

4488

DEGREES, CONFERED BY A COLLEGE, UNIVERSITY OR OTHER INSTITUTION OF LEARNING—DIRECTOR OF EDUCATION WITHOUT AUTHORITY TO REVOKE POWER TO CONFER SUCH DEGREES WHERE COLLEGE OR UNIVERSITY WAS INCORPORATED PRIOR TO ENACTMENT AM. SUB. SENATE BILL 299, 92ND GENERAL ASSEMBLY AND MET REQUIREMENTS SECTIONS 9922, 9923 GENERAL CODE, AS THEY EXISTED PRIOR TO ENACTMENT OF SAID BILL IF INSTRUCTION OFFERED OR DEGREES CONFERRED ANY TIME WITHIN TWO YEARS IMMEDIATELY PRECEDING JULY 26, 1937.

SYLLABUS:

The Director of Education is without authority to revoke the power of a college or university to confer degrees where such college or university was incorporated prior to the enactment of Amended Substitute Senate Bill No. 299 of the Ninety-second General Assembly and met the requirements of Sections 9922 and 9923, General Code, as they existed prior to the enactment of said Amended Substitute Senate Bill No. 299, if such college or university offered instruction or granted degrees at any time within two years immediately preceding July 26, 1937, which was the effective date of said Amended Substitute Senate Bill No. 299.

Columbus, Ohio, November 29, 1941

Hon. Kenneth C. Ray, Director of Education,
Columbus, Ohio.

Dear Sir:

I have your letter with which you enclose a copy of the articles of incorporation of Alfred Holbrook College, together with a certificate of amendment thereto. You ask my opinion as to whether the State Department of Education has power to revoke the authority of such college to grant the degree of Bachelor of Arts.

The original articles of incorporation of this college were filed in the office of the Secretary of State on the 29th day of July, 1933, and the certificate of amendment to such articles was filed on the 9th day of

April, 1935. The original articles, among other things, granted to the college the power "of granting and conferring of degrees and honors conferred by Colleges and Universities of United States, and such others having reference to the courses of study and the accomplishment of the student, as said College may deem proper, subject to the provisions and regulations of the laws of the State of Ohio relating thereto." The certificate of amendment to such articles merely changes the domicile of the corporation from Lebanon, Ohio, to Manchester, Ohio, and did not purport to amend the articles in any other respect.

At the time this college was incorporated, the right of colleges to confer degrees was controlled and regulated by then existing Sections 9922 and 9923, General Code, which respectively provided:

Section 9922.

"When a college, university, or other institutions of learning incorporated for the purpose of promoting education, religion, morality, or the fine arts, has acquired real or personal property, of twenty-five thousand dollars in value, has filed in the office of the secretary of state a schedule of the kind and value of such property, verified by the oaths of its trustees, such trustees may appoint a president, professors, tutors, and any other necessary agents and officers, fix the compensation of each, and enact such bylaws consistent with the laws of this state and the United States, for the government of the institution, and for conducting the affairs of the corporation, as they deem necessary. On the recommendation of the faculty, the trustees also may confer all the degrees and honors conferred by colleges and universities of the United States, and such others having reference to the course of study, and the accomplishments of the student, as they deem proper."

Section 9923.

"But no college or university shall confer any degree until the president or board of trustees thereof has filed with the secretary of state a certificate issued by the superintendent of public instruction that the course of study in such institution has been filed in his office, and that the equipment as to faculty and other facilities for carrying out such course are proportioned to its property and the number of students in actual attendance so as to warrant the issuing of degrees by the trustees thereof."

These sections were repealed by Section 7 of Amended Substitute Senate Bill No. 299 of the Ninety-second General Assembly, found in 117 O.L., 265, 267. You will note that the provisions of law above quoted

provided that any college incorporated for the purpose of promoting education, religion, morality or the fine arts, which had acquired real or personal property of \$25,000 in value and had filed a schedule thereof verified by the oaths of its trustees with the Secretary of State, was empowered to appoint a president, professors, tutors and other necessary officers, and the trustees, on the recommendation of the faculty, were empowered to confer degrees. It was necessary, however, before conferring degrees, for such college to file with the Secretary of State a certificate issued by the superintendent of public instruction to the effect that the course of study of such college had been filed in his office and that the equipment as to faculty and other facilities for carrying out such course were proportioned to the property of the institution and the number of students in actual attendance so as to warrant the issuing of degrees by the trustees thereof.

