

1803

EDUCATIONAL INSTITUTION—CONDITIONS FOR CONFERRING CUSTOMARY DEGREES—§§1713.02, 1713.03 R.C.—STATE BOARD OF EDUCATION TO DETERMINE COMPLIANCE WITH REQUIREMENTS—CAPITALIZED VALUE OF CONTRIBUTED SERVICE—INVESTMENT OF ENDOWMENT FUNDS.

SYLLABUS:

1. Sections 1713.02 and 1713.03, Revised Code, prescribe the conditions which an educational institution desiring to confer customary degrees, must meet in order to obtain from the state board of education a certificate of authority to confer such degrees. The determination as to sufficient compliance with such conditions by an applying institution is vested entirely in the state board of education, acting on the recommendation of the superintendent of public instruction as to the faculty, library, laboratories and other facilities of the applicant.

2. The capitalized value of contributed services by employees of an institution applying for such certificate must be determined by the state board of education, based upon customary business practices.

3. The "stable income" of an applicant for such certificate, requisite for compliance with the conditions set out in Section 1713.03, Revised Code, is not defined by any statute, and its sufficiency for enabling the applying institution to carry on creditably the purpose of its organization and to receive such certificate must be determined by the state board of education.

4. Business enterprises conducted by a college such as cafeterias, bookstores, *etc.* cannot be considered as proper investment of the endowment fund required by Section 1713.03, Revised Code; but such endowment fund may lawfully be invested in building dormitories for housing students.

Columbus, Ohio, March 4, 1958

Hon. E. E. Holt, Superintendent of Public Instruction
State Board of Education, Columbus, Ohio.

Dear Sir:

I have before me your request for my opinion reading as follows:

"I have been directed by the State Board of Education to secure your opinion in answer to the following questions relating to Section 1713.03, O.R.C.:

"(a) What is the means of determining 'adequate housing for the declared field or fields of education'? Is this determination a duty of the State Board of Education?

“(b) What is meant by ‘a productive endowment including the capitalization of contributed services and stable income’.

(1) Does this include contributed services of teachers and administrators only, or may it include contributed services of others necessary to, but less directly connected with, the educational process?

(2) Must *all* of such services be contributed, or may credit be given where the pay is substantially less than the true, or generally acceptable, pay for such services?

(3) Who is empowered to fix the value of such contributed services and on what basis or standard?

(4) What is meant by ‘stable income’? Does this include net income from dormitory, book-store and cafeteria operations and other business functions, where assets, i.e., ‘endowment’, have actually been invested in such operations?

“(c) Are the ‘minimum standards in respect to faculty, library, laboratories and other facilities’ to be adopted and published by the ‘superintendent’ alone, or, since the Board issues the certificate of authorization, must they be adopted and published subject to the Board’s ratification?”

Section 1713.03, Revised Code, to which you refer is a part of Chapter 1713., Revised Code, relating to institutions of learning which desire to confer customary degrees.

Section 1713.02, Revised Code, provides as follows:

“Any institution seeking permission to offer instruction in the arts and sciences, of such kind and quality as may lead to the giving of customary academic or professional degrees may become incorporated under sections 1702.01 to 1702.58, inclusive, of the Revised Code; but no corporation established for this class of higher education may offer instruction, confer degrees or diplomas or other written evidences of proficiency or achievement, until it has received a *certificate of authorization issued by the state board of education*. Such certificate shall specify the fields of training permitted and the diplomas or degrees authorized to be given. A copy of such certificate shall be filed with the secretary of state.”
(Emphasis added)

Section 1713.03, Revised Code, as amended by the 101st General Assembly, reads as follows:

“The prerequisites for the giving of a certificate of authorization *by the state board of education* are:

“(A) Adequate housing for the declared field or fields of education;

“(B) A productive endowment including the capitalization of contributed services and stable income exclusive of tuition and fees in the following sums:

“(1) Two hundred fifty thousand dollars for each institution of a junior college rank which offers a two-year program of studies;

“(2) Five hundred thousand dollars for each institution of a senior college rank which offers a four-year program of studies;

“(3) One million dollars for each institution of a graduate school rank which offers a program of studies of five years or more;

“(C) Such minimum standards in respect to faculty, library, laboratories, and other facilities as are adopted and published *by the superintendent.*” (Emphasis added)

I shall endeavor to touch on the questions which you have presented, in their order.

