

LINCOLN UNIVERSITY: Re: The provision in House Bill #361 passed by the 63rd General Assembly does not restrict the use of money appropriated for the tuition of students in out-state institutions to those institutions which are tax-supported

August 20, 1945



Mr. Sherman D. Scruggs  
Acting Secretary, Board of Curators  
Lincoln University  
Jefferson City, Missouri

Dear Mr. Scruggs:

We have your letter of August 13, 1945, in which you request an opinion of this department regarding the use of funds appropriated in House Bill #361 for the payment of tuition and other fees of negro students, who are residents of the State of Missouri, in out-state institutions of higher education, such tuition arrangements being pursuant to Section 10779, R.S. Mo., 1939. Pointing out that House Bill #361 limits the use of the funds appropriated to tuition and other fees in tax-supported institutions of other states, your request reads as follows:

"2. The Curators seeks an opinion from the Attorney General as to whether those students who are already pursuing courses in the non-tax-supported institutions may continue their courses to completion with the use of the funds provided under this measure and also that those students whose attendance at such institutions has already been arranged for to begin in September, 1945, may also be permitted to use the fund for such attendance."

As stated in your letter, Section 10779, R.S. Mo., 1939 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."

The pertinent provision of House Bill #361, as truly agreed to and finally passed, reads at page 24, as follows:

"Section 2. There is hereby appropriated out of the State Treasury for Lincoln University payable out of the General Revenue fund for the year beginning July 1, 1945 and ending June 30, 1946 the sum of Twenty Thousand Dollars (\$20,000.00) for the payment of tuition and other student fees of negro residents of the State of Missouri at any tax supported institution of higher education of any other 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 23, Article III, Constitution of 1945, reads as follows:

"No bill shall contain more than one subject which shall be clearly expressed in its title, except bills enacted under the third exception in section 37 of this article and general appropriation bills, which may embrace the various subjects and accounts for which moneys are appropriated."

Legislation of a general character cannot be included in an appropriation bill. State ex rel. Gaines vs. Canada (1937) 113 S. W. (2d) 783, 342 Mo. 121; State ex rel. Davis vs. Smith (1934) 75 S. W. (2d) 828, 335 Mo. 1069; State ex rel. Mueller vs. Thompson (1926) 316 Mo. 272, 289 S. W. 338.

In State ex rel. Gaines vs. Canada (1937) 342 Mo. 121, the Supreme Court of Missouri had before it the question of whether an appropriation Act, providing funds for the payment of tuition fees for attendance of negro students at the University of any adjacent state, could provide that the total amount paid should not exceed the difference between the registration and incidental fees charged by the University of Missouri to resident students

and the school attended for similar courses. The question in the case was whether the proviso as to the maximum amount which could be paid was constitutional under Section 28 of Article IV of the Constitution of 1875, which provided as is provided in Section 23 of Article III of the Constitution of 1945, that no bill shall contain more than one subject which shall be clearly expressed in its title. The court held said proviso unconstitutional and that legislation of a general character cannot be included in an appropriation bill. The court said, l.c. 136:

\* \* "The proviso in the 1935 act which attempts to limit the authority of the board of curators to the payment of the difference between the tuition in Missouri and in the adjacent states is unconstitutional and void. A general statute (Sec. 9622, R. S. 1929) authorizes the board of curators of Lincoln University to pay the reasonable tuition fees of negro residents of Missouri for attendance at the university of any adjacent state. This statute cannot be repealed or amended except by subsequent general legislation. Legislation of a general character cannot be included in an appropriation bill. To do so would violate Section 28 of Article IV of the Constitution which provides that no bill shall contain more than one subject which shall be clearly expressed in its title. There is no question but what the mere appropriation of money and the amendment of Section 9622, a general statute granting certain authority to the board of curators, are two different and separate subjects. (State ex rel. Hueller vs. Thompson, 316 Mo. 272, 289 S. W. 338; State ex rel. Davis v. Smith, 335 Mo. 1069, 75 S. W.(2d) 828.) The valid and invalid portions of the statute are separable. If we disregard the invalid proviso there is left a complete workable statute which appropriates the sum of \$10,000 for the purposes therein named. \* \* \* \*"

We think the broad question in the Gaines case was identical with that presented in your letter of August 13, 1945, i.e. whether an appropriation bill could restrict and limit the use of funds by Lincoln University for tuition purposes to certain cases

when there was a general statute (Sec. 10779, supra,) regarding the use of the fund which set out the manner in which the tuition was to be paid and in what instances. The only difference between the facts of the Gaines case and those presented at this time, was that at the time the Gaines case was decided, the statute provided that tuition should be paid to schools in "ad-facent states," whereas, the present statute provides that said tuition may be paid in "some other state." This difference is not material to the question involved and does not affect the application of the Gaines case to the present statute.

