M. M. Chambers
Education Building, Indiana University
Bloomington, Indiana
47405

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GRAPEVINE

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A newsletter on state tax legislation; state appropriations for universities, colleges, and junior colleges; legislation affecting education at any level. There is no charge for GRAPEVINE, but recipients are asked to send timely newsnotes regarding pertinent events in their respective states.

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KANSAS. This state has long been noted for adherence to the theory of strictly limited powers for the governing boards of the state institutions of higher education.

(In fact, in 1916 it abolished the institutional governing boards and created the State Board of Regents to govern all the institutions from the Statehouse).

Recently the Kansas State University at Manhattan needed to obtain a tract of land suitable for use for a "Summer Shielding Development Program" which is a project of its Shielding Institute sponsored by the Department of Nuclear Engineering. Control of suitable land was a prerequisite to the making of a federal grant to support the research in part.

The Kansas State University Endowment Association (a private nonprofit corporation accessory to the university) leased 175 acres adjacent to the Fort Riley military reservation, for five years 1962-1967, and took an option to purchase 290 acres, including the leased land, with the option to expire May 1, 1964.

The university was awarded the federal grant and entered into the use of the land under a sub-lease from the Endowment Association. Then on June 5, 1963 the State Board of Regents filed a petition for condemnation of the land covered by the lease.

Three months later the landowners filed a motion to dismiss the condemnation proceedings, alleging that the Endowment Association was no more than an agent of the State Board of Regents, and that the existence of the uncompleted lease estopped the Regents from taking the land by condemnation.

In complicated litigation in the lower courts the right of the Regents to take the land by condemnation was upheld, and these judgments were affirmed by the supreme court of Kansas.

The opinion, written by Commissioner Hatcher and approved by the whole court, said:

"The legislature has not seen fit to authorize the State Board of Regents to acquire land by negotiation and purchase.. nor to negotiate options to purchase, and it had no authority to do so. No doubt the Endowment Association entered into the lease and option agreement for the purpose of assisting Kansas State University in obtaining government grants for the purpose of conducting nuclear research programs, but its assistance could not go beyond the power of the University and the State Board of Regents to act.

"The Endowment Association could not by agreement, or under the claim of agency, extend the power of the State Board of Regents beyond that granted by the legislature."

-- Murray v. State Board of Regents, 194 Kan. 686, 401 P. 2d 898 (1965).

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Address communications to M. M. Chambers, Education Building, Indiana University, Bloomington, Indiana, 47405

M. M. Chambers, Education Building, Indiana University, Bloomington

NEW JERSEY. Governor Richard J. Hughes early in January addressed the legislature, urging the enactment of a graduated one to five per cent income tax (half the rate of the present income tax in neighboring New York), to be made retroactive to January 1, 1966.

The tax would produce $180 million the first year, plus $52½ million more if made retroactive as suggested. With the revenues from other sources, it would finance an annual budget of $900 million, as contrasted with the current annual expenditures of about $640 million.

Most of the proceeds of the proposed state income tax would be allocated to state aid to public school districts, capital improvements at public institutions of higher education, and highway construction.

Capital improvements for higher education would get $50 million the first year and $30 million each year thereafter-- characterized as "the biggest program of pay-as-you-go capital outlay for higher education ever proposed in New Jersey's history."

For many decades New Jersey has been notorious as one of the very few states habitually rejecting any kind of a broad-based state revenue system. At present Nebraska is the only other state having neither a state sales tax nor a statewide income tax. The chances for a revolution in New Jersey now appear brighter than ever before. Not only was Governor Hughes recently re-elected by a landslide, but also both houses of the legislature are now controlled by the same political party as that of the governor, for the first time in fifty-two years.

Speaking bluntly of the state's "pride in the absence of a broad-based tax", Governor Hughes said: "But that pride has been tarnished by our obvious shortcomings in the meeting of our public obligations. I think no legislator can expect reward for inaction that perpetuates such public neglect."

NEW MEXICO. The state institutions of higher education have generally been held to be immune from responsibility for negligence in tort cases, on the familiar ground of "state immunity" which stems from the medieval doctrine that the King can do no wrong.

Consonant with the changes in this field of the law which are taking place slowly in many states, a 1965 New Mexico decision evidences a somewhat different spirit.

A female case-worker for the State Welfare Department visited a blind student in his dormitory at New Mexico State University, to confer with him about his Welfare assistance. While departing from the dormitory, she fell and was injured on a ramp-type walk at a point where it sloped downward.

There was conflicting testimony as to whether the walk was troweled glassy-smooth, or roughened on the surface to prevent slipping. The university director of physical plant testified that it was properly roughened, but a civil engineer as witness for the injured woman testified that it was smooth, slippery, and dangerous to pedestrian traffic.

