

564.

UNIVERSITY OF CINCINNATI—AUTHORITY OF BOARD OF DIRECTORS
TO ADMINISTER FUNDS—SHOULD FOLLOW REQUIREMENTS OF
CITY CHARTER WITH REFERENCE TO LEGAL ADVERTISING.

SYLLABUS:

1. *The funds of the University of Cincinnati, including moneys raised by taxation and moneys received from tuition fees, are trust funds, the administration and full control of which are vested in the board of directors of such University created by Sections 4001, et seq.*

2. *Such funds are not subject to appropriation by the council of the city of Cincinnati under Section 5649-3g of the General Code, but it is necessary that the certification required by Sections 5660 and 5660-1 be made before such funds are paid out by the treasurer upon the order of the board of directors as provided by Section 7909 of the General Code.*

3. *The requirements of the city charter of the city of Cincinnati with reference to legal advertising, the same being in the interests of uniformity among the several municipal departments, should be followed by the board of directors of the University of Cincinnati.*

4. *The University authorities may legally pay the expenses of officers or employes of the institution in attending conventions and educational meetings if in the opinion of the directors such attendance is in furtherance of the objects of the University.*

COLUMBUS, OHIO, June 2, 1927.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your recent communication in which you have submitted four questions for answer:

“First: Do the general tax moneys of the University of Cincinnati and the tuition and fee moneys require the certification as provided in Sections 5660 and 5660-1 of the General Code?

Second: Must said moneys be appropriated by council before they may be expended by the directors of the university?

Third: Are the directors of the university bound by the charter provision of the city of Cincinnati in the placing of legal advertising?

Fourth: In the expenditure of said moneys, can the university legally pay expenses of officers or employes in attending conventions and educational meetings?”

Section 5649-3g provides that at the beginning of each fiscal year the county commissioners and other boards, including councils or other legislative authorities of municipal corporations, shall make appropriations for expenditures to be made for and during the said fiscal year from the funds of such county, municipal corporation or other taxing district.

Section 5660 provides that no expenditure, excepting from proceeds of bonds, shall be made unless authorized by appropriation both as regards purpose and amount, and that no contract, agreement or other obligation calling for or requiring for its performance the expenditure of public funds, shall be made or assumed by any authority, officer or employe of any county or taxing district unless the auditor or chief fiscal officer thereof shall certify that the money required to meet such contract or other obligation, or to make such payment or expenditure, has been lawfully appropriated or directed for such purposes, and is in the treasury or in process of collection.

Section 5649-3g is substantially the same in its provisions as was Section 5649-3d of the General Code, to which I will have occasion to hereafter refer.

The University of Cincinnati was originally established with funds devised in trust to the city of Cincinnati by Charles McMicken for the purpose of establishing two colleges for educational purposes. The details of the carrying out of the provisions of the will in this regard were by the terms of the will left "to the wisdom and discretion of the corporate authorities of the city of Cincinnati, who shall have power to appoint directors of said institution."

Thus the charitable trust was created with the city of Cincinnati as trustee, with wide discretion in the carrying out of the terms of the trust. The funds thus received were later added to by the bequest of Matthew Thoms who gave to the city of Cincinnati, in trust for the University of Cincinnati, a large portion of his estate to be "applied to such uses as the directors may provide." This, again, gave the trustees broad discretionary powers.

From time to time laws were passed providing for the management of such institution by boards of directors, the manner of their appointment and the extent of their powers. Sections 4001, 4002, 4003 and 7902, et seq. of the General Code of Ohio.

By the terms of Sections 4003 and 7902, the board of directors is given all the powers in the government of the university that the municipal corporation has. As will be noted by the terms of the original gift these powers are very broad and, moreover, courts are and always have been very liberal in the construction of charitable trusts.

Charitable trusts generally, as well as this particular one, have been the subject of much litigation, and there are many authorities construing the powers and duties of trustees of such trusts.

Without going into a discussion of the authorities, I wish to call your attention to two cases bearing directly on the powers and duties of the directors of the University of Cincinnati.

In the case of *Cincinnati vs. Jones*, 16 Ohio Dec. 343, affirmed by the Circuit Court, 28 O. C. C. 210, the court decided that the directors of the University of Cincinnati might lawfully expend trust funds in their hands whether derived from taxation or otherwise for the erection of a dwelling for the president of the university.

In the case of *Carroll vs. State*, 30 O. C. A., 16, the question of whether or not professors in the University of Cincinnati might lawfully be paid their salaries while away in military service was before the court. The directors justified the expenditures on the ground that under a broad view they promoted the purposes and objects of the donors and tended to further the success of the university. The court in its opinion said that the board had large discretion in such matters and if in their opinion the interest of the university required that these salaries should be paid, then it was perfectly lawful that they should be paid.

It will be seen from these two cases that the courts have been very liberal in their construction of the powers and duties of the directors of the University of Cincinnati.

As the needs of this university and similar ones grew, in furtherance of the general scheme for the fostering and increasing of schools and the means of education, general laws were passed providing for the acceptance of other charitable gifts for the use of such universities, the levying of taxes therefor, and the issuing of bonds when necessary to supplement the trust funds for university purposes.

Sections 7908 and 7909 of the General Code of Ohio, after setting out how such tax levies should be made, provide how the funds of such university shall be paid out, in this language:

"The funds of any such university, college or institution shall be paid out by the treasurer upon the order of the board of directors and the warrant of the auditor."

