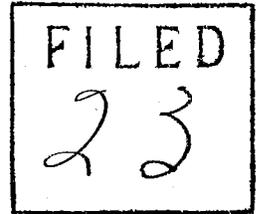


STATE TEACHERS COLLEGES: The Central Missouri State Teachers College is unauthorized to accept money from the Federal Government under Title V, Public Law 458, 78th Congress. The acceptance of such money would be a contract without express authority of law in contravention of Section 39 (4), Art. III, Const. 1945.

CONSTITUTIONAL LAWS:

February 8, 1946



President G. W. Diemer  
Central Missouri State Teachers College  
Warrensburg, Missouri

Dear President Diemer:

This will acknowledge receipt of your letter of recent date in which you request an opinion of this department as follows:

"We wish to complete plans for dormitories and other buildings which we hope to erect on this campus at the earliest date possible. As you know, the Federal Government, under Title V, of Public Law 458--78th Congress, is advancing money to public agencies to make possible the planning of buildings and other projects. This money is to be repaid if and when the construction of the public work so planned is undertaken. May I inquire whether or not in the opinion of your department, the Central Missouri State Teachers College could accept such advances with the obligation of repayment. An opinion from your office will be appreciated."

Title V, Public Law 458, 78th Congress, to which you refer in your letter, reads as follows:

"Sec. 501. (a) In order to encourage States and other non-Federal public agencies to make advance provision for the construction of public works (not including housing), the Federal Works Administrator is hereby authorized to make, from funds appropriated for that purpose, loans or advances to the States and their agencies and political subdivisions (hereinafter referred to as 'public agencies') to aid in financing the cost or architectural, engineering, and economic investigations and studies, surveys, designs, plans, working drawings, specifications,

procedures, and other action preliminary to the construction of such public works: Provided, That the making of loans or advances hereunder shall not in any way commit the Congress to appropriate funds to undertake any projects so planned.

(b) Funds appropriated for the making of loans or advances hereunder shall be allotted by the Federal Works Administrator among the several States in the following proportion: 90 per centum in the proportion which the population of each State bears to the total population of all the States, as shown by the latest available Federal census, and 10 per centum according to his discretion; Provided, That the allotments to any State shall aggregate not less than one-half of 1 per centum of the total funds available for allotment hereunder; Provided further, That no loans or advances shall be made with respect to any individual project unless it conforms to and over-all State, local, or regional plan approved by competent State, local, or regional authority.

(c) Advances under this section to any public agency shall be repaid by such agency if and when the construction of the public works so planned is undertaken. Any sums so repaid shall be covered into the Treasury as miscellaneous receipts.

(d) The Federal Works Administrator is authorized to prescribe rules and regulations to carry out the purposes of this section.

(e) As used in this section, the term 'State' shall include the District of Columbia, Alaska, Hawaii, and Puerto Rico."

Section 10760, R. S. Mo., 1939, Mo. R.S.A., p. 766, provides, in part, as follows:

"Each state teachers college shall be under the general control and management of its board of regents, \* \* \*"

Section 10771, R. S. Mo., 1939, Mo. R.S.A., p. 772, provides as follows:

"No president, professor, teacher, regent or other officer or employee shall keep for sale or be interested, directly or indirectly, in the sales of any school furniture or apparatus, books, maps, charts or stationery used in said colleges; nor be interested, directly or indirectly in any contract or purchase for building or repairing any structure, or for fencing or ornamenting the grounds, or furnishing any supplies or material for the use of such state teachers colleges."

The above sections of Chapter 72, R. S. Mo., 1939, relating to State Teachers Colleges, provide that the Board of Regents of said colleges shall have the complete control and management of such colleges and Section 10771, supra, provides that the officers of the teachers colleges shall have no interest in contracts for the erection of buildings. These sections indicate that the Board of Regents are to supervise the planning and erection of buildings in connection with said colleges.

