CHAPTER III

CONSTITUTIONAL AUTONOMY OF THE UNIVERSITY
SINCE THE HOMEOPATHIC CASES

1. CASES INTERPRETING THE CONSTITUTIONAL SEPARATION OF UNIVERSITY AND STATE

The University’s autonomy is based upon a clause of the state constitution granting the Board of Regents the “general supervision” of the University. Since 1908 and 1956 respectively, the governing boards of Michigan State University and Wayne State University have enjoyed a similar franchise. In the present state constitution, equal rights were given to all governing boards of state-assisted four-year institutions of higher learning granting baccalaureate degrees.

Judicial interpretation of the “general supervision” clause could not end with the homeopathic cases, for clearly there are limits to the independence of universities\(^1\) from the rest of state government. While the “general supervision” clause grants the governing boards plenary power over all of the internal management and affairs of the universities, no one would argue that the universities are completely exempt from all the general legislation affecting the rest of the state. The universities are not independent city-states. There have, therefore, been recurring cases in which the courts are called upon to decide whether, in a particular situation, a statute applicable by its terms to a much larger group than the constitutional universities, is actually an unconstitutional interference in the internal affairs of the universities.

The other recurring problem is the validity of particular conditions on appropriations the legislature makes to the state universities. On the one hand, the constitution makes it the duty of the legislature to support certain named institutions (Article 8, Section 4), and, in general, the legislature has traditionally adhered to the spirit of the constitution by making lump-sum
appropriations to the universities which may be used in any way at the discretion of the governing board (See Chapter V). However, the power of the legislature to appropriate money has been generally thought to include the power to prescribe reasonable conditions for the use of the appropriations provided they do not interfere with the constitutional mandates to the governing boards of the universities. Such a doctrine is implicit in the homeopathic case of the *Regents v. Auditor General* in which the University did not receive its first appropriation because it could not satisfy either the Auditor General, or a majority of the Supreme Court, that it had appointed a homeopathic professor as required. Needless to say, it would be easy for the legislature to defeat completely the intent of the constitution by attaching sweeping conditions to appropriations which are very necessary for the proper support of the universities. In the cases in this chapter, the court has, therefore, limited the permissible scope of these conditions on appropriations.

The earliest case discussed in this chapter, *Weinberg*, was decided before the *Sterling* case. In *Weinberg*, subcontractors for the building of University Hospital sought to hold the University liable for failure to require the main contractors to post a bond to pay their subcontractors. A statute required all state agencies to obtain such bonds from their building contractors. In this case, the court was not required to decide the question of whether the statute could constitutionally be applied to the University. The more immediate issues were whether the statute should be interpreted as including the University, and, even if it did, whether the violation of the statute by a state officer was intended to give subcontractors a right to damages from the state agency. Since the court actually decided both these prior issues against the plaintiff, its ruling that the law was unconstitutional as applied to the University is, technically, only dicta. This dicta, however, took on new significance when the court itself, in later cases, cites it as authority.

A much more serious threat to University autonomy was presented in the next case in this series. The procedural framework of this case, mandamus, was becoming familiar—*Board of Regents v. Auditor General*. This time, the Auditor General had inquired into the uses of University funds and had decided that it was not proper to spend such money for field trips by students,
for President Angell's traveling expenses in attending the inaugurations of presidents of other universities, or for certain other purposes. This time the court had no trouble in unanimously voting to grant mandamus. The court ruled that "as against the discretion of the regents," the Auditor's function in this case is purely ministerial, that his judgment on the wisdom of University expenditures is irrelevant.

The power of the legislature to control the curriculum at the "agricultural college" (now Michigan State University) was decided in the first case of the State Board of Agriculture v. Auditor General. The legislature had tried to force the school to abandon its Engineering Department by limiting expenditure in that department to $35,000. This limitation on the use of funds was part of an increasing state appropriations to the school, but it applied to funds from all sources. At that time the agricultural college was largely supported from the proceeds of federal land grants.

In this case, the court ruled that "legislature exceeded its powers in attempting to deprive [the governing board] of its constitutional control of agricultural funds derived from the federal government." Since the whole act was declared void by the court, the former act which provided less state support for the college was declared to be still in effect.

The conditional appropriation was the issue in the next case, which was brought by the State Board of Agriculture against the Auditor General. The condition attached to an appropriation for the agricultural extension service of the then college had been interpreted by the Auditor General and the State Administrative Board, an agency of the executive branch of state government, to require the college's board to surrender complete control of the service to the State Administrative Board. The majority of the court ruled that such conditions were not constitutional. Since, in the majority's judgment, the legislature intended the appropriation itself to remain effective even though an unconstitutional condition were struck down, the court ordered the Auditor General to pay the full amount of the appropriation to the college. Three justices vigorously dissented.

The scope of the powers of the Board of Regents includes the power to sell or to lease land, even if the legislature has not
enacted specific enabling legislation. This was recognized in the 1863 case of *Regents v. Detroit Young Men's Society* and the relatively recent 1911 case of *Bauer v. State Board of Agriculture*. In effect, these cases hold that the constitutional provisions themselves have empowered the boards to act, and that they need not be supplemented by statute. Statutes, nevertheless, purport to delegate certain powers to these constitutional boards.²

Two workmen's compensation cases are included in this chapter because they raised constitutional questions. Both cases involve Michigan State University which resisted the application of workmen's compensation laws. The University of Michigan seems to have chosen to be covered because in two cases involving its employees³ the University argued only the merits of each claim and did not claim exemption from the statute. In the first Michigan State case, *Agler*, the court interpreted the statute as then written not to cover the college without its consent. In *Peters*, decided in 1948, the court was equally divided. The amended statute now clearly included the college, and the deadlock in the high court resulted in sustaining an award in favor of an employee.