The title of House Bill #361 shows it to be an appropriation bill and an appropriation bill only. However, in Section 2 of the bill, at page 24, it attempts to limit the use of the funds for tuition of negro students in outstate institutions to tax-supported institutions. It thus attempts to pass general legislation regarding the use to which the fund is to be put and therefore, attempts to pass general legislation in an appropriation bill.

General legislation cannot be included in an appropriation bill for the reason that such an inclusion violates the Constitutional provision against including more than one subject in a legislative enactment. State ex rel. Gaines, supra; State ex rel. Davis vs. Smith, supra; State ex rel. Hueller vs. Thompson, supra.

While the above cases were decided under the Constitution of 1875, that Constitution contained the identical provision now found in Section 23, Article III, Constitution of 1945, and these cases are thus controlling in interpreting Section 23, Article III of the Constitution of 1945.

We think, therefore, that that portion of House Bill #361 limiting the use of the tuition funds to "tax-supported" institutions is void as violative of Section 23, Article III of the Constitution of 1945.

The question which then arises is whether the entire section appropriating funds for tuition is invalid or merely that part limiting the use of such funds to provide tuition at tax-supported institutions.

The law is well settled in this state that, although a statute may be invalid or unconstitutional in part, the part that is valid will be sustained where it can be separated from the part which is void. State ex rel. Hueller vs. Thompson, supra;

State ex rel. vs. Bigger (1944) 178 S. W.(2d) 347; State ex rel. vs. Taylor (1909) 224 Mo. 474; State ex rel. vs. Gordon (1911) 236 Mo. 142; State ex inf. vs. Washburn (1902) 167 Mo. 680. It is held that the void portion is separable if, (1) when the unconstitutional portion is stricken out, that which remains is complete and capable of execution and, (2) the context indicates the Legislature intended the provision to be considered as a whole and would not have enacted the residue independently of the void portion.

Measured by these canons of law, we think the void portion of the section regarding funds for tuition is separable from the rest of the bill. The words "tax-supported" can be removed from Section 2 of the Act and the section then reads in such a manner as to be in substantial accord with the provision of Section 10779, R. S. Mo. 1939. It is complete and logical, and capable of execution. Thus, the section can and does stand independently after the void portion is removed.

There is no valid reason for assuming that the Legislature would not have passed the Act without the void portion of Section 2. In State ex rel. vs. Gordon, supra, the court, in discussing the question of whether the Legislature would have passed an appropriation Act for a game and fish protection fund without a provision that none of the money should be available "so long as the present state game and fish commissioner remains in this office or is in anywise with the office of State Game and Fish Commissioner, except the salaries and accounts due at the time of the approval of this Act," said that the fact that the State Game and Fish Commission was an important department of the State and it was necessary that funds be provided therefor, should be considered in determining whether the Legislature would pass a bill without the void portion relating to the present Game and Fish Commission. The Court said, l.c. 172:

"\* \* \*The questions are thus presented whether the proviso was the inducement for making the appropriation and whether the belief is warranted that the Legislature would not have made the appropriation had it known that the proviso would not be carried into effect.

"In the consideration of these questions great influence must be given to the duty of the Legislature to make provision for the support of the public institutions of the State. One of the first and

most important questions confronting every form of organized government is that of raising and supplying the necessary funds to meet the legitimate expenses of government, including the support of those public institutions which enlightened sentiment has deemed essential to the general well-being of the people. Under the genius of our system of government and that from which it was evolved, this function has always been regarded as peculiarly within the province of the lawmaking body. And under our State Constitution the necessity for making such provision for carrying on the government of the State, more than any other one cause, makes imperative the biennial convening of the General Assembly.

"There are many reasons why the Forty-Sixth General Assembly must have recognized the importance to the people of the State of making provision for the support of the game department, and the fact that it did appropriate the sum of ninety thousand dollars therefor clearly shows that it did not underestimate the full import of that duty.\* \* \*"

The Court held the provision did not invalidate the entire appropriation.

It is as necessary to provide funds for educational purposes as for fish and game purposes. The one is as much an essential duty of the State as the other. We are, therefore, of the opinion that the portion of House Bill #361 limiting the use of the funds to tax-supported institutions is separable from the remaining portion of Section 2 of that bill.

#### CONCLUSION

It is, therefore, the opinion of this department that the

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moneys provided for in House Bill #361, passed by the 63rd General Assembly, may be used for the payment of the tuition of negro residents of the State of Missouri who have been attending, or will attend, in the coming term, institutions of higher education in any other state even though such institutions are not tax-supported.

Respectfully submitted,

SMITH N. CROWE, JR.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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