This proposition was accepted in State ex rel. Thompson vs. Board of Regents (1924), 305 Mo. 57. In that case the Supreme Court of Missouri held that funds which the Board of Regents of the Northeast Missouri State Teachers College had received from insurance coverage on buildings insured by the said Board, and which were destroyed by fire, were not required to deposit such funds in the State Treasury. The Board of Regents had expended some of the money so received to partially replace the structures destroyed by fire. The court, in discussing the discretion of the Board with regard to the latter action, said: (l.c. 66 and 67)

"Among other expenditures which have been made by the board in the exercise of its discretion is that for insurance upon the buildings and equipment of the college. Lacking express statutory authority for its action the beneficiary named in the policies thus obtained, was the board. When the loss occurred the amounts due under the contract was paid, as it should have been, to the board. In furtherance of its discretion it proceeded at once to expend a portion of the money thus received in repairs necessary for the protection of certain damaged buildings and to partially replace the library. When this writ was served the board was taking steps to replace the destroyed buildings. It is charged with no wrong doing or the usurpation of any power which has

not at least received tacit legislative and public approval for a half century. These facts are entitled to more than persuasive consideration in determining the question here seeking solution. Absent qualifying incidents they may arise to the dignity of ruling decisions. (State ex rel. v. Gordon, 266 Mo. 412; Folk v. St. Louis 250 Mo. 141.) \* \* \*"

The question in the instant situation, however, is not that of whether the Board of Regents may use their discretion in the planning and erection of buildings, the erection of which have been authorized and the funds therefor provided (or, as in State v. Board of Regents, supra, where the college has funds already available), but rather that of whether the Board of Regents can make a contract with the United States Government binding an agency of the State of Missouri to pay back money borrowed. The latter, in our opinion, is the effect of an acceptance by the Board of Regents of federal funds under Article V of Public Law 458, 78th Congress.

Section 39, Article III, Constitution 1945, limits the powers of the General Assembly. That section reads, in part, as follows:

"The general assembly shall not have power;

(4) To pay or to authorize the payment of any claim against the state or any county or municipal corporation of the state under any agreement or contract made without express authority of law; (Ibid)"

Under Section 39(4), Article III, Constitution 1945, the Board or Regents, in order to bind the State for the payment of any money, is required to have express authority for such action.

The proposition that educational institutions have no power to borrow money without express authority to do so is well settled. In Alabama College v. Harman (1939 Ala.) 175 So. 394, the Board of Trustees of Alabama College proposed to issue bonds to cover the costs of erecting a co-operative house dormitory. The bonds were to be secured by pledging student fees, rentals received from said dormitory, and a mortgage upon the property. The President of said cooperation refused to sign the resolutions of the Board of Trustees which would cause the bonds to be prepared and issued. The authority of the Board of Trustees of the Alabama College was very similar to that which is given to the Board of Regents of the State Teachers Colleges of Missouri. The suit was for a declaratory judgment

adjudging it to be the duty of the president to sign the necessary instruments to authorize the issuance of the bonds. The Supreme Court of Alabama reversed the decree of the Circuit Court in so far as it decreed that Alabama College had the legal right and authority to issue bonds to finance the construction of the dormitories. In discussing the authority of the college to borrow money the court said: (l.c. 397)

"We fail to find in the act of the Legislature creating the complainant--corporation, or in any of the acts amending the original act, any express power to borrow money, or any power to pledge the revenues of the institution, or any power to execute a mortgage, or deed of trust on any of its properties. Nor do we find any implied power in this corporation to do such acts."

\* \* \* \* \*

"(2) Counsel for appellant has pressed upon our attention the holdings of this court in the cases of Kelly v. Trustees of Alabama C. R. R. Co., 58 Ala. 489, Talladega Ins. Co. v. Peacock, Adm'r., 67 Ala. 253, and Taylor v. Agricultural & Mechanical Ass'n of West Alabama, 68 Ala. 229, as authorities holding that corporations have ordinarily the right to borrow money, and to secure it by mortgage upon its property. These cases were dealing with private corporations, and not public or quasi public corporations, created by the state, and intended as an agency of the state, to enable it to carry out governmental purposes. Consequently, being mere agencies of the state, created by statute, their authority must be found in the law creating them, or thereafter conferred upon them, unaided by any common-law rights inhering in a strictly private corporation."

"(3) There is nothing in the case of Kimmons v. Jefferson County Board of Education, 204 Ala. 384, 85 So. 774, or in the case of Turk v. County Board of Education of Monroe County, 222 Ala. 177, 131 So. 436, which in any wise contravenes the general principle that a municipal corporation, or a public, or quasi public corporation, cannot, without express legal authorization borrow money, and pledge its property as security therefor."

Upon application for rehearing, the attention of the Court was, for the first time, called to an act of the Legislature of Alabama, General Acts of 1939, page 1064, which reads as follows:

"To provide authority for the State Board of Education and/or the trustees of all State Institutions, where education is a part of the program of the Institution, to borrow money from Federal Agencies for the erection of buildings, beautification of grounds, and the erection and maintenance of swimming pools at the several State Institutions; to authorize the issuance of bonds, warrants or other evidences of debt for the repayment of the amount borrowed with interest at a rate not to exceed four per cent semi-annually, and to pledge therefor the fees from students to be levied by the Institution for which the money is borrowed, and any other moneys not appropriated by the State to said Institution; to make such bonds, warrants or other evidences of debt not an obligation of the State and not payable out of any moneys provided by the State."

