

the Constitution and statutes of this State that our boards of supervisors should function as propaganda bureaus." (p. 31)

In point is the opinion of the New Jersey Supreme Court in *Citizens To Protect Public Funds, et al. v. Board of Education of Parsippany-Troy Hills Twp.*, 13 N.J. 172, 98 A2d 673 (1953) where a school district used public funds to publish a booklet which exhorted a yes vote on a school bond proposition and emphasized that dire consequences would follow a failure of passage. The Court recognized that there is an implied power under the authority to furnish and maintain school facilities, to make reasonable expenditures to give voters relevant facts to aid them in reaching an informed judgment when voting upon a proposal. It clearly stated, however, that use of public funds to advocate only one side of a controversial question, without affording the dissenters the opportunity by means of that financed medium to present their side, was unlawful and went beyond the implied authority.

The Court relied upon *Mines v. DelValle*, 201 Cal. 273, 257 P. 530 (1927) where city officers spent public funds without express or implied authority to advocate one side of a proposition to be voted on. The Court sustained a judgment compelling the officials to repay such amounts into the city treasury.

From the foregoing, it must be concluded that in the absence of authority, public funds cannot be expended to influence the outcome of an election. Such authority being absent, it is the opinion of the Attorney General that a board of education of a school district is without power to spend public moneys to advocate a favorable vote at an election on the questions of increasing the tax limitation and issuing bonds.

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**COLLEGES AND UNIVERSITIES:** Michigan State University – Authority to supervise university and to control university funds.  
**LEGISLATURE:** Authority over university functions.

A statute establishing a law enforcement academy at Michigan State University with a council to direct its activities and expenditure of funds would be unconstitutional as violative of Article VIII, Section 5 of the Michigan Constitution of 1963.

No. 4335

January 12, 1965.

Hon. Charles N. Youngblood, Jr.  
State Senator  
Lansing, Michigan

You have asked if the legislature could establish a law enforcement academy at Michigan State University, with a council to direct its activities and expenditure of funds, without the approval of the Board of Trustees.

Measures purporting to accomplish such an objective were introduced at the 1964 session of the legislature but failed to receive favorable considera-

tion in committee. The proposed legislation would create a law enforcement academy at Michigan State University as a central police training facility. The activities of the academy would be directed by a council composed of members associated with law enforcement problems. Under the bills submitted, the state treasurer would annually allocate and pay to the University a sum deemed necessary by the council to operate the academy.

It is contemplated that legislation of this nature will again be proposed at future sessions of the legislature. You have questioned the constitutionality of such legislation in light of Article VIII, Section 5 of the Michigan Constitution of 1963.

Article VIII, Sec. 5 provides in part as follows:

“\* \* \* the trustees of Michigan State University and their successors in office shall constitute a body corporate known as the Board of Trustees of Michigan State University; \* \* \* shall have general supervision of its institution and the control and direction of all expenditures from the institution's funds. \* \* \*”

This conferment of authority is substantially the same as that accorded the Board of Trustees by Article XI, Sec. 8 of the Michigan Constitution of 1908, as amended, which provided that:

“\* \* \* The board shall have the general supervision of Michigan state university, and the direction and control of all Michigan state university funds; \* \* \*.”

The purpose and implications of comparable constitutional language were considered by the Michigan Supreme Court in *Sterling v. Regents of University of Michigan*, 110 Mich. 369. A mandamus action sought to compel the regents to remove the homeopathic medical college from Ann Arbor to Detroit pursuant to an act of the legislature. It was held, however, under the constitutional provision,<sup>1</sup> that the legislature had no authority to dictate such a move. The Court traced the history of the provision and found that the people placed exclusive control over the University of Michigan in a corporate body known as the Board of Regents. No authority was left in the legislature to supervise university affairs.

The Court has had occasion to apply the constitutional provision to statutes dealing with Michigan State University. A case similar to the present situation is *State Board of Agriculture v. Auditor General*, 226 Mich. 417.<sup>2</sup> Involved there was an attempt by the legislature to make an appropriation for co-operative extension work subject to the general supervisory control of the State Administrative Board. The latter was granted the power to control expenditures and direct work of this nature. The Court found this interference with the institution to be in violation of Article XI, Sec. 8 of the Michigan Constitution of 1908 and quoted with approval the following

<sup>1</sup> The Michigan Constitution of 1850, Article XIII, Section 8, provided in part that “The board of regents shall have the general supervision of the university, and the direction and control of all expenditures from the university interest fund.”

