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SCHOOLS. : Board of Regents of State Teachers
: College may lease facilities of
: college for joint use with Army
: Hospital.

August 15, 1944

Mr. Roy Ellis, President
Southwest Missouri State Teachers College
Springfield, Missouri

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FILED

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Dear Mr. Ellis:

This will acknowledge the receipt of your letter of August 11, 1944, requesting an opinion of this office, which is as follows:

"Pursuant to the telephone request made to Mr. Vance C. Thurlo of your office by Mr. Frank C. Mann, our Attorney, to-day, we will appreciate your giving your opinion on the right of the Board of Regents to enter into a contract with the United States for leasing a portion of our buildings and equipment under the following conditions.

"The Government is requesting the Board of Regents to lease to them approximately the west half of our campus which includes the cafeteria in the Administration Building, The Field House, the Athletic Field, the joint use of our swimming pool, and other grounds and facilities for the use of O'Reilly General Hospital, the Army Hospital located in Springfield, as a convalescent hospital for soldiers who are now patients at O'Reilly General Hospital. They require your opinion as to the authority of the Board of Regents to enter into such a lease, which authority is clearly granted under the provision of Article 20, Chapter 72, Revised Statutes of 1939.

"I might add that due to the war conditions the school has no need for the facilities the Board proposes to lease to the Government, and it is contemplated that the lease will continue during the duration or probably six months thereafter.

"Four executed copies of your opinion are required by the War Department; therefore, I will appreciate it if you will send me four executed copies

of your opinion when it is ready."

Section 10753, R. S. Mo., 1939, provides:

"The boards of regents now constituted and appointed for the first, second, third, fourth and fifth district normal schools and for Lincoln institute are hereby created boards of regents for the first, second, third, fourth and fifth state teachers colleges and for Lincoln university with full succession to property and powers. Said boards shall be known respectively as 'the board of regents for the northeast Missouri state teachers college,' the 'board of regents for the central Missouri state teachers college', the 'board of regents for the southeast Missouri state teachers college,' the 'board of regents for the southwest Missouri state teachers college,' and the 'board of regents for the northwest Missouri state teachers college' and the 'board of regents for Lincoln university:' and by their respective names they shall have perpetual succession, with power to sue and be sued, complain and defend in all courts, to take, purchase and hold real estate, and sell and convey or otherwise dispose of the same, and to make and use a common seal and to alter the same. (R. S. 1929, Sec. 9596.)"

In State ex rel. Thompson v. Board of Regents, 305 Mo. 57, l. c. 68, the Supreme Court stated in speaking of the above section: "Under Sec. 11491 the board of regents is empowered to sue and be sued, to take, purchase and hold real estate and to sell and otherwise dispose of same. This section invests the board with powers akin to those of a corporation and within the limits defined recognizes the board as a legal entity without in any wise lessening the State's sovereignty."

Section 10760, R. S. Mo., 1939, provides:

"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. (R. S. 1929, Sec. 9603)."

In State ex rel. Thompson v. Board of Regents quoted supra the court, at page 65 stated: "While in a sense, the board is an agent of the state with defined powers, the importance of its duties with their attendant responsibilities, is such as to necessarily clothe the board with a reasonable discretion in the exercise of same. This is inevitably true, first because of the difficulty in framing a statute with such a regard for particulars as to cover every exigency that may arise in the future, and second, because a restriction of the board's powers to the letter of the law would destroy its efficiency and to that extent cripple the purpose for which the institution was created. Legislatures therefore, moved by that wisdom which is born of experience whether conscious or not of that aphorism "new occasions teach new duties; time makes ancient acts uncouth" have contented themselves with defining in general terms the powers of such boards as are here under review, leaving the discharge of duties not defined and which may under changed conditions arise in the future, to the discretion of the board."

CONCLUSION.

It is therefore the opinion of this office that

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the Board of Regents of the State Teachers College of Missouri, at Springfield, may in its discretion, lease facilities of the college for joint use with the O'Reilly General Hospital, an Army convalescent hospital.

Respectfully submitted

ROBERT J. FLANAGAN
Assistant Attorney General

APPROVED:

ROY MCKITTRICK
Attorney General

RJF:LeC