In the *Jackson Broadcasting and Television* case, the court refused to interfere with an arrangement between Michigan State University and a private company to share facilities of a shared time television channel. This case is particularly interesting because it is so recent, and because of the delicate treatment afforded one of the presently heated issues of university autonomy—whether a condition in an appropriations bill is valid which requires that the universities must surrender to the central state government the right to plan and design new university buildings in order to qualify for appropriations to erect the buildings.⁴

At the present time, an unresolved question concerning constitutional autonomy is the validity of the amended Hutchinson Act as applied to the universities. The text of this legislation is included at the end of this chapter. Whether the broad authority this statute invests in the State Labor Mediation Board, which extends far beyond traditional "mediation," encroaches on the constitutional prerogative of the Board of Regents to conduct its own internal affairs must be answered by the state's highest court.⁵
MONTGOMERY, J. The plaintiff brought suit against the Regents of the University of Michigan, James B. Angell, James H. Wade, and Charles R. Whitman to recover the value of materials furnished to one Lucas, a subcontractor in the building of the University hospital. The right of action is claimed under Act No. 94, Laws of 1883, as amended by Act No. 45, Laws of 1885 (3 How. Stat. § 8411a). The declaration avers:

"That the Regents of the University of Michigan is a public corporation organized and existing under the laws of the State of Michigan, created for the government of the University of Michigan, which said institution belongs to and is the property of the State of Michigan, and is maintained at the expense of this State; that the defendant James B. Angell is the president of the Regents of the University of Michigan, and the executive head of the University of Michigan; that the defendant James H. Wade is the secretary; that the defendant Charles R. Whitman is a member of the Regents of the University of Michigan; that on or about the months of July and August, A.D. 1890, the Regents of the University of Michigan advertised for proposals for the erection and completion of a hospital building for the University of Michigan, which said hospital building, so to be erected and completed, was to be and has been built at the expense of this State; that afterwards, to wit, on the first day of October, A.D. 1890, in pursuance to said advertisement and proposals received, the bid of one William Biggs, of the city of Ann Arbor, was accepted, and on or about the date aforesaid the Regents of the University of Michigan entered into a contract with said William Biggs for the erection and completion of said hospital, in consideration of the sum of, to wit, $78,556, which said contract was signed by the defendants James B. Angell, James H. Wade, president and secretary as aforesaid, and by said William Biggs; that the defendant Charles R. Whitman was a member of the committee on buildings and grounds appointed by the Regents of the University of Michigan, which building committee was given full authority to act for the said Regents of the University of Michigan until otherwise ordered; that said Charles R. Whitman, as a member of said committee, was principally in charge of said undertaking of building said hospital; that afterwards the said William Biggs, by contract with one John Lucas, sublet a portion of the job for the building and erection
of said hospital; that the plaintiff, Julius Weinberg, is a laborer and material-man, engaged in the business of buying, selling, and furnishing stone, sand, and other material to contractors and other persons engaged in building, and other business in which such materials are used; that after the contract so made as aforesaid by the Regents to said Biggs, and by Biggs with said John Lucas, said Lucas, subcontractor as aforesaid, applied to the plaintiff to furnish stone for use in said hospital building, for which said Lucas agreed to pay plaintiff 85 cents for every 16 feet in length by one foot thick and one foot high, as the same was laid in the wall of said building.

"And the plaintiff further says that the defendants, the Regents of the University of Michigan, James B. Angell, James H. Wade, and Charles R. Whitman, were the board, officers, and agents of the State of Michigan, and made and entered into the contract for the erection of said hospital for and on behalf of the State of Michigan, and had the same built at the expense of this State; that it was the duty of said defendants as aforesaid, under section 8411a, as amended by Act No. 45, Public Acts of 1885, and sections 8411b and 8411c, Howell's Annotated Statutes, to require sufficient security by bond for the payment by the contractor and all subcontractors for all labor performed and materials furnished in the erection, repairing, or ornamenting of said hospital building."

The declaration further avers that plaintiff furnished the material in question, relying on such bond, and also avers that he has not received his pay, and concludes:

"And plaintiff further says that said defendants, in disregard of their duty aforesaid, negligently and carelessly, and in disregard of the rights of the plaintiff, neglected to require of said contractor the bond aforesaid, and permitted the said contractor to enter into said contract for the erection of said hospital building, and to enter upon the performance thereof, without giving security, by bond or otherwise, for the payment by said contractor and all subcontractors for the labor and materials furnished him or any subcontractor, as required by said statute."

To this declaration the defendants demurred, and the plaintiff joined in demurrer. The demurrer was sustained as to the individual defendants, and overruled as to the Regents of the University, and the plaintiff was permitted to amend as to the individual defendants. The defendant the Regents of the University of Michigan brings error. The plaintiff has, however, amended his declaration as against both defendants, and it is requested by both parties that the question of liability be here determined.
It is contended on behalf of the defendant that the statute does not apply to the Regents of the University of Michigan; that the University buildings are not built at the expense of the State, nor are they contracted for on behalf of the State, within the meaning of this statute; that they are constructed by a constitutional corporation, which may sue and be sued, and has power to take and hold real estate for any purpose which is calculated to promote the interests of the University.

The section, as amended by Act No. 45, Laws of 1885, provides:

"That when public buildings or other public works or improvements are about to be built, repaired, or ornamented under contract, at the expense of this State, or of any county, city, village, township, or school-district thereof, it shall be the duty of the board of officers, or agents, contracting on behalf of the State, county, city, village, township, or school-district, to require sufficient security by bond for the payment by the contractor and all subcontractors for all labor performed or materials furnished in the erection, repairing, or ornamenting of such building, works, or improvements."