(a) As to the means of determining “*adequate housing for the declared field or fields of education.*”

Prior to its amendment, Section 1713.03, *supra*, was in the identical language quoted, excepting that in the first paragraph it was provided that the certificate of authorization was to be issued by the *state superintendent of public instruction*, while now, as will be observed, it is to be issued by the state board of education.

At the same time, Section 1713.04, Revised Code, was amended providing that such certificate of authorization is subject to revocation by the state board of education, instead of by the superintendent of public instruction as formerly provided.

These statutes in their present wording and particularly by the changes to which I have called attention, clearly place upon the state board of education the duty of determination of all of the elements that enter into the issuance of the certificate above referred to.

As to the means of determining what is adequate housing for the declared field or fields of education, there is certainly nothing in the law which furnishes an answer to that question, and it would seem presumptuous for me to venture on my own speculation as to what would be adequate housing for a college which seeks and obtains authority to grant

degrees. That is certainly a matter that is more directly within the comprehension of men expert in school administration such as your board and its employees, and it is, therefore, my opinion that it is for the determination of the state board of education.

(b) You present several questions as to what is meant by a "productive endowment including the capitalization of contributed services and stable income." I will take up these questions in their order.

1. Does the quoted phrase include contributed services of teachers and administrators and does it include also contributed services of others necessary to, but less directly connected with the educational process?

The scope of the words "contributed service" as used in Section 1713.03 (B), *supra*, would certainly include contributions by teachers and administrators, but is not limited to them. It is broad enough to include contributed services of all persons who are necessary to and more or less connected with the operation of any particular institution.

2. Your next question is whether all of the service of an employee must be contributed, in order to be within the law. This question as stated is somewhat confusing. If you refer to a teacher or other employee whose salary is fixed at \$10,000.00, but who refuses to take more than \$5,000.00, I should say that this constituted "contributed service" within the meaning of the statute. If, however, the salary scale of a particular institution is painfully low as compared to other like institutions, or as related to the cost of living, as is frequently the case, then the service of a teacher or other employee, at a personal sacrifice, would not be "contributed service, capable of capitalization."

Furthermore, it should be borne in mind that since a teacher's salary continues at most during his lifetime, and since he may die or resign within a short time, the value of his contribution for the purpose of capitalization would be a vague and uncertain amount and certainly could not be placed at a figure that would be applicable to the capitalization of an income which is fixed for life or which is permanent.

"Capitalization," as defined by Webster, is the "computation of the present value of an income, annuity, etc." In the matters we are here considering it would be the computation of the present value of the service which is donated, taking in all contingencies, and that is a matter which would probably require the services of an actuary.

(3) As to the responsibility for fixing the value of such contributed services, I have no hesitancy in saying that that is the duty of the board of education, and this notwithstanding the language of Section 1713.03(C), *supra*, which reads as follows:

“(C) Such minimum standards in respect to faculty, library, laboratories, and other facilities as are adopted and published by the superintendent.” (Emphasis added)

The fact that the data for fixing the minimum standards requisite for the granting of the certificate in question are to be “adopted and published by the superintendent,” does not, in my opinion, take away from the board of education the responsibility for their actual determination and application. Prior to the sweeping amendments of the laws relating to the department of education, which became effective January 3, 1956, substantially all responsibility of the department of education was vested in the state superintendent of public instruction. The vast number of changes made by that renovation of the law consisted principally in substituting the state board of education for the superintendent of public instruction.

Section 3301.11, Revised Code, reads as follows:

“The superintendent of public instruction shall be the executive and administrative officer of the state board of education in its administration of all educational matters and functions placed under its management and control. He shall execute, under the direction of the state board of education, *the educational policies, orders, directives, and administrative functions of the board*, and shall direct, under rules and regulations adopted by the board, the work of all persons employed in the state department of education.” (Emphasis added)

I do not find any other provisions in the statutes which take away from the state board any of the responsibilities which are conferred upon them or which make the state superintendent of public instruction independent of the board.

