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INSTITUTIONS OF LEARNING—AFFILIATION OF NOTRE DAME COLLEGE AND URSULINE COLLEGE WITH JOHN CARROL UNIVERSITY APPROVED UNDER CERTAIN CONDITIONS—LIABILITY FOR INDEBTEDNESS OF EACH BY THE OTHER.

SYLLABUS:

1. *Under a working agreement or plan of affiliation effected between John Carroll University on the one hand and Notre Dame College and Ursuline College, whereby each institution maintains its separate and corporate existence for administrative purposes, but the courses of study in each of the colleges and the duty of organizing and fostering those courses of study and the student body and faculty of each college, and in fact the entire college in so far as its academic aims and purposes are concerned are placed under the direct and sole jurisdiction and supervision of the university, the trustees of the university may lawfully confer degrees and honors on the students of each of said institutions upon the recommendation of the faculty of each institution, providing the Superintendent of Public Instruction issues his proper certificate to the university and the same is filed with the Secretary of State in accordance with Section 9923, General Code.*

2. *Under a plan of affiliation between two or more institutions of learning, whereby each institution maintains its separate existence for administrative purposes and affiliates only in the prosecution of its academic aims and purposes, neither institution by force of the arrangement becomes liable for the indebtedness of the other.*

COLUMBUS, OHIO, May 3, 1933.

HON. B. O. SKINNER, *Director of Education, Columbus, Ohio.*

DEAR SIR:—My opinion has been requested concerning certain legal phases of a proposed working agreement between John Carroll University on the one hand, and Notre Dame College and Ursuline College, all located in Cleveland, Ohio.

The proposed working arrangement between these institutions, or "plan of affiliation", as it is denominated by counsel for the institutions, is set out in a letter to you from them, as follows:

"John Carroll University, for brevity hereinafter referred to as the 'University', is a corporation of Ohio organized for educational purposes. Notre Dame College and Ursuline College, hereinafter referred to as the 'Colleges', are similar Ohio corporations. The two Colleges educate women students only.

Both by its charter and its actual organization the University is qualified to function in a broad field. We attach hereto as an exhibit, the 'purpose clause' of the University as it stands in its articles of incorporation. Giving recognition to this circumstance, there has heretofore been an affiliation between the University and the Colleges which has been largely advisory on the part of the University but which is favorably known and spoken of in local circles and by its results has promoted a proposal to further consolidate educational efforts as follows:

1—By proper amendment of their respective articles of incorporation, each college will annex to its name the words 'of John Carroll University'; thus, for example, changing the present name of Ursuline College to Ursuline College of John Carroll University.

2—To justify this change of name and not mislead either the student body or the public, the institutions propose, by proper corporate action on the part of each, to enter into a written agreement whereby the faculty members, the students, and the duty of organizing and fostering the courses of the Colleges, will be placed under the jurisdiction and supervision of the University. In other words, these faculty members, students and courses will become an intrinsic part of the University organization. As a necessary corollary the University will confer degrees in its own name on recommendation of the faculty concerned and on favorable action by the Board of Trustees of the University and will issue suitable diplomas signed by the President and Secretary of the University and by the President or Dean of the college concerned, with the seal of the University affixed thereto. The University will further agree to supplement the present educational resources of the Colleges by its own educational resources and to further the educational development of the faculty members. The courses in question will appear in the general catalogue of the University.

3—In order, nevertheless, to keep the Colleges at all times in direct contact with the situation, it is proposed that a board be established, of which the Very Reverend Bishop of the Cleveland Catholic Diocese will be honorary chairman, and on which the University and the Colleges shall each have two representatives and which may make recommendations.

4—The agreement will extend only to educational matters having to do with the student body and each college entity will retain complete autonomy with respect to its financial and property interests and in the prosecution of its individual aims and all other matters except educational matters, policies and standards as hereinbefore set forth.

5—The agreement shall continue in effect indefinitely but may be terminated by any party upon not less than six (6) months notice.

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The letter in question, after commenting on certain phases of the proposed plan of affiliation, continues:

"At the present time only the two Colleges above named will join in this plan of affiliation. But sometime in the future the plan may be extended to other institutions, provided, of course, at that time such other institutions can satisfy the requirements of the University as well as your Department in respect to scholastic standing and the adequacy of facilities."

The specific questions submitted for my consideration, in the light of the proposed working agreement, as outlined above are:

(1) By whom may degrees be conferred?

(2) Would John Carroll University be liable for indebtedness created by the other institutions?

(3) Would the other institutions be liable for indebtedness of John Carroll University?

Each of the institutions named is an independent corporation organized and incorporated for educational purposes, and while I do not have before me copies of the purpose clauses of the articles of incorporation of Notre Dame College and Ursuline College, I assume their purport is such as to empower the colleges to confer degrees if, and when that privilege is accorded them by the Superintendent of Public Instruction, in accordance with the statutes relating thereto. I am informed both colleges have been authorized to confer degrees in the past.