We think the statute sufficiently broad to cover the contract in question. Act No. 145, Laws of 1889, appropriated—

"For the purchase of a site for and the erection of a hospital, for the year 1889, the sum of $25,000, and for the year 1890 the sum of $25,000: Provided, however, that no part of the above-named appropriations for the purchase of a site for and the erection of a hospital shall be paid out of the treasury until the city of Ann Arbor shall have bound itself to contribute the sum of $25,000 for the same purpose."

Section 2 provides for the assessment of taxes to pay this appropriation. Certainly, then, the undertaking was at the expense of the State and of the city of Ann Arbor, the contribution of the city of Ann Arbor, however, becoming State property upon its appropriation. We think it clear, also, that the Regents who acted in the matter were agents contracting on behalf of the State. They are officers elected by the voters of the State, whose duties relate to the control of public property. It is altogether too technical to say that the Regents were contracting on behalf of the University; for, while this is in a sense true, it is also true that they, by the very contract in question, provided for the expenditure of State money, and for the construction of a building which it would, I think, be news to most
residents of Michigan to learn is not State property. This is as much so as in the case of a school-district. Auditor General v. Regents, 83 Mich. 467.

It is contended by the defendant that the liability for neglect to require this bond attaches to the individuals who represented the State, county, city, village, township, or school-district in the letting of the contract, and not to the State or county or corporation of which they are directly the officers or agents. We think the defendant is right in this contention. In Owen v. Hill, 67 Mich. 43, and Plummer v. Kennedy, 72 Id. 295, the action was brought against the individuals composing the board. In Wells v. Board of Education, 78 Mich. 260, it was held that the officers were personally liable for materials on failure to take the required bond. Our attention has not been called to any case in which the municipality, in the case of a township or school-district, or a public or quasi public corporation, has been held liable as such, and it seems to us that there are insuperable objections to so holding. The duty rests upon the officers of the State, as well as cities, counties, and school-districts. Can it be intended that the State, which must act through its public officers, is to be held liable as for a tort for a mere neglect to take the bond required by this statute? It is true that it is urged that the Board of Regents is an agent of the State. This may be true in a certain sense, but we think the board, as a board, is not the agent contemplated by this statute, but that the officers who act directly are the ones who, as individuals, fall within the purview of the act. It may be doubtful to what extent the board of managers of a hospital which is a public institution, like the one in question, can be made liable for negligence; as to which see McDonald v. Hospital, 120 Mass. 432; Glavin v. Hospital, 12 R. I. 411. We do not deem it necessary to decide whether, under such circumstances as are involved in those two cases, the board of managers of the hospital, as a corporation, may not be liable. In such a case it might well be contended that it has undertaken to perform certain duties, and established relations towards the patients which impose upon the body in control certain duties. But the ground of the plaintiff’s right to recover at all in this case is that this property is State property, and, further, that the building is being constructed at the expense of the State, and that the members of the board were acting for and on behalf of the State in making the contract. It could not be contemplated that the State or the public corporation is to be made liable. The individual guilty of the wrong or neglect of duty is the one against whom the action should be directed. Cooley, Torts, 621. The wrong is in the nature of a tort consisting of neglect of duty owing to the public generally, for which the public corporation as such is not liable, unless made so by statute.
It follows from the views expressed that the judgment should be reversed, and the case remanded, that the plaintiff may proceed against the individuals named in the amended declaration.

McGRATH, J., concurred with MONTGOMERY, J.

GRANT, J. I concur in the opinion of my Brother Montgomery that under Act No. 94, Laws of 1883, as amended by Act No. 45, Laws of 1885, the public corporation cannot be made liable, but only those officers or agents of such corporation to whom is committed the duty of letting contracts for the erection of public buildings or making public improvements. But I cannot concur in holding that the statute applies to the corporation known as “the Regents of the University of Michigan.” The grounds, buildings, and other property of all the other State institutions, penal, reformatory, charitable, and educational, belong to the State. These institutions are the creations of the Legislature. They are under the exclusive control and management of the State. The State, which created them, may at any time repeal the laws by which they were established, and sell the property. The public buildings, public works, and public improvements mentioned in this statute mean those over which the State has control. This is evident from the language of the statute, which says:

“It shall be the duty of the board of officers, or agents, contracting on behalf of the State, * * * to require sufficient security by bond,” etc.

The Regents make no contracts on behalf of the State, but solely on behalf of and for the benefit of the University. All the other public corporations mentioned in the Constitution, which have occasion to erect public buildings or to make public improvements, are expressly included in this statute. *Expressio unius est exclusio alterius.* It expressly enumerates the State, counties, cities, villages, townships, and school-districts. If the University were under the control and management of the Legislature it would undoubtedly come within this statute, as do the Agricultural College, Normal School, State Public School, asylums, prisons, reform schools, houses of correction, etc. But the general supervision of the University is, by the Constitution, vested in the Regents. Const. art. 13, §§ 7, 8.

* * *

Under the Constitution, the State cannot control the action of the Regents. It cannot add to or take away from its property without
the consent of the Regents. In making appropriations for its support, the Legislature may attach any conditions it may deem expedient and wise, and the Regents cannot receive the appropriation without complying with the conditions. This has been done in several instances.

Property aggregating in value nearly or quite half a million of dollars has been donated to the University by private individuals. Such property is the property of the University. It is not under the control of the State when it acts through its executive or legislative departments, but of the Regents, who are directly responsible to the people for the execution of their trust. 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.

