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1. BOWLING GREEN STATE UNIVERSITY—BOARD OF TRUSTEES—OFFICIAL AGENCY TO ACCEPT GIFT OF BUILDING TO UNIVERSITY.
2. BEFORE ACCEPTANCE OF BUILDING, BOARD SHOULD DETERMINE CONDITIONS UNDER WHICH GIFT MADE—FINDING WILL NOT BE DISTURBED IN ABSENCE OF CIRCUMSTANCES WHICH CLEARLY CONSTITUTE ABUSE OF DISCRETION.

SYLLABUS:

1. The board of trustees of Bowling Green State University is the official agency to accept the gift of a building to such university.

2. The board of trustees before accepting a building shall first determine the reasonableness of the conditions, if any, upon which the gift is made, and its finding will not be disturbed in the absence of circumstances which clearly constitute an abuse of discretion.

Columbus, Ohio, September 2, 1949

Hon. Samuel O. Linzell, Director
Department of Public Works
Columbus, Ohio

Dear Sir:

The request of your predecessor in office for my opinion reads as follows:

“An organization in Ohio desires to give the State of Ohio and Bowling Green State University a building for certain specific uses.

Section 18 of the General Code authorizes the State to accept such a gift.

I beg to inquire as to what officer of the State of Ohio has authority to accept the gift of a building as a State University. There seems to be some opinion that the Director of Public Works is the official who can accept such a building but I am unable to find any specific authorization.

The plans for the proposed gift building will be checked by the Department of Public Works and it will be constructed under the general supervision of the department as are all other buildings at the State Universities.

In accepting a building designed for a special use or service, can the State future use of that building be limited to those purposes set forth in the gift or is the University free to use the building as it thinks best through the changing years."

Section 18 of the General Code reads as follows:

"The state, a county, a township or cemetery association, the commissioners or trustees thereof, a municipal corporation, a council, a board or other officers thereof, a benevolent, *educational*, penal or reformatory institution, wholly or in part under the control of the state, the *board of directors, trustees or other officers* thereof, may receive by gift, devise or bequest, moneys, lands or other properties, for their benefit or the benefit of any of those under their charge, and hold and apply the same according to the terms and conditions of the gift, devise or bequest. *Such gifts or devises of real estate may be in fee simple or of any lesser estate, and may be subject to any reasonable reservation.* This section shall not affect the statutory provisions as to devises or bequests for such purposes."

(Emphasis added.)

The authority is clearly set forth in the above cited section for the Bowling Green State University to accept such a building as is referred to in your predecessor's letter. Likewise, the board of directors, trustees or other officers of the university are specifically authorized to accept such gift.

Now, coming to the question contained in the last paragraph of said letter which is, can the State's future use of the building be limited to those purposes set forth in the gift or is the university free to use the building as it thinks best through the changing years? I am assuming from said letter that the building will be constructed on state property and will be completed at the time acceptance is contemplated. Therefore, it shall have become realty.

The conditions upon which the gift is to be made determine whether or not it may be accepted. It appears reasonably clear from the emphasized wording of the next to the last sentence of the above quoted section of the General Code that a gift or devise of real estate may be accepted subject to reasonable limitations as to its use. If they are unreasonable or will eventually operate as a burden upon the state or are incapable of being carried out, then the gift can not be accepted.

In Opinions of the Attorney General for 1931, No. 2981, the then Attorney General, with reference to the acceptance of a gift of land for county purposes, by the county commissioners, stated:

“The commissioners may not accept gifts, the conditions of which impose burdens upon the county in excess of the benefits received. Whether or not the conditions are unreasonable must be determined in the first instance by the county commissioners, and their findings will not be disturbed in the absence of circumstances which clearly constitute an abuse of discretion.”

I believe the officers accepting a gift for a state university will be guided and controlled by that opinion.

Therefore, it is my opinion that:

1. The board of trustees of Bowling Green State University is the official agency to accept the gift of a building to such university.

2. The board of trustees before accepting a building shall first determine the reasonableness of the conditions, if any, upon which the gift is made, and its findings will not be disturbed in the absence of circumstances which clearly constitute an abuse of discretion.

Respectfully,

HERBERT S. DUFFY,
Attorney General.