

3573

STUDENTS — STATE SUPPORTED COLLEGES AND UNIVERSITIES — WHERE DURING REGISTRATION PERIOD, THEY CONTRACT FINANCIAL OBLIGATIONS INCIDENT TO ATTENDANCE, WHICH THEY FAIL TO MEET, BY REASONABLE, NOT ARBITRARY REGULATION, SHALL BE REFUSED RIGHT TO RE-REGISTER FOR CONTINUOUS ATTENDANCE — JURISDICTION, TRUSTEES AND FACULTY — CREDITORS — UNIVERSITY, APPROVED ROOMING OR BOARDING HOUSES.

## SYLLABUS:

*The trustees and faculty of state supported colleges and universities may in their discretion promulgate and enforce, if the same is done reasonably and not arbitrarily, a regulation to the effect that students in the institution who during a registration period contract financial obligations incident to their attendance in the college or university which they refuse to meet or make an honest effort to meet, shall be refused the right to re-register for continuous attendance at the institution until the obligations are paid or secured to be paid in a manner satisfactory to the creditors, whether those obligations are to the university or to approved rooming or boarding houses.*

Columbus, Ohio, March 18, 1941.

Doctor K. C. Leebrick, President, Kent State University,  
Kent, Ohio.

Dear Doctor Leebrick:

I am in receipt of your request for my official opinion, which reads as follows:

“The other day a question arose over a practice I found in effect when I came to Kent, of refusing re-registration to students who were indebted to the University or to those who operated approved houses, including sororities and fraternities, and, in some cases, those who owe debts to merchants and others in Kent.

After conferences here the last classification was omitted. We still sometimes refuse re-registration to students who have not met their financial obligations to the University.

The other day the question arose as to whether we were justified in refusing re-registration to students who owed bills to proprietors of houses approved by the University. The following statement appears in our 'Off-Campus Housing Handbook': 'Students in arrears shall not be considered in good standing in the University and shall not be permitted to register until past rooming bills are paid in full. Itemized bills of amount due must be submitted in writing to the Director of Residences prior to the next registration date.'

We will be very grateful to have your advice especially upon the point raised by the quotation."

Kent State University, originally established as Kent State Normal School under and in pursuance of an Act of the Legislature of Ohio of May 10, 1910 (101 O.L., 320), and later known as Kent State College by authority of Section 7924, General Code as enacted in 1929 (113 O. L., 34), became a university by name by virtue of the amendment of said Section 7924, General Code, in 1935 (116 O. L., 229), whereby the said Kent State College was thereafter to be known as Kent State University. At the time of the enactment of Section 7924, General Code, in 1929, there was enacted in the same act of the Legislature Section 7924-1, General Code, which provided that the Board of Trustees of the then existent Kent State Normal School should continue to exercise its powers and perform its duties in maintaining and managing the Kent State College.

In the act of May 10, 1910, providing for the establishment of the Kent State Normal School, a Board of Trustees therefor was created, with very broad powers, expressed in general terms as follows:

"Said board of trustees shall do any and all things necessary for the proper maintenance and successful and continuous operation of said normal schools and may receive donations of lands or moneys for the purpose of said normal schools."

It was further provided in said act that the Members of said Board of Trustees should be appointed for terms of five years "for the control and management of said normal school."

By reason of the broad and unrestricted powers extended to the trustees in the control and management of the said university, as shown by the general terms employed by the Legislature in extending those powers it may well and definitely be regarded as extending to them the power to do all things usually accorded the trustees of similar institutions. One of these powers is the universally recognized right to make proper

rules and regulations for the orderly management of the institution and the proper conduct of the students attending the same. It would clearly seem that such power is impliedly included within the express power granted to "control and manage the institution" and "to do any and all things necessary for the proper maintenance and successful and continuous operation" of the school as such an institution would not be properly controlled and managed nor successfully maintained and operated without proper rules and regulations therefor. In Ohio Jurisprudence, Volume 40, page 750, it is said:

"University and college authorities may make all necessary and proper rules and regulations for the orderly management of the institution and the preservation of discipline therein. Any rules and regulations formulated for the government of a university must, however, be reasonable and not arbitrarily applied, and must be consistent with both the state and Federal law. Since the college officials stand in loco parentis concerning the physical and moral welfare and training of the pupils, to that end they may make any rule or regulation for the government or betterment of their pupils that a parent could make for the same purpose."