The trial court rendered a summary judgment in favor of the university; but on appeal the New Mexico supreme court reversed this judgment and remanded the case with direction to proceed to trial of the disputed facts.

This plainly implies that if the university negligently maintained the walk in a slippery and dangerous condition, then it might be responsible in damages to a person innocently injured thereon.

The decision was unanimous, with the opinion being written by Chief Justice Carmody and concurred in by Justices Chavez and Moise.

-- Sandoval v. Board of Regents of New Mexico State University, 75 N. M. 261, 403 P. 2d 699 (1965).

NEW YORK. The Dormitory Authority in this state is a rare species of animal known as a "public benefit corporation", almost sui generis, and generally held to be not subject to the various statutory restraints imposed on other more common types of public corporations.

For example, it is not required to award a contract to the lowest responsible bidder; and it seems that it may formally award a contract and soon thereafter rescind that action without being liable for breach of contract.

The minutes of the Dormitory Authority for April 12, 1965 show the following:

"It was moved, duly seconded, and VOTED to award the general construction contract for the Life Science Building at C. W. Post College of Long Island University to Schumacher and Forelle, Inc., Great Neck, L. I., in the amount of $1,571,000, as bid on March 31, 1965."

Four weeks later, on May 10, it adopted another resolution rescinding the above (apparently at the suggestion of C. W. Post College) and rejecting all bids and authorizing the solicitation of new bids.

Schumacher and Forelle brought an action asking the court to direct the Dormitory Authority to award the contract in accord with its resolution of April 12. The action in the trial court was unsuccessful. Justice Harold E. Koreman dismissed the case, saying: "The Public Authorities Law does not require the Dormitory Authority to advertise for bids and does not require the Authority to do any particular thing in relation to the awarding of a contract.....Nor is the Authority required to award a contract to the lowest bidder."

He concluded that in this case there "is no duty imposed by law to award the contract." Hence, he thought, "It is not necessary to determine whether the Authority effectively accepted petitioner's offer as a result of its April 12 resolution."

-- Schumacher and Forelle, Inc. v. Johnson, 47 Misc. 2d 65, 261 N.Y.S. 2d 943 (1965).

OHIO. The new Cleveland State University was created by Chapter 3344, Ohio Revised Code, enacted December 18, 1964. It is governed by a board of 9 trustees, appointed by the governor.

Under an "Agreement of Transfer and Transition" Cleveland State University uses as its beginning nucleus the faculty, staff, and facilities of Fenn College, a private institution which originated in the early 1920's as an enterprise of the Cleveland YMCA. In the 'Thirties it was separately incorporated, and in 1951 entirely severed from all connection with the YMCA.

The Fenn College board of trustees now turns its plant and facilities over to Cleveland State University, and receives from the state $260,000 and the expectation that the state will enormously expand the operation, and will "continue, so far as practicable, the cooperative program of education" in engineering, with business and industrial employers.

The Fenn Board of Trustees will have its charter amended and become the "Fenn Educational Foundation" and "carry on as a nonprofit corporation supporting worthy educational, literary, charitable and scientific endeavors." The Common Pleas Court issued a declaratory judgment regarding the rights of all parties, including private donors to the college.

Noting that "Those who have been generous to Fenn in the past have the assurance that their charitable intents will be perpetuated, and, although they have no legal title or interest in any of Fenn's assets, that their donations will continue to advance the cause of education", the court said the "doctrine of deviation" in the operation of charitable trusts is applicable here, and declared that the Fenn Trustees "had full and complete legal authority...and ample discretion to enter into the agreement and transfer most of their assets to the newly-created state university."

-- Fenn College et al. v. Nance et al., (Ohio Com. Pl.), 210 N.E. 2d 418 1965).

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TEXAS. Pan American College at Edinburg received a National Science Foundation Grant for research in astronomy and astrophysics, with Professor Paul Engle as director of the project. As a Research Associate in this project, Dr. Hector R. Rojas, a resident of France, was first employed for one year terminating May 31, 1963. This contract was renewed, to expire May 31, 1964.

Soon after the renewal a strong personal animosity developed between Engle and Rojas. On September 21, 1963, in response to a letter from Engle, Rojas wrote, "Because you are not astronomer at all, and anymore I will not accept from you any instruction regarding what to do or what not to do in the research project."

Thereafter the college not only allowed Rojas to continue his work, but furnished him with a new and better office. On October 25, 1963, just outside Rojas' office, a fist-fight between Engle and Rojas occurred, in which both were knocked to the ground. There were no eye-witnesses, and the two principals gave flatly conflicting testimony as to which had been the aggressor, and which had acted in self-defense. On this point an adult student was permitted to testify that Engle's reputation for veracity was not good.

