

LINCOLN UNIVERSITY: Curators of Lincoln University may not lawfully pay the tuition for negro students at St. Louis University in Missouri under the terms of Section 10779, R. S. Mo. 1939.

September 7, 1944



Mr. Sherman D. Scruggs
President of Lincoln University
Jefferson City, Missouri

Dear President Scruggs:

This opinion is written in response to your letter of August 22, 1944, in which you state:

"Since Negro students are being admitted to the St. Louis University, at St. Louis, Missouri, a problem arises for the Curators of the Lincoln University in the matter of meeting requests for tuition costs by these students for courses which are offered at the University of Missouri and not offered at Lincoln University.

"The problem for the Curators is to decide whether or not they can legally pay tuition costs to those students, since the St. Louis University is within the State of Missouri, when the fund was provided for the payment of tuition costs for attendance at schools outside of the State.

"Will you give an opinion, please, as to what shall be the action of the Curators in these cases? Your earliest reply will aid them to meet an urgent need for information and guidance."

Your letter, therefore, submits one question for an opinion, to-wit: Whether the curators of Lincoln University may legally pay tuition costs for negro students who attend St. Louis University within the State of Missouri, under the statute authorizing them to pay such tuition costs for students attending colleges and universities in some other state who are taking a course of study equal to a course of study provided for at the State University of Missouri and which are not taught at Lincoln University.

Section 10779, Article 21, Chapter 72, R. S. Mo. 1939 is the general statute of this state on the subject of the disbursement of funds appropriated for tuitions of negro students in colleges and universities outside of the State of Missouri,

taking courses of study equal to those taught at Missouri University and not taught at Lincoln University. Said Section is 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."

This section as re-enacted in 1939 by the Legislature of Missouri with some amendatory language, is practically the same section as Section 9622, R. S. Mo. 1929. It was originally enacted in 1929 (Laws, 1921, p. 386, Section 7). Since the re-enactment in 1939 of Section 10779, there has been four appropriation bills passed by the Legislature appropriating funds for tuition costs for negro college students at Universities outside the State. These enactments appear in the Session Acts of Missouri as follows, at page 70, Session Acts of 1941, page 274, Session Acts of 1941, page 51, Session Acts of 1943, and page 213, Session Acts of 1943, all carrying the same condition as to the authority of the Board of Curators of Lincoln University to disburse the funds appropriated as is contained in Section 10779, R. S. Mo. 1939, and in obedience thereto.

These four appropriation bills are respectfully as follows:

Section 2 of House Bill 17 at page 70, Laws of 1941:

"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 period beginning January 1, 1941 to June 30, 1941, the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00) 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 2 of House Bill 582 at page 247, Laws of 1941:

"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 Forty 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 2 of Senate Substitute for House Bill 9, page 51, Laws of 1943:

"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 period beginning January 1, 1943 and ending June 30, 1943, the sum of Twelve Thousand Five Hundred Dollars (\$12,500.00), 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 2 of House Bill 417, page 213, Laws of 1943.

"There is hereby appropriated out of the State Treasury for Lincoln University, payable out of the General Revenue fund for the years 1943 and 1944 the sum of Thirty-Five Thousand Dollars (\$35,000.00) for the payment of reasonable tuition fees of Negro resident 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."

These appropriations are "ear-marked" as to where and for what purpose the funds thereby appropriated shall be disbursed, and employs, as will be readily observed, precisely the same words in so doing. There is no discretion given the Curators of Lincoln University to disburse such funds in any way or for any purpose or at any place other than in accordance with the definite terms provided in such appropriations, which is that such funds shall be used "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."

Under Section 22 of House Bill 657 under the title of "Money for the support of state government", page 260, l.c. 281, Laws of 1943, is an appropriation bill appropriating funds "to pay the tuition of Negro students during the biennial period 1941-1942". This is the only appropriation since the re-enactment of Section 10779, Article 21, page 72, R. S. Mo. 1939, speaking of any appropriation for tuition for negro students except the four appropriation bills hereinabove copied. Section 22 of House Bill 657, Laws of 1943, page 281 is as follows:

"There is hereby appropriated out of the State Treasury chargeable to the general revenue fund the sum of Thirteen Thousand Forty-One Dollars and Twenty-Two Cents (\$13,041.22) to pay the tuition of Negro students during the biennial period 1941-1942."

This section does not refer in anyway to Lincoln University, nor the authority of the Curators of the institution to take the funds so appropriated into their custody or to disburse it for any cause. For lack of any direction by whom the distribution of such funds shall be made, said Section 22 might well refer to the terms of Section 10250 R. S. Mo. 1939, requiring the directors of common school districts in the State of Missouri to establish and maintain schools for colored children in districts where there are eight or more colored children according to the last enumeration, or in lieu thereof to pay transportation and tuition charges for such students in any district in the county wherein a school is maintained for colored children. Certainly, there is nothing in said Section 22 to identify it as in contemplation of the provisions of Section 10779, supra, authorizing the Curators of Lincoln Univer-

sity to disburse funds for the payment of tuitions in anyother states for colored students who can not get instruction in the studies being followed in this state.

