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POWERS AND AUTHORITIES OF THE GOVERNING BOARDS OF STATE COLLEGES AND UNIVERSITIES

The affairs of some colleges and universities are managed by a board of trustees.¹ Others are governed by a board of regents.² A board of curators may have charge of the university³ and in instances the management of the state university has been intrusted to the State Board of Education.⁴ Often the supervision of a state agricultural college is given to the State Board of Agriculture.⁵ The character of the governing board does not affect the problem with which we are concerned at present. The statutes which vest the control and management of a university in a governing board such as one of those mentioned above, generally specify that a certain number, less than a majority, may constitute a quorum and take tentative action.⁶ Such action however is not binding on the board unless ratified by it at a subsequent meeting at which a majority of all the members are present.⁷

IN GENERAL

In many instances the governing boards of educational institutions such as colleges and universities are corporations.⁸ Yet their administrative functions affecting the public have been held to be franchises.⁹ Such boards have no powers except those which are conferred on them either expressly or by fair implica-

¹*Fidelity and Deposit Company of Maryland v. Trustee of University of Wyoming*, 16 Fed. (2nd) 150, (1926); *Nebraska Wesleyan University v. Parker*, 55 Neb. 435, 72 N. W. 470, (1897).

²*State v. Sheldon*, 8 S. D. 525, 67 N. W. 613, (1896); *Regents University of Michigan v. Detroit Board of Education*, 4 Mich. 213, (1856).

³*State v. Adams*, 44 Mo. 570, (1869).

⁴*Moscow First National Bank v. Regents of University of Idaho*, 26 Ida. 15, 140 Pac. 771, (1914).

⁵*State Board of Agriculture v. Meyers*, 20 Colo. App. 1319, 77 Pac. 372, (1904); *Trapp v. Cook Construction Company*, 24 Okla. 850, 105 Pac. 667, (1909).

⁶*State v. Hall*, 136 La. 920, 67 So. 958, (1915).

⁷*State v. Hall*, supra note 6.

⁸*People v. Regents of University of Colorado*, 24 Colo. 175, 49 Pac. 286, (1897); *Moscow Hardware Company v. Regents of University of Idaho*, 19 Ida. 420, 113 Pac. 731, (1911); *Sterling v. Regents of University of Michigan*, 110 Mich. 369, 68 N. W. 253, 34 L. R. A. 150, (1896); *Gleason v. University of Minnesota*, 104 Minn. 359, 116 N. W. 650, (1908); *State v. State Board of Education*, 33 Ida. 415, 196 Pac. 201, (1921).

⁹*People v. Regents of University of Colorado*, supra note 8.

tion.¹⁰ But they have such powers as are expressly given to them by the charter of the university or such as by fair implication are necessary to the execution of their object.¹¹ Trustees or regents are usually given power by the incorporating act or charter to elect all professors and teachers, and to remove them at their pleasure; to fix and regulate compensation; to do all acts necessary and expedient to put and keep the university in operation; to make all by-laws, rules and regulations required or proper to conduct and manage it;¹² to sue and be sued; to acquire and dispose of property; to make contracts; to grant diplomas, and to perpetuate themselves.¹³

CONSTRUCTION OF CONSTITUTIONAL PROVISIONS

Often certain duties are expressly imposed on the regents or other officers of the university by the statutes of some states¹⁴ and by the constitutions of other states.¹⁵ But in many instances the trustees have a rather wide discretion, particularly where they are given exclusive control over certain matters. The courts will not interfere with the exercise of this discretion.¹⁶ Thus it has been held that where either by constitution or by statute certain matters are placed in the exclusive control of trustees or regents, or where they have a sound discretion to exercise in the performance of a duty, the courts will not interfere, unless the delay in the performance of such duty is unnecessary or willful, or unless the acts of the board are subversive of the purpose for which the board was created.¹⁷ In some jurisdictions the regents of the state university are not subject to the control or supervision of any other branch, board or department

¹⁰*State v. State Board of Education*, supra note 8; *Regents of State University v. Hart*, 7 Minn. 61, (1862); *State v. Whitmore*, 85 Neb. 566, 123 N. W. 1051, (1909); *State v. Lindsley*, 3 Wash. 125, 27 Pac. 1019, (1891); *State v. Regents of University of Wisconsin*, 54 Wis. 159, 11 N. W. 472, (1882); *People v. Regents of University of State of New York*, 199 App. Div. 55, 192 New York Supp. 108, (1921).

