

INVESTMENT: The Board of Curators of the University of
PUBLIC FUNDS: Missouri may invest funds other than those
UNIVERSITY FUNDS: appropriated by the General Assembly.
UNIVERSITY:
CURATORS:
BOARD OF CURATORS:



December 19, 1955

Honorable DeVere Joslin
Member, House of Representatives
67th General Assembly
602 State Street
Rolla, Missouri

Dear Sir:

This is in answer to your recent request for an official opinion of this office, which request reads as follows:

"The business manager of the School of Mines has withdrawn over \$600,000.00 from our two banks and I understand the banks in Columbia have been drawn on, for the purpose of investing University funds in short time Government securities. I presume this action has been made with the consent of the Board of Curators of the University."

We are advised that the money invested by the Board of Curators was derived from sources other than funds appropriated by the General Assembly of the State of Missouri, being primarily an accumulation from incidental fees, the operation of the institutions at Rolla and Columbia, and perhaps (it is not certain) funds from federal grants.

Section 15, Article IV, Constitution of Missouri, requires that all revenue collected and moneys received by the state from any source whatsoever shall go promptly into the state treasury and be deposited by the treasurer in depositaries selected according to law. It appears that the money invested by the Board of Curators of the University of Missouri from the sources mentioned is not required to be transmitted to the state treasury under this

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constitutional provision on the authority of the decision of the Missouri Supreme Court en banc in the case of State ex rel. Thompson v. Board of Regents for Northeast Missouri State Teachers' College, 264 SW 698, and State ex rel. Curators of University of Missouri v. McReynolds, 193 SW2d 611, 354 Mo. 1199. The decision in the Thompson case, supra, while applicable specifically to the State Teachers' College, was decided upon principles which could likewise govern the same question as applied to the University. This case points out the history of these educational institutions; that such funds have never been controlled by legislative enactment, but that they have always been left under the control of and to be expended in the discretion of the authorities of the institution.

This decision of the Supreme Court was by the legislature carried into the provisions of what is now Section 33.080 RSMo 1949, wherein such funds of state educational institutions are specifically exempt from the statutory requirement that all moneys be placed in the state treasury.

The legislature has recognized that various institutions and subdivisions of the state will have funds to be held outside of the state treasury and, in Chapter 110 RSMo 1949, has provided for their safekeeping. Section 110.010 RSMo 1949 (amended in 1955 by Senate Bill 205) provides that "the public funds of every * * * state university * * * which are deposited in any banking institution acting as a legal depository of such funds under the statutes of Missouri requiring the letting and deposit of the same and the furnishing of security therefor * * *" shall be secured as provided in the applicable statutes. It should be noted that this statute specifically enumerates the state university, and that such specific enumeration was contained in the prior enactments of this section.

Sections 110.070 to 110.120 RSMo 1949, inclusive, pertain to deposits by various state institutions and Section 110.070 specifically provides "it shall be the duty of all boards of managers, curators, trustees or other personnel by whatever name called, who have the management of any state institutions, that have the use or custody of any funds * * *" to call for and receive bids for deposit of such funds. The requirement of bids for these deposits has now passed out of the picture since by both state and federal law payment of interest of demand deposits is illegal and has been illegal since 1937. In view of this futility of requiring bids, the legislature in 1937 enacted what is now Section 110.030 RSMo 1949, which provides:

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"The various statutory provisions in relation to the advertisement for and receipt of bids and the award of the funds to the best bidder or bidders for the whole or any part of any of the public funds of the character referred to in section 110.010 shall be applicable only if and when, at the time of said advertisement and award, it shall be lawful for banking institutions to pay interest upon demand deposits, in which event such applicable statutory provisions shall be complied with; but if, at the time of the advertisement for bids or the receipt of bids or the award of funds, it shall be unlawful for depository banks and trust companies to pay interest upon such demand deposits, the award or awards of such funds shall be made in each case, without bids and without requiring the payment of any bonus or interest, by the authority or authorities which are by statute empowered to make the awards of such funds upon bids."

Thus this section requires that the governing body of the institutions shall make the award of such funds without bids. However, it would seem that the other provisions of Sections 110.070 to 110.120 are still applicable. Section 110.110 requires the treasurer of such board to immediately deposit in such depository all moneys that come into his hands. That section reads:

"It shall be the duty of the treasurer of the board of managers, by whatever name called, of such institution, after the selection of such depository or depositories and the approval of their bonds, immediately upon the receipt of any money thereafter to deposit the same with such depository to the credit of such institution, and said treasurer shall, as near as may be, maintain with the depository so selected its due and proper share of the total of the funds let; and for any failure of the treasurer to make transfer of such funds or to deposit all of said funds with said depository, he shall be liable to said

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depository for ten per cent per month upon the part of said funds not so deposited, to be recovered by civil action in any court of competent jurisdiction."

It should likewise be noted that Section 110.120 RSMo 1949, providing a penalty for the violation of the preceding sections, is as follows:

"Any member of a board of managers, curator or regent, officer or employee of any of the eleemosynary, educational or penal institutions of this state who shall knowingly and willfully violate any of the provisions of sections 110.070 to 110.120, and for which no other or different punishment shall be prescribed by law, shall be deemed guilty of a misdemeanor, and, upon conviction, shall be punished by a fine of not less than one hundred nor more than one thousand dollars, or by imprisonment in the county or city jail for not exceeding one year, or by both such fine and imprisonment, and, in addition, shall be removed from his office."

