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DORMITORIES—MONEYS APPROPRIATED TO STATE UNIVERSITIES FOR CONSTRUCTION OF DORMITORIES—MAY NOT LAWFULLY BE USED TO CONSTRUCT APARTMENT BUILDINGS CONTAINING TWO AND THREE UNITS, EACH CONSISTING OF COMPLETE LIVING QUARTERS INCLUDING KITCHEN FACILITIES—PROPOSED UNITS TO BE OCCUPIED BY MARRIED STUDENTS, THEIR WIVES AND FAMILIES—HOUSE BILL 477, 96 GENERAL ASSEMBLY.

SYLLABUS:

The moneys appropriated by the 96th General Assembly in House Bill No. 477, to the state universities for the construction of dormitories, may not lawfully be used for the construction of apartment buildings containing two and three room units, each consisting of complete living quarters including kitchen facilities, which units are to be occupied by married students, their wives and families.

Columbus, Ohio, October 29, 1945

Hon. John M. Wilcoxon, Secretary, Controlling Board
Columbus, Ohio

Dear Sir:

This will acknowledge receipt of your communication which reads as follows:

"The Controlling Board has requested that I submit the following to you for your opinion.

Such Board has a request now pending from Miami University requesting the Board's consent and approval as set forth in Section 8 of House Bill No. 477 on the matter related hereinafter.

Pertinent parts of the request letter from Miami University are quoted below;

'It is the intention of our Board of Trustees to invest approximately one-half of the amount appropriated to Miami University under House Bill No. 477 for dormitory construction purposes in constructing a three-story fireproof apartment building, which for the next few years would be made available for veterans and families who are returning to the campus to complete their education and subsequently for graduate students and instructors. Satisfactory housing accommodations at reasonable rates are not available and there is every reason to anticipate that the number of married veterans enrolled will increase for the next three, four or five years.'

'In common also with the large majority of educational institutions we have failed under the pressure of providing housing for students to give sufficient consideration to the needs of graduate students many of whom are married and have had to get along as best they could with houses and apartments which were

available. In many instances these have been unsatisfactory and expensive and too frequently men returning for graduate work have had to leave their families elsewhere which, of course, is not satisfactory. We think therefore that having apartments available would help later in the solving of this problem. Furthermore, it would be a great advantage to have some apartments available for rental to younger instructors.'

'Some preliminary estimates indicate the possibility of constructing an apartment building of 30 two-room units and 21 three-room units at a cost of approximately \$250,000.00, on the assumption that the unit cost can be held to about 60 cents per cubic foot.'

'* * * we hereby make request for the release of the sum of \$15,000.00 from the appropriation to Miami University" for the purpose of employing an architect to design architectural plans, specifications and services for a Veterans' Apartment Building.'

In view of the language contained in Section 4863-6, G. C., a question has been raised as to the authority of the Controlling Board granting its consent and approval for the purposes as outlined in the request letter of Miami University.

"The question as I understand it is: May a state-owned University construct a dormitory for students and families with the money appropriated in House Bill No. 477 in view of the language used in Section 4863-6, G. C.? Also, a further question as to the Controlling Board's authority to release funds in accordance with Section 8 of House Bill No. 477 for the purposes mentioned."

While your inquiry, stated in terms, concerns the authority of the trustees of state-owned universities to construct dormitories for students and members of their families, I assume from the letter addressed to your Board by Miami University, a portion of which is set out in your communication, that the question is whether or not such trustees are authorized in law to construct apartment buildings containing two and three room units consisting not only of bedrooms but also of general living quarters, including kitchen facilities.

At the outset, it should be pointed out that the trustees of the state universities are public officers and as such have only those powers which are expressly conferred upon them by statute and such implied powers as are necessary to carry into effect, those expressly granted.

In regard thereto, it is stated in 32 O. Jur., pages 933 and 934:

“* * * As a general rule, public officers have only such powers as are expressly delegated them by statute, and such as are necessarily implied from those so delegated. These powers must be exercised in the mode prescribed by statute. It is equally well settled that where the statute prescribes the mode by which power conferred upon a public officer or board shall be exercised, the mode specified is also the measure of power granted.”

