

CONSTITUTIONAL LAW: Senate Bill 165 does not attempt to authorize impairment of obligations of contracts and is not in conflict with the United States Constitution.

June 20, 1945

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Honorable Arnold Leonard  
Room 319 Capitol Building  
Jefferson City, Missouri

Dear Senator Leonard:

Under date of June 8, 1945, you wrote the Attorney General and made the following request for an opinion:

"I am enclosing herewith two copies of Senate Bill No. 165, introduced by myself and Senators Miller, Frisby and Sunderwirth.

"We presented this bill to the Appropriations Committee a day or so ago and the committee appointed me, a committee of one, to inquire of you as to its constitutionality on the following ground: Whether or not the bill violates the provision of the U. S. Constitution, which prohibits the state from making a law impairing the obligation of contracts. The question more particularly being, whether the legislature can, as this bill provides, require the payment of these certificates of indebtedness before some of them are due, or whether we shall have to wait and pay them off as they mature.

"I am enclosing herewith a list of the certificates of indebtedness owed to the school fund and the seminary fund, together with the dates of maturity. It is my impression that those which have already matured have been replaced by new certificates of indebtedness. For the

background of these certificates of indebtedness, I refer you to Report No. 4 by the Committee on Legislative Research which last month filed said report on this subject.

"I do not think that the committee was of the opinion that any question was involved so far as the Constitution of Missouri is concerned, but if there is any such question in your opinion, of course, we should want to know of it."

The provision of the Constitution of the United States referred to in your letter is found in Section 10, Article I, which section is here quoted in part:

"No State shall enter into any treaty, alliance or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

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This clause of the Constitution of the United States has been applied in many cases, but one of the earliest cases decided contains language particularly applicable to your question. The case is *The Trustees of Dartmouth College v. Woodward*, 4 L. Ed. 629, and the following passage from l. c. 657 is the language referred to:

"The parties in this case differ less on general principles, less on the true construction of the constitution in the abstract, than on the application of those principles to this case, and on the true construction of the charter of 1769. This is the point on which the cause essentially depends. If the act of incorporation be a grant of political power, if it create a civil institution to be employed

in the administration of the government, or if the funds of the college be public property, or if the state of New Hampshire, as a government, be alone interested in its transactions, the subject is one in which the legislature of the state may act according to its own judgment, unrestrained by any limitation of its power imposed by the constitution of the United States.

"But if this be a private eleemosynary institution, endowed with a capacity to take property for objects unconnected with government, whose funds are bestowed by individuals on the faith of the charter; if the donors have stipulated for the future disposition and management of those funds in the manner prescribed by themselves, there may be more difficulty in the case, although neither the persons who have made these stipulations nor those for whose benefit they are made, should be parties to the cause. Those who are no longer interested in the property, may yet retain such an interest in the preservation of their own arrangements as to have a right in insist that those arrangements shall be held sacred. Or, if they have themselves disappeared, it becomes a subject of serious and anxious inquiry, whether those whom they have legally empowered to represent them forever may not assert all the rights which they possessed, while in being; whether, if they be without personal representatives who may feel injured by a violation of the compact, the trustees be not so completely their representatives, in the eye of the law, as to stand in their place, not only as respects the government of the college, but also as respects the maintenances of the college charter.

"It becomes, then, the duty of the court most seriously to examine this charter, and to ascertain its true character."

And it is now our duty to determine the nature of the certificates of indebtedness of the State to the Public School Fund and to the Seminary Fund in order to apply the law as quoted. For convenience and to better illustrate the discussion, a copy of one certificate is herein set out:

"THE STATE OF MISSOURI

{ S E A L }

"TO ALL WHO SHALL SEE THESE PRESENTS --  
GREETING:

"KNOW YE THAT: It is hereby certified that the State of Missouri is indebted to the State Board of Education of said State, as trustees, for the Public School Fund of said State, in the sum of one thousand dollars ( \$1,000 ) payable twenty years after date, upon which sum the said State hereby promises to pay to the State Board of Education, as trustee as aforesaid, interest semi-annually, at the rate of five per centum per annum, out of any money in the State Treasury not otherwise appropriated; said interest to be paid on the first day of July and of January, each year, and applied to the maintenance of the free public schools as provided by law.

"This certificate of indebtedness represents certain sums of money paid into the State Treasury and placed to the credit of the State School Fund, being unclaimed dividends of insolvent insurance companies paid into the State Treasury by the Superintendent of Insurance, also proceeds of the sale of Saline lands, and is issued in pursuance to sections 11593, 11594 and 11595, Revised Statutes 1919, and is non-negotiable, unconvertible and non-transferable, and shall be sacredly held and preserved in the State Treasury as part of the Public School Fund of the State.

