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PERSONNEL ADMINISTRATION IN PUBLIC HIGHER EDUCATION

The rights and responsibilities of students, members of the faculty, and trustees or regents of state universities and colleges are defined to some extent in numerous decisions by the courts in the various states. The cases collectively form a valuable source of the principles heretofore applied in this particular branch of administrative law, and an indispensable basis for the consideration of its future development. For convenience they may be grouped in a threefold classification—those involving (1) students, (2) faculty members, and (3) the personnel of the governing board.

STUDENT PERSONNEL

Admission. The trustees of a state institution of higher education cannot make membership in a Greek-letter fraternity a positive disqualification for admission as a student unless the legislature has expressly or impliedly authorized it.\(^1\) Where a state university is given power by the constitution to make reasonable health regulations, it may make and enforce a compulsory vaccination rule, and deny admission to any persons otherwise who refuse to comply with it, unless and until the legislature regulates the subject by positive exercise of its plenary police power.\(^2\) In the absence of constitutional or statutory prohibition, a state university may charge and collect an admission fee to provide a fund for incidental expenses necessary and convenient for the attainment of the objects of the institution, such as the heating and lighting of its public halls, not provided for at the expense of the state.\(^3\) Where a statute provides that admission shall be free, collection of a fee for the use of the library,


\(^3\) State ex rel. Priest v. Regents of University of Wisconsin, 54 Wis. 159 (1882).
and the exclusion from the library of students who refuse to pay the fee, has been held unlawful.\(^4\)

**Miscellaneous Fees and Deposits.** Exaction of deposits to cover possible negligent breakage or damage to university property, or for the use of a prescribed uniform, such deposits to be returned at the end of the term or session if not consumed, is within the powers of the governing board, acting under a general legislative grant.\(^5\) But the requirements of fees from all matriculants, to be applied to the support of the Y. M. C. A., Y. W. C. A., athletic associations, literary societies, and student publications, is beyond the powers of the governing board of a state institution.\(^6\) In the absence of constitutional limitations, the state legislature has power to prescribe fees to be collected from all students for entrance, tuition, or incidental expenses, and may apply the proceeds to the erection and equipment of buildings on the campus.\(^7\) The right of a state to charge higher fees to non-residents than are exacted from its own citizens who become students in its institutions of higher education is undisputed.\(^8\) However, the ultimate soundness of the policy of discrimination against nonresidents is open to question.\(^9\)

**Housing.** The weight of judicial opinion favors the constitutionality of legislative acts authorizing the construction of dormitories and students' activity buildings to be financed solely out of rentals accruing from the use thereof, on the amortization plan, and ultimately to become the property of the state upon the completion of the payment of all contract charges for construction and equipment.\(^10\) A fraternity chapter has been held to be primarily an organization for the rooming and

\(^1\) *State ex rel. Little v. Regents of University of Kansas*, 55 Kan. 389, 40 Pac. 656, 29 L. R. A. 378 (1895).
\(^5\) *Bryan v. Regents of University of California*, 188 Cal. 559, 205 Pac. 1017 (1922).
\(^6\) See Spencer, Carlton E., "The Legal Aspects of the Non-Resident Tuition Fee." 6 *Oregon Law Review* 332 (June, 1927); also published concurrently in 33 *West Virginia Law Quarterly* 350.
boarding of students, and not entitled to exemption from taxation as a scientific, literary, or educational institution, unless a statute expressly and unequivocally exempts it.\textsuperscript{11} It has been held that even if the donation of a building to a state university creates a trust limiting its use to the rooming and boarding of students, continuous use of it for the designated purpose for thirty-six years would constitute full performance of the trust, and the governing board would then be entitled to convert it to another use for educational purposes.\textsuperscript{12} An occupant of a room in a college dormitory has not the legal rights of an ordinary tenant of real property, nor even those of a lodger; and by taking up residence there he implies the agreement to conform to all reasonable rules and regulations then in force or thereafter adopted by the proper authorities, who may, when the circumstances make it reasonably necessary, expel him therefrom summarily.\textsuperscript{13}

