

LINCOLN UNIVERSITY:
AUTHORITY OF BOARD OF CURATORS:
DALTON VOCATIONAL SCHOOL:
LEASE OF SCHOOL PROPERTY:

The Board of Curators of the Lincoln University has, in the absence of funds to carry on the operation of the vocational school as such, the authority to lease Dalton Vocational School for one year to an independent public school district.



April 12, 1956

Honorable Earl E. Dawson
Acting President
Lincoln University
Jefferson City, Missouri

Dear Mr. Dawson:

This will acknowledge receipt of your opinion request of March 29, 1956, which is as follows:

"The Board of Education of Keytesville R-3 Public Schools, Keytesville, Missouri, has requested the privilege of leasing the classroom building at the Dalton Vocational School, Dalton, Missouri, for use by their colored pupils for the academic term beginning September 1, 1956 and ending May 31, 1957.

"Perhaps you will recall that the 68th General Assembly appropriated funds for the operation of this school for only one year of the current biennium (1955-1956) and that the Board of Curators will be forced to discontinue the operation of the Dalton Vocational School at the close of the current term ending May 31, 1956.

"The Board of Curators of Lincoln University respectfully requests your opinion with respect to the following questions:

1. Does the Board of Curators have the power and authority under the existing laws to lease the Dalton Vocational School properties and/or facilities to an independent public school district?
2. Are there any legal arrangements whereby the Board of Curators might authorize the Keytesville R-3 Public School District to use the classroom building at the Dalton Vocational School for the above period (September 1, 1956 to May 31, 1957)?

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"The Curators will appreciate having the opinion of your office on the above questions."

The control of the Dalton Vocational School is placed in the Board of Curators of the Lincoln University by Section 175.070, RSMo 1949, which is as follows:

"The board of curators for Lincoln university shall take over and conduct the demonstration farm and agricultural school for the Negro race as now established at Dalton, Missouri, and the supervision and control of said school is hereby invested in the board of curators for the Lincoln university."

The only real question involved is the question of the authority of the Board of Curators of Lincoln University in the operation and management of the Dalton Vocational School. It becomes necessary to look at the statutes in determining such. Section 175.040 reads as follows:

"It is hereby provided that the board of curators of the Lincoln University shall organize after the manner of the board of curators of the state University of Missouri; and it is further provided, that the powers, authority, responsibilities, privileges, immunities, liabilities and compensation of the board of curators of the Lincoln University shall be the same as those prescribed by statute for the board of curators of the state University of Missouri, except as stated in this chapter."

Notice that it is provided in the section that the Board of Curators of Lincoln University shall have the same powers and authorities as those prescribed by statute for the Board of Curators of the State University of Missouri. Sections 172.010 and 172.020 RSMo 1949, set forth the powers and authority of the board of curators of the University of Missouri. They read as follows:

"172.010. A university is hereby instituted in this state, the government whereof shall be vested in a board of curators."

"172.020. The university is hereby incorporated and created a body politic, and shall be known by the name of 'The Curators of the University of Missouri,' and by that name shall have perpetual succession, power to sue and be sued,

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complain and defend in all courts; to make and use a common seal, and to alter the same at pleasure; to take, purchase and to sell, convey and otherwise dispose of lands and chattels; to act as trustee in all cases in which there be a gift of property or property left by will to the university or for its benefit or for the benefit of students of the university; to condemn and appropriate real estate or other property, or any interest therein, for any public purpose within the scope of its organization, in the same manner and with like effect as is provided in chapter 523, RSMo 1949, relating to the appropriation and valuation of lands taken for telegraph, telephone, gravel and plank or railroad purposes; provided, that if the curators so elect, no assessment of damages or compensation under this law shall be payable and no execution shall issue before the expiration of sixty days after the adjournment of the next regular session of the legislature held after such assessment is made, but the same shall bear interest at the rate of six per cent per annum from its date until paid; and provided further, that the curators may, at any time, elect to abandon the proposed appropriation of property by an instrument of writing to that effect, to be filed with the clerk of the court and entered on the minutes of the court, and as to so much as is thus abandoned, the assessment of damages or compensation shall be void; provided, that the curators shall not have power to sell or convey any land contained within the university campus."

That the government of the University of Missouri shall be vested in the Board of Curators of that university is also provided in Section 9(a), Article IX of the 1945 Constitution of Missouri. The section reads as follows:

"Section 9(a). State university--government by board of curators--number and appointment--The government of the state university shall be vested in a board of curators consisting of nine members appointed by the governor, by and with the advice and consent of the senate."

Section 9(b) reads as follows:

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"Section 9(b). Maintenance of state university and other educational institutions.--The general assembly shall adequately maintain the state university and such other educational institutions as it may deem necessary."

The source of sections 9(a) and (b), just quoted, is Section 5, Article XI, of the 1875 Constitution of Missouri which reads as follows:

"The General Assembly shall, whenever the Public School Fund will permit and the actual necessity of the same may require, aid and maintain the State University now established with its present departments. The government of the State University shall be vested in a Board of Curators, to consist of nine members, to be appointed by the Governor, by and with the advice and consent of the Senate."