From the foregoing, it would appear that it was the intention of the legislature to require that all moneys coming into the hands of the Board of Curators of the University of Missouri be deposited by the treasurer of the board in depositories selected by the board pursuant to statute. And such statutory requirement, if valid, would seem to preclude the investment of such funds by the Board of Curators, and that, under the statutes, the board would be required to keep such money on deposit until expended for the purposes of the University. However, the Constitution places the government of the University in the Board of Curators, not in the General Assembly. This is accomplished by Section 9 of Article IX, which is identical to the provisions contained in the Constitution of 1875. Such section reads:

"Sec. 9(a).# State university--government by board of curators--number and appointment.--The government of the State University shall be vested in a board of curators consisting of nine members appointed by the governor, by and with the advice and consent of the senate."

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Under the authority of this constitutional provision and of the prior decision in the case of State ex rel. Thompson v. Board of Regents for Northeast Missouri State Teachers' College, 264 SW 698, the Supreme Court en banc, in the case of State ex rel. Curators of the University of Missouri v. McReynolds, 193 SW2d 611, 354 Mo. 1199, stated "they (the Curators of the University) have sole control and custody of the fees received from dormitories and dining rooms." In this case, the issue was whether or not the curators could issue revenue bonds for the purpose of building dormitories and dining facilities. In considering the case, the court pointed out the history of the University and the fact that for many years after its establishment it operated solely from the proceeds of the seminary fund and such moneys as are here in question in this opinion. As to the history, the court precisely summarized it as follows, l.c. 193 SW2d 611:

"The University of Missouri was created by the General Assembly in 1839. Laws of 1838, p. 173. A fund designated as the 'seminary fund' was established by the act. This fund was to receive the proceeds of the sale of seminary lands and after the principal reached the sum of \$100,000 the income was to be applied for the support of the University. The original buildings were financed and for many years maintained solely from the income from the seminary fund and by gifts, subscriptions and student fees. These funds were paid directly to the curators who had control and management of them. The first funds by way of appropriation by the Legislature came in 1867, Laws 1867, p. 9, and then not for support but to reimburse the University for \$10,000 damage to its property because of military occupation during the war between the States. It appears that it was not until 1879 that the Legislature made its first general appropriation to the University. Laws 1879, p. 5."

The court pointed out that the University was to be contrasted to rather than compared with a municipal corporation which could handle and expend its money only in accordance with specific statutory or charter provisions, and that the University had broad discretion in dealing with funds derived from sources other than taxation

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and which were not appropriated to it by the General Assembly. The court said, l.c. 193 SW2d 613:

"* * * The broad powers historically exercised by the curators without specific legislative authority or appropriations present a different situation from an ordinary municipal corporation depending entirely upon taxation for its support and with powers rigidly limited by statute or charter."

The constitutional provision vesting the government of the State University in the Board of Curators was specifically construed by the Supreme Court en banc in the case of State ex rel. Heimberger v. Board of Curators, University of Missouri, 268 Mo. 598. In this case the legislature had provided by statute for the giving of additional courses and conferring of additional degrees by the University School of Mines and Metallurgy at Rolla. The University resisted on the express grounds that the constitutional provision we are now construing removed the University from the control of the General Assembly and that, consequently, they were not bound by the legislative enactments in question. The court came to the conclusion that the decision of that question depended upon the meaning of the word "government" as used in the constitutional provision vesting the "government" of the University in the Board of Curators. They pointed out that the normal definition of the word "government" was the "exercise of authority in regulating something; control; direction; rule; regulation;" and since the action of the legislature was in the nature of adding to the establishment rather than controlling or directing the operation thereof, the legislature was not prohibited from making such provision for additional courses and degrees by the constitutional provision. The court said, l.c. 268 Mo. 621:

"The constitutional powers of the board consist of those which 'government' includes--no more and no less. Except as to those the General Assembly is free to act while the powers conferred are beyond the General Assembly's reach. Before, however, we hold the General Assembly powerless to enact particular legislation, he who asserts such lack of power carries the burden of making his position clear beyond a reasonable doubt. We do not think that has

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been done in this case. Certainly no implication excluding the General Assembly's power to legislate upon subjects of one character can necessarily arise from the fact that authority over subjects of a different character is invested in the board of curators."

Thus the decision which must be made in this opinion is whether or not the matter of investing funds, which would otherwise lie idle in a bank or other depository, so as to secure therefrom additional funds for use in furthering the purposes of the University comes within the constitutional power of "government" of the University so as to authorize such investment in the face of the statutory provisions discussed above. It is clear, of course, that statutes as to the depositing of funds are not an addition to the University establishment so as to come squarely within the holding of the Heimberger case, supra. However, that case, by its definition of the word "government" said that it included control, direction, rule and regulation. The funds here in question have historically been in the sole control of the curators who have expended them for the purposes of the University in their sole discretion and without appropriation by the legislature. The General Assembly has never attempted to control their use. The Supreme Court has held that such funds are not within the constitutional provision requiring all state funds to be deposited in the state treasury and the General Assembly has expressly excluded such funds from statutory requirements of deposit in the state treasury. Further, the Supreme Court allowed the curators to pledge future funds of this type by issuing revenue bonds for the present construction of dormitory and dining facilities. It therefore seems that a reasonable construction of the definition of the term "government" discussed above would include the control and investment of the funds we are here considering. Thus, since the matter of investment of such funds comes within the constitutional power of the Board of Curators to govern the University, such matter is by such constitutional provision removed from the field within which the General Assembly may act, and the statutes above discussed can have no force and effect upon the Board of Curators of the University of Missouri.

Conclusion.

It is, therefore, the conclusion of this office that, under the powers granted to the Board of Curators of the University of Missouri by Article IX, Section 9 of the Constitution, the board may invest

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funds in its hands which are derived from sources other than appropriation of the General Assembly.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Fred L. Howard.

Yours very truly,

John M. Dalton
Attorney General

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