"IN WITNESS WHEREOF, I hereunto set my hand and cause to be affixed the GREAT SEAL of the State of Missouri, Done at Office in the City of Jefferson, State of Missouri, this sixth day of January Nineteen Hundred and Forty five .

BY THE GOVERNOR:

(Signed) Forrest C. Donnell  
Governor.

(OFFICIAL ) (Signed) Gregory C. Stockard  
) SEAL ) Secretary of State.

By (Signed) L. B. Hartley  
L. B. Hartley,  
Chief Clerk. "

Certificates of this nature totaling \$4,598,939. 92 have been issued by the State to the Public School Fund and the Seminary Fund. All of the certificates draw interest at either five or six percent per annum (Report No. 4, Legislative Research Committee).

It will be observed from the copy of certificate set out that it certifies that the State is indebted to the State Board of Education, as Trustee for the Public School Fund, a certain sum of money. The State Board of Education is solely a governmental board. Section 4, Article XI, Constitution of 1875 and Section 10663, R. S. No. 1938. The Public School Fund and the Seminary Fund were set up by the Constitution of 1875, Section 26, Article X, as follows:

"All certificates of indebtedness of the State to the 'public school fund' and to the 'seminary fund' are hereby confirmed as sacred obligations of the State to said funds, and they shall be renewed as they mature for such period of time and at such rate of interest as may be provided for by law. The General Assembly shall have the power to provide by law for the issuing certificates to the public school fund and seminary fund as the money belonging to said

funds accumulates in the State Treasury: Provided, that after the outstanding bonded indebtedness has been extinguished, all money accumulating in the State treasury for above named purposes shall be invested in registered county, municipal or school district bonds of this State of not less than par value. Whenever the State bonded debt is extinguished or a sum sufficient therefor has been received, there shall be levied and collected, in lieu of the ten cents on the one hundred dollars valuation now provided for by the statutes, an annual tax not to exceed three cents on the one hundred dollars valuation, to pay the accruing interest on all the certificates of indebtedness, the proceeds of which tax shall be paid into the State treasury and appropriated and paid out for the specific purposes herein mentioned."

Following this constitutional provision, appropriate legislation has been enacted.

The Constitution of 1945 contains a different provision, Section 4, Article IX:

"All certificates of indebtedness of the state to the Public School Fund and to the Seminary Fund are hereby confirmed as sacred obligations of the state to said funds, and they shall be renewed as they mature for such time and at such rate of interest as may be provided by law. The general assembly may provide at any time for the liquidation of said certificates, but all funds derived from such liquidation, and all other funds hereafter accruing to said state school or state seminary funds, except the interest on same, shall be invested only in registered bonds of the United States or the state, bonds of school districts of the state, or bonds or other securities payment of which are fully guaranteed by the United States, of not less than par value. The general assembly may levy an annual tax sufficient to pay the

accruing interest of all state certificates of indebtedness."

All of the certificates of indebtedness have been executed on behalf of the State pursuant to statutory direction. Section 10881, R. S. Mo. 1939, provides as follows:

"Whenever a certificate of indebtedness of the state to the 'public school fund' or to the 'seminary fund' shall mature, it shall be canceled by the board of education and a new certificate for a like amount in renewal thereof shall be executed by the governor, as provided in the next section, payable to the 'public school fund' or to the 'seminary fund' (as the case may be) twenty years after the date thereof, bearing the same rate of interest as the maturing certificate, the interest to be payable semi-annually on the first days of January and July in each year. An entry of the cancellation of the matured certificate, and the execution of the renewal thereof, shall be entered upon the records of said board, and said renewal certificate of indebtedness shall be deposited with the state treasurer and his receipt therefor filed with the state board of education and noted upon its books."

From these exceedingly brief statements it is apparent that the Public School Fund and the Seminary Fund are funds set up by the State for public purposes. The certificates of indebtedness executed by the State to these funds are evidence only of a transaction by the State with its funds.

#### Conclusion

It is, therefore, the conclusion of this department that the clause of Section 10, Article I of the Constitution of the United States, prohibiting states from passing laws impairing the obligations of contracts, would not be violated by the passage of

Hon. Arnold Leonard

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June 20, 1945

Senate Bill No. 165 by the General Assembly of Missouri.

Respectfully submitted,

W. O. JACKSON  
Assistant Attorney General

APPROVED:

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HARRY H. KAY  
(Acting) Attorney General

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