The University and the school-district are both provided for in the same article of the Constitution. Why should the Legislature mention the school-district in this statute, and leave out the University, if it was its intention to include the latter? The University is the property of the people of the State, and in this sense is State property, so as to be exempt from taxation. *Auditor General v. Regents*, 83 Mich. 467. But the people, who are the corporators of this institution of learning, have, by their Constitution, conferred the entire control and management of its affairs and property upon the corporation designated as “the Regents of the University of Michigan,” and have thereby excluded all departments of the State government from any interference therewith. The fact that it is State property does not bring the Regents within the purview of the statute. The people may, by their Constitution, place any of its institutions or property beyond the control of the Legislature.

This Court has refused to compel the Regents to comply with certain provisions of acts of the Legislature against their judgment that they were not for the best interests of the University. *People v. Regents*, 4 Mich. 104; *People v. Regents*, 18 Id. 469; *People v. Regents*, 30 Id. 473. The Legislature was undoubtedly cognizant of the above decisions, for the questions involved were of considerable public interest.

These considerations lead me to the conclusion that the Regents are not included in this act, and that the judgment should be reversed, and judgment entered in this Court for the defendants.

Judgment entered accordingly.

HOOKER, C. J., and LONG, J., concurred with GRANT, J.
Board of Regents of the University of Michigan v. Auditor General

167 Mich. 444, 445-52; 132 N. W. 1037 (1911)

STEERE, J. In this proceeding the court is asked to decide whether the judgment of the auditor general or that of the board of regents shall prevail respecting the expenditure of moneys appropriated for the use and maintenance of the University by Act No. 102, Pub. Acts 1899. On April 30, 1906, the treasurer of the University made requisition upon the respondent for monthly expenditures from the appropriation of the so-called quarter-mill tax, amounting to $39,452.50, for the payment of current expenses. In making this requisition he followed the usual practice, which was in harmony with the methods prescribed by the accounting laws. The auditor general refused to draw his warrant upon the State treasurer for the amount of such requisition, for the reason that certain vouchers made by the regents for prior expenditures, which in his opinion were unlawful, had not been audited and allowed by him. These prior expenditures, amounting to $557.54, were for traveling expenses of Dr. Angell, president of the University, in attending alumni meetings and inaugurations of presidents of other universities, and for traveling expenses of other members of the faculty and officers, acting under the authority of the president and regents, in attending intercollegiate meetings and conferences as delegates or representatives of the University, and for the expenses of instructors in accompanying students in inspecting mechanical engineering plants, the same being a part of the prescribed course for certain engineering students. It was the opinion of the auditor general that such expenditures were not for the use and maintenance of the University, as contemplated by Act No. 102, Pub. Acts 1899, and consequently not for lawful purposes under the accounting laws of this State. The petitioner claims it has exclusive direction and control of all University expenditures, and asks for a writ of mandamus to compel respondent to draw his warrant on the State treasurer for the amount of the requisition above mentioned.

On behalf of the respondent it is urged that the writ should be denied for the following reasons:

"First. Because the quarter-mill tax appropriation must be dispensed in accordance with the accounting and appropriation laws of this State, and in refusing to comply with the conditions therein expressed the board of regents has violated the conditions upon which the appropriation was made."
"Second. Because it is the judgment of the auditor general, whose determination is final and conclusive, that the disbursements represented by the vouchers in question are for unlawful purposes.

"Third. Because the auditor general is prohibited by law from drawing his warrant upon the State treasurer for future requisitions until the amounts represented by the vouchers in question are returned to the institution treasury."

The moneys available for support and maintenance of the University consist of, first, interest on the University fund so called, being a fund derived from the sale of lands donated by the general government; second, fees received from students; third, appropriations made from time to time by the legislature of the State.

The funds in question are of the latter class, being appropriated by Act No. 102, Pub. Acts 1899, providing for a tax of one-quarter mill upon the taxable property of the State. This act, which is an amendment of a former act of similar import, consists of but one section, and reads as follows:

"SECTION 1. There shall be assessed upon the taxable property of the State as fixed by the State board of equalization, in the year 1899 and in each year thereafter, for the use and maintenance of the University of Michigan, the sum of one-fourth of a mill on each dollar of said taxable property to be assessed and paid into the State treasury of the State in like manner as other State taxes are by law levied, assessed and paid; which tax, when collected, shall be paid by the State treasurer to the board of regents of the University in like manner as the interest on the university fund is paid to the treasurer of said board; and the regents of the University shall make an annual report to the governor of the State of all the receipts and expenditures of the University: Provided, that the board of regents shall not authorize the building or the commencement of any additional building or buildings or other extraordinary repairs until the accumulation of savings from this fund shall be sufficient to complete such building or other extraordinary expense. Also provided, that the board of regents of the University shall maintain at all times a sufficient corps of instructors in all the departments of said University as at present constituted, shall afford proper means and facilities for instruction and graduation in each department of said University, and shall make a fair and equitable division of the funds provided for the support of the University in accord with the wants and needs of said departments as they shall become apparent; said departments being known as the departments of literature, science and art, department of medicine and surgery, department of law, school of
pharmacy, homeopathic medical college and the department of dental surgery. Should the board of regents fail to maintain any of said departments herein provided, then at such time shall only one-twentieth of a mill be so assessed: Provided, further, that the State treasurer be and is hereby authorized and directed to pay to the regents of the University, in the year 1899 and each year thereafter, in such manner as is now provided by law, upon the warrant of the auditor general, the amount of the mill tax provided for by this act; and that the State treasury be reimbursed out of the taxes annually received from said mill tax when collected; and said auditor general shall issue his warrants therefor as in the case of special appropriations."