¹¹*People v. Geneva College*, 5 Wend. (N. Y.) 211, (1830).

¹²*State v. White*, 82 Ind. 278, (1882).

¹³*Regents of University v. Williams*, 9 Gill & J. (Md.) 365, (1838).

¹⁴*Young v. Regents of University of Kansas*, 87 Kan. 239, 124 Pac. 150, (1912); *State v. Whitmore*, supra note 10.

¹⁵*State v. Board of Education*, supra note 8.

¹⁶*Gleason v. University of Minnesota*, supra note 8.

¹⁷*Bauer v. State Board of Agriculture*, 164 Mich. 415, 129 N. W. 713, (1911); *People v. Regents of University of Michigan*, 4 Mich. 98, (1856); *Davidson-Nicholson Company v. Pound*, 147 Ga. 447, 94 S. E. 560, (1917).

of state government.¹⁸ In Idaho the constitution gave to the regents of the university, "the general supervision of the University, and the control and direction of all the funds of and appropriations to the University, *under such regulations as may be prescribed by law.*" In *State v. State Board of Education*,¹⁹ the court in construing the above constitutional provision said, "The regulations which may be prescribed by law, and which must be observed by the regents in their supervision of the University, and the control and direction of its funds refer to the method and rules for the conduct of its business and accounting to authorized officers. Such regulations must not be of a character to interfere essentially with the constitutional discretion of the board under the authority granted by the constitution." The Supreme Court of Michigan in construing the Michigan constitutional provision, which is similar to the Idaho provision, with the italicized part omitted, said, "It is made the highest form of juristic person known to the law, a constitutional corporation of independent authority which within the scope of its functions, is co-ordinate with and equal to that of the legislature."²⁰

THE GOVERNING BOARD AS AN AGENCY OF THE STATE

In some cases universities have been held to be agencies of the state.²¹ In *Tucker v. Pollock*,²² it was said that the Rhode Island College of Agriculture and Mechanical Arts was a state institution; the title to the lands, buildings and other property was in the state, and the board of managers, although made a corporation, was but the agent of the state to carry out the purposes of the general assembly in connection with the establishment and maintenance of the college. The opposite view was expressed in *Orno v. Sigma Alpha Epsilon Society*,²³ where the court said, "The University of Maine while chartered by the state and fostered by it especially in recent years, is not a

¹⁸*State v. Board of Education*, supra note 8.

¹⁹33 Ida. 415, 196 Pac. 201, (1921).

²⁰*Board of Regents of University of Michigan v. Auditor General*, 167 Mich. 444, 132 N. W. 1037, (1911).

²¹*State v. Bryan*, 50 Fla. 293, 39 So. 929, (1905); *Tucker v. Pollock*, 21 R. I. 317, 43 Atl. 369, (1899).

²²Supra note 21.

²³105 Mo. 214, 74 Atl. 19, (1909); See also *State v. Carr*, 111 Ind. 335, 12 N. E. 318, (1887).

branch of the state's educational system, nor an agency, nor an instrumentality of the state, but a corporation, a legal entity wholly separate and apart from the state." Whether the university is a mere agent or is entirely separate from the state, has a great bearing upon the extent of the powers of the governing board. Thus where the institution is a mere agent of the state the trustees and officers are subject to the control of the legislature.²⁴ In *Board of Trustees of University of Mississippi v. Waugh*,²⁵ it was said the trustees are mere instruments to carry out the will of the legislature in regard to the educational institutions of the state. Both the institutions and the trustees are under the absolute control of the legislature." Likewise in *State v. Whitmore*,²⁶ the court said, "The Board of Regents is but a mere governmental agency expressly subjected by the constitution to the will of the legislature to work out its projects for higher education." The Federal Court held that the trustees of the University of Wyoming were a corporation created by statute as an agency of the state through which it manages the affairs of the state university.²⁷ In such cases particular powers granted the trustees by the legislature may be afterwards annulled by that body.²⁸ This is of course subject to any existing constitutional limitations.²⁹ So where the constitution vests the government and control of the institution in a board of regents, curators or trustees, the legislature has no power to interfere by statute.³⁰

