

704.

APPROVAL--BONDS OF CITY OF AKRON, SUMMIT COUNTY,
OHIO, \$29,000.00 (Limited).

COLUMBUS, OHIO, June 7, 1937.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.
GENTLEMEN :

RE: Bonds of City of Akron, Summit County, Ohio,
\$29,000.00 (Limited).

I have examined the transcript of proceedings relative to the above bonds purchased by you. These bonds comprise part of an issue of refunding bonds in the aggregate amount of \$567,086.38, dated October 1, 1935, bearing interest at the rate of 4½% per annum.

From this examination, in the light of the law under authority of which these bonds have been authorized, I am of the opinion that bonds issued under these proceedings constitute a valid and legal obligation of said city.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

705.

COMBINED NORMAL AND INDUSTRIAL DEPARTMENTS
AT WILBERFORCE UNIVERSITY—BOARD OF TRUSTEES
MAY NOT FORM AGREEMENT FOR THE DELEGATION
OF DUTIES OR THE PAYMENT OF SALARIES TO MEM-
BERS OF FACULTY—PRESIDENT OF UNIVERSITY IS
MEMBER OF BOARD OF TRUSTEES BY VIRTUE OF
SECTION 7976, GENERAL CODE.

SYLLABUS:

1. *The board of trustees of the Combined Normal and Industrial Department at Wilberforce University may not legally enter into any agreement involving either the delegation of authority by the board of trustees or the superintendent to officials employed by Wilberforce*

University, or the payment of salaries to members of the faculty of Wilberforce University.

2. *The President of Wilberforce University sitting as ex-officio member of the board of trustees of the Combined Normal and Industrial Department by virtue of Section 7976, General Code, is entitled to all the normal rights and privileges of membership which include the right to vote and to participate in all matters of the board of trustees.*

COLUMBUS, OHIO, June 7, 1937.

Board of Trustees, Combined Normal and Industrial Department, Wilberforce University, Wilberforce, Ohio.

GENTLEMEN: This will acknowledge the receipt of your recent communication which reads in part as follows:

“On April 27, 1937, the Board of Trustees of Wilberforce University met in special session in the city of Cleveland, Ohio, for the purpose of considering certain plans and recommendations offered by the President of the University.

. Among the recommendations is one to do away with the present set-up whereby one Dean is employed in the Department of Education and to employ two Deans and a Director of Training, merging this work in the Combined Normal and Industrial Department and the University under one system.

. It is definitely proposed and intended that the salaries of these three members of the faculty are to be paid as follows: one-half to be paid by the University and one-half by the State of Ohio through its treasurer.

. Several of the State trustees were dubious as to the legal right of the state trustees to agree to enter into a contract to pay half the salary of officials of the University.

. Therefore, I am asking your office for an opinion or letter which will definitely settle the following questions, viz:—

1. Has the Board of Trustees of Wilberforce University the legal right to agree to pay out of state funds one-half of the salary of two Deans and the one Director of Training as proposed in plan I (referred to in the minutes of the last meeting of the Board), assuming that said officials are members of the faculty of Wilberforce University, as distinguished from that branch

of Wilberforce University known as the Combined Normal and Industrial Department of Wilberforce University.

2. Has the President of Wilberforce University sitting as an ex-officio member of the Board of Trustees, the right to vote; or does he simply sit in an advisory capacity, without the right to vote?"

While the Combined Normal and Industrial Department at Wilberforce University appears to the casual observer as a normally functioning part of the University, the plan of organization under which this department was created and set up made it unique and distinct. Wilberforce University is operated and controlled by the African Methodist Episcopal Church, while the Combined Normal and Industrial Department is operated and controlled by the State. Those sections of the General Code providing for the Combined Normal and Industrial Department, and directly in point for this opinion are Sections 7975, 7976, 7981 and 7982 of the General Code, which read as follows:

Sec. 7975. "A combined normal and industrial department shall be established and maintained at Wilberforce University, in Green County, Ohio."

Sec. 7976. "The government of such department shall be vested in a board of nine trustees to be known as 'the board of trustees of the combined normal and industrial department of Wilberforce University.' Five members of such board shall be appointed by the governor, by and with the consent of the senate, and three members thereof shall be chosen by the board of trustees of the university. The president of the university shall be ex-officio a member of the board. The governor shall appoint one member of such board each year, who shall serve five years, and whose term shall begin upon the first day of July in such year. Such appointment shall be made during the session of the senate next preceding the beginning of such term."

