

Educational Institutions, Erecting Private Buildings on Campus of. State University, Erection of Private Buildings on Campus of.

The State Board of Education has no authority to lease any portion of the land used for the State University for the purpose of erecting private dwellings thereon.

Helena, Montana, June 19, 1909.

Hon. State Board of Education,

Helena, Montana.

Gentlemen:

I beg leave to acknowledge receipt from you of correspondence addressed to your Honorable Board by C. A. Duniway, president of the University of Montana, relative to the lease by him of certain portions of the university campus for the purpose of erecting a dwelling house thereon, the proposition of president Duniway being:

That the board grant to him permission to erect a president's building on the northwest corner of the university campus, under such form of ground lease as may be approved by the attorney general, for a period of ten years, with the privilege of renewal for a like period, and with a further right of sub-leasing the premises to any member of the university faculty, such building to be erected at the personal expense of President Duniway.

The land, of which the university campus is a part, as we are informed, is not a part of the government grant to the state for university purposes, but was granted to the state by the South Missoula Land Company and the estate of Christopher P. Higgins, the terms and conditions of the grant being that the state will

"Use the same for the purposes of the state university of the State of Montana, as defined and established by act of the legislative assembly of the state of Montana." Approved February 17, 1893. (Laws of 1893, p. 173.)

This act of the legislature above referred to provides for the establishment of the "University of Montana," and for the control and government of said university, the course of instruction therein, selection of site therefor, etc., and in section 4 of the act provides,

"But the state board of education shall have the control of all books, records, buildings, grounds and all other property of the university."

This latter clause is the only specific authority conferred upon the state board of education relative to the control of property belonging to the university, and this clause does not confer upon the board any specific authority relative to the leasing of any portion of the lands contained in the grants above referred to, and under it the board is given no more authority to lease the land for private purposes or for any purpose than to lease any building erected thereon at the state's expense, or to lease any other property belonging to the university.

If it be conceded that the erection of dwelling houses for the faculty made, the board, nevertheless, under the law, does not possess the power to enter into a contract with president Duniway, as indicated in the proposition submitted, for the reason: The state board under no construction of the law, and within the terms of the grant, has the right to lease any portion of the property to any one for private purposes, except it be in some manner directly connected with the university. Hence, the board would have no authority to permit the use of any portion of this ground for a private dwelling house beyond the period when president

Duniway is connected with the university, and as the position or office of the president of the university, or any other member of the faculty has no fixed tenure, it follows that the board could not make a lease for any specific time, while the lease called for in the proposition submitted is practically for twenty years; and, under such a lease, although President Duniway might sever his connection with the university, he would still have the right to occupy the house and the ground, either for his private use or for rental to a member of the faculty for the remainder of the twenty years.

A house erected under such conditions would be in no sense public property, but would be private property situate upon public land under lease.

Furthermore, the legislature alone has the authority to cause the erection of buildings at public expense, or to purchase buildings erected by others. The state board, therefore, has no authority to contract or agree, either directly or indirectly, to purchase, either now or at any time in the future, any building erected, either on land belonging to the university or elsewhere, and the board could not legally enter into any agreement to purchase any building that might be erected by Doctor Duniway, in case he ceased to be connected with the university.

While this latter proposition is not necessarily involved in the question submitted, yet it is one that would eventually have to be dealt with.

Inasmuch as the board does not possess the authority under the terms of the grant to execute a lease for any number of years, it cannot, therefore, comply with the request of Doctor Duniway; and the question as to whether or not the state board of education has the authority to execute a lease on any university lands, without legislative authority having first been granted, is not here considered.

Very truly yours,

ALBERT J. GALEN,

Attorney General.