

INSURANCE: Northeast Missouri State Teachers College has authority to buy insurance for its protection and to pay for the same out of the incidental funds which are not appropriated by the Legislature.

January 26, 1937. 128



Hon. Henry L. Enochs,
Business Secretary,
State Teachers College,
Kirksville, Missouri.

Dear Sir:

We have received your inquiry, which is as follows:

"In regard to the question of insurance on state owned property, I should like to be clear as to whether it is possible to carry insurance if such insurance was to be paid from the Funds and Earnings of the institution and not from the General Revenue Funds.

"If the above is not possible, is there any other way possible for us to carry insurance?"

Your question does not involve the authority to expend any moneys appropriated by the State Legislature, but limits itself to the question of whether your Board of Regents has authority to expend a part of the funds collected by the school as incidental funds, and whether insurance may be paid for out of said funds when the insurance is for the protection of and written on properties owned by the Northeast Missouri State Teachers College.

This very question was considered by the Supreme Court of this state in the case of State ex rel. Thompson v. Board of Regents, 305 Mo. 57, decided in 1924. Incidentally, the writer here happened to be a member of the board at that time.

In the above case insurance had been taken out on the properties of the school and the policy written in favor of the Board of Regents. A fire occurred and the question arose as to whether this fund collected from the insurance company should go into the state treasury or could be paid direct to the school and used by the school in repairing and replacing the damaged or destroyed buildings. This case, decided by the court en banc, holds that this fund is not payable to the state treasurer, but may be expended by the Board of Regents of the school in replacing said structures. That opinion also comments on and construes the meaning of this constitutional provision with reference to the Constitution of 1865 and holds that "revenue collected and money received by the State from any source whatsoever", as is referred to in said constitutional provision of 1875, means -

"the current income of the State from whatsoever source derived which is subject to appropriation for public uses. This current income may be derived from various sources as our numerous statutes attest, but no matter from what source derived, if required to be paid into the Treasury, it becomes revenue or state money; * * * state money means money the State, in its sovereign capacity, is authorized to receive--the source of its authority being the Legislature."

The opinion also holds that the Board of Regents does not have the attributes of sovereignty "which would entitle them to be designated as the State's alter ego," and that the Legislature, many decades ago, "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."

The opinion then sets out the following, l. c. 66:

"When the college was organized fifty-four years ago, it was evidently not within the contemplation of the framers of the law that the board would receive or be charged with the expenditure of other funds than those appropriated by the Legislature and hence no provision was made in reference thereto. In addition, for what reason it is profitless to discuss, no express power was conferred

upon the board to protect the State's property from loss occasioned by fire or other destructive forces. The board, upon the college becoming operative, with the increase in the student body and the extension of its work, deemed it proper to charge students certain fees for junior high school, extension and other work. This custom has continued, not only in this institution but others of like character, during the terms of their respective existences. No criticism has ever been made of same and as proof of its approval no General Assembly during the more than fifty years of this college's operation has sought to either regulate the collection or disposition of the funds thus obtained. The fund arising from such collections has been retained by the board and expended by it for the college."

Speaking of the board, the opinion says, l. c. 66:

"It is charged with no wrong doing or the usurpation of any power which has not at least received tacit legislative and public approval for a half century. These facts are entitled to more than persuasive consideration in determining the question here seeking solution. Absent qualifying incidents they may arise to the dignity of ruling decisions. (State ex rel. v. Gordon, 266 Mo. 412; Folk v. St. Louis, 250 Mo. 141.) The sum of its offending is, that having made a valid contract in the State's interest and for its protection and the fruits of same having been received, that it shall pay this money into the State Treasury instead of using it to partially restore the buildings destroyed, and await legislative action authorizing its use for that purpose. Such a course disregarding the implication which the application for this writ involves as to the integrity and business judgment of the board after its years of experience, is fraught with injury to the college in interfering with its operation and thus lessening its opportunities for the advancement of higher education."

At l. c. 69 the opinion says:

"Without burdening this opinion with their review, it seems sufficient to say that in none of these statutes, either by express enactment or reasonable implication does it appear that it was within the contemplation or intention of the Legislature that moneys received by the managing boards of educational institutions in the nature of incidental fees should, as a condition precedent to their use by the respective boards, be required to be first paid into the State Treasury and appropriated therefrom by the Legislature. In the absence of a mandatory requirement to that effect no duty is devolved upon such boards to thus dispose of these funds. Their duty in the premises in the presence of that discretion with which the law has clothed them is to expend such funds for the college, and account for same in the manner required by the plain provisions of the governing statutes."

CONCLUSION

It is our opinion that the above cited case is authority that the Board of Regents of the Northeast Missouri State Teachers College has the legal right to exercise its discretion as to taking out insurance for the protection of the property of said school, and that if its judgment is that the procuring of insurance is advisable, and if said school has funds on hand which were not appropriated by the Legislature but which were collected as incidental funds, that such funds may be used in payment of the premium on said insurance policies.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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