POWER TO CONTRACT

The trustees or other governing body of a college or university may make such contracts as are within the limits of the authority conferred on them by charter or statute.³¹ Such a state-

²⁴*Board of Trustees of University of Mississippi v. Waugh*, 105 Miss. 623, 62 So. 827, (Aff. 237 U. S. 589), (1913); *Phillips v. University of Virginia*, 97 Va. 472, 34 S. E. 66, (1899).

²⁵105 Miss. 623, 62 So. 827, (1913).

²⁶85 Neb. 566, 123 N. W. 1051, (1909).

²⁷*Fidelity and Deposit Company of Maryland v. Trustees of University of Wyoming*, supra note 1.

²⁸*State v. Hewitt Land Company*, 74 Wash. 573, 134 Pac. 474, (1913).

²⁹*Sterling v. Regents of University of Michigan*, supra note 3.

³⁰*Sterling v. Regents of University of Michigan*, supra note 3; *Board of Regents of University of Michigan v. Auditor General*, supra note 20; *Trapp v. Cook Construction Company*, supra note 5.

³¹*State Board of Education*, supra note 3; *Fairfield, State Auditor, v. Corbett Hardware Company*, 25 Ariz. 199, 215 Pac. 510, (1923); *Ward v. Kansas State Agricultural College Board of Regents*, 138 Fed. 372, 70 C. C. A. 512, (1905); *State v. Fields*, 131 Ala. 31 So. 6, (1901).

ment is quite general. It might be well to mention a few of the limitations which have been placed upon their power to contract. It has been held that the regents or other governing officers of a state university act as agents in behalf of the state when they enter into a contract involving the expenditure of money of the state.³² Their authority to bind the state, however, is limited to the amount of legislative appropriations granted for such purposes.³³

In *Moscow Hardware Company v. Regents of University of Idaho*,³⁴ it was held that the board of regents had no authority whatever to incur any indebtedness against the state, directly or indirectly, in the erection of university buildings for which they had no funds to pay. The Idaho court in a recent leading case³⁵ has said that the board of regents of the state university has no power to contract indebtedness against the state. One of the many questions confronting the court in that case was whether a claim against the regents was one against the state. The court said, "The Board of Regents is a constitutional corporation with granted powers, and while functioning within the scope of its authority, is not subject to the control or supervision of any other branch, board or department of state government, but is a separate entity, and may sue and be sued, with power to contract indebtedness, with the right to exercise its discretion within the powers granted, *without authority to contract indebtedness against the state, and in no sense is a claim against the regents one against the state.*" The regents cannot draw upon the state treasury for work yet undone. Thus in *State v. Moore*,³⁶ it was held that a voucher, within the meaning of an act making an appropriation for a library building for Nebraska University, was an instrument showing on what account and by what authority a particular payment had been made, and there was no authority for the secretary of the board of regents to draw upon any portion of the appropriation for work not yet done. In a few states the officers of a state university are ex-

³²*Weinberg v. Regents of University of Michigan*, 97 Mich 246, 56 N. W. 605, (1893).

³³*Regents of State University v. Hart*, supra note 10; *Moscow Hardware Company v. Regents of University of Idaho*, supra note 8; *Ward v. Kansas State Agricultural College Board of Regents*, supra note 31.

³⁴19 Ida. 420, 113 Pac. 731, (1911).

³⁵*State v. State Board of Education*, supra note 8.