Sec. 7981. "The board of trustees shall take, keep and maintain *exclusive authority, direction, supervision and control* over the operations and conduct of such combined normal and industrial department, so as to assure for it the best attainable results with the aid secured to it from the state. The board shall determine the branches of industry to be pursued, select a superintendent whose selection shall be approved by the state controlling board and who shall not be removed ex-

cept for cause after due hearing before said controlling board. Said superintendent shall be the fiscal officer of the department and shall attend all meetings of the board of trustees wherein matters affecting the revenues or expenditures of the department are involved. The expenditures of all moneys appropriated for carrying out the purposes and provisions of this subdivision of this chapter shall be made under such regulations as the board of trustees shall establish; but no contract, claim or voucher against any appropriation shall be valid until approved in writing by said fiscal officer. No money appropriated by the state shall be used for any purpose not in direct furtherance and promotion of the objects of the department." (Italics the writer's.)

Sec. 7982. "*No sectarian influence, direction or interference in the management or conduct of the affairs or education of such department shall be permitted by its board; but its benefits shall be open to all applicants of good moral character and within the limitations of age determined by the board.*" (Italics the writer's.)

Under the plan of organization as above set forth, the University and the Combined Normal and Industrial Department have apparently endeavored for the best interests of the students to function with as much unity and harmony of purpose as possible. However, the increasing growth and development of both institutions under their peculiar set ups has resulted in certain problems.

The status of the Combined Normal and Industrial Department has been before this office on several occasions. As far back as 1904, in an opinion of the Attorney General the status of the Combined Normal and Industrial Department was set forth as follows (Annual Reports of the Attorney General 1904-1906, page 227) :

"It must always be borne in mind that this department is separate, distinct and independent from Wilberforce University. The statute makes it so, and indeed, were it not for this provision of the statute, the act providing for State aid to this department of Wilberforce University would be unconstitutional. The Constitution of Ohio expressly prohibits any state aid to any sectarian institution.

. . . . This normal department is *separate, distinct and independent* from the University, and must be so managed in order to carry out the provisions of the law."

This ruling has been consistently affirmed by this office and other authorities upon the law applicable to the Combined Normal and Industrial Department (1919 O. A. G., Vol. II, page 1228, 1932 O. A. G., Vol. I, page 396, 40 O. J., page 718, Section 78).

Moreover, in *Wilberforce University vs. Green* (113 O. S. 15) the Supreme Court of Ohio ruled upon this question, and the court held as follows:

“As constituted, the board of trustees of the department is a separate entity established by the State, with the entire control of the buildings and land used by the department and of its functions. The fact that the University has three members and an ex-officio member of the board, does not give it control over the Combined Normal and Industrial Department.”

If the plan of proposed administration now before us were adopted, the “unique, separate and distinct” feature of the Combined Normal and Industrial Department would be changed. Under the plan proposed, two Deans and a Director of Training would head up and combine academic work and personnel supervision in both institutions. In analyzing this situation, by no legal alchemy can we change the leaden facts of such a combination into the golden situation which is apparently desired. Teachers paid by the University and responsible to the University under this plan would render services to the Combined Normal and Industrial Department and would in addition have portions of their salaries paid by the State. Such procedure would be in direct conflict with the prohibition contained in Section 7981, of the General Code, *supra*, which expressly provides:

“The board of trustees of the Combined Normal and Industrial Department of Wilberforce University has the exclusive authority, direction, supervision and control over the operations and conduct of the department, *free from all sectarian influence, direction or interference.*” (Italics the writer’s.)

The plan in question, insofar as it relates to the payment of salaries of University teachers by the State, would also conflict with the provisions of the Ohio Constitution prohibiting State aid to religious and sectarian institutions.

Aside from those considerations, the plan would fail legally since it attempts to permit two independent educational authorities to hire teachers jointly. In an Opinion of the Attorney General for 1929, Vol.

I, page 129, this matter was discussed. Several district boards of education had employed a music teacher jointly. This opinion held:

“It is a familiar principle of law that governmental agencies whose authority is entirely dependent on statutes are limited in the exercise of that authority both as to manner and extent of the authority so granted.

. . . . Boards of education are empowered to employ teachers and in some instances supervisors and superintendents, but no place is there any authority for a local district board of education to act jointly with another board in the employment of teachers, supervisors, superintendents, or any other employees, except in the maintenance of joint high schools.