The president of the college dismissed Rojas, and this action was confirmed by the Board of Regents, apparently without giving him a hearing. Rojas later sued for damages for breach of contract; and in the district court the question was put to a jury: "Was there just cause for the dismissal?" The verdict of the jury was: "No." The court awarded Rojas a judgment for $5,100, being the total of his unpaid salary and $434 for traveling expenses for his return to France, as stipulated in his contract.

The statutory power of the Board of Regents to "dismiss an employee whenever in their judgment the best interests of the College require it" was unsuccessfully pleaded when the case went up to the Court of Civil Appeals. There was no evidence or allegation, said that court, that the Regents considered the best interests of the college, rather than a mere wish to placate Professor Engle. Thus the judgment was affirmed.

-- Pan American College v. Rojas, (Tex. Civ. App.), 392 S.W. 2d 707 (1965).

VERMONT. The old question of the circumstances under which a university can adjudge a student to be a failure in his academic work and dismiss him for that reason was the subject of a federal district court decision in 1965.

At the University of Vermont a third-year medical student was enrolled in a 12-week course in pediatrics and obstetrics, March through June, 1964. From May 11 to June 7 he was absent due to illness, and "made up" the lost time from July 1 to July 16. On July 17 he was advised that he had failed and could not advance to his fourth year because a rule of the College of Medicine forbade the advancement of any student who failed 25% or more of his major courses of the third year.

He then petitioned for permission to repeat his third year; but this was denied, and subsequently he was permanently expelled.

In court he alleged that his expulsion was wrongful, arbitrary, and unjust, and asked the court to order it rescinded. His work had been "passing" prior to his absence, he said (87% and 82% in the respective parts of the course), and early in July his teacher decided that "he would not give him a passing grade regardless of his prior work and regardless of the quality of his work in the make-up period."

The university met this allegation with a motion to dismiss the case and a motion for summary judgment in its favor. The federal district judge denied these motions and ordered the case set for hearing on the limited issue of whether the university had acted arbitrarily, capriciously, or in bad faith in dismissing the student; and said, "Should

VERMONT. (Continued from Page 547)
the plaintiff (student) prevail on that issue, this court will then order the defendant University to give the plaintiff a fair and impartial hearing on his dismissal order."

The court will not undertake to appraise the quality of a medical student's work, nor to interpose its own judgment of that as a substitute for the discretion of the medical faculty; but the allegation that the student was declared an academic failure without regard to the quality of his work is one which a court is bound not to ignore.

The burden of proof is on the student, but he has a right to be heard in court in an effort to prove his allegation.

In support of its motions to dismiss the case and for summary judgment, the university put forward some technical matters to which the court's responses are of some interest. First, it was asserted that the court should not take jurisdiction because of the Eleventh Amendment prohibition of a state being sued by a citizen of another state. Not so, said the court. The University of Vermont is clearly a public corporation having its own entity apart from that of the state, and a suit of this kind against it is not a suit against the state within the prohibition of the Eleventh Amendment.

Second, it was asserted that the court should not take jurisdiction because the statutory minimum amount of money involved for that purpose was not present. To this the court responded: "The value of the right of a third-year medical student to complete his fourth year and obtain a degree is worth, for purposes of determining the jurisdictional amount, in excess of $10,000."

-- Connelly v. University of Vermont and State Agricultural College, (U.S.D.C., Vt.), 244 F. Supp. 156 (1965).

VIRGINIA. At the beginning of the biennial 60-day legislative session, Governor Albertis S. Harrison, Jr., recommended a 2% state sales tax, to be effective September 1 and to be raised to 3% in July of 1968. Half of the proceeds of the 2% levy would go to the counties and cities, and the statute authorizing local sales taxes would be repealed. Fifteen cities are now levying local sales taxes, generally at 2%.

At the same time a legislative study committee recommended a 3% state sales tax, one third of the proceeds to go to the counties and cities.

The governor said his upcoming biennial budget would call for nearly $2¼ billion, half a billion higher than the budget for the biennium now approaching its end. Much of the increase, he said, would be for public schools and higher education.

At the end of 1965 the Higher Education Study Commission created by the legislature of 1964 completed its report. The main document is a 206-page mimeographed discourse prepared by John Dale Russell, director of the study. There are eleven supplementary staff reports of smaller size. All are available from the State Council for Higher Education, 10th Floor, Life Insurance Company of Virginia Building, 914 Capital Street, Richmond, Virginia 23219.

The State Council for Higher Education, created by statute in 1956, has had a rocky road to travel and has been the subject of much criticism. John Dale Russell's recommendation is that it serve as "the chief advisory body to the Governor and the General Assembly in the development of statewise policies in higher education, in formulating long-range plans to meet future needs, and in coordinating present activities with future planning." (Italics ours).

With the emphasis as indicated, GRAPEVINE is in full accord.
