

138.

OHIO STATE UNIVERSITY—FUNDS OF ANY DEPARTMENT MUST BE DEPOSITED WEEKLY WITH THE STATE TREASURER—ARE NOT SUBJECT TO RE-USE WITHOUT APPROPRIATION—ROTARY FUNDS ARE AUTOMATICALLY RE-APPROPRIATED.

SYLLABUS:

1. Funds coming into the hands of any department of the Ohio State University, must be, by the terms of Section 24 of General Code, deposited weekly with the state Treasurer, and such funds so deposited are not subject to re-use by the department making the deposit, without express appropriation therefor.

2. Funds coming into the hands of the enterprises provided for by the rotary fund may be deposited with the state treasurer and, by the express terms of the appropriation act, are reappropriated to the use of such enterprises.

COLUMBUS, OHIO, March 3, 1927.

HON. GEORGE W. RIGHTMIRE, *President, The Ohio State University, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent communication as follows:

"A matter is just now coming up concerning which your opinion is desired, and it affects the rotary fund policy set up in the budget of this institution, viz., the Graduate School has a special legislative appropriation; studies in one or another field of learning are made under the auspices of that school and when the report on a study is approved it is sent to the University press for printing. The University press makes a charge therefor which is paid by the Graduate School out of its appropriation, to the University press. So far as the press is concerned this is the normal operation of their rotary fund.

Now these reports of studies in book form are put on sale and the money derived therefrom comes into the possession of the University press book store through which the sales have been made. Can the proceeds of these sales be turned back to the Graduate School which has no rotary fund at its disposal? Can the proceeds of these sales be retained by the University press book store which at present operates under a rotary fund—general store room? Or must such proceeds be turned into the State Treasury? I know of no other alternative and present the questions herewith in this way and the case I am making is illustrative of a situation which might arise here in several other departments or bureaus of the University."

The University press book store is maintained out of the rotary fund which is the recurrent appropriation found in the general appropriation bill for the maintenance of many of the enterprises of the University. That fund is described in the appropriation bill for the last biennium as follows:

"I Rotary—For the maintenance of the veterinary clinic, dental clinic, dispensaries, University hospital, laboratory supply store, general store room, journalism, mechanics and laundry, and architecture-photograph; * * *"

The validity of the maintenance of the University press book store by the use of this fund was sustained in the recent case of Long v. Mack, et al., decided by the

Court of Appeals of Franklin county, Ohio, as yet unreported. It will be noted that the language of the appropriation for the rotary fund is such as to preclude the possibility of the Graduate School having any benefit therefrom. The authority for its expenditures must be found in other sections of the appropriation act.

Section 5 of the appropriation act describes what is meant by "rotary fund" as follows:

"The term 'Rotary Fund' as used in this act means a fund set aside to enable a department or institution to carry on a function or an activity, self-sustaining in its nature, the receipts from which are to be used for the function or activity for which the rotary fund is established.

Money obtained from the function or activity for which a rotary fund is provided, shall be turned into the treasury, and such monies turned into the treasury between July 1, 1925, and June 30, 1927, both inclusive, are hereby appropriated for the purpose for which such rotary fund is herein established. * * * * *

Under the terms of this section, it is obvious that all enterprises provided for out of the rotary fund must make their expenditures from such fund and return all of their receipts thereto.

Under the practice which you say prevails at present, the press makes a charge to the Graduate School for the printing of studies in book form. This charge must obviously come from the regular appropriation of the Graduate School and the proceeds therefrom must be turned into the rotary fund. After the printing, the books are placed on sale at the book store and the proceeds from the sale thereof must also necessarily be deposited to the credit of the rotary fund. The University press book store, therefore, obtains, in effect, double payment for the same thing and the rotary fund is enriched in consequence. Under these circumstances, you ask whether the proceeds of the sale cannot be turned back to the Graduate School. My answer to your question is in the affirmative, but such proceeds, upon payment to the Graduate School, would have to be turned into the state treasury to the credit of the general fund and would not be subject further to the use of the Graduate School. In other words, this money must be handled in the method prescribed by Section 24 of the General Code, which provides that all moneys received by the University shall be turned into the treasury weekly. Such funds are not subject to re-use by the Graduate School, as in the case of the rotary fund, which, by the express terms of the appropriation act, is reappropriated immediately upon being turned into the treasury.

Answering your second question, these proceeds may be retained by the University press book store and deposited with the state treasurer to the credit of the rotary fund. I should perhaps mention that the case of Long v. Mack, et al., referred to above, is still pending and it cannot, therefore, be said that the validity of the maintenance of the book store from the rotary fund has been finally established. I expect, however, that the case will finally be disposed of within a short time.

Respectfully,

EDWARD C. TURNER.

Attorney General.