Manifestly there cannot be a strict compliance with the two somewhat contradictory provisions as to time and manner of payment. In the enacting clause of the statute under consideration, the legislature provides for a quarter-mill tax, appropriates it to the use and maintenance of the University, and specifies that, when collected, it shall be paid to the regents in like manner as interest on the University fund is paid. It further requires that the regents shall annually make report of receipts and expenditures to the governor. Following this, in separate provisos, are two distinct conditions as to expenditure of this appropriation. First, it prohibits the use of savings, accumulated from the appropriation, for any new buildings or extraordinary repairs or expenses until such accumulations are sufficient to complete the same; second, the departments of the University are to be maintained in a certain manner, and by a final proviso the State treasurer is directed to each year advance from the State treasury the amount of the mill tax provided by the act, to be reimbursed from said tax when collected, and he is to pay the same "in such manner as is now provided by law." The respondent and his predecessors have construed this proviso as requiring payments to be made under the general accounting laws of the State, and have followed the procedure there pointed out, which course has been acquiesced in by the regents until this controversy arose over the authority of the auditor general to reject vouchers for expenditures authorized by the board when in his judgment they were not for lawful purposes.

He claims such authority under sections 3 and 5 of the accounting laws, being sections 1207 and 1209, 1 Comp. Laws; the material portions reading as follows:

"SEC. 3. Such account current, abstract, vouchers, and receipts, when received by the auditor general, shall be examined by him, and if found correct shall be so endorsed by him; and all
vouchers for expenditures, so far as the amount thereof shall appear to be for lawful purposes, he shall audit. ** *

"SEC. 5. Money appropriated by any act of the legislature for the use or benefit of any State educational, charitable, reformatory or penal institution, or to be disbursed by any officer, may be drawn from the State treasury upon the warrant of the auditor general, as follows, viz.: Under appropriations for current expenses monthly for pro rata amounts: ** ** Provided, that when appropriations are made for current expenses, or general purposes, where no itemized estimates were furnished as a basis therefor, then the class of disbursements shall be determined by the officer, or board of the institution making them, and if the same shall appear to the auditor general to be within the range of reasonable purposes he shall approve the account. ** **"

In passing upon statutory provisions which are obscure or conflicting, the practical construction which State officials, with a duty to perform thereunder, have, during a long period adopted and followed with reference to their meaning, and which has been acquiesced in all parties in interest, is entitled to weight, and has been favored by the courts when not manifestly in conflict with the intent and spirit of the act. In harmony with that rule of construction, we are disposed to accept the interpretation of the law adopted and acted upon by respondent and relator as to the time and manner of payment; but, in the light of constitutional provisions, legislation, and decisions of this court touching the authority of the board of regents to control the affairs of the University, cannot hold that the judgment of the regents as to the legality and expediency of expenditures for the use and maintenance of the institution is subordinate to that of the auditor general.

The leading thought and clearly expressed object of the final proviso under consideration is the advancement during each year of this appropriation from the State treasury for current expenses, to be later replaced when the tax is collected. To that extent it clearly modifies the enacting clause, but words found in the body of the act, following the phraseology of previous acts of like nature, paralleling the appropriations made, with the University interest fund, have a significant bearing on the intent of the legislature. It is an elementary rule of construction that all words found in the act are presumed to be made use of for some purpose, and, so far as possible, effect must be given to every clause and sentence.

The proper function of a proviso is to restrain, or in some manner modify, the general provisions of an enacting clause. It is not to be extended or enlarged by inference, but strictly construed and
limited to the object plainly within its terms.

By the provisions of the Constitution of 1850, repeated in the new Constitution of 1909, the board of regents 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. By the old Constitution it is given "direction and control of all expenditures from the University interest fund" (section 8, art. 13); and by the new Constitution "general supervision of the University, and the direction and control of all expenditures from the University funds." Section 5, art. 11. That the board of regents has independent control of the affairs of the University by authority of these constitutional provisions is well settled by former decisions of this court. *People v. Regents*, 4 Mich. 98; *Weinberg v. Regents*, 97 Mich. 254 (56 N. W. 605); *Sterling v. Regents*, 110 Mich. 382 (68 N. W. 253, 34 L. R. A. 150); *Bauer v. State Board of Agriculture*, 164 Mich. 415 (129 N. W. 713). Strong and unequivocal language is used in these decisions.

"The respondents are constitutional officers to whom are confided by the Constitution 'the general supervision of the University, and the direction and control of all expenditures from the University interest fund.' \*\*\* To their judgment and discretion as a body is committed the supervision of the financial and all other interests of an institution in which all the people of this State have a very great interest." *People v. Regents*, supra.

"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. \*\*\* Under the Constitution, the State cannot control the action of the regents. \*\*\* It cannot add to or take away from its property without the consent of the regents. In making appropriations for its support the legislature may attach any conditions it may deem expedient and wise, and the regents cannot receive the appropriation without complying with the conditions. This has been done in several instances." *Weinberg v. Regents*, supra.

The able and exhaustive opinion by Justice GRANT in *Sterling v. Regents*, supra, reviews the causes which led up to these former decisions and reaffirms them. In the recent case of *Bauer v. State Board of Agriculture*, supra, the *Sterling Case* is cited with approval.

That conditions may be attached by the legislature to appropriations for the University is well settled. In such case the regents may
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accept or reject such appropriation, as they see fit. If they accept, the conditions are binding upon them. In this act appropriating the quarter-mill tax, now three-eighths of a mill (Act No. 303, Pub. Acts 1907), are specific conditions as to reporting to the governor, maintaining the departments, and use of accumulations. With these the regents must comply. For a failure to maintain any of said departments the penalty is a reduction of the tax to one-twentieth of a mill, but beyond that the money passes to the regents, and becomes the property of the University, to be expended under the exclusive direction of the regents.

