

State University—State Board of Education—State Board of Examiners—Powers—Construction—Residence Halls.

Neither the state board of education, the state board of examiners nor the local executive board of the university have authority to permit the erection upon the campus of a residence hall by a Greek letter sorority, to be used by it as a chapter house.

The local executive board of the state university may not assume a trusteeship in connection with private enterprises. Private buildings may not be built upon the university campus.

State Board of Examiners,
Helena, Montana.

April 17, 1929.

Gentlemen:

You have submitted to me for opinion, as to the legality of the proposed arrangement stated in a proposed declaration of trust by Kappa Kappa Gamma Alumni Building Association, a resolution of the state board of examiners, a resolution of the state board of education, a resolution of the local executive board of the State University at Missoula, and a certificate of indebtedness by the local executive board of the said university, all relating to the proposed erection of a building on the campus of the University at Missoula, said building to be known as the "Kappa Kappa Gamma House," and to be used by the local chapter of Kappa Kappa Gamma sorority as a chapter house and residence hall. Briefly stated, the arrangement outlined in these documents for the accomplishment of the object is as follows:

The state board of examiners, state board of education and the local executive board are by resolution to permit the Kappa Kappa Gamma Alumni Building Association to construct the building on the campus of the university, the said building to be used as a chapter house and residence hall for the local chapter of the Kappa Kappa Gamma

sorority. The cost of the building is not to exceed \$40,000, \$25,000 of which is to be provided by borrowing money. The association will make provisions for the payment by the members of said sorority of rents and fees sufficient to defray the cost of operation and upkeep of said sorority house, plus an amount sufficient to pay all interest and principal charges as the same become due on account of the money borrowed, and provide a sinking fund ample for such purpose.

The local executive board of the university will be appointed trustee by the said association and the moneys received by the sorority will be turned over to the trustee for payment of the principal and interest charges. To secure the payment of the money borrowed the trustees will execute and issue "certificates of indebtedness" by which the local executive board of the University of Montana at Missoula promises to pay to the holders the amounts stated in said certificates, with interest at 6% per annum, payable annually, and in which certificates it is recited that they are issued by the building association and the local executive board as trustees, for the purpose of constructing the building, and that the certificates shall be discharged solely from the surplus revenues derived from the operations of said building, and that none of the certificates shall be or become obligations of the State of Montana, the state board of examiners, the state board of education, the local executive board, nor of any other state officer or individual whomsoever; save and except that the surplus revenues of said building are pledged to the payment of said certificates, and the local executive board undertakes, as trustee, to provide for the segregation of such surplus revenues for the payment of the said certificates.

The proposed declaration of trust further provides that the building shall be used exclusively for the student activities of the local chapter of the Kappa Kappa Gamma sorority, including the furnishing of living space, board, and an opportunity for such social activities as may be incident to the student life of the members of said sorority. The association reserves the right to manage the financial affairs under which the said house or hall shall be operated, subject to the rules and regulations of the State University, so long as such management by the association shall produce sufficient revenue for the payment of the obligations, but in the event that the trustee shall at any time conclude that the management by the association has failed, or may fail, to produce sufficient revenues for said purposes, the trustee may immediately assume the management and control of the operations of said house and conduct the same in such manner and under such conditions as will produce sufficient revenue for such purposes.

If the said trustee shall decide at any time that the said house may not be operated exclusively as a Kappa Kappa Gamma chapter house in such manner as will produce sufficient revenues to discharge the obligations represented by the certificates, the trustee shall have complete authority to convert the house into a residence hall for the general purposes of the university, and to use the same without limitation or restriction for whatever purpose may seem best calculated to provide the revenue required for the payment of the interest on and the retirement

of said certificates of indebtedness. If such house is so converted to general university purposes, upon the payment of the full amount of principal and interest due upon said certificates the said house shall revert to the use of Kappa Kappa Gamma sorority, subject only to the limitations provided by law and the rules and regulations of the said university.

From the foregoing it is apparent that the building proposed to be erected on the university campus is to be and remain private property and used for private and not public purposes. The grounds constituting the campus of the university at Missoula belong to the State of Montana and are public property acquired by it for the use of the University of Montana in the accomplishment of its legal object, to-wit:

“Instruction of young men and women on equal terms in all the departments of science, in literature, the arts and industrial and professional education.” (Section 861 R.C.M. 1921).

Greek letter fraternities and sororities are legal entities wholly separate and distinct from the University of Montana. They constitute no department or branch thereof. A donation or grant of the use of a part of the state-owned lands constituting the campus of the university at Missoula to the association or the sorority for the purpose of building and operating a sorority house, is a donation or grant of the property of the state to a private association or corporation which finds no sanction in the statutes of Montana, but, on the other hand, is forbidden by the paramount law of the state, to-wit: Section 1 of Chapter 13 of the Constitution of Montana, reading as follows:

“Neither the state, nor any county, city, town, municipality, nor other subdivision of the state shall ever give or loan its credit in aid of, or make any donation or grant, by subsidy or otherwise, to any individual, association or corporation, or become a subscriber to, or a shareholder in, any corporation, except as to such ownership as may accrue to the state by operation or provision of law.”

