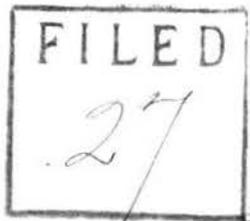


STATE TEACHERS COLLEGE SWIMMING POOL: Can be promoted by who,
and under what circumstances?



July 28, 1933

Honorable Eugene Fair, President
Northeast Missouri State Teachers College
Kirksville, Missouri

Dear Mr. Fair:

Your request for an opinion from this office dated July 5, 1933, is in words and figures as follows:

"We are contemplating somewhat, building an indoor swimming pool on the campus of this college. Of course, we have no appropriations to do it with. However, the students who collect each quarter a student activity fee, have decided that they would like to devote a part of this each quarter to the payment for a swimming pool. I want to ask your advice about a number of matters in this connection.

Am I right in assuming that as a State Teachers College through our Board of Regents, we would not be allowed to borrow any money to float this project even though we had ascertainable means to do it. I am assuming that that is right. This raises then, the question as to how the students might go ahead and do it themselves. Would we be permitted, providing we were able to get some help from the United States government, to build this pool on our campus here, or would there be a necessity for deeding the ground on which it is built, to the Student Council, with a promise from them that as soon as the pool is paid for they would deed it to the state?

Then I should like to submit to you too, the further following questions:

1. If the Student Council, as a corporate body, holds title to the building and grounds, will they have to pay a general property tax to local and state authorities?

2. If the students sell season tickets or other swimming privileges to outsiders in order to defray part or all of the cost of maintenance, will the project be classed as an amusement and be subject to an amusement tax, as such?
3. If it is classed as a privately owned amusement would the amusement tax be assessed
 - (a) against the project as a whole,
 - (b) against all student and outsider's fees which are applied to the pool
 - (c) only against the fees charged outsiders

Bearing in mind the spirit of the project, I can see no sensible reason for any kind of a tax with one possible exception -- 5% -- a percentage of fees charged outsiders for pool privileges."

You are right in your assumption stated in paragraph two of your letter. The Board of Regents of your institution has only such powers as are specifically set out in the statutes. Article 18, of Chapter 57, R. S. Mo. 1929 consists of several sections of law creating the State Teachers Colleges of this State, and providing for the administration and management of the same. Upon a careful reading of said article we have failed to discover any authority for the Board of Regents to borrow money, or pledge the real estate of the college for the purpose of building a swimming pool. It follows then that the Board cannot deed the property to the Student Council for such a purpose with an understanding that it is to be deeded back. This would be indirectly pledging the real estate to satisfy labor and material liens. The Board of Regents cannot do indirectly, that which they are not authorized to do directly.

Answering the third paragraph of your request, of course the Student Council could purchase land in their own right, separate from the school property. They could incorporate if they prefer. Should said property be operated exclusively for educational purposes they would not have to pay a general property tax on the same. Whether or not a swimming pool owned by the Student Council can be said to be owned and operated exclusively for educational purposes, thereby coming within the constitutional tax exemptions, depends altogether on the facts. The property may, or may not be exempt. Our

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answer would be a mere guess and speculative, the courts only could establish the answer in the final analysis. The whole issue would be to determine what the phrase "educational purposes" includes.

This State has no amusement tax. We are not familiar with the provisions of the Federal Tax Laws. If you present your question to the Collector of Internal Revenue on this point, they will be in a position to answer your questions.

The Student Council, upon authority from the Board of Regents, could build a swimming pool on the campus, out of the student activity fees, but the real estate would not be subject to any construction liens, and the title to the pool would vest in the State of Missouri free and clear of all the incumbrances. One loaning money on the project could choose to look to the Student Council for the satisfaction of the indebtedness, but not to the property.

If we have not answered your query you may call upon us further.

Respectfully submitted

WILLIAM ORR SAWYERS
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General.