Very similar language will be found in Ruling Case Law, Volume 27, page 141, Section 10, where a large number of authorities are cited in support of the same. In the same section it is stated:

"Whether the rules or regulations are wise or their aims worthy is a matter left solely to the discretion of the authorities and in the exercise of that discretion the courts are not disposed to interfere unless the rules and aims are unlawful or against public policy."

The Legislature is in control of the colleges and universities of the state, and has a right to legislate for their welfare and to enact measures for their discipline and when the Legislature has done this, it is not subject to any control by the courts. See *Mississippi University v. Waugh*, 105 Miss. 623, 62 So. 827, L.R.A. 1915 D 588 and note, affirmed by the United States Supreme Court, 237 U. S. 589, 59 L. Ed. 1131.

Where the Legislature has not expressly spoken as to the details of the management and control of a university and delegates that duty to a board of trustees with power to do any and all things necessary for the successful maintenance of the university, proper administrative rules and regulations not unreasonable or arbitrary and not inconsistent with law have the force and effect of legislation and students and other persons

are required to observe them or abide by the consequences. *Foley v. Benedict*, 122 Texas, 193, 55 S.W., 2d, 805, 80 A.L.R., 477. In the instant case, what is proper and needful for the proper administration of the university looking to its successful maintenance and continuous operation are matters left by law to the discretion of the university officials within their proper field.

Every student, upon his admittance to a university, impliedly agrees to submit to and be governed by all the necessary and proper rules and regulations which have been or may be adopted for the government of the university and the conduct of the students. The right to attend the educational institutions of the state is not a natural right. It is a gift of civilization, a benefaction of the law. If a person seeks to become a beneficiary of this gift he must submit to such conditions as the law imposes as a condition precedent to this right. See *Ruling Case Law*, Vol. 27 page 140.

Of course, such rules and regulations may be annulled by the courts if found to be unauthorized, against common right, or palpably unreasonable, but courts are loath to do so and it is only in rare and extreme cases that it has been done. It is stated in the case of *Woods v. Simpson*, 146 Md., 547, 126 At., 882, 39 A.L.R., 1016:

“The maintenance of discipline and the upkeep of the necessary tone and standards of behavior in a body of students in a college is committed to the faculty and officers, and not to the courts, which will not interfere unless the college officials have exceeded their discretion or acted arbitrarily.”

Practically all colleges and universities which are attended by students who do not live at home or with relatives and who necessarily live in rooming houses and boarding houses when in attendance at such institutions, maintain some supervision over such places and require that these rooming houses and boarding houses catering to students, in order to have the approval of the university authorities, shall meet the standards set for their maintenance. It is fair and reasonable, to say the least, that they likewise be protected in the service rendered. Aside from that view of the matter, however, it would clearly, in my opinion, be consistent with proper tone and behavior of a body of students, as well as a proper standard of conduct for individual students to require that they meet honest obligations legitimately and lawfully incurred as incidental to their attendance at the university. It does not seem to me that it could be successfully contended that such a rule or regulation would be unreasonable, arbitrary

or contrary to law. I believe that such rules and regulations would be upheld as being wholesome and consistent with proper training and welfare of the students.

There is but one decided case in Ohio, so far as reported decisions of courts are concerned, where the question of the extent of the powers possessed by trustees of state supported institutions of higher learning is the subject of discussion, and that case did not involve a rule or regulation penalizing students for failure to meet financial obligations incurred in connection with their attendance at the university. The principles discussed and applied in that case are applicable to a situation such as is here under discussion.

