

Another of said bonds is for the sum of \$100,000, given for the purpose of securing the funds in the hands of the Treasurer of State for the unexpired term of Bert Buckley, as ex-officio custodian of the funds of the Industrial Commission of Ohio and executed in pursuance of the provisions of Section 1465-56a, of the General Code, which said section requires the approval of the Governor as to amount and surety. The Southern Surety Company has signed as surety upon this bond and the same has been approved by the Governor.

The third bond which you have submitted is for the sum of \$100,000 and given for the purpose of securing the deposit held by the Treasurer of State in his capacity of custodian of the Teachers Retirement Fund, for the unexpired term of Bert B. Buckley. This bond is executed in pursuance to the provisions of Section 7896-13 of the General Code, which said section requires the approval of the Governor as to amount and surety. The Southern Surety Company has signed as surety and the Governor's approval appears thereon.

In view of the fact that the bonds have been properly executed and approved by the Governor, I hereby approve them as to form. Said bonds are being returned herewith and should be filed in your office.

Respectfully,
GILBERT BETTMAN,
Attorney General.

81.

BOARD OF TRUSTEES OF OHIO STATE UNIVERSITY—NO POWER TO GRANT EASEMENT ACROSS LANDS OF INSTITUTION FOR CITY SEWER CONSTRUCTION—ACT OF GENERAL ASSEMBLY NECESSARY.

SYLLABUS:

Without legislative authority for that purpose, the board of trustees of the Ohio State University has no power or authority to grant to the city of Columbus an easement in and across the lands of said institution for the purpose of a sewer to be constructed and maintained therein by said city.

COLUMBUS, OHIO, February 9, 1929.

HON. CARL E. STEEB, *Secretary Board of Trustees, Ohio State University, Columbus, Ohio.*

DEAR SIR:—This is to acknowledge receipt of your communication of recent date, which reads as follows:

“The city of Columbus is about to enter upon a comprehensive plan of sewer construction. This plan calls for a large intercepting sewer to be constructed through the western portion of the University grounds.

The city attorney has prepared and just placed in my hands a proposed bill for presentation to the General Assembly granting the Board of Trustees authority to grant an easement to the city of Columbus for the construction of this sewer.

The question I should like to raise is this: do the present powers of the Board of Trustees permit the granting of permission to the city of Columbus to construct a sewer through the grounds, or is authority from the Legislature

necessary? During the years 1888-1890, inclusive, two sewers were run through the entire campus, but I do not find any legislative authority granting such permission.

The Board of Trustees holds its next meeting on Monday, February 11. If it is possible to receive your advice on this question by that time it will be greatly appreciated."

In the consideration of the question presented in your communication, it is noted that by the provisions of Section 7942, General Code, the government of the Ohio State University is vested in a board of seven trustees who are appointed by the Governor, with the advice and consent of the Senate. Section 7943 provides that the trustees and their successors in office shall be styled the "Board of Trustees of the Ohio State University," with the right, as such, of suing and being sued, of contracting and being contracted with, and of making and using a common seal, and altering it at pleasure. Sections 7950 and 7952, General Code, are likewise applicable in the consideration of the question here presented. These sections provide as follows:

Sec. 7950. "The board of trustees shall have general supervision of all lands, buildings, and other property belonging to the university, and the control of all expenses therefor, but shall not contract a debt not previously authorized by the General assembly of the state."

Sec. 7952. "The title for all lands for the use of the university shall be made in fee simple to the State of Ohio, with covenants of seizing and warranty, and no title shall be taken to the state for the purposes aforesaid until the attorney general is satisfied that it is free from all defects and incumbrances."

A consideration of the foregoing statutory provisions leads to the conclusion that the Ohio State University, as represented by the Board of Trustees, is a branch or agency of the state government, and is not a corporation with independent powers, as such.