³⁶36 Neb. 579, 54 N. W. 866, (1893).

pressly prohibited by statute from contracting any debt whatever on account of the university without the consent of the legislature previously obtained.³⁷

CONTROL OF FUNDS OF THE UNIVERSITY

In some jurisdictions the constitution or statutes give the custody and control of the funds of a state college or university to the board of regents.³⁸ In such cases it seems that once the funds have passed to the regents they have absolute power over them. Thus in *Board of Regents of University of Michigan v. Auditor General*,³⁹ the court said, "But the general supervision of the University is by constitution vested in the Regents. . . . So 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." Many problems arise as to the expenditure of university funds. Where the governing board has funds available, may it make purchases of supplies without requisition upon the proper state official? May it purchase land with the money or employ counsel or accountants and pay them out of the money? The Idaho court answered these questions directly in *State v. Board of Education*,⁴⁰ quoting from the opinion, "If the regents have funds available for the purpose of making purchases of supplies, they may do so without requisition upon and without the consent of the commissioner of public works, and if they have money which is available for the purchase of land, or the payment of counsel fees, or to employ accountants and auditors, other than the state accountants and auditors, we know of no valid reason why they should not do so. This in no way would involve the power of the legislature to provide that accounts and records of the regents shall be examined and audited by the regular accountants and auditors of the state." Another question arising in that case was whether the regents were required to pay over to the state treasurer the proceeds of the sale of prop-

³⁷*Phillips v. University of Virginia*, supra note 24.

³⁸*Moscow Hardware Company v. Regents of University of Idaho*, supra note 8; *Board of Regents of University of Michigan v. Auditor General*, supra note 20.

³⁹Supra note 20.

⁴⁰Supra note 8.

erty belonging to the university. The court held that there was no obligation upon the Board of Regents of the State University to pay over to the State Treasurer the proceeds of the sale of property belonging to the University in the absence of conditions contained in an appropriation which by being accepted raised an implied contract on the part of such board, and said proceeds of the sale might be paid to the treasurer of the State University for the use thereof. Claims against funds whose source is federal appropriations, and private donations do not have to be passed on by the state examiners. The Idaho court,⁴¹ in passing upon the question said, "The proceeds of federal land grants, direct federal appropriations and private donations to the University are trust funds, and are not subject to the constitutional requirements that money must be appropriated before it is paid out of the state treasury. Claims against such funds need not be passed on by the board of examiners, and the money in such funds may be expended by the board of regents, subject only to the conditions and limitations provided in the acts of Congress making such appropriations or the conditions imposed by the donors upon the donations." Under some statutes it is the duty of the board of regents of the State University to determine who is entitled to money due on its contracts and to direct payment thereof. In such cases the action of the board in ordering payment is not subject to supervision by the state auditor and he can decline to draw a warrant for a claim allowed by the board only on the ground that it is not for a public purpose.⁴²

APPROPRIATIONS AND DONATIONS

The regents may accept or reject appropriations made by the state legislature.⁴³ In *Board of Regents of University of Michigan v. Auditor General*,⁴⁴ the court said, "That conditions may be attached by the legislature to appropriations for the University is well settled. In such a case the regents may accept or reject such appropriation as they see fit. If they accept, the conditions are binding upon them." "Likewise in the case of private donations, the directors, regents or trustees are at lib-

⁴¹*State v. State Board of Education*, supra note 8.

⁴²*Fairchild, State Auditor v. Corbett Hardware Company*, supra note 31.

⁴³*Board of Regents of University of Michigan v. Auditor General*, supra note 20.

⁴⁴167 Mich. 444, 132 N. W. 1037, (1911).

erty to reject a proposed donation if in their opinion the terms are unlawful, or for any reason unacceptable to them.⁴⁵ Where it is not otherwise provided by constitution the custody and control of the funds of a state college or university are subject to statutory provisions and regulations.⁴⁶

