared as a pamphlet dated 1849. It is reprinted in Moores, "Caleb Mills," *Indiana Historical Society Publications*, III, 501.

<sup>22</sup> *Laws of Indiana, General*, 1848-1849, pp. 124-31.

<sup>23</sup> *Indiana State Journal*, January 7, 1850, reprinted in Moores, "Caleb Mills," *Indiana Historical Society Publications*, III, 537.

<sup>24</sup> In 1849 the counties voted on the question of operating under the law; sixty-one accepted and twenty-nine rejected it. "Report of the Superintendent of Common Schools," *Indiana Documentary Journal*, 1849, Part II, 235, 248. The vote is analyzed in detail by Mills. Moores, "Caleb Mills," *Indiana Historical Society Publications*, III, 537-43. See also, Boone, *History of Education in Indiana*, 124-28.

<sup>25</sup> The four letters, only the last of which bore any signature, were addressed to "Gentlemen of the Constitutional Convention." They appeared in the issues of November 6, 13, 20, and December 4, 1850. They are reprinted in Moores, "Caleb Mills," *Indiana Historical Society Publications*, III, 550ff.

Common School, the Literature, and the University Funds. The interest from the Literature Fund was, in addition to being used to subsidize private academies, to be spent to establish and increase common school libraries, a recently recognized instrument of public instruction.

It was after his fifth address that Mills wrote Niles and revealed himself as "One of the People." How the Wabash College professor and the influential lawyer delegate had become acquainted can be conjectured: Mills graduated from Dartmouth College in 1828, Niles in 1830. Mills' reference to "scenes of bygone years" has just that touch of nostalgia which supports the inference of an undergraduate acquaintanceship. Obviously Mills expected sympathy from the well-educated Niles, himself a former teacher of chemistry in the medical department of the Indiana Medical College of La Porte.<sup>26</sup>

John B. Niles Esq.,  
(Constitutional Convention)  
Indianapolis, Ind.  
[Postmark Crawfordsville, Dec. 10.]

Wabash College  
Dec. 7, 1850

John B. Niles Esq.

My Dear Sir:

You may perhaps be surprised to receive a letter from me. It would be pleasant to sit down and chat over scenes of bygone years, but we revolve in such different orbits that it is utterly impossible to calculate when two such bodies will be in conjunction. Were it certain that the convention would not complete their labors by Christmas & that the portion of the constitution pertaining to Education would not be disposed of before that time, I think I should confer upon myself the honor of a lobby membership for a few days. But I presume that period would be too late for the accomplishment of the principle object of such a visit and therefore I will venture to propose a conference on the subject of constitutional provision for popular Education. I presume you feel a deep interest in this subject & are prepared to favor any plan that bids fair to accomplish the object in the most effectual manner. There is a strong disposition among timid politicians & demagogues to skim along the surface and ask what will be popular, disregarding whatever is essential to their success, providing it is not grateful to the more ignorant or selfish of the dear people. Presuming that you do not sympathize with such & are willing & desirous to embody in the fundamental law of the commonwealth educational provisions of

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<sup>26</sup> For a brief sketch of Niles' life, see *A Biographical History of Eminent and Self-Made Men of the State of Indiana*, II, District 13, p. 36.

