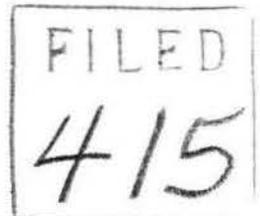


SCHOOLS:  
STATE UNIVERSITY:  
STATE COLLEGES:

As regards to the University of Missouri and its branches, Lincoln University and the five state colleges, that: 1. Under the Constitution and Statutes of Missouri a graduate of an accredited high school does not have an absolute legal right to be admitted. 2. The governing boards of these institutions have the authority to set by rules and regulations admission requirements which are reasonable and not arbitrary. 3. The provisions of neither Article IX, Section 1(a), Missouri Constitution of 1945, nor Section 160.090(2), RSMo 1959, prevent the governing boards of these institutions from adopting reasonable and non-arbitrary admission requirements.

December 29, 1964



OPINION NO. 415

Honorable R. J. (Bus) King, Jr.  
State Representative  
10th District St. Louis County  
39 Ridgemoor Drive  
Clayton 5, Missouri

Dear Mr. King:

This official opinion is issued in response to your request of December 11, 1964.

Your letter states the following questions:

- "1. Does any graduate of an accredited Missouri high school have an absolute right to be admitted to a public college?
- "2. Does the University of Missouri have the authority to adopt reasonable rules as to admission of graduates of accredited Missouri high schools?
- "3. Does Section 160.090, RSMo 1959, or any other Missouri statute prevent Missouri University or our state colleges from adopting reasonable rules as to the admission of graduates of accredited Missouri high schools?

"I would appreciate it if, in answer to my opinion request, you would set forth in outline or summary form such admission rules (both resident and non-resident) as are currently in effect at the University of Missouri (including its branches at Rolla, Kansas City, and St. Louis), Lincoln University, and finally each of the five state colleges."

In general, state legislatures may by statute impose reasonable requirements for admission to state colleges and universities. Such requirements do not violate the Fourteenth Amendment of the United States Constitution. Waugh v. Board of Trustees, 237 U.S. 589; Hughes v. Caddo Parish School Board, 57 F. Supp. 508.

Rather than prescribe admission standards by statute, the legislature may empower the board of regents or curators to make necessary rules and regulations. When so empowered, the board may set such admission requirements as are reasonable and not arbitrary. Newman v. Graham, Idaho, 349 P2d 716; Foley v. Benedict, Tex., 55 SW2d 805; Lesser v. Board of Education, 239 NYS2d 776.

Our research reveals that the courts of this state have never specifically considered the legality of admission requirements set by the state universities or colleges.

However, admission requirements of the Harris Teachers College were upheld by our Supreme Court in the case of Kayser v. Board of Education, Mo., 201 SW 531. The board had adopted an admission requirement whereby graduates of St. Louis Public Schools who were in the upper two-thirds of their class were admitted to the college without examination. All others were required to qualify by examination. The court held that the Harris Teachers College was not a public school in the sense that grade and high schools are public schools and that the board could limit admissions by reasonable regulations.

The Harris Teachers College was established by and is under the control of the board of education of St. Louis City. Thus, the Kayser case supports but does not specifically authorize the conclusions hereinafter reached regarding the state universities and colleges.

The Legislature has specifically empowered the governing boards of the state colleges and universities to prescribe qualifications for admission.

Section 172.360, RSMo 1959, applicable to Missouri University states:

"All youths, resident of the state of Missouri, over the age of sixteen years, shall be admitted to all the privileges and advantages of the various classes of all the departments of the university of the state of Missouri without payment of tuition; provided, that each applicant for admission therein shall possess such scholastic attainments and mental and moral qualifications as shall be prescribed in rules adopted and established by the board of curators; and provided further, that nothing herein enacted shall be construed to prevent the board of curators from collecting reasonable tuition fees in the professional departments, and the necessary fees for maintenance of the laboratories in all departments of the university, and establishing such other reasonable fees for library, hospital, incidental expenses or late registration as they may deem necessary." (Emphasis added.)

The curators of Lincoln University have the same power. Section 175.040, RSMo 1959:

"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 chapter."

Sections 174.120 and 174.130, RSMo 1959, are applicable to the state colleges:

"Each state teachers college shall be under the general control and management of its board of regents, and the board shall possess full power and authority to adopt all needful rules and regulations for the guidance and supervision of the conduct of all students while enrolled as such; to enforce obedience

to the rules; to invest the faculty with the power to suspend, or expel any student for disobedience to the rules, or for any contumacy, insubordination, dishonesty, drunkenness or immoral conduct; to appoint and dismiss all officers and teachers; to direct the course of instruction; to designate the textbooks to be used; to direct what reports shall be made; to appoint a treasurer for such college, and to determine the amount of his bond, which shall be in amount not less than ten thousand dollars; and to have the entire management of the college, including qualifications for admission. (Emphasis added.)

"Each board may make such rules and regulations for the admission of students as may be deemed proper."

These statutes are clear and express in granting the power to adopt admission standards. However, as you have requested, we will consider whether any other state law abrogates or limits the above express authorization.

You inquire whether Section 160.090, RSMo 1959, would prevent Missouri colleges and universities from adopting reasonable admission requirements to apply to graduates of accredited state high schools.

Section 160.090(2), RSMo 1959, provides:

"The state board of education shall:

\*\*\*\*\*

"(8) Classify the public schools of the state, subject to such limitation as may hereafter be provided by law, establish requirements for the schools of each class, formulate rules governing the inspection and accreditation of schools preparatory to classification, and such accredited school work shall be given full credit in requirements for entrance to and classification in any educational institution supported in whole or in part by state appropriation." (Emphasis added.)