CONTROL OF UNIVERSITY PROPERTY

In some states the regents are given absolute and exclusive control of all university property.⁴⁷ The Texas court in a recent decision⁴⁸ has held that the regents have full discretionary power over buildings on the university campus subject to review by the legislature, but not by the courts except in case of abuse. In that case money had been donated for building a dormitory, which was erected and used as such for a period of thirty-six years. The regents proposed to repair the building and use it for a classroom and office building. In the course of its opinion the court said, "The board of regents are invested by law with the authority and duty to govern the University, and the power to determine what buildings are to be placed upon the campus, their arrangement, and changes and alterations to be made therein, is vested in the regents, whose discretion in that regard is subject only to legislative control. The courts have no power to interfere with the decisions of the board in that regard, so long as they do not transcend powers and duties conferred on them by law." The trustees however cannot change the location of a college or university where the location has been fixed by the constitution. Thus in *People v. Regents of University of Colorado*,⁴⁹ it was held that the regents had no power to remove a part of any of the departments of the University nor to conduct lectures at Denver, the location having been fixed by the constitution at Boulder.

EMPLOYMENT AND DISCHARGE OF PROFESSORS

The board of regents or trustees has power to make a valid contract employing a professor for a reasonable length of

⁴⁵*State v. Schauss*, 23 Oh. Cir. Ct. 233.

⁴⁶*Regents of University of California v. January*, 66 Cal. 507, 6 Pac. 376, (1885); *State v. Wright*, 17 Mont. 77, 42 Pac. 103, (1895).

⁴⁷*Weinburg v. Regents of University of Michigan*, supra note 32.

⁴⁸*Splawn v. Woodward*, 287 S. W. (Tex.) 677, (1926).

⁴⁹24 Colo. 175, 49 Pac. 286, (1897).

time.⁵⁰ The charter may authorize the trustees not only to elect their professors and instructors but at any time to displace and discharge them. If it is provided by statute or by rules of the institution that the appointee assumes his position subject to removal at the discretion of the governing board, such provision becomes a condition of the contract and no notice or hearing is required.⁵¹ In Arizona an act of the Assembly provided that the board of regents of the state university should have power to remove any officer or employee whenever in their judgment the interest of the university required it. There it was held that since the regents in employing an instructor had no power to contract for his dismissal on three months' notice, such instructor could not recover for his salary for three months on being dismissed without notice.⁵² In the absence of bad faith or fraud the ground for removal in such a case is not a proper subject of judicial investigation.⁵³ Thus the West Virginia court held⁵⁴ that a court had no jurisdiction to review the action of the Board of Regents of West Virginia University in removing a professor and a writ of prohibition would not lie to prevent the board from executing its resolution removing the professor. Neither will the court interfere with the discretionary power of the regents to delay the appointment of a professor unless there appears to be unnecessary delay or bad faith.⁵⁵ A professor employed by the board of regents of a state university is not a public officer but an employee by contract.⁵⁶ But where a professor in the University of Missouri was elected for six years "subject to law," it was decided that this expression meant subject to whatever law the state legislature might see fit to pass, and it was part of the contract that the legislature could, at its discretion and in its pleasure, bring it to an earlier end.⁵⁷ The

⁵⁰*Ward v. Kansas State Agricultural College Board of Regents*, supra note 31; *State Board of Agriculture v. Meyers*, supra note 5.

⁵¹*Hartigan v. Board of Regents of West Virginia University*, 49 W. Va. 14, 38 S. E. 698, (1901).

⁵²*Devio v. Regents of University of Arizona*, 6 Ariz. 259, 56 Pac. 737, (1899).

⁵³*Ward v. Kansas State Agricultural College Board of Regents*, supra note 31; *Hartigan v. Board of Regents of West Virginia University*, supra note 51.

⁵⁴Supra note 51.

⁵⁵*People v. Regents of University of Michigan*, supra note 17.

⁵⁶*Butler v. Regents of University of Wisconsin*, 32 Wis. 124, (1873).