We cannot construe the language of the final proviso of the act in question as an intent on the part of the legislature to overthrow the public policy of over half a century, plainly deducible from the general course of legislation and adjudication relating thereto, or as a purpose on their part to refuse aid to the University, unless the regents surrender their constitutional right to control the affairs and finances of the institution, and submit their judgment as to the wisdom and expediency of detailed expenditures for current expenses to that of the auditor general. Neither in construing this proviso can we interpret it as an intent thus by indirection to enlarge the scope of the enacting clause and ingraft upon this appropriation all conditions and restrictions found in the accounting laws of the State, together with any legislation which may be read in connection therewith.

No money is paid out of the State treasury except on the warrant of the auditor general. In this case, as in many others, his duties are purely ministerial. As against the discretion of the regents in expenditure of the University funds he exercises no judicial functions. As to him, in the performance of his official duties, vouchers for expenditures made within the amount of the appropriation, when authorized by the board of regents and properly authenticated by the duly constituted officials, are, within the meaning of the law, “for lawful purposes.”

A writ of mandamus will issue as prayed.

OSTRANDER, C. J., and MOORE, McALVAY, BROOKE, BLAIR, and STONE, JJ., concurred. BIRD, J., did not sit.
State Board of Agriculture v. Auditor General

180 Mich. 349, 350-61; 147 N. W. 529 (1914)

Under the Constitution and laws of the State, money may be drawn from the State treasury only upon the warrant of the auditor general. On the 23d of March last the auditor general declined to draw warrants for certain sums asked for by the State board of agriculture, basing his action upon the legislative declaration found in Act No. 324 of the Public Acts of 1913, which appropriates and orders to be levied for the use of the agricultural college, in the year 1913 and thereafter, annually one-sixth of a mill on each dollar of the taxable property in the State, and concludes as follows:

"SEC. 1 (a). No part of this or any other appropriation shall be available in case a sum in excess of thirty-five thousand dollars from any or all sources, shall be expended in any one fiscal year for all the maintenance of the mechanical and engineering department."

When the warrants were refused, a sum in excess of the requisitions stood credited to the agricultural college fund. Requisitions previously honored advised the auditor general that a sum in excess of $35,000 had been expended in maintaining the mechanical and engineering department of the college since June 30, 1913.

The State board of agriculture filed its petition for an order requiring the auditor general to draw the refused warrants and such others as it might be entitled to. The auditor general made answer, and, upon the petition and answer, there being no disputed facts, the matter has proceeded to a hearing. It is asserted, in concluding the petition, that, if the auditor general's construction of the act of 1913 is the correct one, it prevents relator's performing duties imposed by the Federal statutes and those imposed upon it by the Constitution of the State; that the appropriation, in view of the condition, is not one which it is free to accept or reject. It cannot reject the appropriation without disobeying constitutional mandates; it cannot accept it and perform the condition without denying itself the exercise of constitutional powers. The condition is not within the title of the act. The act may be construed to limit the expenditure of moneys raised by taxation and appropriated by the act, in which case it has been complied with. If it may not be so construed, the condition is altogether unconstitutional, and relator is entitled to receive the appropriation.

In behalf of the respondent auditor general the attorney general contends that:
"An examination of the conditions found in section 1 (a) of the act under consideration demonstrates that the provisions are in no wise ambiguous, and there can be no serious question as to the purpose of the legislature in attaching this condition. Undoubtedly it was the same purpose that prompted the condition attached in the regents’ case involving the homeopathy department. It is not a question for this Court, we respectfully submit, nor is it a question for the administrative officers of the State, whether the agricultural college shall continue as a competitor against another institution maintained at State expense of over $200,000 per year; nor is it a question for this Court or the administrative officers of the State whether this legislation is wise in policy or not; nor is it a question, we respectfully submit, for relator board to determine. The money in the treasury of the State was the property of the State; none of it was the property of the agricultural college until appropriated by the legislative branch of the State government. That branch of the State government has the exclusive control of appropriations to State institutions, and may prescribe the amount and condition upon which any of the public institutions of the State can withdraw the same. If, in the wisdom of the legislature, it is inadvisable to continue two appropriations to two institutions which are duplicating work in the State, neither the courts, the administrative officers, or administrative boards can set aside such action.

"Relator understood clearly the conditions under which this appropriation was made; it understood clearly that, if the act was valid, its engineering department must be curtailed; and, while protesting against the power of the legislature to attack such conditions, it continued to make its requisitions upon the auditor general and to receive the money appropriated to it under this and other acts, and to use such money contrary to the conditions found in this act. The people, by the Constitution of 1908, gave to relator powers never before possessed by the controlling board of the agricultural college, the same powers exercised by the regents of the university, but they still reserved to their representatives chosen each two years the right to determine the appropriations to be made, not only to the other State institutions, but also to the university and the agricultural college. The respondent is but carrying out the conditions imposed under the act in question. Relator’s present position, if unfortunate, arises from its failure to recognize that the legislature, and the legislature alone, holds the purse strings of the State.”

To understand and to dispose of the contention presented, it is necessary to refer to facts appearing in the pleadings of evidence by the Constitution of the State and Federal and State statutes. By the
Constitution of 1909 the State board of agriculture is made, what before it was not, a constitutional board and body corporate. It is given general supervision of the college and direction and control of “all agricultural college funds.” Article 11, § 8. Sections 10 and 11 of article 11 read, respectively, as follows:

“SEC. 10. The legislature shall maintain the university, the college of mines, the State agricultural college, the State normal college, and such State normal schools and other educational institutions as may be established by law.

