SCHOOLS: Lincoln University's School of Journalism may edit newspaper.

October 23, 1942

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Mr. Sherman D. Scruggs
President
Lincoln University
Jefferson City, Missouri

Dear Sir:

Your letter of October 13, 1942, in reference to the issuance of a newspaper in connection with the journalistic course at Lincoln University, has been received.

I

Your first question reads as follows:

> "Is it not legal for this School, a state-supported institution, to operate its own laboratory and produce a weekly newspaper under the typical conditions of the typical weekly newspaper when this is the only means at the School's disposal for providing practical training and experience for students pursuing courses in journalism of a quality at the level of accredited schools in this profession?"

The section applicable to this question is Section 10774 R. S. Missouri, 1939, which reads as follows:

> "The Board of Curators of the Lincoln University shall be authorized and required to reorganize said institution so that it shall afford to the negro people of the state opportunity for training up to the standard furnished at the State University of Missouri. To this end the board of curators shall be authorized to purchase necessary additional land, erect necessary additional buildings, to open and establish any new school, department or course of instruction, to provide necessary additional equipment, and to locate the respective units of the university wherever in the State of Missouri in their opinion the various schools will most effectively promote the purposes of this article."

Another section applicable to this question, is Section 10778, R. S. Missouri, 1939, which reads as follows:

> "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 article."

Under the above section, the powers, authorities, responsibilities, and other matters shall be the same as those prescribed by statute for the board of curators of the state university of Missouri, and, in rendering this opinion, we are confined almost solely to the powers and duties of the curators of the state university of Missouri.

Under Article 22, Chapter 72, of the Revised Statutes of Missouri, 1939, which applies to the state university of Missouri, the legislature saw fit to enact Section 10807, which reads as follows:

> "The curators shall have power to make such by-laws or ordinances, rules and regulations as they may judge most expedient for the accomplishment of the trust reposed in them, and for the government of their officers and employees, and to secure their accountability, and to delegate so much of their authority as they may deem necessary to such officers and employees or to committees appointed by the board."

This section gives the curators of Lincoln University complete authority as to the course of study and the regulation of the same, except as to other enactments by the legislature. It was so held in the case of State ex rel Heinberger v. Board of Curators of the University of Missouri, 188 S. W. 128.

Under Section 10807, supra, the curators are authorized to make such rules and regulations as they may judge most expedient for the accomplishment of the trust imposed in them.

In the case of Marsh v. Bartlett, 121 S. W. (2d) 737, pars. 15,16, the court, in ruling upon the power to make rules and regulations said:

> "It has been indicated above that the Conservation Commission has been granted the authority to control, regulate, etc., the matters committed to it. There was much discussion by counsel in their oral arguments, and much appears in their brief, with reference to the meaning of the words definitive of that authority. In the aspect of the Amendment now under consideration there is no need to go into definition of the various terms. They take color and significance from the context.
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> "The term 'regulate' will be sufficient for the moment. It includes ordinarily the means to adjust, order, or govern by rule or established mode; direct or manage according to certain standards or rules. Sluder v. St. Louis Transit Co., 189 Mo. 107, 88 S. W. 648, 5 L. R. A., N. S., 186. Regulation and legislation are not synonymous terms. In re Northwestern Indiana Tel. Co., 201 Ind. 667, 171 N. E. 65, 70. Regulation is comprehensive enough to cover the exercise of authority over the whole subject to be regulated. Southern R. Co. v. Russell, 133 Va. 292, 112 S. E. 700, 703."

Under the Constitution of Missouri, 1875 the legislature did enact laws creating certain courses of study, but it saw fit to empower the curators to perform that duty, by enacting Section 10807, supra, which gave the board of curators authority to pass all rules and regulations for any matters that may come up in the governing of the courses, and other matters in the state university and which also applies to Lincoln University. The curators of Missouri University are not limited either by the Constitution, or Section 10807, supra, in providing for the education of the students who enroll either in the state university of Lincoln University. In the case of State v. Board of Regents, 264 S. W. 698, par. 4, the court, in holding that the curators are empowered to make any rules and regulations which may arise on new occasions to teach new studies, said:

> "While the board, in a sense, represents the state in the performance of its duties, it is but one of the many necessary instrumentalities through which the former is enabled to act within the scope of the powers conferred by law. These powers embody no attributes of sovereignty which would entitled them to be designated as the state's alter ego. 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 that '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."

