

SCHOOLS: Appropriation of funds for State University.

May 11th, 1939.



Honorable Delmar Dail,  
State Senate,  
Jefferson City, Missouri.

Dear Senator:

We have your letter of April 21,  
last which reads as follows:

"Pursuant to our conversation of a few days ago, I am writing to request an opinion of the Attorney General relative to the appropriation for the state University of Missouri.

In so far as the information I have at hand these appropriations could be made from the fund provided by the one-third appropriation of general revenue to the free school fund, and I would like to have a definite opinion as to whether or not under the existing statutes this could be taken from that fund."

In answer to your question we first call attention to the applicable part of Section 5, Article XI, of the Missouri Constitution, which reads in part 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."

Section 6 of the said Article of the Constitution created, and specifies what constitutes the public school fund, namely, property and money derived therefrom as set forth in the section, and which section further provides as follows:

"The annual income of which fund, together with so much of the ordinary revenue of the State as may be by law set apart for that purpose, shall be faithfully appropriated for establishing and maintaining the free public schools and the State University in this article provided for, and for no other uses or purposes whatsoever."

It is to be seen by reason of the context of Section 6 aforesaid, the public school fund in the aggregate consists of the income from the corpus of the property specified and the one-third part of the state revenue set apart for and which becomes thereby a part of the school fund.

The Legislature in the earlier history of the state carried out the mandate of the Constitution by way of legislative or statutory declaration, which statute is now Section 9712, R. S. Mo., 1929, and is substantially a repetition of the provisions of the aforesaid Section 6 of the Constitution. Section 9712, however, winds up as follows:

"\* \* \* \* \* together with not less than 25% of the state revenue, shall be applied annually to the support of the public schools provided for in this chapter."

The chapter alluded to is Chapter 57 of the Revised Statutes and which chapter by Article XX thereof, contains the set-up of the State University. We believe it fair to say that the Legislature intended by its revision of the laws from time to time and including in such revision the State University in the chapter of which Section 9712 is a part, that the support of the University should come from the school fund.

So far as the support of the University is concerned, an additional and another fund exists, for such purpose known as the "Seminary Fund" provided for in Article 25 of Chapter 57 of the present statutes.

The "Seminary Fund" was created for the support of the University at the same time the University was established by the Laws of 1838-39, and appeared at that time to be the only source of support provided. The Constitutional Convention of 1865 provided in the organic laws of the state for the creation or establishment of the University "as soon as the public school fund would permit", and at the same time created the public school fund substantially as it is now (See Sections 4 & 5, Article 9, Constitution of 1865). The Seminary Fund had been carried along as legislative enactment and was in effect at the time of the 1865 Convention.

When the present Constitution was enacted in 1875, a change was made respecting the maintenance of the University, which in effect made it mandatory on the General Assembly to support the University along with the other public schools out of the public school fund, as such fund was then and is now constituted as above mentioned. The seminary fund at the time of the enactment of the present constitution was still in existence and has ever since been.

We recite the above sequence of legislative and constitutional enactments respecting the support of the University, because it may be fairly inferred therefrom that at the time of the Convention of 1865 it was

May 11th, 1939.

seen that the seminary fund which the Legislature had theretofore set up as a source of support for the University, was or would be, inadequate and thus it was written into the organic law that the University was to share in the use of the public school fund for its support when its necessities so required.

We are not prepared to say that the support for the Univeristy is limited to an appropriation from the public school fund, towit, the income from the corpus of the fund, together with the one-third of the state revenue set aside as a part of such fund, and hat the legislative set-up of the seminary fund and the appropriation therefrom or thereof is unconstitutional, because we are not called upon to pass on such question. But granting, for the purpose of this opinion, that the Assembly is not mandatorally so limited or confined to an appropriation from the school fund for the support of the University, our conclusion is, however, that it is at least permissible for the Assembly to make its appropriation for the University from the school fund, if it will permit, which fund, as we have said comprises as a part thereof the one-third part of the state revenue set apart for school purposes.

Very truly yours,

J. W. BUFFINGTON,  
Assistant Attorney General.

APPROVED:

---

J. E. TAYLOR,  
(Acting) Attorney General

JWB RV