

LINCOLN UNIVERSITY: Powers and functions of Board of Curators with respect to operation and maintenance of institution.

December 3, 1943

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

Dear Doctor Scruggs:

We are in receipt of your letter of December 1, 1943, as follows:

"The Board of Curators of Lincoln University has held certain opinions as to its powers and function in the operation and maintenance of the Lincoln University, the State supported institution for the higher education of the Negro residents of the State. It would request of you a statement of the validity of these opinions.

"1. It is the opinion of the Board of Curators of this Institution that by statutory provision the control of this Institution is vested in this body (the Board), and by this symbol the Board is responsible to no higher authority, provided that in the administration of the educational offerings of the Institution the Board's actions are in conformity with sound educational practice.

"2. It is the opinion of the Board of Curators of this Institution that this body (the Board) is authorized and required to operate and maintain an institution of learning that shall afford to the Negro people a quality of educational offerings up to the standard provided for other citizens at the State University of Missouri.

"3. It is the opinion of the Board of Curators of this Institution that the Board can provide and maintain educational offerings of acceptable and

required standards only so long as funds are adequate and available for such operations and purposes.

"4. It is the opinion of the Board of Curators of this Institution that the Board may in its discretion and best judgment make such distributions and allocations of its appropriated funds as shall enable it (the Board) to operate and maintain the educational offerings and services of the Institution at the level of acceptable and required standards.

"5. It is further the opinion of the Board of Curators of this Institution that the Board may in its discretion and best judgment reorganize or discontinue any course, departments or schools in the Institution when the available funds are inadequate for their operation or maintenance at acceptable and required standards of excellence.

"For your earliest consideration of these opinions the Board of Curators would be most grateful to you."

The powers and functions of the Board of Curators, with respect to the operation and maintenance of Lincoln University, are contained in the Statutes of Missouri.

Section 10,774, R. S. Mo. 1939, provides that:

"The Board of Curators of the Lincoln University shall be authorized and required to reorganize said institution so that it shall afford to the negro people of the state opportunity for training up to the standard furnished at the State University of Missouri. To this end the board of curators shall be authorized to purchase necessary additional land, erect necessary additional buildings, to open and establish any new school, department or course of instruction, to provide necessary additional equipment, and to locate the respec-

tive units of the university wherever in the State of Missouri in their opinion the various schools will most effectively promote the purposes of this article."

Section 10,775, R. S. Mo. 1939, provides in part as follows:

"The Board of Curators of Lincoln University of Missouri, shall hereafter consist of nine members who shall be appointed by the Governor, by and with the advice and consent of the Senate. * * * * *

Section 10,778, R. S. Mo. 1939, provides 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 article."

Section 10,783, R. S. Mo. 1939, sets out the powers and liabilities of the Curators of the University of Missouri in part as follows:

"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, 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, *

* * *

I

A reading of the above statutes reveals unequivocally that all authority, liabilities, privileges and immunities with respect to the operation and maintenance of Lincoln University is vested in the Board of Curators of Lincoln University, and in it alone.

You raise the further question as to whether the Board of Curators is responsible to any higher authority, provided, of course, that in the administration of the university the board's conduct is in conformity with sound educational practice.

Obviously, in a limited and narrow sense, all public institutions and their administrators are responsible ultimately to the people of the state, and the people are able to exercise their prerogatives through the legislature. We desire to have it understood, however, that we are not considering the term "responsible" in such a limited sense.

Section 12,826, R. S. Mo. 1939, provides that the governor may remove any appointive state official when, in his opinion, such removal is necessary for the betterment of the public service. Said section is as follows:

"The Governor shall have power and he is hereby authorized to remove from office, without assigning any other reason therefor, any appointive state official required by law to be appointed by the Governor, whenever in his

opinion such removal is necessary for the betterment of the public service, but the Governor may, at his discretion, in any order of removal which he may make under authority of this act, assign additional and more specific reasons for such removal."

The governor, under the terms of the above statute, may remove from office any and all members of the board and appoint new members in place of these removed members, irrespective of whether such board is conducting itself properly. The governor need only determine that such removal is necessary for the betterment of the public service. This is a matter wholly within the governor's discretion, and he need assign no reasons for removal if he does not so desire.

