

of optometry and such other rules as may be necessary to carry out the provisions of this chapter (G. C. §§ 1295-21 to 1295-35); provided, however, that it shall require the concurrence of a majority of the members of the board to grant or to revoke a license."

Sections 1295-25 to 1295-26, General Code, provide for a bond of the secretary of the board and the compensation of all members thereof. Section 1295-27, General Code, provides among other things that the State Board of Optometry shall keep a record of its proceedings and that its records shall be open to public inspection. Section 1295-30, General Code, provides in part as follows:

"\* \* \* \* The board shall adopt a seal and certificate of suitable design and shall have an office at Columbus in this state, where examinations may be held and where all its permanent records shall be kept, which records shall be open to public inspection. It shall have the power to make requisition upon the proper state officials for office rooms and supplies, including stationery and furniture. All printing and binding necessary for the work of the said board shall be done by the state printer upon an order issued by said board through its president and secretary to the supervisor of public printing."

The contention that the secretary of the board must be a resident of Columbus is probably based upon the provision of Section 1295-30, *supra*, that the board shall have an office at Columbus, it being assumed that the duties of the secretary as such would require that he spend a portion of his time at such office. Even if the legislature had provided that the secretary of your board shall devote his entire time to this office at Columbus, in the absence of an express provision that the secretary must be a resident of Columbus, such a contention would not in my view be tenable. I find no provisions in the General Code requiring that the secretary of your board be a resident of any particular city or county of the state. Neither do I find any provision to the effect that even one member of your board shall be a resident of the city of Columbus. Section 1295-23, General Code, places no restrictions as to residence qualifications upon the governor in appointing members of your board except that such appointees be citizens of Ohio.

Specifically answering your inquiry, it is my opinion that the State Board of Optometry, in the election of a secretary under the provisions of Section 1295-24, General Code, is not required to consider residence qualifications of its various members.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3044.

DORMITORY—ALUMNI DESIRE TO GIVE SUCH BUILDING TO OHIO STATE UNIVERSITY—PROPOSED LAW DECLARING ACCEPTANCE BY STATE DEEMED CONSTITUTIONAL.

*SYLLABUS:*

1. *A statute should not receive a construction which makes it conflict with the Constitution, if a different construction is possible.*
2. *The construction of a statute depends upon its operation and effect, and not upon the form that it may be made to assume.*
3. *It is the duty of courts, in the interpretation of statutes, unless restrained*

by the latter, to adopt that view which will avoid absurd consequences, injustice, or great inconvenience, as none of these can be presumed to have been within the legislative intent.

4. It will never be presumed to have been within the legislative intent in the enactment of legislation extending power to administrative officers, to extend to them powers beyond constitutional limitations.

5. House Bill No. 528, of the 89th General Assembly will, if enacted, be constitutional.

COLUMBUS, OHIO, March 12, 1931.

HON. VIRGIL E. CRAMER, *Chairman, Committee on Universities and Colleges, Ohio House of Representatives, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your request for my opinion with reference to the constitutionality of proposed House Bill No. 528, of the 89th General Assembly. The title and text of this said bill are as follows:

“A BILL

To permit the alumni of the Ohio state university to present to the state a building or buildings to be used as dormitories in connection with said university, and to authorize the trustees of the Ohio state university to enter into a contract for such purpose.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. The board of trustees of Ohio state university is hereby authorized to enter into a contract with any incorporated association of alumni of said university whereby such association shall be permitted to erect upon the campus of said university, and upon a site to be designated by said board of trustees, a suitable building or buildings to be used as dormitories for students of the university. Such contract may provide that the legal title to such building or buildings shall remain in such association, and that the same shall be subject to mortgage or other encumbrance by such association; that the necessary repairs on such building or buildings shall be made by the trustees of the Ohio state university and paid for out of any appropriation made by the General Assembly for such purposes; and that the control and management of such building or buildings shall be vested in such association, subject to such disciplinary regulations as may be provided by said board of trustees. Such contract shall, however, provide that upon the payment of the indebtedness of such association, incurred in the erection and equipment of such building or buildings and the discharge of such building or buildings from liens or encumbrances, the legal title to such building or buildings, and any and all appurtenances thereof, and furniture and equipment therein, shall pass to and be vested in the state. The purpose of this section is to authorize the said trustees to permit the alumni of the Ohio state university to present to the state a building or buildings, and furniture and equipment for the aforesaid purpose, and to adopt such plans and financial arrangements as may be, within the limitations hereinbefore set forth, appropriate therefor.”