⁵⁷*Head v. Curators of University of Missouri*, 19 Wall. (U. S.) 526, (1874).

court in that case declined to pass on the question whether or not the professor was a public officer. The word year when used in employing teachers, means a college or school year, and not a calendar year.⁵⁸

STUDENTS: ADMISSION AND CONTROL AFTER ADMISSION

We come now to the authority of the governing board over the students. The first question arising is that of admission to the university. The right of admission to a state university is a right which the trustees or other officers are not authorized to abridge materially and which they cannot as an abstract proposition rightfully deny.⁵⁹ Where there is no statute authorizing or requiring them to do so, the trustees cannot make membership in a Greek letter fraternity or other secret society a disqualification for admission as a student. In *State v. White*⁶⁰ it was held that the board of trustees of Purdue University could not make membership in a Greek letter fraternity or other college secret society a disqualification for admission as a student in the university, nor require as a condition for admission that an applicant who may be a member of such a society sign a pledge to disconnect himself from such society during his connection with the university, and admission refused for such cause may be enforced by mandamus against the trustees and faculty. Yet in these same jurisdictions the trustees may after the admission of persons as students prohibit their connection with such fraternities or societies.⁶¹ The court in *State v. White* drew an admirable distinction between admission and control after admission, as follows, "The admission of students in a public educational institution is one thing and control of students after they are admitted and have become subject to the jurisdiction of the institution is quite another thing. The first rests upon well established rules either established by law or sanctioned by usage, from which the right to admission is to be determined. The latter rests largely in the discretion of the officers in charge, the regulations prescribed for that purpose

⁵⁸*Brookfield v. Drury College*, 139 Mo. App. 339, 123 S. W. 36, (1909)

⁵⁹*Foltz v. Hoge*, 54 Cal. 28, (1879); *State v. White*, 82 Ind. 278, (1882); *Connel v. Gray*, 33 Okl. 591, 127 Pac. 417, (1912).

⁶⁰82 Ind. 278, (1882).

⁶¹*Board of Regents of University of Mississippi v. Waugh*, supra note 24.

being subject to modification and change from time to time as supposed emergencies arise.”

RULES AND REGULATIONS FOR GOVERNING STUDENTS

If the constitution of the state invests the board of regents of a state university with a large degree of independence and discretion, the board has power to make a rule requiring persons applying for enrollment as students to be vaccinated.⁶² The trustees or proper authorities of a university may make reasonable rules for the government and discipline of the students.⁶³ They may make reasonable regulations to enforce such regulations as are prescribed by statute,⁶⁴ and may place restrictions on matters which materially affect the relations of the students to the university.⁶⁵ In speaking of the authority of the trustees to prohibit the attendance of students upon the meetings of Greek letter fraternities, the court in *State v. White* said, “As to the propriety of such and similar inhibitions and restrictions the trustees aided by the experience of the faculty, ought and are presumed to be, the better judges, and as to all such matters, within reasonable limits, the power of the trustees is plenary and complete.” The courts are not apt to interfere with the action of the governing board in this regard. In *Gott v. Berea College*,⁶⁶ the court spoke thus, “Whether the rules or regulations are wise, or their aims worthy, is a matter left solely to the discretion of the authorities and in the exercise of that discretion, the courts are not disposed to interfere, unless the rules and aims are unlawful or against public policy.” The rules and regulations of colleges or universities which are supported in whole or in part by appropriations from the state are scrutinized more closely by the courts than those of private schools.⁶⁷ The reason for this is obvious. The state institutions derive their support from the taxpayers of the state, who are entitled to have some voice in the way their money is used, while

⁶²*Williams v. Wheeler*, 23 Cal. 619, 138 Pac. 937, (1913).

⁶³*North v. Board of Trustees of University of Illinois*, 137 Ill. 296, 27 N. E. 54, (1891); *Gott v. Berea College*, 156 Ky. 376, 161 S. W. 204, (1913); *Davison-Nicholson Company v. Pound*, supra note 17.

⁶⁴*Waugh v. Board of Trustees of University of Mississippi*, 237 U. S. 589, 35 S. Ct. 720, (1915).

⁶⁵*State v. White*, supra note 59.

⁶⁶156 Ky. 376, 161 S. W. 204, (1913).