It was conceded in the case of Heimberger vs. Board of Curators of the University of Missouri, 268 Mo. 598, 188 S.W. 128, that this section (Section 5, Article 9 of the 1875 Constitution) deprived the general assembly of the power to disestablish the University of Missouri or any department thereof in existence when the Constitution (1875) was adopted. It appears that the same construction would be applied under the present sections-9(a) and 9(b) of the Constitution. There is no such constitutional provision as section 9(a) relating to Lincoln University and the Board of Curators thereof. Also notice that by Section 9(b), the general assembly shall adequately maintain the state university and such other institutions as it may deem necessary. By this section, the government and control of Lincoln University is left to the General Assembly. Query, then, as to whether the scope of authority of the Board of Curators of Lincoln University is as broad as that of the Board of Curators of the University of Missouri. In the absence of such a section as 9(a) pertaining to Lincoln University and the Board of Curators thereof, the power to divert the use of the Dalton Vocational School is in the general assembly. Whether the Board of Curators of Lincoln University has been given that authority depends upon the statutes quoted above and the implications therefrom. The court, in State vs. McReynolds, 193 S.W. 2d 611, at l.c. 612, stated the rule as follows:

"The question for decision is whether the curators have the power to borrow money for building the dormitories and issue such revenue bonds as security."

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"This State has long followed the rule announced in Dillon, Municipal Corporations (1911) Sec. 237, so long that it has become firmly established here. It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers and no others: first, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the declared objects and purposes of the corporation--not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation and the power is denied."

The court held that the Board of Curators of the University of Missouri had the authority under Section 172.020, supra, to issue revenue bonds for the purpose of erecting dormitories, although the power to do so was not expressly given to said board.

Other cases from this jurisdiction and others, although not determinative of the precise question involved, throw some light upon the solution of the question with which we are concerned. In the case of Corley vs. Montgomery, 46 S.W. 2d 283, the Kansas City Court of Appeals held that the power of the board of a city, town, or consolidated district, to establish ward schools carries with it, or necessarily implies, the power to abandon schools no longer required. Courts in other jurisdictions have tended to base the authority of a board of education to lease school property upon the basis of the purpose for which it was leased. Also, it seems that the power of a board of education is narrower than that of the Board of Regents or Board of Curators of a college or university. However, see Presley vs. Vernon Parish School Board, 139 So. 692, (Louisiana case) where a school board attempted to lease a portion of the school ground to a private person who intended to build a cafeteria thereon. In denying the school such authority the court held that a school board does not have the power, under the law, to lease ground acquired for school purposes unless it is for some casual use, not prejudicial to nor inconsistent with the main purpose for which the property was acquired. See also Herald et al. vs. Board of Education, 65 S.E. 102 (West Virginia case) for a similar holding. However, see Atlas Life Insurance Company vs. Board of Education of City of Tulsa, 200 P. 171 (Oklahoma case) for a more liberal view. In that case the court held that the Board of Education had the authority to lease portions of the

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school lands to a mining corporation where the land was not needed for school purposes. See the case of State vs. Davidson, 31 S.E. 2d 255 (Georgia case) and Francis vs. Croley, 50 S.W. 2d 462 (Texas case) where the Board of Regents executed leases of certain lands belonging to the respective universities. These cases, except for the Corley case, are cited only to show that the boards in other jurisdictions have executed leases of certain school properties; they are not determinative of the question of authority of the Board of Curators in this state because of the differences between the laws in those jurisdictions and the laws of Missouri.

It is the opinion of this office that the Board of Curators of Lincoln University may lease the Dalton Vocational School as proposed in the opinion request. Said opinion is not to be construed broader than is necessary to cover the peculiar facts and circumstances presented in the opinion request. From that which has been pointed out, it is apparent that the Board of Curators of Lincoln University acts in the nature of a trustee for the state in the control and management of the Dalton Vocational School.

That the board is clothed with discretion in the exercise of its powers is shown from the following quotation taken from State ex rel. Thompson vs. Board of Regents for Northeast Missouri State Teachers College, 264 S.W. 698, at l.c. 700:

"While the board, in a sense, represents the state in the performance of its duties, it is but one of the many necessary instrumentalities through which the former is enabled to act within the scope of the powers conferred by law. These powers embody no attributes of sovereignty which would entitle them to be designated as the state's alter ego. While in a sense the board is an agent of the state with defined powers, the importance of its duties with their attendant responsibilities, is such as to necessarily clothe the board with a reasonable discretion in the exercise of same. This is inevitably true, first, because of the difficulty in framing a statute with such a regard for particulars as to cover every exigency that may arise in the future; and, second, because a restriction of the board's powers to the letter of the law would destroy its efficiency, and to that extent cripple the purpose for which the institution was created. Legislatures, therefore, moved by that wisdom which is born of experience, whether conscious or not of that aphorism that 'new occasions teach new duties;

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time makes ancient acts uncouth,' have contented themselves with defining in general terms the powers of such boards as are here under review, leaving the discharge of duties not defined, and which may, under changed conditions, arise in the future, to the discretion of the board."

It hardly seems probable that the General Assembly intended that the Dalton Vocational School was to sit vacant and unused after the school term of May 31, 1956. Besides the non-use, it is common knowledge that buildings depreciate at a faster rate under such conditions than when used. These seem to be further reasons from which to infer that the Legislature intended that the Board of Curators was to use discretion in the exercise of its authority in the control and management of said school.

CONCLUSION

It is therefore the opinion of this office that the Board of Curators of the Lincoln University has, in the absence of funds to carry on the operation of the vocational school as such, the authority to lease Dalton Vocational School for one year to an independent public school district.

Yours very truly,

JOHN M. DALTON
Attorney General

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