“SEC. 11. The proceeds from the sales of all lands that have been or hereafter may be granted by the United States to the State for educational purposes and the proceeds of all lands or other property given by individuals or appropriated by the State for like purposes shall be and remain a perpetual fund, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and annually applied to the specific objects of the original gift, grant or appropriation.”

Agricultural college funds, when the Constitution was adopted, consisted of sums paid for tuition, receipts from sales of products of the institution, a grant of money by the Federal government, the interest paid by the State upon money received from sales of land granted by the Federal government (the proceeds of the sales having been covered into the State treasury), and, lastly, the proceeds of a tax of one-tenth of a mill levied annually upon the valuation of taxable property of the State pursuant to the provisions of Act No. 232 of the Public Acts of 1901 (4 How. Stat. [2d Ed.] § 9808). The condition attached to the Federal grant of lands was:

“That all moneys derived from the sale of the lands aforesaid by the States to which the lands are apportioned, and from the sales of land scrip hereinbefore provided for, shall be invested in stocks of the United States or of the States, or some other safe stocks, yielding not less than five per centum upon the par value of said stocks; and that the moneys so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished (except so far as may be provided in section fifth of this act), and the interest of which shall be inviolably appropriated, by each State which may take and claim the benefit of this act, to the endowment, support, and maintenance of at least one college, where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the
legislature of the States may respectively prescribe, in order to pro-
mote the liberal and practical education of the industrial classes in
the several pursuits and professions in life.”

And the Federal grants of money were made to the State for
the more complete endowment and maintenance of such agricultural
college as had been or might be established in accordance with the
original land grant act. Formal acceptances of the Federal bounty
were made by the legislature (Acts Nos. 46 and 140, Session of 1863;
Act No. 80, Session of 1891), and it was formally devoted to the
maintenance of the agricultural college. Including the interest paid
by the State, the proceeds of Federal bounty amount to more than
$120,000 annually. Although one purpose of the Federal grants was
the teaching of mechanic arts, and instruction was in some degree
afforded in mechanic arts, it was more than 20 years after the first
grant was made before a mechanical department was established at
the college. Act No. 42, Public Acts 1885. Since it was established,
the State board of agriculture has been repeatedly expressly charged
with the maintenance of the department. Section 15 of Act No. 188,
Public Acts of 1861, an act which reorganized the college, provides
a course of instruction as follows:

“The course of instruction shall embrace the English language
and literature, mathematics, civil engineering, agricultural chemistry,
animal and vegetable anatomy and physiology, the veterinary art,
entomology, geology, and such other natural sciences as may be pres-
cribed, technology, political, rural and household economy, horti-
culture, moral philosophy, history, bookkeeping, and especially the
application of science and the mechanic arts to practical agriculture
in the field.”

To refer to no other instances, in Act No. 232, Public Acts of
1901, is found the following condition:

“The Michigan State board of agriculture shall maintain at all
times a sufficient corps of instructors in all the courses of study of
the agricultural college as at present constituted, *** the same being
known as the agricultural department, the mechanical department
and the woman’s department; *** and shall make a fair and equita-
ble division of the funds provided by this act in accord with the
wants and needs of said courses of study. ***”

And the concluding language of the section is:
"Should the State board of agriculture fail at any time to maintain any of said departments as herein provided, the terms of this act shall be suspended until further action by the legislature."

The mechanical department has grown in importance until it now represents an investment of more than $227,000. To maintain it during the year ending June 30, 1913, there was expended $27,000 for supplies, machinery, and maintenance of buildings, and about $34,000 for salaries of professors and instructors.

Following the enactment of the law in question here and before any money had been drawn under it, the State board of agriculture made a statement in writing, copies of which were sent to the State officers, in which statement, after reviewing the history of the mechanical and engineering department of the college and the Federal and State legislation pertaining thereto, the following conclusions are set forth:

"The board is advised by reputable legal counsel, and it believes, that under the Constitution of the State, the legislature has no authority to enact the limiting provision hereinbefore first referred to, and especially that it had no power to limit or determine the use of the Federal funds. However, without in any manner accepting the provisions of said limitation, and without waiving our right to insist upon its invalidity, we respectfully make the following declaration of our intention in reference to said mechanical and engineering department:

"(a) We shall continue that department as now conducted and as it may legitimately grow and develop.

"(b) We shall limit the annual expenditure of State funds in this department to $35,000.00.

"(c) For the remainder of the necessary expenditure we shall use a sufficient portion of the funds of the Federal government.

"(d) The secretary is instructed to mail certified copies of this statement, and the action of the board in reference thereto, to the governor, the auditor general, the State treasurer, the attorney general and to the president of the senate and the speaker of the house."

As matter of bookkeeping, the auditor general credits the agricultural college fund with all moneys belonging to it. During the fiscal year beginning July 1, 1913, and until the month of March, 1914, requisitions upon the fund were honored until a sum in excess of $400,000 had been paid upon the requests of the State board of agriculture, there remaining in the fund in March, 1914, when further demands were refused, a sum in excess of $190,000.
OSTRANDER, J. (after stating the facts). In attempting to find the meaning to be given to section 1 (a), it will be assumed that the legislature knew that, independent of the immediate appropriation, there was a fund already devoted to the needs of the college larger than any sum likely to be used to maintain the particular department. If the purpose was to limit the total sum which should be expended to maintain that department, it could not be accomplished by limiting the amount which might be taken from the immediate appropriation. If there was no purpose to limit the total amount which might be expended, the provision is wholly insensible. In any event, the words “from any and all sources” may not be disregarded. Section 1 (a) cannot be held as intended merely to place a limitation upon the amount to be taken from the immediate appropriation to be used in maintaining the mechanical and engineering department.