<sup>2</sup> Michigan State University was then known as the Michigan Agricultural College. See O.A.G. 1955-56, Vol. I, page 157.

from *Weinberg v. Regents of University*, 97 Mich. 246, one of the leading cases defining the constitutional provision:

“When the State appropriates money to the University it passes to the regents, and becomes the property of the University, to be expended under the exclusive direction of the regents, and passes beyond the control of the State through its legislative department.”

The Board of Regents of the University of Michigan has also been confronted with a comparable problem. The general accounting laws of the state provided that the auditor general might approve disbursements by educational or other institutions if they appeared to be within the range of reasonable purposes. Based on these statutes, the auditor general refused to draw a warrant for certain expenditures of the University including traveling expenses of the President of the school in attending alumni meetings. The Supreme Court in *Board of Regents of the University of Michigan v. Auditor General*, 167 Mich. 444, in granting a writ of mandamus, held that the auditor general was without such power. The Court made it clear that the constitution gave independent and exclusive control over University affairs and funds to the Board of Regents.<sup>3</sup>

Thus, it is clear that an act creating a law enforcement academy at Michigan State University, with a council to direct its activities and expenditure of funds, would be a direct violation of Article VIII, Sec. 5 of the Constitution of 1963. It is difficult to imagine a more clear-cut conflict with the spirit of that section than a creature of the legislature such as a council directing an educational activity of the University and regulating a portion of University funds. Such supervision of University activities and control over University funds is vested by the Constitution exclusively in the Board of Trustees.

This conclusion also finds support in the opinion of the Attorney General, No. 1417, dated May 18, 1951, O.A.G. 1951-52, p. 255. The Attorney General was there asked to rule upon the constitutionality of a concurrent resolution which created a television commission to control the televising of home athletic contests at the University of Michigan and at Michigan State University.<sup>4</sup> This commission was empowered to receive bids from sponsors and to determine who the sponsor would be. The revenue received was to be placed in the athletic funds of the respective institutions. The Attorney General held that the legislature could not deprive the controlling boards of these institutions of the prerogative of supervision and control of the University conferred upon them by the Constitution. Creation of such a commission was found to have such an effect.

<sup>3</sup> Article XI, Sec. 4 of the Michigan Constitution of 1908 continued the status of the Regents of the University of Michigan as a body corporate. Sec. 5 of that Constitution granted the Board of Regents “the general supervision of the university and the direction and control of all expenditures from the university funds.” Article VIII, Sec. 5 of the Constitution of 1963, quoted supra, now includes both Michigan State University and the University of Michigan within its terms.

<sup>4</sup> The name of the institution was then Michigan State College of Agriculture and Applied Science and its controlling board was known as the State Board of Agriculture.

Therefore, it is my opinion that an act creating a law enforcement academy at Michigan State University with a council to direct its activities and expenditure of funds, would be in violation of Article VIII, Sec. 5 of the Constitution of 1963.

This is not to say that such an academy could not be created absent the unconstitutional provisions involving control and funds. The approval of the Board of Trustees would be needed however.

When an appropriation is made to the University for a purpose, it has the option of accepting or rejecting it. If it accepts it, it must use the appropriation for the purposes specified. *Board of Regents of the University of Michigan v. Auditor General, supra.*

The Attorney General in an opinion dated February 10, 1938, O.A.G. 1937-38, p. 422, ruled that where an appropriation was made to Michigan State University<sup>5</sup> to build certain buildings, the University must in fact undertake to build the buildings if the institution accepts the appropriation. Implicit in that ruling is the underlying assumption that the people through the Constitution conferred exclusive supervision of that institution on its governing body, giving it the power to determine if a grant or appropriation should be accepted or rejected.

Therefore, it is my opinion that the approval of the Board of Trustees of Michigan State University is essential to the establishment of a law enforcement academy at that institution. This approval would be signified by accepting the appropriation having knowledge of its purpose. The appropriation could not contain provisions for a council to direct the academy's activities or expenditure of funds, such conditions being beyond the power of the legislature to prescribe because of the mandate that Article VIII, Sec. 5 of the Constitution of 1963 imposes.

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<sup>5</sup> *Ibid.*