The general control and supervision of the state university and its property, of which the campus is a part, is vested in the state board of education, whose powers and duties are prescribed by law. (Constitution, Article II, Section 11). The powers and duties of the state board of education provided by law, insofar as they relate to the subject under consideration, appear in our statutes as follows:

Section 836 R.C.M. 1921, relating to the powers and duties of the board, provides as follows:

“The state board of education shall have power and it shall be its duty:

“1. To have general control and supervision of the state university, state normal college, college of agriculture and mechanic arts of Montana, state orphan’s home, Montana school of mines, Montana school for the deaf and blind, the Montana state industrial school, and the state vocational school for girls.

"2. To adopt rules and regulations, not inconsistent with the constitution and laws of this state, for its own government, and proper and necessary for the execution of the powers and duties conferred upon it by law.

"3. To provide, subject to the laws of the state, rules and regulations for the government of the affairs of the state educational institutions named in this section. * * *

"11. To have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the institutions and colleges named in this section. * * *

"14. To confer upon the executive board of each of said institutions such authority relative to the immediate control and management, other than financial, and the selection of the faculty, teachers, and employees, as may be deemed expedient, and may confer upon the president and faculty such authority relative to the immediate control, and management, other than financial, and the selection of teachers and employees, as may by said board be deemed for the best interest of said institutions."

Section 855 R.C.M. 1921 provides that it is the duty of the state board of education to investigate carefully the needs of each of the institutions under its control with reference to buildings, equipment, and instruction, and estimate the necessary appropriations required for such needs and to make recommendations to the Legislative Assembly accordingly.

Section 841 R.C.M. 1921 as amended by Chapter 160, Laws of 1925, and Section 853 R.C.M. 1921, provide also that the general control and supervision of the university is vested in the state board of education, and Section 842 R.C.M. 1921 provides for the creation of an executive board for the university and that said board "shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the State Board of Education, subject always to the supervision and control of said state board."

It will be observed that the power conferred by law upon the state board of education and the local executive board under it is to control and supervise the university and its property. Such powers must be exercised to the end that the object of the university as expressed in Section 861 R.C.M. 1921, above stated, shall be attained. The power to control and supervise the university and its property does not include the power to alienate by gift, sale, grant, or otherwise, the said property, or the use, benefit or possession thereof, nor does it include the power to permit the use of any of said property by private individuals, associations or corporations, whether for or without consideration, in the operation of their private enterprises. Until otherwise directed by law, the said property must be kept and used only in connection with the purpose for which it is acquired by the state. No authority appears in the laws of Montana at this time which authorizes the board of education and the local executive board of the university, or either of them,

to permit the use of part of the campus of the university at Missoula for the erection and operation of the proposed building, or any other building owned and operated by and for private interests. Neither does any provision of the existing law authorize the state board of examiners to do so.

The local executive board of the university has only such powers as are granted to it by statute or are delegated to it by the board of education, which delegated powers cannot exceed those possessed by the board of education itself, and such other incidental powers as may be necessary to carry out the powers expressly conferred. I am aware of no law which authorizes either of said boards to act as a trustee with duties that relate to private property and private undertakings. The boards are state functionaries and as such can only perform those state duties which they are authorized by law to perform. The members of the board may not act as a board on matters without the scope of their official duties. The state has concerned itself with the payment of private debts to the extent that it has made its judicial department available to compel payment when default is made, but it has not provided that the board of education or the local executive board of the university may by contract with private persons, corporations or associations, place upon the state the burden of taking over private property when, under the management of its owner, it fails to produce sufficient revenues to pay the obligation against the property for the purpose of operating it in an effort to do that which the private owner could not do, that is, make it produce sufficient revenue to pay operating expenses and discharge the debt against it, and when, if at all, the property is cleared of its indebtedness, return the same to the private owner.

The persons who are members of the executive board may, as individuals, assume such trusteeship, but they may not do so as the board. As private individuals they could not operate the hall for general university purposes, if such became necessary under the trust declaration, as the individual members of the board in their private capacity cannot operate the university but may only do so when they act in their official capacity as a board.

For the reasons hereinabove stated, it is my opinion that neither the state board of examiners, the state board of education, nor the executive board of the university at Missoula have the power to do or permit to be done that which is proposed and set forth in the documents submitted to me.

Very truly yours,

L. A. FOOT,
Attorney General.

By L. V. Ketter, First Assistant.