

2285.

APPROVAL, BONDS OF CLARK COUNTY, OHIO—\$59,557.85.

COLUMBUS, OHIO, September 4, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2286.

APPROVAL, BONDS OF HARRIS TOWNSHIP, OTTAWA COUNTY, OHIO
—\$18,000.00.

COLUMBUS, OHIO, September 4, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2287.

KENT STATE COLLEGE—FEES COLLECTED FROM STUDENTS MATRICULATING THEREIN—VARIOUS KINDS THAT SHOULD BE DEPOSITED IN STATE TREASURY WEEKLY DISCUSSED.

*SYLLABUS:**Status of various fees collected from students attending Kent State College discussed.*

COLUMBUS, OHIO, September 4, 1930.

HON. JOSEPH T. TRACY, *Auditor of State, Columbus, Ohio.*

DEAR SIR:—Your recent communication reads as follows:

“We are making an examination of Kent State College and find that some fees and collections made at the above school are not deposited in the state treasury in compliance with Section 24, G. C., but are deposited in a local bank and later disbursed by the college for various purposes.

We desire an opinion concerning the depositing of the following fees and collections which are not now deposited in the state treasury weekly:

1. In the departments of home economics, biology, art, music, kindergarten primary, manual training, physical education and psychology, laboratory supplies of raw materials and things needed for practical illustration are a necessity. These various supplies are used up by the students in the different lessons in the department. Each student is charged a fee, not for the purpose of revenue, but to cover, in part, the actual cost of materials used.

2. (a) In the departments of chemistry and physics fees are charged to cover use of materials and breakage of equipment. A portion of this is

returned to the students depending upon what materials have been used and what equipment has been lost or broken.

(b) A room reservation of \$3.00 is charged the students who intend to live in the dormitories at the college. This fee is later refunded depending upon whether the student occupies the room or not.

3. A fee for health service is collected from each student enrolled at the college. The revenue from such fees is used to maintain a department of health of the college.

4. A fee is charged students enrolled in extension courses. A portion of this is deposited in the state treasury and a portion is kept by the college. The portion kept by the college is used for the traveling expenses of the instructors in extension work.

5. A student activity fee is charged each student enrolled at the college. The receipts from this source have been deposited in the following funds carried at the college:

- (a) Athletics.
- (b) Entertainment.
- (c) College paper.
- (d) Women's league.
- (e) Men's union.
- (f) Reserve fund.

6. Collections from the college bookstore—The college bookstore is maintained and receipts from this source are used to maintain the store and purchase books and supplies to be sold to the students.

7. Receipts from dining room service.

8. Receipts from room rent in the dormitories.

9. Receipts from plays and other student activities.

10. A fee is charged all students graduating and is known as a diploma fee. The receipts from this source are due to purchase diplomas.

11. On entering the college a fee is charged each student for an intelligence test. These fees are used to purchase supplies for the tests.

We are familiar with the opinions of the Attorney General, relative to the depositing of fees by colleges, found in Vol. I, p. 35, and Vol. II, pp. 1149, 1151, and 1193, for the year 1915, and the opinion in the year 1920 to be found on page 283, Vol. I, but there is some doubt as to the present status of such fees and collections as above enumerated. Enclosed find schedule fees."

Section 24 of the General Code reads:

"On or before Monday of each week every state officer, state institution, department, board, commission, college, normal school or university receiving state aid shall pay to the treasurer of state all moneys, checks and drafts received for the state, or for the use of any such state officer, state institution, department, board, commission, college, normal school or university receiving state aid, during the preceding week, from taxes, assessments, licenses, premiums, fees, penalties, fines, costs, sales, rentals or otherwise, and file with the auditor of state a detailed verified statement of such receipts. Where tuitions and fees are paid to the officer or officers of any college, normal school or university receiving state aid, said officer or officers shall retain a sufficient amount of said tuition fund and fees to enable said officer or officers to make refunds of tuition and fees incident to conducting of said tuition fund and fees. At the end of each term of any college, normal school or university receiving state aid the officer or officers having in charge said

tuition fund and fees shall make and file with the auditor of state an itemized statement of all tuitions and fees received and disposition of the same."

The first opinion of the Attorney General to which you refer held, as disclosed by the syllabus, that:

"Deposits by students of colleges, universities and normal schools, against which supplies and broken apparatus are charged, are not to be paid into the state treasury weekly, under Section 24, General Code.

If students are charged for supplies for services, as the same are furnished, the sums so received should be paid into the state treasury weekly, under Section 24, General Code.