The Court on rehearing said: (l.c. 398)

"(5) All that need be said is that the bill, as filed in this case, clearly does not seek a declaratory judgment or decree as to the right of the complainant to borrow money from the federal government, or from any federal agency, as provided in said act. On the contrary, it seeks a declaratory judgment as to whether it had power generally to borrow the money and pledge the properties of said institution for its payment.

As to all other questions argued by appellant, in his brief filed on rehearing, we find nothing to convince us that we were in error in the opinion heretofore rendered. \* \* \*

The pleadings were later redrawn in such manner as to indicate that the college was acting under the above quoted act of the Alabama Legislature, and thus the question of the authority to borrow money was eliminated from the case. The case was then refiled and decided upon other grounds which are not

pertinent to the present discussion. The court, therefore, under facts very similar to those now under consideration, held that a school corporation must have express authority in order for it to borrow money.

In another Alabama case, *Keller v. State Board of Education of Alabama* (1938 Ala.) 183 So. 268, the Supreme Court of Alabama had before it the question of whether the State Board of Education of Alabama could properly mortgage certain property belonging to the State Teachers College of Florence, Alabama, as security for a loan from the United States Government granting money to the State of Alabama for the construction of a physical education building and a swimming pool at the State Teachers College. The court in that case said: (l.c. 270)

"\* \* \* Authority for this improvement is based on General Acts of 1935, p. 1064, under which all state educational institutions are granted the right to borrow money from Federal agencies for the erection of buildings, beautification of grounds, etc., and to comply with the requirements of the Federal agencies in reference to monies so loaned to issue bonds or warrants for the payment of same, and to pledge therefor fees from students to be levied by the institution and other monies not appropriated by the State. \* \* \*"

Other states have held similarly on the question of the authority of officers of educational institutions to contract indebtedness without express authority of law. In *Hard v. Depaoli* (1935) 41 Pac. (2d) 1054, the Supreme Court of Nevada, in discussing the authority of the Board of Trustees of a public school district to contract indebtedness, said: (l.c. 1057)

"\* \* \* By those acts they are brought into existence as political subdivisions of the state, formed for the purpose of aiding in the exercise of that governmental function which relates to the education of children; their functions defined, and such powers as they may exercise conferred upon them. They have no inherent right to vote bonds or negotiate loans; such right must be derived from statute, and in voting such bonds or providing for such loans, the statute must be substantially complied with."

In *Powell v. Bainbridge State Bank* (1926) 132 S.E. 60, the Supreme Court of Georgia, in discussing the same question, said: (l.c. 61)

"\* \* \*The grant of power to public officers to borrow money which must be repaid by the taxpaying public cannot be implied. Such power rests upon an express grant, subject to such restrictions and limitations as the lawmaking power may see fit to impose."

The same holding was made in *Kite School District v. Clark* (1931 Ga.) 156 S.E. 618.

The same principal is stated in the textbooks. In 14 C.J.S. p. 1354, we find the following:

"Generally speaking the governing body of a state college or university is regarded as a distinct legal entity so far as its debts are concerned and lacks authority to contract indebtedness collectable from the state; \* \* \*"

While an educational institution, and thus the officers thereof, may have the implied power to borrow money, such power exists only when it is necessary that this be done to maintain and operate the schools in accordance with and in the manner provided by statute. The implied power ordinarily occurs only when a purpose expressly authorized by statute cannot be accomplished without such power. *Logan v. Board of Public Institutions of Polk County* (1945 Fla.) 158 So. 20; *Watkins v. Ouachita Parish* (1931 La.) 136 So. 591; *Union School Township v. First National Bank of Crawfordsville, Ind.* (1885 Ind.), 2 N.E. 194.

Under section 39 (4), Article III, Constitution 1945, the Board of Regents in order to bind the State for the payment of any money is required to have express authority for such action.

An examination of Chapter 72, R. S. Mo., 1939, including Section 10760, supra, and 10771, supra, reveals no such express authority given to the Board of Regents to make a contract binding the State for repayment of money.