⁶⁷*Gott v. Berea College*, supra note 58; *John B. Stetson University v. Hunt*, 88 Fla. 510, 102 So. 637, (1924).

the private schools rely on other sources. The governing board may require that all students shall refrain from hazing.⁶⁸ They may prohibit any connection between Greek letter fraternities and the university and prohibit attendance of students at meetings of such societies.⁶⁹ Likewise they may prohibit students from joining any secret society.⁷⁰ The relation between the student and the university has been held to be a contract and the trustees of the university cannot arbitrarily refuse to permit further attendance.⁷¹ In a recent New York case⁷² a girl who had attended Syracuse University for three years and who had registered and paid her tuition for the fall term of her last year was peremptorily dismissed for no cause stated. She demanded to know the reason and her demand was refused. She sought the aid of a court to compel the University to reinstate her. The court in ordering her reinstatement by the University held that the action of a university or college in dismissing a student who had matriculated and paid his tuition is subject to review by the courts. In the course of its opinion the court said, "Both parties agree that when a student becomes duly matriculated in a college or university a contractual relationship arises; on the one hand, the student, having paid the tuition, agrees to abide by the rules and regulations of the college or university; he must accept the course of study prescribed; if he would remain, he must meet the tests required as to attendance, as to diligence in study, and as to personal conduct; failure on his part in any of these respects empowers the university or college to impose penalties or punishments prescribed, and in some cases authorizes dismissal. On the other hand, the university or college agrees that, in the event the student successfully pursues the course of study prescribed and complies during his attendance at the institution with the disciplinary rules and regulations of it, he will receive evidence of his conduct and proficiency in the form of a certificate or diploma. . . . Such is the contract." But

⁶⁸*Kentucky Military Institute v. Bramblet*, 158 Ky. 205, 164 S. W. 808, (1914).

⁶⁹*State v. White*, supra note 59.

⁷⁰*People v. Wheaton College*, 40 Ill. 186, (1886).

⁷¹*Gleason v. University of Minnesota*, supra note 8.

⁷²*Anthony v. Syracuse University*, 130 Misc. Rep. 249, 223 New York Supp. 796, (1927).

the power of supervision and the power of expulsion are implied powers essential to the government of educational institutions.⁷³

COLLECTION OF FEES

Unless expressly prohibited by constitution or statute it is within the general powers of the board of regents or trustees to exact fees for tuition.⁷⁴ They may also make incidental charges.⁷⁵ The board of regents of the Oklahoma Agricultural and Mechanical College was held to have authority where not prohibited either expressly or impliedly by law to collect an incidental fee to bear expenses necessary and convenient to accomplish the object for which the institution was founded.⁷⁶ In *State v. Regents of University of Wisconsin*,⁷⁷ it was held that all acts of the legislature relating to the university construed together, conclusively established a legislative intent that under the general grant of power to make laws for the government of the university the grant of "all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by law," and other like grants in successive statutes defining the functions of the board, it should take the power to exact fees from students for admission, instruction and incidental expenses to the university, except as such power was from time to time limited. The court said, "The heating and lighting of public halls and rooms of the University are necessary and convenient for the accomplishment of the objects of the University and the general powers granted to the board of regents authorized it to enact the existing by-law under which there is exacted from each student in attendance, a fractional share of the expenses of such heating and lighting as a part of the incidental expenses." The trustees have power to furnish instruction free to any student or class of students.⁷⁸ But where by the constitution or statute instruction in a state college is free, a fee for the use of the college library cannot be charged.⁷⁹

⁷³*Goldstein v. New York University*, 76 App. Div. 80, 78 New York Supp. 130, (1902).

⁷⁴*State v. Regents of University of Wisconsin*, supra note 10.

⁷⁵*Connel v. Gray*, supra note 59.

⁷⁶*Connel v. Gray*, supra note 59.

⁷⁷54 Wis. 59, 11 N. W. 472, (1882).

⁷⁸*Adams v. Perry*, 43 N. Y. 487, (1871).

⁷⁹*State v. Regents of University*, 55 Kan. 389, 40 Pac. 656, (1895).