It therefore becomes necessary to look to the statutes defining the powers of such trustees. Relative thereto, your attention is directed to Section 4863-6 of the General Code, which in so far as material hereto reads:

“The boards of trustees of Kent State University, Bowling Green State University, Ohio University, Miami University, the college of education and industrial arts at Wilberforce University, Wilberforce, Ohio, and Ohio State University are hereby authorized to construct, equip, maintain and operate upon sites within the campuses of the above universities, respectively, as their respective boards may designate therefor, buildings to be used as dormitories for students and members of the faculty and servants of said universities, and to pay for same out of any funds in their possession derived from the operation of any dormitories under their control, or out of funds borrowed therefor, or out of funds appropriated therefor by the general assembly of Ohio, or out of funds or property received by gift, grant, legacy, devise, or otherwise, for such purposes.”

It will be noted that the power conferred is limited to the construction of buildings to be used as dormitories. The word “dormitory” is defined in Webster’s New International Dictionary, 2nd Edition, as “a sleeping room, or a building, containing a series of sleeping rooms, a sleeping apartment capable of containing many beds, especially one connected with a college, boarding school, monastery.”

It is a fundamental rule of statutory construction that words of a statute should be given their ordinary and natural meaning and courts should be slow to impart any other than their natural and commonly understood meaning to terms employed in the legislation. *Denbow v. State*, 18 Ohio 11; *State, ex rel. v. Green Co.*, 94 O. S. 296.

With respect to said rule it is declared in 37 O. Jur., page 542:

“As a general rule, words of a statute, in common use or other than terms of art or science, will be construed in their ordinary acceptation and significance and with the meaning commonly attributed to them. Indeed, the intention of the legislature to use statutory phraseology in such manner has even been presumed. Ordinarily, such words are to be given their natural, literal, and full meaning. These rules are applicable unless such an interpretation would be repugnant to the intention of the legislature, as plainly appears from a construction of the entire statute.”

Therefore, since the power conferred by the statute authorizes the construction of dormitories, I am quite unable to perceive how there may be derived from such power the authority to construct apartment buildings, consisting of separate units, each containing complete living quarters.

Moreover, the power granted by the statute is further restricted in that the buildings which may be constructed are to be used as dormitories for *students and members of the faculty and servants* of the respective universities. This limitation would, of course, prohibit the use of any such buildings by persons other than those enumerated in the statute. It would appear, therefore, that not only do the trustees of the state-owned universities lack authority to construct the apartment houses in question, but any dormitories erected by them may be used and occupied only by students and members of the faculty and servants of the university.

The appropriation for the construction of dormitories made under House Bill No. 477 of the 96th General Assembly is as follows:

“A loan under provisions of Senate Bill No. 333 for dormitory construction purposes to the following universities:

Ohio State	\$500,000
Miami	500,000
Ohio	500,000
Bowling Green	500,000
Kent State	500,000
Wilberforce	200,000

Said loans to be repaid to the state at the rate of not less than 7 per cent of the principal amount annually to be deposited to the credit of the general revenue fund.

Total Dormitories\$2,700,000”

Senate Bill No. 333, referred to in the above provision, has been codified as section 4863-6, supra.

From this it is apparent that the moneys appropriated are to be expended in accordance with and under the powers conferred by said Section 4863-6.

You also inquire as to the authority of the Controlling Board to release funds in accordance with Section 8 of House Bill No. 477, for the above purpose. In said section it is provided:

“No moneys herein appropriated for the purchase of real estate in any amount, or for the construction of new buildings or new structures or other public improvements to cost in excess of one thousand dollars, shall be expended without the consent and approval of the controlling board herein provided for.”

It will be observed that the above provisions authorize the Controlling Board to give its consent and approval to the construction of buildings only when moneys for such construction have been appropriated in the act. Since, as above pointed out, the moneys appropriated in the act were appropriated for the construction of dormitories and not apartment buildings, and, inasmuch as the Controlling Board has before it information and facts which indicate that such moneys so appropriated are to be used for the construction of apartment buildings, it seems to me that the members of said Board, being public officials and as such being presumed to discharge their duties in good faith and in the exercise of sound judgment, should consider the legality of the contemplated project. In other words, even though the provisions of Section 8, standing alone, appear to confer authority on the Controlling Board to give its consent and approval to the proposed construction, the language of the provisions under which the money is appropriated and the terms of Section 4863-6, General Code, should likewise be considered, and if this is done it is difficult to understand how the members of said Board would in the light of the facts submitted to them approve such construction.

You are therefore advised, in specific answer to your question, that the moneys appropriated by the 96th General Assembly in House Bill No. 477, to the state universities for the construction of dormitories, may not lawfully be used for the construction of apartment buildings containing

two and three room units, each consisting of complete living quarters including kitchen facilities, which units are to be occupied by married students, their wives and families.

Respectfully,

HUGH S. JENKINS

Attorney General