an enlightened and liberal character, I will proceed to communicate to you what I wish to be considered a *secrete*, vis, that the Educational Addresses to the Legislature, under the signature of One of the people, for the last *four years*, and the *fifth* published in the Indiana Statesman, addressed to the Constitutional Convention came from me. They have been extensively circulated and read, & have done something to awaken & increase the interest in fact in popular education. I presume you have read the one addressed to the Body, of which you are a member. I flatter myself that the plan suggested in that address, will commend itself to your favorable regard, and if so, I wish you would give it the benefit of your influence and support when the subject of Education comes up for discussion. Now is the time to strike, and in the right spot. Can you not make a *great speech* on the subject and show shallow heads that academies and colleges are as indispensable to a good educational system as common schools? Show them that these higher institutions are the intellectual reservoir from which proceed the controlling influences of society. Whence proceed inventions and improvements in every department of human industry, but from awakened, cultivated intellects? Will you carefully read the several nos. if you have not already done it & suggest any difficulties & modifications & thus give me an opportunity to explain, obviate & demonstrate the soundness & wisdom of the scheme. No one, who has *seen* the operation of free schools in New England, will question for a moment, the wisdom, nay, the necessity of a partial support at least by taxation, & the undesirableness of a fund so large as to supersede the necessity of taxation. This point being established, where is the necessity of a public fund larger than I have shown we should have from the three sources indicated. Let the Literature fund derived from the fines & forfeitures, bank tax & saline funds be consolidated & appropriated for the encouragement of academics, common school libraries & apparatus. New York has appropriated \$90,000 annually & for a series of years on the plan suggested securing the raising an equal sum by the recipients of the grant. The fine and forfeiture funds, bank tax and saline funds would go but a little way in sustaining the common schools of the state, not amounting to 25 cents per head on all the children in the state; but for the purpos proposed, they would be sufficient, abundantly sufficient to secure a library of 150 or 200 vols such as you will see in the state library room, to every school district in the state. What a glorious point gained to secure such a result. Such a library would educate parents as well as children prove of untold value to every neighborhood. I hope you will both take hold of it yourself and endeavor to enlist others in its support. I have urged Jernigan to do what he can with the members of his acquaintance and hope you will stand up and support the Educational Committee should they propose it. Could you not get a dozen of your most intelligent & influential members to unite & push it thro' with a rush. In respect to the University plan, I see no objection at all. The funds are all in the possession & under the *sole & exclusive control* of the State on my plan. It proposes to alienate not a dollar but to make every dollar tell on cultivated mind. It proposes nothing but what is just, liberal & wise. You can see at a glance that the influence of its operation would be most happy & efficient. It would do more to expose imposition & elevate

the standard of collegiate education than anything that could be done. The adoption of the plan suggested in its threefold division would both bless & honor us as a state. The facts & statistics embodied in that address & its predecessors, would furnish you with unanswerable arguments. I will send you a copy of the second & third for perusal. I should rejoice to see that plan, or something substantially like it, incorporated into the organic law of the state. Let me hear from you at an early date & know the result of your recruiting service. Could you not return by this place & spend a day with us? Yours truly

Caleb Mills

P.S. Let this all be "*sub rosa*."

While Niles may have given his silent support, or may have subscribed to Mills' views but not thought the matter one to be embodied in detail in a constitution, certain it is that he never made a "great address." Nor was the article reported by the committee on education and passed after amendment<sup>27</sup> by the convention in any sense an embodiment of Mills' plan. True, the new constitution called for "a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all";<sup>28</sup> a perpetual Common School fund was established and the office of Superintendent of Public Instruction created. But county seminaries were abolished.<sup>29</sup> with no attempt to find a substitute in private institutions, and Indiana University was left unscathed.<sup>30</sup> All details of the school system to be effected under the new government were left to the legislature.

<sup>27</sup> Principal amendments were the rejection of sections of the article reported by the committee on education calling for establishment of a Normal School in the State University and for a tax on corporate dividends in excess of six per cent, to be used for the commons schools. *Debates and Proceedings of the Convention*, II, 1078ff, 1862, 1869-70. The committee on education through its chairman John I. Morrison reported as an additional section to its original article on education one providing for the office of Superintendent of Public Instruction. The section was adopted. *Ibid.*, 1058-61. The most serious debates in the convention, relating to the article on education, concerned various attempts to abolish, or to make it possible for the legislature to abolish, support for Indiana University. See note 30.

<sup>28</sup> Kettleborough, *Constitution Making in Indiana*, I, 346-49.

<sup>29</sup> *Ibid.* Section 2 provides simply that the funds derived from sales of the seminaries and their lands, and money and property heretofore held for them, be made part of the Common School Fund. The convention intended to abolish seminaries. *Debates and Proceedings of the Convention*, II, 1867-68, 2044. In *Edwards v. Jagers*, 19 *Indiana*, 407 (1862), the Indiana Supreme Court held the Indiana constitutional provision directing sale of the land and buildings of the Switzerland County seminary void because it violated the contract clause of the United States Constitution.

<sup>30</sup> The status of Indiana University was the subject of perhaps the most vigorous debates on education of the entire convention. Some



To the 1851 General Assembly, then, Mills directed his last appeal,<sup>31</sup> calling attention to the peculiar significance any law passed at this time must have as a sort of interpretation of the spirit of the new constitution.<sup>32</sup> Buttressing his call for immediate action by presenting even more depressing data from the recent 1850 census,<sup>33</sup> Mills asked for a law embodying those details of his plan which were still permissible under the new constitution. Fundamentally, the statute must provide three essentials; freedom, competence, and supervision.

