

UNIVERSITY OF MISSOURI : Board of Curators of the University of Missouri authorized to construct married student apartment dormitories under Chapter 176, RSMo 1949.

November 3, 1953



Honorable Frederick A. Middlebush
President
University of Missouri
Columbia, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department reading as follows:

"The University of Missouri would like to have an opinion from your office as to whether or not the Board of Curators, under the provisions of Missouri Revised Statutes 1949 (Section 176.010 to Section 176.080), could finance the construction of married student apartment dormitories. As you know there is great need for a limited amount of housing of this type and we are interested in beginning the construction of these facilities at the earliest possible date. If there is any additional information that we can give you which would be of assistance to your office in passing on this matter, please do not hesitate to call upon us."

Chapter 176, RSMo 1949, provides a scheme for the construction of certain buildings to be used by state educational institutions and the cost of which is to be paid through surplus operating revenues. Obligations incurred thereunder are not an indebtedness of the State of Missouri, of the educational institution for whom constructed, nor of the governing body or individual members thereof.

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Under Section 176.010, RSMo 1949, the University of the State of Missouri is included within the term "state educational institutions" and the Board of Curators of such institution is defined as the "governing body" thereof. The term "project" as used in other sections of the chapter referred to infra, is defined in the following language:

"(3) 'Project' shall mean one or more dormitory buildings with or without dining room facilities as an integral part thereof, or dining room facilities alone, or any combination of dormitory and dining room facilities, or one or more social and recreational buildings, or any combination of dormitory, dining room, social and recreational facilities."

Your attention is next directed to Paragraph 1 of Section 176.020, RSMo 1949, reading as follows:

"1. Any state educational institution of the state of Missouri, as herein defined, shall have the power, acting through its governing body, to acquire, construct, erect, equip, furnish, operate, control, manage and regulate a project, as herein defined, as in the judgment of such governing body shall be necessary, advisable, and suitable for the use of students attending such educational institution."

We might note at this point that the entire chapter under consideration first appeared as an act of the General Assembly in Laws of 1945, page 1715. It is a matter of common knowledge that at such time the various educational institutions of the State of Missouri were filled to capacity and that a definite shortage of housing facilities then existed.

Judicial recognition of such an emergency situation appears from the opinion of the Supreme Court of Missouri in *Northeast Missouri State Teachers College v. Palmer*, 204 S.W. 2d 291, 356 Mo. 946, wherein the court, in construing the emergency clause attached to the chapter now under consideration, said:

"Finally it is insisted that the act is invalid or was not in force at the time the proceeding was instituted because the bill was passed with an

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emergency clause 'but no emergency was expressed in the preamble or the bill' as required by Section 29, Article III of the Constitution. The appellants do not develop the point other than to say 'The reference to the emergency in both places is merely a conclusion and no real emergency was set out as existing.' Section 10 of the act expresses the emergency thus: 'Because of the great increase in the number of students enrolled in state educational institutions as a result of conditions existing after World War II, there is an immediate need for the authority granted by this Act, and this Act being necessary for the immediate preservation of the public peace, health and safety, an emergency exists within the meaning of the Constitution of the State of Missouri * * *.' Certainly it cannot be said that this declaration is such a mere conclusion as to invalidate the act as an improper expression of an emergency. See also the provisions of the Federal Act and its expressed purposes. 42 U.S.C.A. Secs. 1571-1574."

Keeping in mind the history of this legislation and its avowed purpose, it next becomes pertinent to determine whether dormitories designed for the use of married students fall within the definition of "project" heretofore quoted.

The word "dormitory" has been the subject of judicial inquiry in three previous cases decided by the Supreme Court of this state. None of the cases purports to establish the criteria by which the particular usage of a building constitutes such a building to be a "dormitory" but it is noted that the Supreme Court did hold that a seven story non-fireproof building, occupied by a club, which contained kitchen, dining room, library, banquet and dancing hall, and eighty-five bedrooms, was a building included within that category. The cases mentioned are Ranus v. Boatmen's Bank, 214 S.W. 156, 279 Mo. 332; Newell v. Boatmen's Bank, 216 S.W. 918, 279 Mo. 663; and Magill v. Boatmen's Bank, 232 S.W. 448, 288 Mo. 489.

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We do not believe, therefore, that the possible inclusion of kitchen facilities, which apparently is contemplated as you have described the proposed construction to be for married students, would have the effect of depriving buildings primarily designed for sleeping quarters of their characteristics of "dormitories."

We further believe that this construction of the statute is in accord with conditions which were perhaps not within the contemplation of the General Assembly at the time of the enactment of Chapter 165, RSMo 1949. In this regard, we take cognizance of the great influx of married students into state educational institutions, primarily resulting from the opportunity to do so being afforded ex-members of the Armed Forces under the so-called "GI Bill of Rights." We think that a reasonable construction of the statute would authorize the Board of Curators of the University of Missouri to construct such facilities, subject to the limitations and qualifications with respect to the payment of the costs thereof embodied in Chapter 176, RSMo 1949.

CONCLUSION

In the premises, we are of the opinion that the Board of Curators of the University of the State of Missouri is authorized to construct married student apartment dormitories under the provisions of Chapter 176, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

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