Article 21, Chapter 72 of R. S. Mo. 1939, is amended in many respects to conform to the requirements of the decesion of the Supreme Court of the United States in the case of State ex. rel. Gaines v. Canada et. al, 305, U. S. 337 which required definite nondiscretionary laws for an equal opportunity for the negro people of Missouri to have training up to the stan- dard furnished at the University of Missouri

Section 10774 of said article and chapter fully complies with this requirement. Pending such development of Lincoln University to give the colored people such new schools, depart- ments, or courses of instruction provided for in said section 10774, Section 10779 has provided for the Board of Curators of Lincoln University to arrange for the attendance at a college or university in some other state, outside the State of Mis- souri of qualified resident negro students of Missouri, and authorizes such curators to pay the reasonable tuition fees for such attendance by such students. Manifestively, such funds may only be obtained by appropriation from the public funds of the State by legislative appropriation. Examples of such appropriations from the general revenue of the State have been set out heretofore.

Curators, regents, and other governing officers of a state college or university are agents of the State in disbursing money of the State. Such funds are trust funds in the hands of such officials, and their position is one of fiduciary relationship with the State.

In the 11 Corpus Juris, page 994, in Sections 23 and 24 the following text law appears:

"The regents or other governing officers of a state university act as agents in behalf of the state when they enter into a contract involving the expenditure of money of the state; and their authority to bind the state is limited to the amount of the legisla- tive appropriations granted for such purpose.* *"

"Every employee of a university is liable for the misuse of moneys received by him in his fiduciary capacity; * * * * *

Section 22 on the same page of the same work states:

"The trustees or other governing body of a college or university may make such contracts as are within the limits of the authority conferred on them by charter or statute. * * * * *

The duties and responsibilities of curators and other officers of colleges and universities in the disbursement of appropriations of public funds is thus stated in 11 Corpus Juris, pages 986 and 987, Section 11B as follows:

"Appropriations of money in aid of colleges and universities may be absolute and unconditional. If, however, a condition is attached to an appropriation, it must be strictly performed to entitle the institution to the sum offered. The disposition of the funds appropriated by congress for the aid of colleges of agriculture and mechanic arts is left to the discretion of the states, subject only to the limitation that the fund must be applied to its intended purpose. Under an act making an appropriation to such schools as shall be actually engaged in a certain kind of instruction, only such colleges may take as were in operation at the time of the appropriation. The amount of such appropriations, the time and manner of withdrawing the same, whether on voucher or otherwise, the particular purposes for which it may be used, the officer or board entitled to expend it, the priority of warrants, and the fund from which the money is to be drawn are all controlled by the terms of the statute." Citing St. ex. rel. Houck v. Gordon, 181 S. W. 32.

This was a case in which the Supreme Court of Missouri held that an appropriation must be disbursed for the particular purpose for which it was made. Louis Houck was President of the Board of Regents of the State Normal School at Cape Girardeau, Missouri. John P. Gordon was State Auditor. There had been an appropriation bill passed by the Legislature at its 1915 session, of a certain sum for salaries of the instructors at said normal school during the years 1915 and 1916, and to cover deficiencies for the years 1913 and 1914. There arose a controversy over whether the deficiencies in salaries for 1913 and 1914 should be paid out of the sum appropriated for 1915 and 1916 for salaries. Houck claimed such deficiencies should not be so paid out of that sum, but should

be paid out of other general revenues of the State. The State Auditor contended that such deficiencies should be paid out of the specific appropriation made in 1915. The President of the normal school issued his requisition for the payment of the 1913 and 1914 salary deficiencies and presented it to the State Auditor with a demand that a warrent be drawn for the amount named in the requisition. The State Auditor refused to comply. Mandamus was filed in the Supreme Court to compel compliance. The Supreme Court in holding that such deficiencies must be paid out of the specific sum appropriated therefor, and none other, Judge Woodson who delivered the opinion of the Court, l.c. 34 said:

"* * *In my opinion the two sections should be read together, and when so read and construed they clearly, to my mind, mean that any and all deficiencies that may have existed in any and all of the matters enumerated in said section 4 were to be paid out of the specific appropriations made therefor, respectively. For instance: If there existed a deficiency on the salary account, then that deficiency should be paid out of the \$175,000, appropriated for salaries; or, should the deficiency exist on account of the library, then the deficiency should be paid out of the \$3,000 appropriated for that purpose, and so on to the end of the list."

