4030

BOARD OF EDUCATION—UNAUTHORIZED TO PAY TUITION OF HIGH SCHOOL STUDENTS TO KENT STATE NORMAL COLLEGE—HIGH SCHOOL MAINTAINED BY SUCH COLLEGE.

SYLLABUS:

A school district board of education may not lawfully pay tuition to the Kent State Normal College for pupils of the district who attend a high school maintained by said college, even though the district does not maintain a high school.

COLUMBUS, OHIO, February 5, 1932.

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

DEAR SIR:—This will acknowledge receipt of your request for my opinion which reads as follows:

> "I shall be glad to have your opinion as to whether a Board of Education outside the city of Kent may pay tuition to the Kent State Normal High School, which is a training school conducted as a part of the Kent State Normal College."

The authority for a board of education to pay tuition for resident pupils who attend schools other than those maintained by the board is purely statutory. This authority is found in Sections 7734, 7736, 7747, 7748, 7748-1, 7750 and cognate sections of the General Code. An examination of these several sections of the Code authorizing boards of education to pay tuition for school attendance outside the district clearly shows that the payment of tuition to any other agency than a board of education for some other school district in Ohio is not contemplated.

There is no authority, either express or implied, in the statutory law of Ohio for the payment of tuition by a school district board of education to a normal school or college for any of the resident pupils of the district. In the absence of such authority no other conclusion can be reached than that the authority does not exist.

I am therefore of the opinion, in specific answer to your question, that a school district board of education may not lawfully pay tuition to the Kent State Normal College for pupils of the district who attend a high school maintained by said college, even though the district does not maintain a high school.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4031

MIAMI UNIVERSITY—MAY ENTER INTO A BINDING CONTRACT—PUBLIC INSTITUTION WITHIN MEANING OF SECTION 1809-1, G. C.

SYLLABUS:

1. *While Miami University may not have all the attributes of a public institution, it is nevertheless a public institution within the perview or meaning of Section* 1809-1, *General Code.*

2. *A contract entered into between the Village of Oxford and Miami University Board of Trustees complying with the provisions of Section* 1809-1, *General Code, is a valid and binding contract.*

COLUMBUS, OHIO, February 5, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your request for my opinion, with which you enclose correspondence between your office and the Solicitor for the Village of Oxford, from which correspondence I deduce the following set of facts:

In the year 1927, the Village of Oxford proposed to construct a new sewage disposal plant to be used jointly by itself, the Miami University and the Western College for Women. It further appears that Miami University, which occupies a large part of the territory of the Village of Oxford, is also the owner of lands located outside the village and that such plant was erected for the use of such territory lying without the village and belonging to Miami University, as well as that portion of the university's land lying within the village.

It further appears that pursuant to Section 1809-1, of the General Code of Ohio, the village, by duly enacted ordinance, being Ordinance No. 172, entered into a contract with Miami University, to connect the sewer system of such institution with that of the Village of Oxford.

The queries raised by the Solicitor's letter are:

> "Do the words, 'Any commission or Board vested with authority to erect or manage a state institution located outside of the corporate limits of a municipality' include such institutions as The President and Trustees of The Miami University within the full meaning of that section?" (1809-1, General Code).
>
> "Is The Miami University a private institution receiving state aid, and without the meaning of said section?"

Section 1809-1 of the General Code, reads as follows:

> "Any commission or board vested with authority to erect or manage a state institution, located outside of the corporate limits of a municipality and the council of such municipality may enter into a contract upon such terms and conditions as may be agreed upon, to connect the sewer system of such institution with that of such municipality. Such contract may include payment for the increased cost to such municipality occasioned by such connection and service rendered, provided that such contract shall be made for a period of not less than ten years, and is approved by the governor and the attorney general."

An examination of the ordinance or contract, as set forth in the correspondence you enclose, discloses that such contract was entered into with all the formalities required by Section 1809-1, supra, and it is to be presumed that at the time of the execution of such agreement it was within the contemplation of all the parties that Miami University was a state institution or they would not have followed the provisions of such section in the execution of the contract.

In order to answer the inquiries suggested it is necessary to construe Section 1809-1, supra, to determine whether or not it is a contract with a commission or board vested with the authority to erect or manage a state institution, or in other words, whether the corporation known as "the President and Trustees of the

Miami University" is a commission or board vested with the authority to erect or manage a state institution.