. . . . While in many instances, such joint action might be conducive to convenience, more efficient public services, and perhaps in some instances to economy and conservation of public funds, yet these considerations do not atone for the lack of statutory authority.”

The same reasoning can be well applied to the facts at hand: where two separate and independent boards of two separate institutions are attempting to jointly hire three teachers. One of these boards, the Combined Normal and Industrial Board, is a statutory board and as such is limited to the authority granted it. Nowhere in the statute creating it is the authority to hire officials or teachers jointly with another institution or board given. It is to be distinctly understood, however, that the facts given present a question which deals with the merging of the work in the Combined Normal and Industrial Department and the University under one system, and that the discussion of law here in no way pertains to a case where a teacher is employed on a part time basis by more than one institution under separate transactions and where that teacher receives from each institution the entire amount of salary due him for the time he is employed.

Last, but not least, in a consideration of the plan advocated, is the matter of delegation of the authority permitted under it. The two Deans and the Director of Training under this plan would have the authority and responsibility to plan, supervise and control generally the educational and administrative work of the Combined Normal and Industrial Department. Moreover, these teachers would not be wholly responsible to the Combined Normal and Industrial Department. They would instead, be indirectly responsible to the University and directly responsible to its President, rather than the Superintendent of the Combined Normal and Industrial Department. Thus the power of the board of trustees to

direct, supervise and control the affairs of the department would be delegated to persons who were not employees of the department.

Such procedure is frowned upon by the courts. A similar situation was presented in a case where the board of trustees of Toledo University attempted to delegate their authority to the City Board of Education under special circumstances. In deciding this case the Ohio Circuit Court ruled against such procedure, providing:

“Although the board of trustees may delegate its authority to the faculty, it may not so delegate it to any independent board of education.”

(*State ex rel. Rohr vs. Schauss et. al.*, 5 O. C. C., New Series, 388, *State, ex rel. vs. City of Toledo, et al.*, 5 O. C. C., New Series, 277).

For the above stated reasons, it is my opinion that the board of trustees of the Combined Normal and Industrial Department at Wilberforce University may not legally enter into any agreement with Wilberforce University involving a delegation of authority by the board of trustees and superintendent of the department to officials employed by Wilberforce University, and the payment of salaries to members of the faculty of Wilberforce University.

Your second question presents a matter of parliamentary law chiefly. Under Section 7976, General Code, *supra*, the following provision is made:

“The president of the University shall be ex-officio member of the board.”

Hence, the president becomes by virtue of his office, a member of the board of trustees of the Combined Normal and Industrial Department. The term “member” is used here generally and no limitations upon it are implied in the language of the statute. This being true, the rule of statutory construction as set forth in 40 C. J., page 702, paragraph 11 here applies:

“Statutes concerning the establishment and maintenance of colleges and universities, as in the case of statutes generally, must be construed as a whole, so as to give effect, wherever possible to every part of the enactment, and that construction should be adopted which is most reasonable and constructed within the purview of the act.”

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The evident intent of the statute before us was to provide for representation of the University on the board of trustees for the department, in order that this Combined Normal and Industrial Department might be harmonized educationally with the University. The president as a member by virtue of that statute is entitled to all the normal rights and privileges going with membership on the board. These rights and privileges assuredly included the right to vote and to participate in all matters as any other member.

In specific answer to your questions as enumerated, it is my opinion that:

1. The board of trustees of the Combined Normal and Industrial Department at Wilberforce University may not legally enter into any agreement involving either the delegation of authority by the board of trustees or the superintendent to officials employed by Wilberforce University, or the payment of salaries to members of the faculty of Wilberforce University;

2. The President of Wilberforce University sitting as ex-officio member of the board of trustees of the Combined Normal and Industrial Department by virtue of Section 7976, General Code, is entitled to all the normal rights and privileges of membership which include the right to vote and to participate in all matters of the board of trustees.

Respectfully,

HERBERT S. DUFFY,
Attorney General.

706.

NORTHWEST TERRITORY CELEBRATION COMMISSION —
PLENARY POWERS—EXPENDITURES FOR HIGHWAY
MARKERS—LIMITATIONS.

SYLLABUS:

The Northwest Territory Celebration Commission of Ohio has plenary power under Amended Senate Bill No. 317 to expend a part of the appropriation carried in the act for markers to be placed on at least one historic point in each county of the state, bearing in mind at all times that the expenditure for such markers should be reasonable and