Also, in the case of Silverman v. City of Chattanooga, 57 S. W. (2d) 552, (Tenn.), par. 2, the court said:

> " * * * We have italicized the word 'regulating' as the pertinent determinative expression found in the charter. The word regulate is defined by Webster as meaning, 'to adjust or control by rule, method, or governing principles or laws.' One of the well-recognized synonyms of regulate is rule, and another is govern. So in Bouv. Law Dict., vol. 3, page 2860, a definition of regulate is 'to subject to governing principles or laws.' We are of the opinion that when its charter expressly conferred upon the city the power by ordinance of 'regulating all public grounds

> belonging to the city, in or out of the corporate limits,' that this embraced the power to enforce these regulations."

CONCLUSION

It is therefore the opinion of this department that it is legal for Lincoln University to operate its own laboratory and produce a weekly newspaper under the typical conditions of the typical weekly newspaper which would provide practical training and experience for students pursuing courses in journalism, of a quality at the level of the same course in the state university.

II

Your second question reads as follows:

> "Is it not a prerogative of the School to solicit advertising, charge and collect fees from the advertisers in its columns as a part of the training in the business aspects of newspaper management?"

III

> "Should the advertising fees charged be at a rate comparable to those charged by the commercial newspaper

of the locality, based, of course, upon the circulation?"

CONCLUSION

In view of the authorities set out under your first question, it is the opinion of this department, that Lincoln University may solicit advertising, and charge and collect fees from the advertisers in its columns, as part of the training in the school of journalism.

It is further the opinion of this department that Lincoln University may charge such fees at a rate comparable to those charged by the commercial newspapers of this locality, based, of course, upon the circulation.

We base this opinion upon the fact that the soliciting of advertising is a part of the actual training of students who have enrolled in the school of journalism at Lincoln University.

IV

Your fourth question reads as follows:

"Is a city or state license fee or occupational tax levied upon a school when it produces a laboratory newspaper for which a fee is charged its advertisers for advertising merely to

provide managerial experience in the business operations of the paper?"

Since the State has delegated to Lincoln University the business of teaching journalism, a part of which would be the practice of running a newspaper, a municipality would not have the right to charge the University for doing the thing which the State has empowered it to do and commanded it to do. This case is discussed in the case of City of Fulton v. Simms, 120 Mo. App. 677, and the case of Kansas City v. Fee, 174 Mo. 501. The above cases discuss the extent to which a city may regulate institutions established by the State.

CONCLUSION

It is, therefore, the opinion of this department that no city or state license fee, or occupational tax is required of the school of journalism or the newspaper which is a part of the school of journalism, where the fee charged to advertisers is merely to provide managerial experience in the business operation of the school newspaper.

V

Your fifth question reads as follows:

"May the revenue accruing from fees charged to advertisers be properly accounted for to the State, and then used to supplement funds for the production of the newspaper, to provide for the upkeep of equipment or to purchase additional and needed equipment in the School?"

In answer to the above question, we find no special statute which requires the fees charged to advertisers to be paid into the state treasury, as is provided in most fee statutes.

Section 10801 R. S. Missouri, 1939, requires the board of curators to furnish the state legislature a classified statement of all receipts and disbursements of the institution, but does not provide that such incidental fees shall be paid into the state treasury. That such incidental fees should not be paid into the state treasury was held in the case of State v. Board of Regents, 264 S. W. 698, par. 8, where the court said:

> " * * * Without burdening this opinion with their review, it seems sufficient to say that in none of these statutes, either by express enactment or reasonable implication, does it appear that it was within the contemplation or intention of the Legislature that moneys received by the managing boards of educational institutions in the nature of incidental fees should, as a condition precedent to their use by the respective boards, be required to be first paid into the state treasury and appropriated therefrom by the Legislature. In the absence of a mandatory requirement to that effect, no duty is devolved upon such boards to thus dispose of these funds. Their duty in the premises, in the presence of that discretion with which the law has clothed them, is to expend such funds for the college, and account for same in the manner required by the plain provisions of the governing statutes."

As to the powers of the board of curators in opening new departments, the Supreme Court, in the case of State v. Canada, 153 S. W. 2d 12, par. 5, said:

> "The statute, as now worded, does not in terms vest any discretion in the Board of Lincoln University to determine the necessity or practicability of opening new departments. Yet we think, of necessity, a measure of discretion remains in the Board to allocate the funds at its disposal to departments for which great demand exists, if such funds are insufficient to supply all departments of learning furnished at the University of Missouri."

CONCLUSION

It is, therefore, the opinion of this department that under Section 10801 R. S. Missouri, 1939, the board of curators should furnish the state legislature with a classified statement of all receipts and disbursements of the institution, but is not compelled to pay the supplement funds into the state treasury, but may use the funds received by way of payment of advertisements for the upkeep of equipment, or to purchase additional and needed equipment in the school.

Respectfully submitted

APPROVED:

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