In that case there was involved the right of the Trustees of Miami University to make rules and regulations concerning the progress of students of the university and their scholastic fitness to continue their studies. The regulation directly involved in the case was a requirement of the university authorities of Miami University that students earn stipulated credit points measured by the maintenance of certain average grades in order to permit them to continue as students. The legal question involved was the reasonableness and lawfulness of such a requirement and the effect of it. The Court in deciding the case observed that in the Act of the Legislature creating Miami University (7 O.L. 184) it was expressly provided that the said corporation should have the power and authority to make and ordain rules, ordinances and by-laws for the government of the corporation, and to appoint a president and professors, to be styled, "the faculty of the university," and that the faculty "shall have power, with the approbation of the corporation or trustees from time to time to ordain, regulate and establish the mode and courses of education and instruction to be pursued in the university, and also with the approbation of the corporation as aforesaid, to make, publish and execute such code of rules, regulations and by-laws as they shall deem necessary for the well ordering and good government of the university."

After making the above observation, the Court said:

"Obviously, such rules and regulations are subject to the limitations that they must be reasonable and not arbitrary and shall not conflict with the laws of the state or the United States. *Otherwise, they are binding upon all concerned.*"

(Emphasis mine.)

The holding of the Court in the above case as stated in the headnotes, is:

“Term ‘government’ in act vesting government of university in trustees held to include administrative rules and regulations affecting scholastic procedure, as well as disciplinary measures (Section 7939, General Code).”

See *West v. Miami University Trustees*, 41 O. App., 367.

Many authorities outside the state of Ohio, in addition to those already mentioned, might be cited that deal with this question in a general way, all to the effect that managing authorities of state supervised universities may make such rules and regulations for the government of the university and the discipline and conduct of the students as may in their judgment make for efficiency and welfare of the student body and individual students. The only limitation on such power is that such rules and regulations must not be unreasonable, arbitrary or unlawful. The wisdom of such regulations is left to the discretion of the university authorities, which discretion will not be interfered with or overruled by the courts except in cases of its abuse. See:

*Anthony v. Syracuse University*,  
231 N.Y.S., 435;

*Tanton v. McKenney*, 226 Mich. 245,  
197 N.W., 510;

*Splawn v. Woodward* (Tex.Civ.Ap.)  
287 S.W., 677;

*Zucht v. San Antonio School Board*  
(Tex.), 170 S.W., 840;

*Pugsley v. Shellmeyer*, 158 Ark., 247,  
250 S.W., 538;

*Baltimore University v. Colton*, 98 Md., 623,  
57 At., 14.

For a general discussion of the subject see:

*Corpus Juris*, Vol. 56, page 807;

*Corpus Juris Secundum*, Vol. 14, page 1360;

27 *Ruling Case Law*, 140;

27 *Ruling Case Law*, 144;

*Cooley Constitutional Limitations*,  
8th Ed., 345, 355,

86 *A.L.R.*, 486 n.

The law relating to the establishment and maintenance of Kent State University does not in terms, expressly authorize the university authorities to make rules and regulations for the government of the university and the maintenance of proper discipline within the student body, however, the express injunction fixed by law for the trustees of the institution to "control and manage" the same and "to do any and all things necessary for the proper maintenance and continuous operation" of the institution, includes, in my opinion, the power and duty to make proper rules and regulations for the maintenance of discipline within the student body, to the end that ideals of good citizenship as well as those of moral atmosphere be preserved, and that students must so demean themselves that their conduct will not be subversive of the general welfare of the institution.

If the university authorities should determine that students who during a registration period had incurred financial obligations incident to their attendance at the university which they refuse to meet or make an honest effort to liquidate, shall be refused re-registration until payment is made or secured to be made, whether these obligations are owed to the university itself, or to approved student rooming houses or boarding houses, it is my opinion that such regulations would be lawful and proper and would be upheld in the courts in case they should be questioned. Of course, such a regulation should not be arbitrarily applied and an honest effort made by a student to meet the obligation when viewed in the light of all the existing circumstances in connection therewith, should be taken into consideration in the enforcement of the rule. To state my conclusion more succinctly, I am of the opinion that the university authorities of Kent State University may in their discretion promulgate and enforce, if the same is done reasonably and not arbitrarily, a regulation to the effect that students in the university who during a registration period contract financial obligations incident to their attendance in the university which they refuse to meet or make an honest effort to meet, shall be refused the right to re-register for continuous attendance at the university until the obligations are paid or secured to be paid in a manner satisfactory to the creditors whether those obligations are to the university or to approved rooming or boarding houses.

Respectfully,

THOMAS J. HERBERT,

Attorney General.