Section 9363, R. S. Mo., 1939, sets up a fund in the State Treasury for the Central Missouri State Teachers College and provides that all money derived from the Institution shall

be placed to the credit of said fund. Section 9370 R. S. Mo., 1939, Mo. R. S. A., p. 635, relating to the appropriation of money by the state for the support of the Institutions mentioned in Section 9363, provides, in part, as follows:

"\* \* \*No money appropriated by the state for building any addition to any institution, or any house or permanent building pertaining thereto, or for any machinery or repairs of any machinery or building there-to belonging, shall be paid to such ins-titution until the board of managers shall have filed with the state auditor an itemized statement of the costs of such building, machinery or repairs, together with a statement that the work has been done, or machinery or materials fur-nished, equal in value to the amount for which the requisition is drawn; which statement shall be entered upon the minutes of the board and shall be sub-scribed and sworn to by the president of such board of managers. R. S. 1929, Sec. 8673."

Section 9372, R. S. Mo., 1939, Mo. R. S. A., p. 640, and 641, provides, in part, as follows:

"\* \* \*No money appropriated by the state for building any addition to any institution, or any house or build-ing pertaining thereto, or for any ma-chinery or repairs of any machinery or building thereto belonging, shall be paid to such institution until the proper officer, whose duty it is to sign a requisition, shall have filed with the state auditor an itemized statement of the costs of such build-ing, machinery or repairs, together with a statement that the work or machinery or material furnished is equal in value to the amount for which the requisition is drawn, which statement shall be sub-

scribed and sworn to by the officer or other person whose duty it is to make and sign the requisition. R. S. 1920, Sec. 8675."

It will readily be seen that the above sections give no authority to the Board of Regents of the State Teachers Colleges to borrow money.

The Missouri Legislature has enacted no law corresponding to that passed by the Georgia Assembly and referred to in *Alabama College v. Harman*, supra, (said act quoted above in this opinion). The only Missouri statute which deals with Federal aid to educational institutions is Section 10525, Laws of Missouri, p. 553. That Section reads as follows:

"That the provisions of the act of congress enacted by the sixty-fifth congress at the second session thereof, entitled 'An act to provide for the promotion of vocational education; to provide for co-operation with the states in the promotion of such education in agriculture and the trades and industries and home economics; to provide for co-operation with the states in the preparation of teachers of vocational subjects; and to authorize the appropriation of money and regulate its expenditures' and approved (February 23, 1917); that the provisions of the act of congress, Public No. 673, enacted by the seventy-fourth congress, entitled 'An act to provide for the further development of vocational education in the several States and Territories' and approved (June 8, 1936); that the Public Law 668, Chapter 437, 76th Congress, Third Session, Public Law 812, Chapter 750, 76th Congress, Third Session, and Public Law 812, Chapter 780, 76th Congress, Third Session, providing training in occupations essential to National Defense, and any other subsequent acts of congress which may provide federal funds for public schools or other educational agencies and for the necessary administration and supervision of the same, be and the same are hereby accepted."

We are of the opinion that this section does not give the Board of Regents of State Teachers Colleges the right to enter into a contract for the repayment of funds borrowed from the Federal Government. The Section does not expressly grant the right to incur obligations for the repayment of money. It merely provides that federal funds for educational agencies shall be accepted by the State. The laws of Congress, which are mentioned in that Section, are all laws which provide for outright gifts to the state of the funds provided therein. They provide that the funds given to the State shall either be matched by the State or that the expenditure of money by the State shall be completely reimbursed by the Federal Government. We think, therefore, that this Section does not give the Board of Regents the required authority in the instant situation because (1) the laws specifically mentioned do not provide for a repayment of the money granted by the Federal Government and (2) while the Act refers to "other subsequent acts of Congress which may provide federal funds for public schools or other educational agencies", it provides merely that these funds are "hereby accepted", and not that the state or its agencies may incur the obligation to pay back any money thus received.

Finding no express authority for the same, we are, therefore, of the opinion that the incurring of an obligation by the Board of Regents of Central Missouri State Teachers College for the repayment of the federal funds loaned under Title V, Public Laws 458, 78th Congress, would be an agreement or contract made without express authority of law. The payment of the obligation would thus be prohibited by Section 39(4) of Article III, Constitution of 1945.

#### CONCLUSION.

It is, therefore, the opinion of this department that the Board of Regents of Central Missouri State Teachers College could not, under present statutes of Missouri, accept advances of money from the Federal Government, under Title V, of Public Law 458 of the 78th Congress, with the attendant obligation of repayment.

Respectfully submitted,

SMITH N. CROWE, JR.  
Assistant Attorney General

APPROVED:

J. E. TAYLOR  
Attorney General

SNC:dc