In the case of State v. Weatherby, 129 S. W. (2d), 887 the Supreme Court of Missouri held that public funds disbursed by one public official from a fund for which there was no specific appropriation to another public official could be recovered by the State from the person to whom the money was paid. This was a case where Weatherby, who had been an Assistant Attorney General of Missouri, was, by the consent of the then Governor in 1930, employed by the Superintendent of the Insurance Department as special counsel for that department "to enforce the insurance laws of the State". There was a contract between the then Attorney General, the Superintendent of Insurance, and the defendant Weatherby that the defendant should so act as special counsel for the Insurance Department and that he should be paid out of appropriations made by the General Assembly, and available for such purpose. The defendant assumed his duties and performed many services. He was paid out of appropriations for both the insurance department and the legal department. The controversy arose over that fact. The State claimed that Weatherby should have been paid solely out of the appropriations made by the Legislature for the Insurance Depart-

ment, and that the payments made out of the legal department were unauthorized and unlawful. This was the issue in the case. The Supreme Court in holding that the payments to the defendant out of the appropriation made for the legal department was unlawful and could be recovered by the State, on the ground that employees of the insurance department must be paid strictly out of the appropriations for that department, l.c.890, said:

"These appropriation acts evidence a clear legislative intent that the salaries, fees and expenses arising out of appointments issuing from the Insurance Department were to be chargeable against the Insurance Department fund in so far as therein provided; whereas those arising out of appointments under the Legal Department were to be paid out of the State revenues. While the General Assembly was vested with authority to change the fund chargeable with the payment of the controverted items, it did not see fit so to do. It follows that payments to one holding an appointive position under Sec. 5678, supra, as 'counsel' out of State revenue appropriated for the support of the Legal Department were without legislative sanction and unlawful. This is in conformity with the constitutional mandate found in Sec. 19 of Art. 10."

The case of Lamar Township v. City of Lamar, 261 Mo. 171 was a case where, under an assessment for road and bridge purposes in a township in a county under township organization, taxes collected within the City of Lamar were paid to the city of Lamar under the belief that the city was entitled to them. The township sued to recover this money from the City of Lamar. The Supreme Court of Missouri in holding that Lamar Township could recover such funds paid under the State of Missouri to the City of Lamar l.c. 180 said:

"II. Do these taxes levied and collected by Lamar township, from the citizens living within the corporate limits of the city, belong to the plaintiff township or defendant city? That it would seem fair for the city of Lamar to have them, all must admit. It is so recognized by our Legislature, as shown by their repeated efforts to pass and in passing such law. To whom public funds belong and the disposition that can lawfully be made of the, depends upon the law and not upon sentiment or anyone's idea of fairness. So it becomes the court's duty to be governed by the law and not by personal preference of the individual who discharges the judicial function."

Again the Court in the same case l.c. 183 said:

"The taxes collected and paid into the city treasury by the township collector and ex-officio collector were so paid because these officers understood and believed it was their duty, under the law, as was generally understood by the officers of both plaintiff and defendant, so that if the court is right as to its construction of the law, these payments were made under a mistake of law.* * * * *

This opinion l.c. 187 quoting Cyc further states:

"Although there are cases holding the contrary, the better rule seems to be that payments by a public officer by mistake of law, especially when made to another officer, may be recovered back.* * * * *

The Court l.c. 190, also on this point quoted Morrow v. Surber, 97 Mo. 155, as follows:

"Such a mistake as is here described furnishes ground for recovery of the money in this action. The plaintiff is the custodian of the county funds and sues here in his official capacity. He is agent of the county for the purposes defined by law, and the public is bound to take notice of the limitations of his agency. He cannot give away county funds or disburse them contrary to law. Any such disbursement is entirely invalid.* * * * *

The courts of Missouri have thus uniformly held that an appropriation of public funds must be disbursed in the precise manner designated in the act of appropriation.

CONCLUSION

Having in mind the facts as stated in the request of the President of Lincoln University, and following the law as announced by the Supreme Court of Missouri and referring also to the text writers on the question, it is the opinion of this department that the Curators of Lincoln University are not authorized by law to pay, and may not lawfully pay tuition costs for negro students attending St. Louis University in the

September 7, 1944

State of Missouri, under a Statute Section 10779, supra, which only authorizes said Curators to pay the tuition costs of negro students, resident of Missouri, who may take courses of study at a college or university in some other state equal to courses provided for at Missouri University, and which are not taught at Lincoln University. The only recourse left would be to procure relief from the Legislature permitting such Curators to use such appropriations for tuition for students in the State of Missouri who could obtain the same instruction at St. Louis University as is provided for at Missouri University but not taught at Lincoln University.

Respectfully submitted,

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APPROVED:

ROY McKINTRICK
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