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STUDENTS ATTENDING STATE CONTROLLED COLLEGES AND UNIVERSITIES — MANAGING AUTHORITIES MAY COLLECT REASONABLE INCIDENTAL FEES TO COVER COSTS AND EXPENSES NECESSARY TO ACCOMPLISH OBJECTS FOR WHICH SUCH INSTITUTIONS FOUNDED — WHERE FEES COLLECTED FOR VARSITY ATHLETICS, INTERMURAL ATHLETICS, ENTERTAINMENTS, SOCIAL FUNCTIONS, MANAGING AUTHORITIES MAY USE REASONABLE DISCRETION TO ALLOCATE FUNDS — SUBJECT TO PROPER AND REASONABLE RULES IN ABSENCE OF CONSTITUTIONAL OR STATUTORY INHIBITIONS.

SYLLABUS:

1. *Under proper and reasonable rules and in the absence of constitutional or statutory inhibitions thereupon, the managing authorities of state controlled colleges and universities may collect from students attending their institutions, reasonable incidental fees to cover costs and expenses necessary and convenient to accomplish the objects for which they were founded and for such purposes as tend to foster the health, welfare and morale of the student body, and expend such funds for the purposes for which they are collected.*

2. *The managing authorities of state owned colleges and universities*

who under proper rules and regulations have collected incidental fees for such avowed general purposes as varsity athletics, intermural athletics, entertainments, social functions and similar purposes may use a reasonable discretion in allocating funds arising from the collection of the fees to specific purposes within the general purposes for which the fees had been collected.

Columbus, Ohio, June 3, 1941.

Mr. B. F. Renkert, Business Manager, Kent State University,
Kent, Ohio.

Dear Sir:

I have your recent communication which reads as follows:

"Kent State University charges all students who take work on the campus a student activity fee of $8.50 per semester. This fee supports such activities as varsity athletics, intermural athletics, College Paper, School Annual, entertainment, social functions, men's and women's activities, debate and oratory, college plays and in general, other numerous and various activities not heretofore enumerated. Each activity receives a certain percentage of the fee so charged. This percentage was determined by a Faculty Committee and a recommendation made to the President of the University and such recommendation was approved by the Board of Trustees. The fee in question was authorized by the University Board of Trustees. The money collected from these fees is deposited with a local bank and all expenditures made from the money so collected, is made by approval of University officials responsible for the handling of such funds.

The University, under Amended Senate Bill No. 1, received an appropriation — F-9, Tennis Court Construction, of $2,600.00. It is proposed to build three tennis courts, do the necessary grading, and all work related thereto, and we find the estimated cost to be $6,800.00. The University wishes to use the $2,600.00 appropriated under Amended Senate Bill No. 1, and use the sum of $4,200.00 in addition from surplus in our Student Activity Funds for this project.

These tennis courts and the recreational area will be used for student activities, such as Varsity and Intermural Tennis, outdoor pageants, plays, entertainments, winter skating, and by the Department of Physical Education.

At a meeting of the Board of Trustees held April 24, 1941,

> 'It was moved by Mr. Hanan and seconded by Mr. Korb, that an expenditure of the sum of $4,200.00 from Student Activity Funds be authorized for the purposes of constructing a recreational area and tennis courts adjacent to Wills Gymnasium, provided that such expenditure be subject to the approval of the Attorney General.'
>
> In view of the foregoing motion and the facts related, will your office kindly advise us as to the procedure necessary for the consummation of this project?"

As the law contained in the Act of the General Assembly, of March 10, 1910 (101 O.L., 320) and in present Section 7924-1, General Code, vests in the Board of Trustees of Kent State University the entire and exclusive power and authority to properly mantain and successfully operate the said university, and the Attorney General of Ohio is not empowered to perform any duties with respect to the management and control of the university, I assume for the purposes of this opinion that the reference in the resolution of the Board of Trustees of Kent State University of April 24, 1941 which is recited in your letter, to "the approval of the Attorney General" means his approval as to the legality of the contemplated action and not to the policy of so doing.

Speaking generally, the law seems to be well settled in jurisdictions where the matter has been the subject of judicial decisions that state universities, through action of duly authorized trustees or regents may, in the absence of statutory inhibitions to the contrary, exact from students incidental fees for proper extra-curricular activities and apply the proceeds of such fees to purposes included within or allied with the stated purpose for which the fees are collected, and this is true even though the law may expressly provide that tuition shall be free. This rule is stated in Ohio Jurisprudence, Volume 40, page 747, as follows:

> "A board of regents of a state university, when not prohibited either expressly or impliedly by law, has the power to collect incidental fees to cover expenses necessary and convenient to accomplish the objects for which the institution was founded."

In Corpus Juris Secundum, Volume 14, page 1363, it is stated:

> "The tuition and other charges made to students of a college or university ordinarily depend on the contract of the parties and applicable provisions of statute or constitution. A

> state institution may charge for tuition or other service where not prohibited by law, and prohibition against a charge to residents for tuition will not preclude a charge for incidental expenses such as laboratory material."

