

STATE UNIVERSITY:
UNIVERSITY OF MISSOURI:

The Board of Curators of the University of Missouri may assume responsibility for operation of the Residence Center in Independence currently operated by Central Missouri State University and the Center may be operated as a part of the University of Missouri at Kansas City at the discretion of the curators.

OPINION NO. 43

January 24, 1974

Honorable Alex J. Fazzino
Representative, District 22
Room 302, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Fazzino:

This official opinion is in response to your request for a ruling on the following question:

"May the governing boards of the University of Missouri and Central Missouri State University effect a transfer of responsibility for operation of the Residence Center in Independence currently operated by CMSU to the Kansas City campus of the University of Missouri?"

You have furnished us with the following factual background for your question:

"In recent years Central Missouri State University has operated a Residence Center in Independence. The building in which the Center is operated is owned by the Jackson County College Committee, which has a bonded indebtedness on the building of approximately \$855,000. The Committee allows CMSU to use the building at a cost of \$3.00 per student semester hour. Courses at the Center are taught by CMSU faculty members, and students who enroll at the Center pay \$22.00 per semester hour to CMSU. This includes the \$3.00 for use of the building. There are approximately 2,100 students enrolled at the Center.

"Following a recent controversy over the giving of state aid to CMSU for students enrolled

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at the Center, it has been suggested that responsibility for operation of the Center be transferred to the Kansas City campus of the University of Missouri."

This opinion does not concern itself with the propriety of the operation in recent years of the Independence Residence Center by CMSU. It is the understanding of this office that CMSU has decided to cease its operation of the Center. Thus, the relevant question is whether the Board of Curators of the University of Missouri has the authority to assume responsibility for the Center, not whether any "transfer" from CMSU to UMKC would be proper.

The starting point of our inquiry is Article IX, Section 9 (a) of the Missouri Constitution, which reads as follows:

"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."

Throughout the years, this provision has been construed so as to give extensive power to the university curators to establish academic programs and select building sites without legislative approval. This power has been held to authorize the sale of dormitory bonds, State ex rel. Curators of University of Missouri v. McReynolds, 193 S.W.2d 611 (Mo. banc 1946), to authorize the construction and financing of parking facilities, State ex rel. Curators of University of Missouri v. Neill, 397 S.W.2d 666 (Mo. banc 1966), and to authorize university ownership and operation of a commercial radio station, Opinion No. 19, Cox, August 1, 1952, copy enclosed. Each of these rulings notes the wide powers which have traditionally been exercised by the curators of the University.

More specifically relevant here, it should be noted that the establishment of the branch campuses currently operating in Kansas City and St. Louis was done by action of the curators, not by legislation. The story of the acquisition of the University of Kansas City and the formation of UMKC is related by the Supreme Court in Curators of University of Missouri v. University of Kansas City, 442 S.W.2d 66 (Mo. banc 1969). The transfer of the facilities was accomplished by a contract between the UKC and the university curators; one condition of the contract was the approval of an appropriation by the General Assembly:

". . . It was stated the transactions could not be completed unless, not later than September 1, 1963, the General Assembly had enacted and the Governor signed, a law appropriating to the use of the curators for the

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operation of a university in Kansas City during the 1963-65 biennium a sum not less than \$7,100,000 (which was done, see Laws of 1963, p. 43, approved July 8, 1963)." 442 S.W.2d, at 69-70

As can be seen by this account, the only legislative action taken with respect to the creation of UMKC was the approval of an appropriation bill; no other enabling legislation was passed. Since the General Assembly cannot legislate in an appropriation bill, Missouri Constitution, Article III, Section 23; State ex rel Gaines v. Canada, 113 S.W.2d 783, 790 [14-18] (Mo. banc 1938), rev'd. on other grounds, 305 U.S. 337 (1938); it appears that the legislature must have believed that the curators already had the authority to enter into the transfer of the property. Further, the opinion by the Supreme Court gives no indication that either the judges or the parties were in any way troubled by the legality of the actions of the curators in establishing a new campus.

If, as it appears from the above, the curators have the authority to create a new campus, then they must also have the authority to expand a campus already created, either through the construction of new facilities or through the purchase or lease of existing facilities.

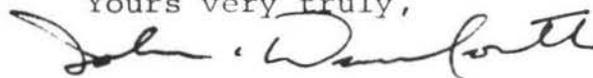
Examining the question you asked in this light, we believe that the curators may contract with the owners of the Independence Residence Center and establish the Center either as an independent campus or as a part of UMKC. The staff of the Center would be employed by the University of Missouri, and the facility would possess whatever status the curators decided to give it.

CONCLUSION

It is, therefore, the opinion of this office that the Board of Curators of the University of Missouri may assume responsibility for operation of the Residence Center in Independence currently operated by Central Missouri State University and that the Center may be operated as a part of the University of Missouri at Kansas City at the discretion of the curators.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Richard E. Vodra.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 19
8-1-52, Cox