

SCHOOLS:

LINCOLN UNIVERSITY: Rules made by Board of Curators with reference to paying Negro school students' tuition outside of State are reasonable; 1% of fund can not be used for administrative purposes.

September 6, 1941



Dr. Sherman D. Scruggs, Pres.  
Lincoln University  
Jefferson City, Missouri

Dear Doctor Scruggs:

On August 26, 1941, you submitted to this department a letter containing two questions for an official opinion. The first question embodies the following facts:

"1. For some time the Board has had the responsibility for distributing the funds appropriated out of General Revenue for the payment of Out-of-State Tuition Aid to students in attendance at institutions outside of the State of Missouri, pursuing courses of study offered at the University of Missouri and not offered at Lincoln University. The authority for this Responsibility is set forth in the Revised Statutes of Missouri, 1939, Section 9622."

"The demands upon this fund are heavy and certain of the individual amounts requested seem excessive and unreasonable. In an attempt to make the most economical use of the fund and to distribute to all applicants the amounts which are reasonable in comparison with the costs which an individual would be required to pay if he were in attendance at the University of Missouri and at the same time grant the just amount to the applicant, the Board of Curators has devised a procedure, a copy of which is enclosed herewith, which it would follow when granting tuition aid to the applicants."

"The Board would like to have an appraisal of this procedure by your office and a statement as to whether the device is a fair instrument for use and in keeping with the provisions of the Statute."

We assume that the Board of Curators has formulated the attached conditions or rules and regulations with reference to the payment of tuition of colored students in compliance with the authority as contained in Section 10779, formerly, as stated in your letter, Section 9622, R. S. Mo. 1929. Said section was reenacted by the General Assembly in 1939 and now reads as follows:

"Pending the full development of the Lincoln University, the Board of Curators shall have the authority, if and when any qualified negro resident so requests, to arrange for his attendance at a college or university in some other state to take any course or to study any subjects provided for at the State University of Missouri, and which are not taught at the Lincoln University, and to pay the reasonable tuition fees for such attendance."

In order that the Board may have the funds to carry out the terms of the above quoted section, the Legislature has appropriated under House Bill 583 the sum of \$40,000.00, it being Section 2, page 23, and as follows:

"Tuition of Negro college students. -- There is hereby appropriated out of the State Treasury for Lincoln University, payable out of the General Revenue fund for the years 1941 and 1942, the sum of Forth Thousand Dollars (\$40,000.00), for the payment of reasonable tuition fees of Negro residents of the State of Missouri at the University of any adjacent State where the Board of Curators of Lincoln University shall have arranged for the attendance of such students to take any course or to study any subjects provided for at the State University of Missouri, and which are not taught at Lincoln University."

Section 10779 places the duty on the Board "to arrange for his attendance at a college or university in some other state" and "pay the reasonable tuition fees for such attendance."

We now consider what we term to be the conditions a prospective student must meet before such arrangement for the tuition by the Board is accepted and granted to the student, and the conditions of the attached copy in your letter. It is recognized as a rule of law, and in many instances by statute, that boards of education, teachers and officials in charge of schools and colleges have the power and authority to make needful and reasonable regulations for the conduct of such schools. Although the statute does give the Board of Curators direct authority to make rules and regulations affecting the entrance of a colored student in a school in a foreign state, we think the power is inherent in the Board of Curators. (Deskins v. Gose, 85 Mo. 485; Englehart v. Serena, 200 S. W. 268).

Having scanned each one of the conditions as outlined by the Board which must be adhered to or agreed to by a prospective colored student, we find none of them which appear to be unreasonable, and the test, when a board has the power to make rules and regulations, is whether such rules and conditions are reasonable. They must pertain to the subject which they are supposed to govern, be without malice or prejudice, and not include collateral matters. (King v. Jefferson City School Board, 71 Mo. 628).

Finding no conditions which appear to be unreasonable or harsh, we are of the opinion that the attached rules and conditions necessary for a colored student to receive tuition under the provisions of Section 10779, quoted supra, may be followed and maintained by the Board.

"2. The Board of Curators finds it quite expensive to administer the Out-of-State Tuition Aid fund. The enormous amount of correspondence requires almost the full time of a clerk to dispose of it and properly file claims for payment. The cost of postage and office supplies further adds to the expense of its distribution. For the defrayal of these costs no provisions are indicated. At present this cost has been borne by the Board of Curators and paid out of General Revenue funds appropriated for institutional operation."

"In view of the fact that the institutional funds for operation are greatly limited and must be used to meet the rightful demands of this rapidly expanding institution, it seems that the cost of the administration of the Out-of-State Tuition Aid fund should be borne by the fund itself and not made the financial and service burden to be borne by the already too restricted operation budget of the Institution."

"The Board would seek your honorable opinion. It would know if it can be permitted to set aside one per cent of the tuition aid fund for its own administration."

In answering your first question, we have quoted that portion of the Appropriation Act which set aside funds for the payment of the tuition of Negro students in schools outside the State. The appropriation act contains the provision "for the payment of a reasonable tuition fee of Negro residents of the State of Missouri." It is silent as to any item for the operation or disbursement of the fund. In order for it to be valid for you to deduct or to set aside one per cent of the amount, the statute would have to be broad enough to include such an item. In the decision of State Ex rel Bibee v. Hackman, 276 Mo. 110, 1. c. 116, the question arose as to the authority of the State Board of Equalization to employ a stenographer. The Court denied the Board the right to employ such a stenographer, stating that the authority must be bottomed on some statute. A like principle was involved in the decision of State Ex rel Bradshaw v. Hackman, 276 Mo. 600, 1. c. 607. The decision of State v. Weatherby, 344 Mo. 848, is also considered as authority for the above statement.

We are, therefore, of the opinion that one per cent of the tuition fund cannot be set aside for the administration of same.

Respectfully submitted,

OLLIVER W. NOLEN  
Assistant Attorney General

APPROVED:

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VANE C. THURLO  
(Acting) Attorney General

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