

SCHOOLS:
LINCOLN UNIVERSITY:

RE: Lincoln University is not entitled to share
in the seminary fund created under Section
10876, R. S. Mo. 1939.

August 15, 1946



8-23
President Sherman D. Scruggs
Lincoln University
Jefferson City, Missouri

Dear President Scruggs:

This will acknowledge receipt of your letter of August 6,
1946, requesting an opinion of this department as follows:

"The Curators of Lincoln University would seek the opinion of the Attorney General on the matter of the right of Lincoln University to participate in the Seminary Fund.

"Does Lincoln University by virtue of its statutory position as the Institution for the higher education of the Negro people of the State of Missouri have a right to a proportionate share in the funds allocated to the State University out of the Seminary Fund as it is designated and referred to in Article 27, Section 10876, Revised Statutes, State of Missouri 1939? If Lincoln University is entitled to a share in said fund, to whom and how may its claim be presented?

The Curators would be most pleased to have the opinion of the Attorney General on these questions."

Section 10876, R. S. Mo. 1939 creates the fund established for the support of the University of the State of Missouri, the College of Agriculture and the School of Mines and Metallurgy, which fund is known as the Seminary fund. This section reads as follows:

"Sec. 10876. Seminary fund created

"There is hereby created and especially established a fund for the support of the university of the state of Missouri, the college of agriculture and the school of mines and metallurgy,

to be denominated the seminary fund, which shall consist of: First, the proceeds of sale of seminary lands, as provided by act approved February 11, 1839, which money is invested in a state certificate of indebtedness of \$122,000.00, dated July 1, 1881, issued by authority of act March 23, 1881; interest to be applied as directed by the board of curators. Second, the proceeds from sale of one hundred Missouri bonds issued under act of March 29, 1872, represented by a state certificate of indebtedness of \$100,000.00, dated January 22, 1904, issued under act of March 31, 1883; interest to be applied as directed by the board of curators. Third, the proceeds of the sale of the lands donated to the state of Missouri by the United States for the support of the college of agriculture and the school of mines and metallurgy by act of congress, approved July 2, 1862, represented by state certificates of indebtedness of the following amounts and dates: April 2, 1905, \$5,000; February 25, 1906, \$5,000; January 1, 1908, \$5,000; December 15, 1908, \$5,000; May 15, 1889, \$5,000; July 1, 1891, \$5,000; May 15, 1893, \$5,000; April 2, 1895, \$22,881.19; April 9, 1895, \$5,000; July 2, 1903, \$242,000; November 1, 1903, \$5,000; January 30, 1904, \$5,000; April 19, 1904, \$35,000; representing a total of \$349,881.19 now issued or any certificates which may hereafter be issued under any general or special act of the general assembly. One-fourth of the interest on these funds shall be paid to the treasurer of the school of mines and metalurgy at Rolla, for the maintenance of said institution, and the remainder to be applied for the maintenance of the college of agriculture. Fourth, the funds paid into the state treasury by authority of sections 10881, 10882 and 10884, R. S. 1939, represented by certificates of the following amounts and dates: July 1, 1898, \$6,000; January 2, 1902, \$3,000; November 26, 1902, \$1,000; the interest to be applied to the maintenance of the state university at Columbia. Fifth, the state certificate of indebtedness of \$646,958.23, derived from 'direct tax' received from the

United States, dated April 1, 1891, issued under act of March 26, 1891, four-fifths of the interest to be applied for the maintenance of the state university at Columbia, and one-fifth for the school of mines and metallurgy at Rolla. Sixth, the James S. Rollins scholarship fund of \$6,000, represented by a state certificate of indebtedness, issued under act of March 31, 1883, and interest to be applied to the maintenance of the 'James S. Rollins university scholarship.' Seventh, the proceeds of sales of lands donated to the school of mines and metallurgy at Rolla, represented by a state certificate of indebtedness of \$2,000, dated April 15, 1893, issued under act of March 31, 1883; interest on which shall be applied to the maintenance of the school of mines and metallurgy at Rolla. Eighth, the state certificate of indebtedness of \$3,000, issued under act of April 1, 1895, dated April 1, 1896; four-fifths of the interest to be applied to the maintenance of the state university at Columbia and one-fifth to the school of mines and metallurgy at Rolla."

Section 10877, R. S. Mo. 1939, designates the purposes for which the fund is to be devoted and reads as follows:

"Sec. 10877. To remain a permanent fund

"The seminary fund shall be and remain a permanent fund, to be invested in accordance with the provisions of articles 22, 23, 24, 27 and 28 of this chapter, and each division thereof aforesaid, constituting the same, shall be devoted exclusively to the purposes and objects expressed in the act of congress or of the legislature relating thereto."

It is clear that section 10877, supra, does not create a fund in which Lincoln University is entitled to share. Lincoln University is not a part of the University of the state of Missouri, nor of the college of agriculture, nor of the school of mines and metallurgy. Lincoln University is created and provided for in a separate portion of the Revised Statutes of Missouri, 1939, namely, Article 21 of Chapter 72, from that creating and providing for the state university, the college of agriculture and the school of mines and metallurgy, which latter are provided for in Articles 22 and 23 of Chapter 72 of the Revised Statutes of 1939.

Section 10773, R. S. Mo. 1939, Chapter 72, Article 21, reads as follows:

"Sec. 10773. Lincoln institute changed to Lincoln University

"The name of the Lincoln Institute is hereby changed to the Lincoln University."

Section 10774, R. S. Mo. 1939, reads as follows:

"Sec. 10774. Board of curators authorized to reorganize

"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 respective 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 10778, R. S. Mo. 1939, reads as follows:

"Sec. 10778. Board to organize and have same powers as curators of state university of Missouri

"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."

All of these sections, as well as others in the statutes, show that there is a distinct and different statutory set-up for Lincoln University.

Section 10877, supra, quoted above, refers to articles 22, 23, 24, 27 and 28 of Chapter 72 and states that each division of the seminary fund, as such divisions are set up in section 10876, shall be devoted exclusively to the purposes and objects set out in section 10876, supra. An examination of the latter section shows that all of the divisions except the first and second provide that the money therein shall be used by the state university at Columbia, the college of agriculture and the school of mines and metallurgy at Rolla, Missouri. The first and second divisions are to be applied as directed by the board of curators. This must of necessity apply to the board of curators of the University of the state of Missouri and, as stated above, the State University is provided for in a different article than is Lincoln University.

CONCLUSION

It is, therefore, the opinion of this department that Lincoln University is not entitled to share in the seminary fund created by Section 10876, R. S. Mo. 1939.

Respectfully submitted,

APPROVED:

SMITH W. CROWE, JR.
Assistant Attorney General

J. E. TAYLOR
Attorney General

SNC:mw