\textit{Liability for Injuries to Students.} The state has no liability for injuries to students resulting from the negligence of employees of a state institution, unless it voluntarily assumes such liability, which it may do by legislative act, in the absence of any constitutional prohibition.\textsuperscript{14} An infirmary or hospital conducted in connection with a state university, even though fees be charged and profits made from the sale of its services, is classified as a purely public or governmental activity, in which the governing board is not responsible for the torts of its employees, and students negligently injured thereby are remediless except as against the person responsible for the injury.\textsuperscript{15}

\textit{Discipline and Dismissal.} The courts will not interfere with the reasonable exercise of disciplinary authority by university or college officers in the absence of any showing that it is exercised arbitrarily, fraudulently, in bad faith, or with

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\textsuperscript{13} Englehart \textit{v.} Serena, 318 Mo. 263, 300 S. W. 268 (1927).

\textsuperscript{14} Mills \textit{v.} Stewart, 76 Mont. 429, 247 Pac. 332 (1926).

\textsuperscript{15} Davis \textit{v.} Regents of the University of California, 66 Cal. App. 693, 227 Pac. 243 (1924).
\end{flushleft}
The president of the institution may enforce proper administrative regulations enacted by the governing board, including those designed to promote and protect a decent standard of moral and social conduct among students, to the extent of suspending or expelling offenders for the good of the institution. The relation between the institution and a matriculated student is contractual, and the law will protect the student against arbitrary dismissal. In cases of suspension or expulsion, the accused student is entitled to a hearing before the administrative authorities of the institution, but such hearing need not possess all the formal characteristics of a court proceeding. If the student is fully apprised of the information against him, and given ample opportunity to explain his conduct, this constitutes a sufficient hearing, without such formalities as the filing of written charges, the summoning of witnesses to give sworn testimony, and the giving to the accused the privilege of confronting all witnesses against him and of hearing their testimony in person and of cross-examining them. Although the law does not require a hearing as formal as a court proceeding, administrative officers may avoid needless litigation by handling suspension and expulsion cases with due regard for the rights and feelings of all concerned, and with especial care to forestall the allegation of condemnation upon mere suspicion, or upon insufficient evidence, or after a proceeding too informal even to meet the minimum requirements of the law as above outlined.

**Faculty Personnel**

**Status and Tenure.** Professors in state universities and  


17 *State ex rel. Ingersoll v. Clapp*, 81 Mont. 200, 263 Pac. 433 (1928); certiorari denied, 48 S. Ct. 528, 277 U. S. 591; writ of error refused, 49 S. Ct. 7.


21 Dissenting opinion of Mr. Justice Galen in *State ex rel. Ingersoll v. Clapp*, 81 Mont. 200, 263 Pac. 433 (1928).
Colleges are not public officers, but employees of public corporations, with rights and duties derived from the contract which is the basis of their employment. Professional tenure is made insecure in many state institutions by statutes of the state or ordinances of the governing board making professors removable at the pleasure of the board, or whenever the board determines that the interests of the institution require it. Where a statute empowered the governing board to remove any professor without previous notice whenever in its judgment the interests of the university required it, one line of judicial opinion holds that the board was without power to contract with an instructor that his separation from the service at the instance of either party would be preceded by three months' notice. Another and seemingly better line of judicial reasoning holds that under a similar statute the board can make such a covenant with an instructor without impairing its power to dismiss him without notice, but thereby renders itself liable for the amount of his salary for three months if it exercises its power to disregard the covenant and dismisses him summarily. Where a statute empowers the board to appoint and remove professors without limitation as to time, it has been held that a contract employing a professor for two and one-half years was not for an unreasonably long period of tenure.

Compensation. A state university teacher's right to his pay is governed by the well-established principles of the law of contracts, except as modified by statute. Employment of a professor for a "year" has been held to mean the traditional academic year and not a full calendar year, in the absence of evidence of any understanding to the contrary, and the fact that the professor spent the summer in the employ of another university teacher did not prevent his pay for that period from being computed as part of his annual salary.

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22 Butler v. Regents, 32 Wis. 124 (1873); Hartigan v. Regents, 49 W. Va. 14, 38 S. E. 698 (1901). Contra, Head v. Curators of University of Missouri, 47 Mo. 220 (1871); Vincenheimer v. Reagan, 59 Ark. 459, 64 S. W. 278 (1901), Mr. Chief Justice Bunn dissenting.