In a former opinion, found in Opinions of the Attorney General for 1929, page 329, I said:

“In passing on the question of the constitutionality of a proposed act

of the Legislature, this department has no authority to consider such proposed act otherwise than from the point of view of an act already duly enacted."

In considering the question before me, it is proper to assume that in the event the said Bill No. 528, as enacted by the General Assembly in the form submitted, and later its constitutionality is questioned in a court of competent jurisdiction, the well known rule that statutes are presumed to be constitutional will be applied.

In other words, it must be conclusively presumed that the legislature did not intend by the terms of this act, to extend any power to the trustees of the university beyond the bounds of constitutionality.

Ohio State University is not a corporation. As successor to the Ohio Agricultural and Mechanical College, it constitutes an arm of the state, subject to the direct control and administration of the legislature. Neither is its board of trustees a corporation, although endowed by the legislature with many of the characteristics of a corporation. It is through a board of trustees created by legislative act that the legislature administers the affairs of the university and expends public funds appropriated for the purposes of the university. Section 7942, et seq., General Code. This board of trustees has such powers only as are expressly delegated to it by the legislature or necessarily implied within such expressly delegated powers. Its so-called implied powers are limited to those that are necessary to carry into execution the powers expressly granted to it.

The power of the legislature to establish state colleges and universities such as the Ohio State University, and appropriate public funds for their maintenance and administration if not an inherent power of sovereignty, is expressly extended by those provisions of the Constitution of Ohio authorizing and directing the fostering of education. Article I, Section 7, and Article VI, Section 1 of the Constitution of Ohio.

In carrying out the constitutional mandate to establish and maintain such facilities for educational purposes as may be deemed necessary and proper, the legislature, of course, is bound by such constitutional limitations as may be applicable. In the expenditure of public funds incident to the maintenance of the Ohio State university those expenditures must be limited not only to purposes that are public but to university or college purposes as well. So also must these expenditures be such as not to contravene Section 4 of Article VIII of the Constitution of Ohio which forbids the State from in any manner giving or loaning its credit to or in aid of any individual, association or corporation whatever. Upon examination of House Bill No. 528, it will be observed that it creates no rights in the alumni of the university or any incorporated association of such alumni. It extends no power to said alumni not theretofore possessed by them. It does not empower the alumni or any portion of them, or incorporated association made up of alumni to demand the right to erect a dormitory or dormitories on the college grounds. It merely empowers the board of trustees of the university to contract with an incorporated association of alumni to construct, control and manage suitable buildings to be used as dormitories for students of the university. It also extends to the board the power to make necessary repairs on such building or buildings from any appropriation made by the General Assembly for such purposes.

The purpose of the act, as expressed in the act itself, is to authorize the said trustees to permit the alumni of the university to present to the State a building or buildings and furniture and equipment for the aforesaid purpose.

The power of a sovereign state to accept donations or gifts for specific edu-

cational or charitable purposes is beyond question as is the right of the legislature to delegate that power to subordinate administrative boards. Such gifts may lawfully contain reservations so long as those reservations are reasonable. *Gardner v. Commissioners of Fayette County*, 16 O. S. 354. It has been held that even in the absence of statute, courts of equity have power to enforce such trusts. *Urney's Executors v. Levi Wooden et al.*, 1 O. S., 160.

Section 18 of the General Code of Ohio, formerly Section 20 of the Revised Statutes, authorizing the state, a county, a municipal corporation, 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 in charge thereof to receive gifts, devises or bequests and hold and apply the same according to the terms and conditions thereof, has been in force for a great many years, and so far as I know, its constitutionality has never been questioned. The only limitation on the terms and conditions of such a gift, devise or bequest is that those terms and conditions must be reasonable. The effect of House Bill No. 528, if enacted, is to authorize the trustees of the university to contract with an incorporated association of alumni permitting such association to erect on state grounds a dormitory for university students, the title to which dormitory is to remain in the alumni association until the mortgages and liens thereon are paid, and when finally paid, the legal title to the building is to become vested in the state. In the meantime the state is to keep the building in repair, the control and management of the building to at all times remain in the alumni association.