We are not aware of any court opinion construing this statute. We note that a similar provision was in effect when the Kayser case, supra, was decided. (See: Section 10923, RSMo 1909).

It is our opinion that the above quoted statute does not require state colleges and universities to admit, without further qualification, all graduates of accredited state high schools. Rather, we read the statute to require all state educational institutions to give the same academic credit value for work in accredited state high schools as is given by the state board of education. In short, these institutions cannot discount work done at an accredited high school.

If Section 160.090(2) is construed as requiring educational institutions to admit all graduates of accredited high schools, it would be in direct conflict with Sections 172.360, 174.120 and 174.130 which expressly authorize the establishing of admission qualifications. Statutes must be read together and construed to be in harmony if possible. Since Section 160.090(2) can be read harmoniously with these other statutes, we so read it.

Thus we conclude that Section 160.090(2) does not prevent state colleges and universities from establishing reasonable admission qualifications applicable to graduates of accredited state high schools so long as the same credit value is given for accredited high school work, as is given by the state board of education.

The only other state law, to our knowledge, that might appear to prevent the reasonable regulation of admissions is Article IX, Section 1(a), Missouri Constitution of 1945, which provides:

"A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the general assembly shall establish and maintain free public schools for the gratuitous instruction of all persons in this state within ages not in excess of twenty-one years as prescribed by law. \* \* \*"

A similar provision was contained in the Missouri Constitution of 1875, i.e., Article XI, Section 1. The Supreme Court of Missouri, en banc, considered the provision of the 1875 Constitution in Lincoln University v. Hackmann, Mo., 243 SW 320. The court held that Lincoln University, Missouri University and the state colleges were not part of the free public school systems of the state. Also in the Kayser case, supra, the court held Harris Teachers College also not to be a "public school" within the meaning of the Constitution.

Honorable R. J. (Bus) King, Jr. - 6

The maintenance of the state university and colleges is authorized under Article IX, Section 9(b) of the 1945 Constitution and not under Article IX, Section 1(a) quoted supra.

Hence, we conclude that Article IX, Section 1(a) of the Constitution of 1945 is not applicable to the state institutions of higher education and does not prevent the adoption of reasonable admission requirements.

You further request that we summarize the currently effective admission requirements of the University of Missouri and its branches, Lincoln University, and also each of the state colleges. An appendix is attached hereto setting forth current admission requirements as shown in the bulletins of the respective schools.

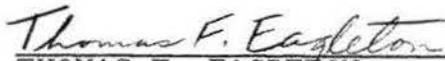
#### CONCLUSION

Therefore, it is the opinion of this office that as regards to the University of Missouri and its branches, Lincoln University and the five state colleges, that:

1. Under the Constitution and Statutes of Missouri a graduate of an accredited high school does not have an absolute legal right to be admitted.
2. The governing boards of these institutions have the authority to set by rules and regulations admission requirements which are reasonable and not arbitrary.
3. The provisions of neither Article IX, Section 1(a), Missouri Constitution of 1945, nor Section 160.090(2), RSMo 1959, prevent the governing boards of these institutions from adopting reasonable and non-arbitrary admission requirements.

The foregoing opinion which I hereby approve, was prepared by my Assistant Louis C. DeFeo.

Yours very truly,

  
THOMAS F. EAGLETON  
Attorney General

LCD:rp

Attachment

A P P E N D I X

OPINION NO. 415  
Issued December 29, 1964

The currently effective admission requirements of the University of Missouri and its branches, Lincoln University, and each of the state colleges, are summarized from their respective official bulletins to be as follows:

Missouri University and its branches -

In general, the admission requirements are:

Missouri residents who are graduated from an accredited high school in the upper two-thirds of their class are admitted without examination; those in the lower one-third of their graduating class must qualify by examination and are admitted only on a probation status.

Nonresidents of Missouri must rank in the upper half of their high school graduating class in order to be admitted, without examination. (At UMKC those in the upper half must also qualify by examination).

School of Mines and Metallurgy at Rolla admits all graduates of accredited high schools. If the applicant does not have a high school certificate he must take an examination.

Lincoln University, Jefferson City -

Admission may be gained by certification of fifteen units of high school work or by passing an examination. The University

"\* \* \* reserves the right to reject any applicant whose character and scholastic records elsewhere were unsatisfactory or who is not officially recommended by the principal or some other certified officer of the school from which he comes. For nonresidents of Missouri the University reserves the right to reject any applicant for any reason it considers adequate."

Northeast Missouri State Teachers College, Kirksville -

"Graduates of accredited high schools in Missouri will be admitted \* \* \*".

Nonresidents must be in the upper three-fourths of their graduating class or they may qualify by examination if they have a "C" average, or else, they may enroll provisionally during the summer term.

Central Missouri State College, Warrensburg -

Apparently all graduates of accredited high schools are admitted.

Southeast Missouri State College, Cape Girardeau -

Applicants with a certificate of an accredited high school are admitted. If the applicant has no certificate he may be admitted by examination.

Southwest Missouri State College, Springfield -

All graduates of accredited Missouri high schools are admitted. Nonresident applicants are required to take an examination unless in the upper two-thirds of their graduating class.

Northwest Missouri State College, Maryville -

Apparently all graduates of accredited high schools are admitted.