Receipts from dining service and room rent in dormitories are not for the use of any university, college or normal school as such, or for the use of the state, but for the use and maintenance of the dormitory, and are, therefore, not to be paid weekly into the state treasury.

Athletic fees and receipts from class plays and from entertainments, assumed to be student activities, are not for the use of the institution or the state and should not be paid into the state treasury."

In the body of said opinion it is stated in substance that it is difficult to establish a rule of universal application with reference to whether funds must be turned into the state treasury. It is suggested, however, that it is the use made of such funds which controls rather than the source from which they are obtained.

Said opinion further states that in dealing with the funds of colleges, normal schools, etc., two questions of a general nature must be considered, viz.:

1. Are the moneys in question tuitions and fees, to the conducting of which refunds are incident?
2. Are the moneys received for the state or for the use of the college or university?

In the second opinion which you mention, the then Attorney General held:

"Of the fees collected by Ohio University for material used, the balance unexpended to be returned pro rata to the students paying same, the university is authorized to retain from weekly payments a sum sufficient to care for anticipated refunds, making itemized statement of disposition of the same as provided in Section 24 as amended."

The third opinion to which you refer, which was rendered by the same Attorney General who rendered the other opinions hereinbefore mentioned, held as disclosed by the syllabus:

"Fees charged students by a university for special instructions, and upon which no refund is to be given, must under the provisions of Section 24, G. C., as amended, be paid into the state treasury.

A university is not authorized to permit the instructor to collect the fees himself and apply the same upon his salary as fixed."

The 1920 opinion to which you refer dealt mostly with the question as to who was the proper custodian of the funds collected for dormitory room rent and board from students. The syllabus of said opinion reads:

- "1. In the absence of a statute particularly designating a custodian for

moneys collected for dormitory room rent and board from students attending the state educational institutions located at Athens, Bowling Green, Columbus, Kent, Oxford and Wilberforce, the board of trustees of such institutions are the proper custodians thereof. In the interest of administrative convenience, however, said boards may designate some proper person custodian of such moneys.

2. Such moneys should be disbursed upon the approval of such boards of trustees and not otherwise.

3. Such moneys should be used for the maintenance of the dormitory room rent and board service, and in this connection the term 'maintenance' includes, among other things, the cost of light, heat, water, repairs, upkeep of equipment and insurance. Said term does not, however, in this connection include interest on investment.

4. The words 'shall fix rates of tuition,' found in paragraph 3, Section 4, H. B. No. 44, 101 O. L. 321, are permissive, merely, and not mandatory.

5. The board of trustees of the several state normal schools mentioned in Section 7654-7, G. C., are the proper custodians of the moneys paid by the state for model rural schools, pursuant to said section. Said moneys should be disbursed upon the approval of said boards of trustees, and not otherwise. Primarily such moneys should be applied to the maintenance of said model schools, but any excess remaining after such purpose is satisfied may be disposed of for such other school purposes as the board of trustees at said state normal schools think proper."

In the body of the opinion the then Attorney General states that he concurs in the opinion which you first mention, found in the Opinions of the Attorney General for 1915, page 35.

In an opinion found in Opinions of the Attorney General for the year 1927, p. 227, it was held, as disclosed by the syllabus:

"1. Funds coming into the hands of any department of the Ohio State University, must be, by the terms of Section 24 of the General Code, deposited weekly with the state treasurer, and such funds so deposited are not subject to reuse 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."

It is difficult to determine in many instances just what the proper rule should be. Clearly, under the language of Section 24, supra, where tuition or fees are, under certain circumstances, the subject of a refund, the college authorities are permitted to retain a sufficient amount to make the refund. This does not mean, however, that all of the tuition or fees received should be retained. Only so much as is reasonably necessary to make refunds should be held back and the remainder should be paid into the state treasury weekly, the officers subsequently at the end of each term making a detailed statement of the disposition of the amounts retained.

On the other hand, the Opinions of the Attorney General, from which I have quoted, recognize that certain types of charges are not to be regarded as received for the use of the college. The distinction is one that is hard to apply, but these charges may be broadly classified as those made for the conduct of extra curricular activities. Typical of this type would be receipts from plays and other student activities.

With the foregoing principles in mind, it becomes necessary to give individual attention to the charges concerning which you inquire.