There is considerable divergence of authority in states where questions relating to the charging of incidental fees to students attending state owned universities has arisen — the cases turning on applicable constitutional and statutory provisions. There is no prohibition either in the Constitution or the statutes of Ohio against the charging of such fees and the question of the power to make such charges has not been the subject of any reported decision of our courts. It has been the universal custom for many years, to make such charges, and the right so to do seems not to have been questioned nor has the purpose for which such charges may be made in this state been limited or defined by law.

The extent to which public authorities invested with the maintenance of state supported institutions of learning may collect reasonable incidental fees from students attending the institutions in the absence of any legal inhibition thereupon and the purposes for which such fees may be collected and applied may be illustrated by a few comparatively late cases. In the case of State v. Regents of University System, 179 Ga., 210, 175 S. E., 567, decided by the Supreme Court of Georgia, in 1934, it was held:

> "There is no law, either constitutional or statutory, which prevents the Board of Regents from charging reasonable matriculation, laboratory, hospital and athletic fees against students attending any of the institutions referred to in this record, and as to which the regents propose to issue bonds secured in part by the income to be derived from such fees.
>
> The regents are authorized in their discretion to purchase land for college purposes, to construct dormitories, gymnasia, and other buildings necessary to usefulness of the several institutions, and to require students to pay reasonable fees for their use.
>
> No abuse of discretion appears in the proposal to require students to occupy new buildings in preference to existing buildings, in order that fees charged for such use may create an income to retire bonds issued for the purpose of raising funds with which to construct such new buildings."

In the case of Rheam v. Board of Regents of the University of

Oklahoma, 161 Okla., 268, 18 Pac. 2d, 535, decided in 1933, it was held:

> "Board of Regents of University of Oklahoma has the implied power to do everything necessary and convenient to accomplish the objects for which that school was founded and which is not prohibited either expressly or impliedly by law.
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> A requirement of the Board of Regents of the University of Oklahoma for the payment of a fee of $2.50 per student each semester of the regular school year, to be used for the construction and equipment and maintenance of a student union building on the campus of the university, and for the retirement of bonds used by the trustees of the Stadium-Union Memorial Fund of the University of Oklahoma for the construction thereof, is not prohibited by any constitutional or statutory provision and is within the implied power of the Board of Regents of the University."

A similar ruling to that of the Oklahoma Supreme Court in the above case, was made by the Supreme Court of Montana in 1934, in the case of State, ex rel. Veeder vs. State Board of Education, 97 Mont., 121, 33 Pac. 2d, 516. In that case it was expressly held:

> "Pledge by State Board of Education of accumulated assets in student union building fund (accumulated from student fees) to repay money borrowed for immediate erection of Union Building, held authorized where fund was received for specific purpose of building."

From your inquiry it appears that there has accumulated from the collection of "student activity fees" from students attending your university a surplus in the "student activity fund," which so far as appears, has not been allocated to any particular activity within the purpose for which the fees were paid, and it is now desired to use $4,200.00 of this surplus to supplement appropriations made by the General Assembly to the university for the building of tennis courts to cost approximately $6,800.00. I gather from your inquiry, that either by reason of a specific express resolution of your Board of Trustees or because of a general understanding, the student fee mentioned was collected for the purpose of instituting and supporting such student activities as varsity athletics, college paper, school annual, social events, entertainments and similar activities. It appears further that the expenditure of this fund is made only upon the approval of the university authorities and presumably by means of properly executed warrants or checks of such authorities, and that it has been the custom for the university trustees to allocate a cer-

tain portion of the proceeds of the fees charged to each separate activity. Whether there has been any permanent rule as to such percentage allocations over the period of the accumulation of the present surplus or whether the custom or understanding has been to make such allocations when and as needed and thought proper I am not advised. I assume for present purposes that at least the $4,200.00 which it is now proposed to use for the building of tennis courts has not been earmarked by reason of any definite rule whereby it might be pledged for definite purposes other than those within which the construction and maintenance of tennis courts would come, such as athletics, entertainment, and social and recreational activities. With that assumption, I find no reason for saying that the fund may not be used for the purpose mentioned and especially if done with the approval of the student body of the university.

The relationship of the students who have paid these fees which may be said in a sense to be extra-legal, that is to say, there is no express affirmative authority for making such a charge and the acknowledged purpose of the charge is other than purely academic, to the university authorities who collect the fees and supervise their expenditure may be said to be comparable to that of cestui que trustant and trustee. That being the case, the university authorities as trustees owe to the student body the duty of not permitting the diversion of the funds which accumulate from the activity fees from the purpose for which they were collected. A reasonable discretion exists, however, in the trustees as to the determination of what specific purposes are within the general purposes for which the proceeds of the fees were originally intended. I could not say as a matter of law, that to use $4,200.00 of the surplus accumulated in your student activity fund which has not been definitely pledged for something else by reason of rules in force during the period of its accumulation as to particular allocations of the student activity fees collected during that time, would constitute an abuse of discretion on the part of the university authorities.

Inasmuch as there functions among your students what is known as a Student Council which in a sense, at least, represents the student body, I would suggest that before the funds are expended for the proposed purpose, the Student Council be requested formally to approve the proposed use.

Respectfully,

THOMAS J. HERBERT,
Attorney General.