The purpose clause of John Carroll University expressly recites:

"The purpose or purposes for which said corporation is formed is to establish, maintain and conduct a University in which may be taught, cultivated or promoted all branches of learning * * the various branches of the fine arts, all other branches of professional, technical or industrial education and such other means of education as may be deemed advisable by the Board of Trustees of said corporation; to establish, maintain and conduct one or more colleges, seminaries, institutes, academies, high schools, commercial high schools, preparatory schools and/or departments; * * to affiliate or consolidate, subject to applicable laws of the State of Ohio, with other educational or professional corporations, colleges, seminaries, institutes, hospitals, nursing schools, academies, high schools, commercial high schools and preparatory schools organized or to be organized with purposes similar to or included under the purposes of this corporation; * * to confer degrees on behalf of said corporation and any institution subordinate thereto in connection with any or all of the above named branches of learning for which degrees customarily are or hereafter may be conferred; * *"

It is not the purpose of the plan of affiliation, as outlined, to effect a merger of the several corporations. Each corporation is to maintain its separate corporate existence and to retain complete autonomy with respect to its financial and property interests and in the prosecution of its individual aims, and all other matters except educational matters, policies and standards as set forth in clause (2) above. Each corporation will retain its separate board of trustees for administrative purposes.

It is only as to "organizing and fostering courses in the colleges" and the placing of faculty members and students with respect to academic aims and standards under the jurisdiction and supervision of the university that the institutions propose to collaborate. To accomplish these ends, it is proposed that the colleges and the university enter into a written agreement whereby the faculty members, students and courses of study of the colleges will become an intrinsic part of the university organization. It is further to be agreed on the part of the university that the present educational resources of the colleges shall be supplemented by those of the university and that the further educational development of the faculty members of the colleges be fostered. ◊

A joint board is to be established, upon which the university and the colleges shall each be represented, the purpose of which is to keep each institution in direct contact at all times, with the situation.

The conferring of degrees by institutions of learning is controlled by Sections 9922 and 9923 of the General Code of Ohio. These sections read as follows:

Sec. 9922. "When a college, university, or other institution 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 by-laws 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."

Sec. 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."

It appears from the foregoing, that a college, university or other institution of learning otherwise qualified may, through its board of trustees, upon the recommendation of its faculty, confer such degrees and honors as are customarily conferred by colleges and universities in the United States, having due regard to the courses of study and the accomplishments of the student.

The legislature having thus provided how and when degrees may be conferred it follows that degrees may not be conferred except as provided by the statute. It would appear from this that the trustees of an educational institution would have no power to confer a degree except upon the recommendation of its own faculty. It would have no power to confer degrees on the recommendation of the faculty of some other institution of learning.

With respect to the proposed working arrangement between these institutions, I have before me only the statement of counsel as set out herein. The details of this plan of affiliation, as set out in this statement, are somewhat meagre. It appears that the written agreement which it is proposed shall be entered into, has not yet been drawn or worked out in detail. If, by the terms of this written agreement, when officially entered into, the faculties of Notre Dame and Ursuline Colleges are placed directly under the jurisdiction or supervision of the university so that it may be said that these faculties are faculties of the university and the courses of study pursued in these colleges are courses of study of the university each of which bears the same relation to the trustees of the university as does the faculty of the university itself, with respect to the academic aims and purposes of the university, I would have no hesitancy in saying that the trustees of the university might lawfully confer degrees upon the recommendation of these faculties providing the Superintendent of Public Instruction issues to the university proper certificate and the same is filed with the Secretary of State in accordance with the provisions of Section 9233, General Code.

Under the proposed plan as I understand it, the university would not be liable for the indebtedness created by the other institutions and the other insti-

tutions would not be liable for indebtedness created by John Carroll University, as it appears that each institution is to maintain a separate existence, for administrative purposes.

You also state in your inquiry, "If you see any other legal complications under the proposed affiliations, will you please render full opinion upon all matters involved?"

Each of the institutions mentioned is a private institution. Each institution, no doubt has some endowments. Whether or not the endowments of Ursuline College and Notre Dame College, if any, might be affected by the surrender of exclusive and independent control over their respective faculties is a question upon which I could not, and perhaps should not pass, at least not without a complete and detailed knowledge of the terms of those endowments. In any event, any such questions would not affect the right of John Carroll University to confer degrees and honors on students attending Notre Dame College and Ursuline College in the event a proper working arrangement is made between these institutions as above stated.

In specific answer to your questions I am of the opinion:

1. If a plan of affiliation is effected between John Carroll University on the one hand and Notre Dame College and Ursuline College whereby each institution maintains its separate and corporate existence for administrative purposes, but the courses of study in each of the colleges and the duty of organizing and fostering those courses of study and the student body and faculty of each college, and in fact the entire college in so far as its academic aims and purposes are concerned are placed under the direct and sole jurisdiction and supervision of the university, the trustees of the university may lawfully confer degrees and honors on the students of each of said institutions upon the recommendation of the faculty of each institution, providing the Superintendent of Public Instruction issues his proper certificate to the university and the same is filed with the Secretary of State in accordance with Section 9923, General Code.

Your second and third questions may be answered together.

Under a plan of affiliation between two or more institutions of learning, whereby each institution maintains its separate existence for administrative purposes and affiliates only in the prosecution of its academic aims and purposes, neither institution by force of the arrangement becomes liable for the indebtedness of the other.

Respectfully,

JOHN W. BRICKER,

Attorney General.

760.

BOARD OF EDUCATION—AUTHORIZED TO TRANSFER FUNDS FROM
GENERAL FUND OF SUBDIVISION TO SINKING FUND OR BOND
RETIREMENT FUND TO MEET DEFICIENCY.

SYLLABUS:

Moneys may be transferred from the general fund of a subdivision to the