23 University of Mississippi v. Deister, 76 So. 526, 115 Miss. 469 (1917); Hyslop v. Regents of University of Idaho, 23 Ida. 341, 129 Pac. 1073 (1913).


25 Kansas State Agricultural College v. Mudge, 21 Kan. 223 (1878).


27 Trustees of University of Alabama v. Walden, 15 Ala. 655 (1894).
university did not impair his right to recover his full salary for the year.\textsuperscript{28} Professors engaging in extra-mural activities to supplement their incomes are within their rights unless the contract of employment forbids such activities, so long as they do not compete with the institution by which they are employed, or act in opposition to its interests.\textsuperscript{29}

**The Personnel of the Governing Board**

_Selection and Tenure._ Where the constitution requires that members of the governing board be elected by the people of the state, and a statute adds an elective state officer to the board as an ex-officio member thereof, such elective state officer, having been elected prior to the enactment of the statute, is not entitled to a seat on the board during his current term, because such seat could not have been contemplated as an incident of his office when he was elected.\textsuperscript{30} It has been held by a division of the court that where a newly enacted statute provides for appointment of members of the governing board by the governor of the state with the advice and consent of the senate, such appointments are not irregular merely because the governor sent the names of his nominees to the senate for confirmation before the statute was passed.\textsuperscript{31} When the constitution or statutes provide a fixed term of office for members of the governing board, and contain no "hold-over clause" specifying that they shall continue in office until their successors shall be appointed and qualified, their tenure terminates upon the expiration of the fixed term, even though this occur at a time (as when the senate is not in session) when regular appointments of their successors cannot be made in the manner prescribed by law.\textsuperscript{32}

_Manner of Removal._ In the absence of constitutional limitations, the power of the legislature to prescribe by statute the

\textsuperscript{28} _Trustees of University of Illinois v. Bruner_, 66 Ill. App. 665, affirmed 175 Ill. 307, 51 N. E. 687 (1898).

\textsuperscript{29} 11 _Corpus Juris_ 996, citing cases.

\textsuperscript{30} _State ex rel. Mack v. Torreyson, Attorney General_, 21 Nev. 517, 34 Pac. 870 (1893).

\textsuperscript{31} _State ex rel. Langer v. Crawford_, 36 N. D. 385, 162 N. W. 710 (1917).

\textsuperscript{32} _State ex rel. Wood v. Sheldon_, 8 S. D. 525, 67 N. W. 613 (1896); _State ex rel. Langer v. Scow (N. D.)_, 164 N. W. 939 (1917). For the effect of a "hold-over clause," see _State ex rel. Little v. Foster_, 130 Ala. 154, 30 So. 477 (1901).
method of removal of members of governing boards is complete, and it may provide for their summary removal without notice or hearing; but where the statutes give to some administrative authority the power to remove, not at pleasure nor at its discretion, but for cause, and are silent as to the procedure to be followed, a specification of the charges, notice, and opportunity to be heard are essential. In the absence of statutory provision for the termination of his tenure by mere neglect or abuse, or by some expressly prescribed method of removal (which may be summary), a member of the governing board cannot be deprived of his seat until the authority competent to remove him has given him reasonable notice and opportunity for hearing, investigated the facts, and determined his forfeiture of right to the office. The power of removal is not a necessary incident of a limited power of appointment which the legislature has conferred upon the governor of the state. It has been held that where a statute empowers the governor to remove members of the governing board whenever he is satisfied that they have been guilty of misconduct or malfeasance in office or are incompetent, and directs that he shall file with the secretary of state a statement showing his reasons with his order of removal, such statement is sufficient if it merely states his conclusions, omitting any mention of the specific facts on which they are based. In this instance a minority of the court opposed the decision both on grounds of law and of policy, and marshalled cogent reasoning and imposing authority in support of its dissenting position.

The increasing importance of public higher education affords an impetus to the study of the personnel problems which arise in its administration. Much remains to be done toward the building of an adequate body of knowledge to serve as a basis for wise legislation, constructive modification of judicial precedents, and the development of sound administrative policies.