Item 1 is, in my opinion, clearly payable into the state treasury. I see no valid distinction between the payment by the college for the instruction itself and the payment for the materials used in the course of instruction. Certainly the college could not retain fees for the purpose of paying instructors and I do not feel that it may retain the fees for the purchase of material. I do not understand that the fee here in question is subject to any refund and accordingly no refund of any portion would be authorized.

Item 2 (a) also covers materials and in addition breakage of equipment. Since this fee is subject to refund, the college may properly retain a sufficient amount to cover such refunds, the balance to be paid into the state treasury.

Item 2 (b) is also a fee subject to refund, but in addition it is incident to the operation of the dormitories. My predecessors in office have held that charges in connection with dormitories are not payable into the treasury, and while the matter is not free from doubt, I am not disposed to disturb the present practice. Accordingly, the college may properly retain this charge.

It is stated in connection with Item 3 that the fee for health service is used to maintain a department of health in the college. It seems to me that, if a department of health is established, the payment of the expenses thereof should be made pursuant to appropriation by the legislature. Since it constitutes a department, it is apparently recognized as a part of the regular college activities and I am of the opinion that these fees should be paid to the state treasurer.

The same statement may be made in reference to Item 4. The extension courses of the college constitute a part of its curriculum and the regular fees therefor should be paid into the state treasury, and any expenses of the instructors should be paid from appropriations made by the legislature. The purposes of the fee described in Item 5 are apparently all separate and apart from the instructional purposes of the college. Without expressing any view as to the legality of a compulsory fee for these purposes, I am of the opinion that these fees need not be paid into the state treasury.

Item 6 deals with the collections from the college bookstore. The bookstore provides the means whereby, for the prices stipulated, students may obtain text books and various other materials necessary in connection with their studies. For this reason, the action of the college in maintaining this store is justified. While not so directly related to the instructional purpose of the college as other items, I feel that the operation of the store is strictly a university purpose and that the moneys received from the sale of supplies are received for the use of the college and hence, under the provisions of Section 24, *supra*, must be paid into the state treasury.

It may be added that a practicable method of handling funds of this character is to secure authority of the legislature to establish a rotary fund, since by this method moneys paid into the treasury are immediately available for the purposes of the enterprise from which they are derived.

Items 7 and 8, which deal with receipts from dining room service and room rents are, under the opinions of my predecessors, not payable into the treasury. As I have before stated, I am not inclined to change the present practice, although the matter is one which, in the first instance, might have been otherwise decided.

Item 9, constituting receipts from plays and other student activities, is, under the rule heretofore announced, not payable into the treasury since these receipts do not pertain to the direct purposes of the college.

Item 10 relates to the fee charged students who graduate, which fee is apparently to cover the cost of the diploma. The furnishing of a diploma, which is the ultimate goal of the student, is certainly a direct part of the college work and the expense incident thereto is, therefore, purely a college expense. I accordingly know of no reason why these funds should not be turned into the treasury.

The last item deals with a fee charged for an intelligence test. Apparently the college has made these intelligence tests a part of the routine through which a student must go in order to enter the college. It presumably is recognized as a strictly college function and, in my opinion, it must be concluded that the fee charged therefor is payable to the state treasury.

In conclusion, I desire to state that in my view the provisions of Section 24 are such as to require the payment of all compulsory fees exacted from students into the state treasury. The plain import of the statute is that all moneys received by a state college for its use shall be so paid, and the receipts from whatever activities are prescribed by the college must necessarily be received for the purpose of the college, for otherwise engaging in the particular activities would be an *ultra vires* act. I am aware, however, that this broad statement is at variance with the expressed conclusions of my predecessors and I am accordingly not inclined to disturb the present practices except as I have indicated above.

It may further be pointed out that the conclusions hereinabove stated are not such as to cripple in any way the financial operation of the institution. Under the appropriation act of the 88th General Assembly, there is made available to Kent State College definite sums of money together with "receipts from student fees." It follows that fees paid in during the current year are immediately available for the purposes of the college. The only inconvenience resulting is the necessity of such receipts being properly accounted for and distributed through state channels.

Respectfully,

GILBERT BETTMAN,
Attorney General.

2288.

APPROVAL, BONDS OF CITY OF PIQUA, MIAMI COUNTY, OHIO—
\$21,000.00.

COLUMBUS, OHIO, September 4, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

2289.

APPROVAL, BONDS OF PORTSMOUTH CITY SCHOOL DISTRICT, SCI-
OTO COUNTY, OHIO—\$5,000.00.

COLUMBUS, OHIO, September 4, 1930.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.