The fact, however, that the governor is vested with the power of removal cannot, under any rule of construction, be interpreted as transferring control of the institution from the board to the governor. His power with respect to the conduct of the institution is limited strictly by statute to the power of removal alone.

We are of the opinion that all authority, liabilities, privileges and immunities, with respect to the operation and maintenance of Lincoln University, are vested by statute solely with the Board of Curators of Lincoln University, and, consequently, that the control of said institution is solely in said board. We are further of the opinion that the board, absent the power of removal by the governor, with or without cause, is responsible to no higher authority for its conduct of the administration of the university.

II

Your second statement is governed by Section 10,774, supra, which provides in part that:

The Board of Curators of the Lincoln University shall be authorized and required to reorganize said institution so that it shall afford to the negro people of the state opportunity for training up to the standard furnished at the State University of Missouri."

The language in the above statute is clear and unambiguous, and needs no statutory construction (Cummins v. Kansas City Public Service Co., 334 Mo. 672, 66 S. W. (2d) 920).

We agree with your second statement and are of the opinion that the Board of Curators of Lincoln University is authorized and required to operate and maintain Lincoln University in such a manner that the negro people of the state will be afforded an opportunity for training up to the standard furnished at the State University of Missouri.

III

Section 10,778, supra, provides that the Board of Curators of Lincoln University shall organize and have the same powers as those prescribed by statute for the Board of Curators of Missouri University.

Section 10,791, R. S. Mo. 1939, provides as follows:

"The president and treasurer of the university, residing at Columbia, and treasurer of the school of mines and metallurgy, residing at Rolla, shall, at each annual meeting of the board, prepare and submit to the board a carefully prepared statement of the probable amount of income, as near as may be, of the university and all its departments for the year following, and the curators shall thereupon make an estimate of the probable expenses of the institution and each of its departments for the ensuing year, based upon the statements above mentioned, and make the necessary appropriations to meet said expenses for the current year; and in no instance shall the board of curators create any indebtedness in any one year above what they can pay out of the annual income of said year."

Under Section 10,791, supra, it becomes the duty of the president and treasurer of Lincoln University to prepare and submit to the board at each annual meeting a statement of the probable income of the university, and based upon said statement, the board is required to estimate the probable expenses not only of the institution, but also each of its departments, for the ensuing year. The board then is required to allocate the available funds as to meet the expenses for the current year, and in no instance can it create an indebtedness for any one year above what they can pay out of the annual income of said year.

To illustrate, if the Board of Curators has made an allocation for the operation of the university and its respective departments for the year 1943, it cannot for any reason take funds allocated by the board for the year 1943 in order to complete prospective operations for the year 1944, if by such transaction of funds an indebtedness would be created in 1943. The legislature contemplated that the institution and its respective departments be operated on an annual basis and that it stay within its income for the particular year. The intention obviously is that there be sufficient funds available to fully complete a course of instruction for any given year.

We are of the opinion that the Board of Curators of Lincoln University must so allocate the funds available to the institution and its respective departments for any given year so as to permit standard and acceptable courses of instruction to be offered in a given year without the creation of an indebtedness for that particular year.

IV

We now pass to a consideration of your third and fifth statements, and will treat them as one.

The board should not, nor would it want to, offer a course of instruction that was so limited by lack of funds as to permit only a partial and incomplete presentation of the subject matter. The board, upon finding that funds will not be available to carry on any school, department or course of instruction for a given year, has no alternative but to discontinue same for that year. The duty rests upon the board in such instance to eliminate such courses of instruction as it deems necessary to permit it to operate within its income for a particular year.

We are of the opinion that the Board of Curators of Lincoln University can provide and maintain only those schools, departments and courses of instruction as they have funds available

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and which will permit the offering of acceptable and adequate standards of instruction. It is our further opinion that if in considering the schools, departments and courses of instruction to be offered and maintained it be found necessary to reorganize or discontinue any of such schools, departments or courses of instruction by reason of lack of funds, the board may in the exercise of its discretion discontinue same.

Respectfully submitted,

MAX WASSERMAN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

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