In the case of *Neil vs. Board of Trustees, Ohio Agricultural and Mechanical College*, 31 O. S. 15, the court in its opinion, referring to the act providing for the establishment of the Ohio Agricultural and Mechanical College, the predecessor in name of the Ohio State University, said:

"It creates a board of trustees to be appointed by the Governor, by and with the advice and consent of the senate, and commits to such board the government, control and general management of the affairs of the institution: and while the statute authorizes the board to make contracts for the benefit of the college, and to maintain actions, if necessary, to enforce them, and to exercise other powers similar to those conferred on bodies corporate, it does not assume to, nor does it in fact, create or constitute such board of trustees a corporation; and hence does not clothe it with corporate functions or powers. *The State ex rel. The Attorney General vs. Davis*, 23 Ohio St. 434. The college is a state institution, designed and well calculated to promote public educational interests, established for the people of the whole state, to be managed and controlled by such agencies as the legislature in its wisdom may provide. Similar powers, but perhaps less extensive, because less required, are conferred on the trustees of the various hospitals for the insane (73 Ohio L. 80), and on the board of managers of the Ohio Soldiers' and Sailors' Orphans' Homes (67 Ohio L. 53), and other institutions of the state."

What is required by the city of Columbus in the present instance is a perpetual easement in and to a strip of ground fifteen feet in width in and across the lands of the Ohio State University for the purpose of constructing and maintaining a sewer, together with sufficient ground for a regulating chamber and a temporary easement in a 100 foot strip of ground across said land during the period of construction of said sewer. An easement is an interest in land which can be created only in the same manner in which an estate in fee simple can be created, that is, by deed or by prescription. *Yeager vs. Tuning*, 79 O. S. 121. On the considerations above noted, and for the reason that the lands of the Ohio State University are owned and held in fee simple by the State of Ohio and not by the Board of Trustees of said institution, said Board of Trustees has no more power or authority to grant a perpetual easement to the city of Columbus for the purpose of constructing the proposed sewer above referred to than it would have to convey said strip of land in fee simple for this or any other purpose.

This conclusion is in accord with former opinions of this department touching the question. In an opinion of this department under date of February 21, 1916, Opinions of the Attorney General for 1916, Vol. I, p. 318, it was held that the Board of Trustees of the Ohio State University had no power, without legislative authority, to permit the city of Columbus to erect a city hospital on the university grounds. Later, under date of October 30, 1916, this department, in an opinion found in Opinions of the Attorney General for 1916, Vol. 2, p. 1730, held that the Board of Trustees of the Ohio State University had no authority, without legislative sanction, to dedicate university lands to the city of Columbus for street purposes.

In this connection it appears that the absence of authority on the part of the Board of Trustees of the Ohio State University, to grant to others any right or interest in the university lands without legislative sanction, has been recognized by the Legislature itself from time to time in acts passed by it, granting such rights or authorizing the Board of Trustees of said institution to do so.

In an act passed April 15, 1892, 89 O. L. 301, the Legislature granted to the city of Columbus the right to construct and improve a public road or street through the lands of the Ohio State University along the east bank of the Olentangy River. On May 31, 1911, in an act found in 102 O. L. p. 297, the Legislature authorized the Board of Education of the Columbus City School District to construct a high school building on the campus of the Ohio State University upon such terms as might be agreed upon by the Board of Trustees of the Ohio State University and the board of education of said school district. Later, on April 18, 1913, an act was passed in 103 O. L. 660, authorizing the Board of Trustees of the Ohio State University to enter into a contract with an incorporated association of alumni of Ohio State University, whereby such association should be permitted to erect upon the campus of the University a suitable building or buildings to be used as dormitories for students and members of the University faculty.

The above noted legislative acts clearly evidence a recognition by the Legislature that apart from such acts the Board of Trustees of Ohio State University had no authority to grant to the city of Columbus, or others, any right or interest in and to the lands of the university.

Upon the considerations above noted, and by way of specific answer to your question, I am of the opinion that the Board of Trustees of the Ohio State University has no power or authority to grant to the city of Columbus an easement in and across the university lands for the purposes of a sewer to be constructed and maintained by said city without legislative authority to this end.

Respectfully,

GILBERT BETTMAN,

Attorney General.