The legislature's response must have been gratifying, for the comprehensive School Law of 1852<sup>34</sup> was a long step in the march to organize in the state a system of uniform public-supported schools. A taxing provision contained no such escape clause as ruined the 1849 act; and school funds were to be consolidated and equally distributed. Administrative organization too was revamped; the congressional township was abolished as an administrative unit and local control of schools given to civil townships, under the supervision of a state Board of Education presided over by the Superintendent of Public Instruction. Other sections of the law taxed for the purpose of establishing township libraries, regulated the examination and licensing of teachers, and

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members wished to abolish the university and divert the federal funds donated for university purposes to the common school fund. Others wished to make it possible for the legislature to do so. *Debates and Proceedings of the Convention*, I, 171; II, 1862-67, 1884-93. The university fund was left inviolate by the Constitution as finally adopted. Article 8, Section 7.

<sup>31</sup> This address, dated December 10, 1851, was submitted to the legislature as a pamphlet on February 20, 1852. The Senate ordered five thousand copies printed. It is reprinted in Moores, "Caleb Mills," *Indiana Historical Society Publications*, III, 578.

<sup>32</sup> "Your action on this subject will be invested with an influence and importance of a peculiar character, because it will be regarded as the exponent of the views entertained of the educational provisions of the Constitution and will give tone to subsequent legislation." *Ibid.*, 580. Mills is here stating accurately the importance given legislation passed immediately after a constitutional amendment as indicating the basic purposes for which the constitutional provision was adopted. Section 1 of the Civil Rights Act has been used by the United States Supreme Court to throw light on the purposes of the draftsmen of the Fourteenth Amendment. See *Buchanan v. Warley*, 245 *United States*, 60, 78 (1917).

<sup>33</sup> *Seventh Census of the United States, 1850*, pp. 756, 788-89, reveals that 72,710 white adults of Indiana were illiterate in a total population of 988,416 (977,154 whites). Only 3,265 of the illiterates were foreign-born.

<sup>34</sup> *Revised Statutes of Indiana, 1852*, I, chapter 98.

sought to provide for the erection of school buildings. The influence of Mills, or at least the general conformity of the act to many of Mills' most important suggestions, is clearly apparent.

The fate of the statute in the courts is another and more discouraging story. But despite the fact that Supreme Court decisions<sup>35</sup> during the next few years "almost destroyed the school system,"<sup>36</sup> legislative tenacity<sup>37</sup> and a change of the judicial heart<sup>38</sup> eventually gave Indiana a workable school law. In the long war for effective free schools ultimate victory was Caleb Mills'.

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<sup>35</sup> Accounts of judicial treatment of the 1852 and 1855 School Laws are difficult to follow in Boone, *History of Education in Indiana*, where the subject is nowhere given separate treatment. Esarey, *History of Indiana*, II, 702-714, is somewhat better, but the story will be most readily understood by reference to the leading cases themselves. They are *Greencastle Township v. Black*, 5 *Indiana*, 557 (1855); *State v. Springfield Township*, 6 *Indiana*, 83 (1854); *Quick v. White-Water Township*, 7 *Indiana*, 570 (1856); *Quick v. Springfield Township*, 7 *Indiana*, 636 (1856); *City of Lafayette v. Jenners*, 10 *Indiana*, 70 (1857); *Adamson v. Auditor*, 9 *Indiana*, 174 (1857).

<sup>36</sup> Esarey, *History of Indiana*, II, 709.

<sup>37</sup> The attempts by the legislature to remedy the defects which were the bases of adverse judicial decisions and otherwise to adjust the school laws to meet various problems and pressures, are described in *ibid.*, II, 702-714. The tenacity referred to lay in the passage in 1867 of a statute giving local school corporations power to tax to raise tuition, a purpose expressly held unconstitutional in *City of Lafayette v. Jenners*, 10 *Indiana*, 70 (1857); *Laws of Indiana*, 1867, chapter XII.

<sup>38</sup> *Robinson v. Schenk*, 102 *Indiana*, 307 (1885) discussed "the very few [cases] that follow *Greencastle Tp. v. Black*," said the *Black* case had "long since been overruled insofar as it denies the power of the Legislature to empower school corporations to levy what is called a tuition tax," and concluded that even if the case had not previously been overruled the court felt it its duty to overrule it now.