The courts of many states have held that the mere fact that the board of trustees or regents of a state university were incorporated did not, of itself, prevent a college or university from being a public institution or agency of the state. See *Tulane Educational Fund* vs. *New Orleans,* 38 La. Ann. 292; *Board of Assessors* vs. *University of North Carolina,* 43 N. C., 257; *Auditor General* vs. *Regents of University of Michigan,* 28 Kans. 376; *Illinois Industrial University Trustees* vs. *Champaign County Supervisors,* 76 Ill., 184; *State ex rel. Johnson* vs. *Clauser,* 51 Wash. 548; *Hopkins* vs. *Clemson Agricultural College of South Carolina,* 221 U. S., 636.

In the solicitor's letter it is further suggested that Miami University is not entirely supported by state funds, by reason of the fact that the profits received from its dining halls are retained by the corporation and used for the erection of dormitories and additional buildings.

In the case of *State ex rel. Johnson* vs. *Clauser, supra,* the court, in holding that the State College of Washington was a state institution, held that although this college was controlled by a board of regents, and although the income from the college was derived, in part from the state and general government, in part from rental received from students, and in part from the sale of its agricultural products, these facts did not prevent it from being a state institution. In this instance, I might further add that the members of the board of regents are appointed by the Governor, with the approval of the Senate, as are the trustees of Miami University.

In the case of *Hopkins* vs. *Clemson Agricultural College of South Carolina, supra,* it is to be noted that Section 4 of the charter of such institution is almost identical with that of Miami University, wherein the board of trustees of such college is created a body politic and corporate, and the court, in that case, in holding that such corporation could be sued, held that since such college was a public institution, it could sue and be sued only because in its charter it was specifically given such right.

In the act creating Miami University, appearing in 7 O. L., 184, and in the subsequent amendments thereto, by the legislature, nothing appears which would tend to show that such institution is not a public institution except that the corporation was created by the legislature for the purpose of holding title to the property given to such university and for the purpose of managing and controlling such university, or, in other words, transferring from the legislature certain duties with respect to the management of such institution.

In the correspondence enclosed, it is suggested that if Miami University is a state institution, its president is by reason of that fact a state officer, and that a non-resident could not be appointed to such office of president. However, upon examination of the act creating Miami University, referred to above, and in the amendments to said act, it is to be noted that the statute says the board of trustees shall be a body corporate and politic, under the name of "The President and Board of Trustees of Miami University." Such act further gives the Board of Trustees the right to elect, hire and discharge the president of such university. If we refer to Article VII, of the Constitution of the State of Ohio, which article is captioned, "Public Institutions" we find therein Section 2, which reads:

> "The directors of the penitentiary shall be appointed or elected in such manner as the general assembly may direct; and the trustees of the

benevolent, and *other state institutions,* now elected by the general assembly, and of such other state institutions as may be hereafter created, shall be appointed by the governor, by and with the advice and consent of the senate; and upon all nominations made by the governor, the question shall be taken by yeas and nays, and entered upon the journals of the senate."

We would further quote Section 7939, of the General Code, with reference to the appointment of trustees of Miami University, which reads as follows:

"The government of Miami university shall be vested in twenty-seven trustees, to be appointed by the governor by and with the advice and consent of the senate. Nine trustees shall be appointed every third year, for a term of nine years, beginning on the first day of March in the year of their appointment. Vacancies in the board of trustees shall be filled for the unexpired term in the same manner. In addition to the trustees herein provided for, the director of education shall be a member of the board of trustees of Miami University, with power to speak but not to vote therein."

While I do not desire to hold that for all purposes, Miami University is a public institution or a public corporation, I must nevertheless follow the rule of statutory construction in construing the language of the legislature and endeavor to arrive at its intention in enacting such section and where in legislating for Miami University, it treats such university as a public institution, I must hold that while such university may not be a public institution for all purposes, it is a public institution within the purview of Section 1809-1, supra, and that when the Village of Oxford has contracted with a public institution, in compliance with the statutes concerning such contract, it is binding upon both the institution and the village.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4032.

DENTAL HYGIENIST—MUST PRACTICE UNDER SUPERVISION OF A LICENSED DENTIST—MANNER OF SUCH SUPERVISION DISCUSSED.

SYLLABUS:

1. *A dental hygienist may legally practice such profession only in a dental office, public or private school, hospital, dispensary or public institution, and there only when such practice is under the supervision of a licensed dentist.*

2. *A dental hygienist may not legally practice such profession in his or her office several blocks distant from a dental office and not a part thereof.*

COLUMBUS, OHIO, February 5, 1932.

Ohio State Dental Board, Columbus, Ohio.

GENTLEMEN:—Your request for opinion is:

"Dr. Blank, a licensed and registered dentist, sends out notices to