

2241.

DEGREES AND HONORS CONFERRED BY A COLLEGE, UNIVERSITY OR OTHER INSTITUTION OF LEARNING — PURPOSE — TO PROMOTE EDUCATION, RELIGION, MORALITY OR THE FINE ARTS—AUTHORITY OF TRUSTEES TO CONTINUE SUCH GRANTS SUBSEQUENT TO EFFECTIVE DATE, AM. SUB. S. B. 299, 92ND GENERAL ASSEMBLY, i. e., JULY 25, 1937 — CORPORATE CHARTER — LIMITATIONS AND RESTRICTIONS.

SYLLABUS:

*A college, university or other institution of learning incorporated for the purpose of promoting education, religion, morality, or the fine arts, which had been empowered to grant degrees and honors conferred by colleges and universities of the United States prior to the effective date of Amended Substitute Senate Bill No. 299, of the 92nd General Assembly of Ohio (July 25, 1937), by force of Sections 9922 and 9923 of the General Code of Ohio, as they existed prior to the effective date of said act, and which offered instruction or granted degrees within two years or more prior to the said effective date of said act, may thereafter, on the recommendation of its faculty, grant such degrees and honors as are conferred by colleges and universities of the United States as may be deemed proper by the trustees of such institution, subject, of course, to such limitations and restrictions that may be contained in its corporate charter or the instruments of its endowments, if any.*

Columbus, Ohio, May 1, 1940.

Hon. E. N. Dietrich, Director of Education,  
Columbus, Ohio.

Dear Sir:

This is to acknowledge receipt of your request for my opinion, which reads as follows:

“At a conference with officials from \_\_\_\_\_ College, the following question was raised, and an opinion from your Department is requested:

\_\_\_\_\_ College has not granted degrees since 1930. Senate Bill No. 299, Section 5, states: ‘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.’

\_\_\_\_\_ College since 1930 has continued to give instruction. The question now is: Are they entitled to grant degrees? Our department would approve the work of the college only to the extent of meeting the standards for a degree in elementary education.”

Prior to the enactment of Amended Substitute Senate Bill No. 299, of the 92nd General Assembly (117 O. L. 265), matters relating to the right of colleges and universities to confer degrees were controlled by former Sections 9922 and 9923, of the General Code of Ohio. These statutes provided as follows:

“Sec. 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 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 pub-

lic 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 will be observed from the provisions of law quoted above, that during the time those provisions were in force, any college, university or institution of learning incorporated for the purpose of promoting education, religion, or the fine arts, which had acquired the requisite amount of property as fixed by statute, and had filed a statement thereof under oath with the Secretary of State, might elect officers and appoint a president, professors, tutors and other necessary agents and officers, fix their compensation and enact such by-laws consistent with law, as might be necessary for the government of the institution. Its trustees thereby became authorized to confer degrees upon the recommendation of its faculty, provided the president or board of trustees had filed with the Secretary of State a certificate issued by the Superintendent of Public Instruction stating that the courses of study in such institution had been filed in his office and that in his opinion the equipment of the institution as to faculty and other facilities for carrying out such course of study 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.

I am advised that the college to which you refer in your inquiry had met the requirements of law as they then existed a number of years ago and that its trustees had conferred degrees by authority of law for a number of years until 1930, but had not, for reasons of its own, conferred degrees since that time, but had continued to offer courses of study and functioned otherwise with approximately the same number of students since 1930 as it had for a great many years prior thereto. Many years prior to 1930, the proper certificate of the Superintendent of Public Instruction, in accordance with the then existing Section 9923, General Code, was filed with the Secretary of State, and has never been cancelled or withdrawn, and is now on file.

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 de-

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.”

Inasmuch as the college, which is the subject of your inquiry, has offered instruction continuously for a great many years prior to the effective date of Amended Substitute Senate Bill No. 299 and had continued to offer instruction all the time within two years and more prior to the effective date of the Act, it is not required by the plain provisions of Section 9923-3, General Code quoted above, to meet the requirements of the Act. As it is not required to meet the requirements of the Act, and former Sections 9922 and 9923, General Code, which had during their existence contained the only statutory requirements of law limiting the right of an institution of learning to confer degrees, were repealed when the new Act was enacted, I am of the opinion that the college in question may, through its trustees, grant such degrees as the trustees may on the recommendation of its faculty, in their discretion deem proper, subject, of course, to such limitations or restrictions that may be contained in its corporate charter or the instruments of its endowments if any, and that the Director of Education nor any other agency except the said faculty and trustees has any control over the matter whatever.

Respectfully,

THOMAS J. HERBERT,  
Attorney General.