In the former opinion rendered by this department which will be found in Opinions of Attorney General, 1916, at page 1207, a similar question with reference to the University of Toledo was passed upon by this department.

At that time Section 5649-3g had not been passed, but the same provisions practically were set out in Section 5649-3d, which was then in force and effect, and which provided that funds must be appropriated by city council before the same could be available for use by various boards, etc.

There was also involved in the question before the department at that time certain charter provisions of the city of Toledo, but I do not think that those charter provisions were such as to in any way affect the conclusions reached, and what was said there with reference to the University of Toledo might well apply to the University of Cincinnati. It was said in that opinion:

"It seems clear to my mind that when the tax levies for the support of said municipal university are made by the council of said city in any year, and when the same are placed upon the duplicate, collected and turned over to the city treasurer, the same become trust funds in the hands of said treasurer, to be held by him in trust for the uses and purposes of said municipal university, and to be paid out in the manner provided for in the latter part of Section 7909, General Code. It seems equally clear that as soon as said funds come into the hands of the city treasurer they cease to be funds of the municipality in the ordinary sense and within the meaning of the provisions of Section 5649-3d, General Code, supra, which must be appropriated by the city council before the same can be paid out by the treasurer on the order of the board of directors of said university."

This conclusion appears to be a proper one in view of the fact that any appropriation of these funds would be an idle and unnecessary act. The proceeds of a special levy for a municipal university could not be appropriated other than to university purposes.

You also ask, however, whether the expenditure of these funds requires the certification provided for in Sections 5660 and 5660-1, General Code. While these sections do speak of appropriations, yet they clearly comprehend expenditures from funds not necessarily appropriated. The second paragraph of Section 5660 is as follows:

"No contract, agreement or other obligation calling for or requiring for its performance the expenditure of public funds from whatsoever source derived, shall be made or assumed by any authority, officer, or employee of any county or political subdivision or taxing district, nor shall any order for the payment or expenditure of money be approved by the county commissioners, council or by any body, board, officer or employee of any such subdivision or taxing district, unless the auditor or chief fiscal officer thereof first certifies that the money required to meet such contract, agreement or other obligation or to make such payment or expenditure has been lawfully appropriated or authorized or directed for such purpose and is in the treasury or in process of collection to the credit of the appropriate fund free from any previous and then outstanding obligation or certification which certificate shall be filed with such authority, officer, employee, commissioners, council, body or board, or the chief clerk thereof. The sum so certified shall not thereafter be considered unencumbered until the county, subdivision or district is discharged from the contract, agreement, or obligation or so long as the order is in force. Taxes and other revenues in process of collection or the proceeds to be derived from lawfully authorized bonds, notes, or certificates of indebtedness

sold and in process of delivery shall, for the purposes of this section, be deemed in the treasury or in process of collection and in the appropriate fund."

You will note that the certificate must show that the money has been either appropriated or authorized or directed for the purpose and is in the treasury. Accordingly, it would be the duty of the city auditor in this instance to certify, not that council has appropriated the money, since appropriation by that body is unnecessary, but that the board of trustees has authorized or directed the expenditure and that funds are available therefor. Such a certificate would encumber the university funds to the extent of the expenditure anticipated. The requiring of a certificate provides a very salutary check upon the expenditures of the board and will effectually keep them within the bounds of the funds available.

Coming now to the specific questions which you have propounded, in the light of what I have heretofore said, I take them up in their order:

First: In my opinion the general tax moneys of the University of Cincinnati and the tuition and fee moneys become trust funds when once collected and paid into the municipal treasury, but their expenditure cannot be made without the certification as provided in Sections 5660 and 5660-1.

Second: In my opinion these trust funds need not be appropriated by the municipal council as provided by Section 5649-3g.

Third: Considering the fact that the charter of the City of Cincinnati provides the manner for the placing of legal advertising, which provision is made in the interests of uniformity in the several municipal departments, and in view of the fact that it could not in any way promote the interests of education or further the objects of the University of Cincinnati to disregard this provision, it is my opinion that the directors of the University are bound by this provision of the charter, and should place the legal advertising in conformity with such provision.

Fourth: As the directors of the University of Cincinnati are given very broad discretionary powers, if in their opinion the interests of the University and the furtherance of the objects contemplated by the same will be promoted by the payment of the expenses of officers or employes in attending conventions and educational meetings, then it is my opinion that they may legally pay such expenses.

Respectfully,
EDWARD C. TURNER,
Attorney General.

565.

DISAPPROVAL, ABSTRACT OF TITLE TO LAND KNOWN AS GUILFORD LAKE PARK, HANOVER TOWNSHIP, COLUMBIANA COUNTY.

COLUMBUS, OHIO, June 2, 1927.

HON. GEORGE F. SCHLESINGER, *Director, Department of Highways and Public Works, Columbus, Ohio.*

DEAR SIR:—You have resubmitted for my opinion encumbrance estimate No. 3984 and the abstract prepared by McMillan & Kelso under date of May 17, 1926, re-certified December 24, 1926, and again certified May 25, 1927, covering land known as Tract No. 14, Guilford Lake Park, containing 87.87 acres, situate in the township of Hanover, county of Columbiana and State of Ohio, and being situate in the southwest quarter of Section No. 1, in said township, county and state, and more particularly described in my former opinion under date of April 29, 1927.