That part of your question (3) which relates to the basis or standards for fixing the value of contributed service, for the purpose of “capitalizing” the same, becomes, as I have already indicated, largely a matter for actuarial determination, the responsibility being on the state board of education to act in accordance with the information thus obtained. It may be noted that the statute fixes no rate of return as necessary to make an endowment productive within the contemplation of the law. It is manifest that one

institution might have an endowment fund of a nominal total of a million dollars but so poorly invested that it only yields an income of one percent while another might have an endowment of half that amount yielding five percent. The determination of what should be a reasonable yield to bring the endowment within the terms of the statute, must be left to the sound discretion of the board, acting upon the best business advice obtainable.

(4) You ask what is meant by "stable income" and whether that term may include income from dormitories, bookstores, cafeterias and other business enterprises.

As to the definition of "stable income," I can find no statutory or legal expression as to the meaning of the term. I again resort to Webster's Dictionary; "stable" is defined as "firmly established; fixed; steadfast." There is no statute which governs the investment of endowment funds of a privately organized college. They may or may not be limited by the terms of a gift or bequest.

The statutes which I have quoted fix no rate which an endowment must yield and accordingly I can only conclude that it is within the sound discretion of the state board of education to determine, in the first place, whether an institution seeking the certificate has a sufficient endowment, yielding a stable income of a sufficient amount to meet the purpose of the general statute and the standards which the board deems reasonable. It seems manifest that the legislative purposes have been to see to it that the institution is sufficiently endowed that it may carry out its purposes creditably. Likewise it is within the authority of said board, if it finds that the endowment of an institution has been dissipated or deteriorated so as to fall below the required standard, to revoke a certificate theretofore issued, under the authority of Section 1713.04, Revised Code.

In regard to such business ventures as cafeterias, bookstores, *etc.*, I cannot believe that they are capable of capitalization so as to form a part of the required endowment of a college. They are speculative, and fluctuating as to profit or loss. As to dormitories, it is not unusual for colleges to invest a definite portion of their endowment in construction of dormitories, estimating that they can both make such endowment fund yield a substantial income and supply a need for housing students which could not otherwise be met. We are not concerned with the wisdom of this practice, but in the absence of some restriction placed by the donor of such endowment, I know of nothing in the law which would make it unlawful.

Accordingly, it is my opinion that the net income arising from such an investment, could properly be considered as "stable income" within the provision of said Section 1713.03, Revised Code.

(c) Your final question is whether the "minimum standards" mentioned in Section 1713.03(C), *supra*, are to be "adopted and published" by the superintendent of public instruction on his own responsibility, or whether such minimum standards must be approved by the state board of education.

In view of what has already been said it must be clear that I regard the superintendent as the agent and servant of the board in all matters which come under its supervision and administration. If there was any doubt as to that general conclusion, it would, in my opinion be cleared by a consideration of the entire plan and purpose of said Sections 1713.02 and 1713.03, *supra*, which we have been considering. The particular provision which you mention is one of the prerequisites upon which the *state board* determines whether it will or will not grant the certificate which the college requests, and it appears clear that the board's action in granting the certificate involves among other things, the approval of the standards which the superintendent has prepared. If the board is not willing to give such approval, it may withhold granting the certificate.

In specific answer to the questions which you have submitted, it is my opinion:

1. Sections 1713.02 and 1713.03, Revised Code, prescribe the conditions which an educational institution desiring to confer customary degrees, must meet in order to obtain from the state board of education a certificate of authority to confer such degrees. The determination as to sufficient compliance with such conditions by an applying institution is vested entirely in the state board of education, acting on the recommendation of the superintendent of public instruction as to the faculty, library, laboratories and other facilities of the applicant.

2. The capitalized value of contributed services by employees of an institution applying for such certificate must be determined by the state board of education, based upon customary business practices.

3. The "stable income" of an applicant for such certificate, requisite for compliance with the conditions set out in Section 1713.03, Revised Code, is not defined by any statute, and its sufficiency for enabling the

applying institution to carry on creditably the purpose of its organization and to receive such certificate must be determined by the state board of education.

4. Business enterprises conducted by a college such as cafeterias, bookstores, *etc.* cannot be considered as proper investment of the endowment fund required by Section 1713.03, Revised Code; but such endowment fund may lawfully be invested in building dormitories for housing students.

Respectfully,
WILLIAM SAXBE
Attorney General