You do not state whether or not Alfred Holbrook College complied with these requirements, but for the purposes of this opinion I shall assume that they were met.

In my Opinion No. 2241, found in Vol. I-of the Opinions of the Attorney General for 1940, at page 426, which was rendered to your immediate predecessor, I said:

“The regulations with respect to the conferring of degrees by institutions of learning as contained in the statute referred to were for a great many years the only legal limitation on the power of institutions of learning to confer degrees. Had it not been for these statutory limitations, the power of trustees of colleges, universities and institutions of learning to confer degrees would have been unlimited except as they might have been restricted by the terms of their respective corporate charters or the endowments under which they operated and the Superintendent of Public Instruction nor any other agency would have had any control over the matter whatever. When Amended Substitute Senate Bill No. 299 was enacted the then existing Sections 9922 and 9923, of the General Code were by Section 7 of said Act, expressly repealed, and the result is that no statutory regulations or limitations now exist with respect to the conferring of degrees by institutions of learning, except as they are contained in the said Amended Substitute Senate Bill No. 299.

Said Amended Substitute Senate Bill No. 299 was enacted April 22, 1937. It became effective ninety days thereafter. It was codified as Sections 9922 to 9923-4, inclusive, of the General Code of Ohio. The title of the Act is:

‘An Act providing for the regulation of new institutions of higher education and to repeal sections 9922 and 9923 of the General Code.’

Upon examination of the content of the Act, it clearly appears that its provisions apply exclusively to *new* institutions, as its title directs, except Section 5 thereof, which is codified as Section 9923-3, General Code, and which will be hereafter noted.

In substance, the Act provides with respect to a new institution of learning, that it shall not be,

‘permitted to offer instruction, confer degrees or diplomas or other written evidences of proficiency or achievement, until it has received from the director of education a certificate of authorization, which shall specify the field or fields of training permitted and the diploma or degree or degrees authorized to be given, and a copy of which shall be filed with the secretary of state.’

(Section 9923, General Code.)

Section 9923-1, General Code, sets forth the prerequisites for the certificate of authorization referred to above, to be issued by the Director of Education and Section 9923-2, General Code, provides that said certificate shall be subject to revocation.

Section 5 of the Act (Section 9923-3, General Code) provides as follows:

‘Any corporation previously authorized to grant degrees, but which has not offered instruction or granted degrees within two years or more prior to the effective date of this act, shall, before resumption of instruction and the granting of degrees, meet all of the requirements of this act.’ ”

As I stated heretofore, I have assumed for the purposes of this opinion that this college complied with the provisions of Sections 9922 and 9923, General Code, as they existed prior to the enactment of Amended Substitute Senate Bill No. 299 of the Ninety-second General Assembly. If the requirements of these sections were met, the college was, of course, empowered to grant degrees at the time of the enactment of such bill. You do not state whether the college in question either offered instruction or granted degrees within two years or more prior to the effective date of said Amended Substitute Senate Bill No. 299 of the Ninety-second General Assembly. This bill was filed in the office of the

Secretary of State on the 26th day of April, 1937, and became effective ninety days thereafter. Although the language of Section 5 of the Act codified as Section 9923-3, General Code, was not happily chosen and is ambiguous, it seems to me that the words "within two years or more prior to the effective date of this act" should be given the meaning expressed by the words "for at least two years prior to the effective date of this act." The alternative construction renders meaningless and unnecessary the use of the words "two years," and under such construction a college would continue to have authority to grant degrees if it had at any time in its history offered instruction or conferred degrees even though it might have for many years been dormant and inactive at the time Amended Substitute Senate Bill No. 299 of the Ninety-second General Assembly became effective.

If, therefore, Alfred Holbrook College met the requirements of Sections 9922 and 9923, General Code, as they existed prior to the effective date of said Amended Substitute Senate Bill No. 299, which was July 26, 1937, and if such college conferred degrees or offered instruction at any time during the two-year period immediately preceding July 26, 1937, the Director of Education has no authority to revoke the power of the college to confer degrees.

Respectfully,

THOMAS J. HERBERT,
Attorney General.