The obligation of the state, which the trustees of the university are authorized by the terms of this act to incur by the making of a contract such as is there authorized, is the obligation to provide ground space for the building and to keep the building in repair.

That the housing of university students in dormitories is a proper university purpose, and if the university be an institution supported from public funds, a public purpose, is too well settled to admit of controversy. *Cincinnati v. Jones*, 16 O. D., 343, affirmed by the Circuit Court, 28 O. C. C., 210. *Harvard College v. Cambridge*, 175 Mass., 145; *Yale University v. New Haven*, 71 Conn., 316; *Corpus Juris*, Vol II, page 972 note.

Any money expended by the trustees of the university in keeping a dormitory in repair even before the legal title to the building became absolutely vested in the state, would, in my opinion, be expended for a public purpose and for a proper university purpose, so long as the university received the benefit growing out of the furnishing of dormitory facilities for the students; so also is the furnishing of a site for such a building a legitimate university purpose. There can be no constitutional objection to this bill on that account; nor does the fact that the building may be mortgaged, constitute a subversion of any constitutional provision.

This act does not limit the trustees in the making of a contract with an incorporated association of alumni, to the making of that contract with an association incorporated not for profit. That fact does not, however, in my opinion, render the act unconstitutional. For the trustees to contract with an association incorporated for profit to maintain a dormitory for students on state lands, and bind the state to keep the building in repair would without a doubt be illegal as being subversive of the constitutional inhibition on the state's lending its credit in aid of an association or corporation. Article VIII, Section 4, Ohio Constitution. Such an act would be authorizing the use of public property for private purpose.

The act, however, does not contemplate the making of such contract. If the parties should attempt to make a contract of that kind, it would no doubt be held to be unauthorized by the act and illegal. Courts would undoubtedly construe

the act to mean that the trustees were only authorized by its terms to enter into such contracts as were legal and so long as the contract was made with an incorporated association of alumni incorporated not for profit the contract would be upheld. *State v. Kerns*, 104 O. S., 550.

It remains to inquire whether or not the authorized reservation in a contract which the trustees may make is such as to render the power extended to the trustees by the act unconstitutional. This reservation is to the effect that the building shall at all times be under the control and management of the alumni. In my opinion, a reservation of this kind is not unreasonable and is not such a reservation as would render a contract authorized by the act to be illegal or void.

While it is possible the alumni association might attempt to so control and manage the building as to render the expenditure of public funds in aid of the maintenance of the building unlawful, it will not be presumed that such would be the case, and anyway it is time enough, and is within the power of the proper authorities to correct abuses of that nature when the occasion arises. The statute would be interpreted so as to extend authority to the trustees of the university to make lawful contracts only and any contract made by the trustees in pursuance of this statute would be construed so as to limit the control and management of the building which might be reserved to the alumni therein, to such control and management as is reasonable, proper and lawful. It has been held that it is the duty of courts in the interpretation of statutes, unless restrained by the letter to adopt that view, which would avoid absurd consequences, injustice or great inconvenience as none of these can be presumed to have been within the legislative intent. *Moore v. Given*, 39 O. S., 661; *Hill v. Micham*, 116 O. S., 549.

A cardinal rule of construction of statutes is stated by the court in the case of *Burt v. Rattle*, 31 O. S., 116, as follows:

“A statute should not receive a construction which makes it conflict with the Constitution, if a different interpretation is practicable.”

I believe it is practicable to construe the act here under consideration so as to render it not subversive of any provision of the Constitution.

I am therefor of the opinion, in specific answer to your question, that the terms of the act in question meet any objection that might be made to it on the grounds of its constitutionality.

Respectfully,

GILBERT BETTMAN,  
*Attorney General.*

3045.

APPROVAL, ABSTRACT OF TITLE TO LAND OF WILLIAM V. SMITH  
IN NILE TOWNSHIP, SCIOTO COUNTY, OHIO.

COLUMBUS, OHIO, March 13, 1931.

HON. CARL E. STEEB, *Secretary, Ohio Agricultural Experiment Station, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your letter submitting for my examination and approval an abstract of title, copy of real estate option, authority of controlling board, encumbrance estimate No. 791, and tax receipts for the year 1929, covering