POWER TO ISSUE DIPLOMAS AND DEGREES

Lastly we come to the granting of diplomas and degrees. The decision of the college authorities is conclusive on the question as to whether a student has performed the conditions entitling him to a degree, providing they act in good faith and within their jurisdiction.⁸⁰ Thus it has been held that the exercise of a discretionary power to withhold a degree will not be interfered with by the court in the absence of bad faith or clear abuse.⁸¹ But a college cannot arbitrarily and without cause refuse examination and degree to a student who has complied with all the conditions entitling him thereto.⁸²

MANDAMUS

The question of the right to a mandamus to compel the issuance of a degree or diploma is one on which there is very little authority. The New York court seems to have passed on it more often than any other. In two instances the application has been refused,⁸³ but in *People v. Bellevue Hospital Medical College*⁸⁴ the mandamus was granted on the ground that the refusal to bestow the degree was arbitrary. The court seemed to place its decision on the ground that when a student matriculates according to the terms of the published circular of the college a contract arises. The English courts deny that the relation between students and faculty is contractual.⁸⁵ Yet the American courts seem to consider the relation a contractual one.⁸⁶ The rule governing the question of right to compel the issuance of diplomas by mandamus seems to be well stated by the court in *People v. New York Homoeopathic Medical College*,⁸⁷ thus, "Stated in general terms the principle is that mandamus will lie to compel the performance of duties purely ministerial in

⁸⁰*Tate v. North Pacific College*, 76 Or. 160, 140 Pac. 743, (1914).

⁸¹*People v. New York Homeopathic Medical College*, 20 New York Supp. 379, (1892).

⁸²*State v. Lincoln Medical College*, 81 Neb. 533, 116 N. W. 294, (1908).

⁸³*People v. New York Homeopathic Medical College*, 20 New York Supp. 379, (1892); *People v. New York Law School*, 68 Hun. 118, (1893).

⁸⁴60 Hun. (N. Y.) 107, 14 New York Supp. 490, (1891).

⁸⁵*Green v. Master & Fellows of St. Peters College, Cambridge*, 31 Law Journal 119.

⁸⁶*Stetson University v. Hunt*, supra note 67; *Goldstein v. New York University*, supra 73.

⁸⁷Supra note 83.

their nature, and so clear and specific that no element of discretion is left in their performance; but as to all acts or duties necessarily calling for the exercise of judgment and discretion on the part of the officer or body at whose hands their performance is required, mandamus will not lie." In that case where the college neither expressly or impliedly agreed to issue a diploma to its students unless the latter had satisfactorily passed certain examinations and their qualifications had been approved by the faculty, a student against whose qualification the faculty had found was held not entitled to a writ of mandamus to compel the college to issue a diploma to him, although he charged bad faith and ill will upon the part of some of the officials of the college. But where the applicant has been found duly qualified by the proper authorities and the issuance of the degrees does not depend upon discretionary acts, but only upon ministerial acts the performance of which are arbitrarily refused, it seems that mandamus will lie.⁸⁸ In case of universities where one is entitled to be admitted as a student, mandamus has been held a proper remedy to compel the institution to admit him as a student if this right is wrongfully denied him.⁸⁹ It has also been declared the proper remedy to compel the reinstatement of a student wrongfully expelled or suspended from the privileges of the institution.⁹⁰ On the other hand it has been held for the breach of a contract to furnish a diploma to a student there is an adequate remedy by action for breach of the contract or suit for specific performance, and that mandamus will not lie⁹¹

It has been the object of the writer to set forth some general observations as to the powers and authorities of the governing boards of state colleges and universities, rather than to arrive at any definite conclusion; to review some of the more important decisions which have either limited or attested the authority of the board of trustees or regents. In order to determine the powers and authorities of the governing board of any specific college or university, recourse must first be had to the constitu-

⁸⁸*State v. Lincoln Medical College*, supra note 82.

⁸⁹*State v. White*, supra note 59; *Jackson v. State*, 57 Neb. 183, 77 N. W. 662, (1898).

⁹⁰*Baltimore University v. Colton*, 98 Md. 623, 57 Atl. 14, (1904); *Jackson v. State*, supra note 89.

⁹¹*State v. Milwaukee Medical College*, 128 Wis. 7, 106 N. W. 116. (1906).

tional and charter provisions. Then we may well examine the decisions of various courts construing similar provisions, and thus arrive at some conclusion as to the extent of the powers in question.

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