While no reading and no analysis of the language employed leaves one entirely certain of the meaning of the provision, it seems most reasonable to say that the purpose was to limit expenditures for maintaining the particular department to $35,000 annually, and to make unavailable for the use of the college all of its funds in case the maximum thus fixed was exceeded. I do not overlook the language, “No part of this or any other appropriation shall be available,” nor the actual occurrence of a result which was inevitable; namely, that unless the declaration of the relator board was to be accepted for the fact some part of the immediate and of other appropriations would of necessity be available, if the college was to continue to exist, since it could not be known before the fact whether relator would or would not expend more than $35,000 in maintaining the particular department. Some question might be raised also about the meaning of the words “or any other appropriation.” The reference might be to an unexpended appropriation or the term “appropriation” used to designate, and not improperly, the earlier legislation which devoted the Federal gifts to the maintenance of the college. But I think we must say that the legislative purpose expressed in this statute is the one to which the respondent has given effect, and, assuming the law to be valid, respondent cannot be required to issue to relator further warrants for money.

We must either say this, or else conclude that section 1 (a) was added to the act as an admonition, and not a command, or a condition; that it expresses the opinion of the legislature with respect to the manner in which the agricultural college funds shall be employed. If it was an admonition merely, the act could, of course, stand without it. Because of the language employed in section 1 (a) I do not feel warranted in concluding that it is admonitory only. It is therefore necessary to determine whether the legislature has, as it is
claimed, exceeded its constitutional powers, and, if it has, then the
state of the applicable law.

If section 1 (a) be held to be valid, its effect would be legisla-
tive supervision of the college. To determine that a department of
the college which has been maintained at a cost of $60,000 annually
for instructors and supplies shall be from a given date maintained at
a cost of $35,000 annually for instructors and supplies is to deter-
mine that it shall have fewer supplies, or fewer, or less capable, in-
structors, or both. It is something more than reducing a general ap-
propriation so that the expenses in some or in all departments of the
college must be reduced, leaving the proper supervisors to determine
how efficiency can be best maintained under new conditions. The
Constitution has given to the relator the general supervision of the
college and the direction and control of all agricultural college funds.
So long as the relator employs them for the purposes intended by the
grant, it is beyond the power of the legislature to control the relator’s
use of the funds received from the Federal government and long ago
appropriated to the agricultural college. Undoubtedly the grant of
funds was to the State, and the disposition of them wholly within
the power of the State, acting through its legislature, in accordance
with the conditions of the trust imposed. *Montana, ex rel Haire, v. Rice*, 204 U.S. 291 (27 Sup. Ct. 281); *Wyoming, ex rel. Wyoming
Agricultural College, v. Irvine*, 206 U.S. 278 (27 Sup. Ct. 613). See,
also, *Massachusetts Agricultural College v. Marden*, 156 Mass. 150
(30 N. E. 555). I am called upon to neither affirm nor deny the
proposition that the legislature may now appropriate the Federal
fund, in whole or in part, to some other institution, withdrawing it,
or some of it, from the agricultural college, so long as it keeps faith
with the congress. The legislature has not withdrawn it from the col-
lege nor appropriated it, or any part of it, to another institution. It
remains an *agricultural college fund*, within the meaning of the Con-
stitution, devoted, under the supervision and direction of the relator,
to the college and to the purposes expressed in the grant, in State
legislation, and, finally, in the Constitution of the State. It is re-
quired to be “annually applied to the specific objects of the original
gift, grant or appropriation.” Necessarily it must be so applied, under
existing conditions, by the constitutional supervisors of the fund,
and of the college, and not by the legislature. It follows that the
legislature exceeded its powers in attempting to deprive the relator
of its constitutional control of agricultural college funds derived
from the Federal government. The constitutional powers of the State
board of agriculture with respect to the college and its funds are the
same as those of the board of regents of the university with respect
to the university and its funds, and authority for the conclusion
stated may be found in *Sterling v. Regents of the University*, 110 Mich. 369 (68 N. W. 253, 34 L. R. A. 150); *Board of Regents v. Auditor General*, 167 Mich. 444 (132 N. W. 1037), as well as in *Bauer v. State Board of Agriculture*, 164 Mich. 415 (129 N. W. 713).

I assume that the legislature, in amending the original bill by adding section 1 (a) thereto, acted in good faith and with the highest motives. I am obliged to find that in doing so constitutional powers were exceeded. I am obliged to find, further, that the legislative intent was to deprive the college of all funds, however derived, upon the contingency expressed in the act. This being so, the question is whether it can be said that the act would have passed without the condition.

In deciding this question, we are not concerned with, do not inquire into, and cannot know the purpose and intent of legislators. We must look at the law itself and judicially ascertain the intent of the legislature.

"If a statute attempts to accomplish two or more objects, and is void as to one, it may still be in every respect complete and valid as to the other. But if its purpose is to accomplish a single object only, and some of its provisions are void, the whole must fail unless sufficient remains to effect the object without the aid of the invalid portion. And if they are so mutually connected with and dependent on each other, as conditions, considerations, or compensations for each other, as to warrant the belief that the legislature intended them as a whole, and if all could not be carried into effect the legislature would not pass the residue independently, then if some parts are unconstitutional, all the provisions which are thus dependent, conditional, or connected must fall with them." Cooley's Constitutional Limitations (6th Ed.), p. 211.

There are some facts which we may and do know which aid us in this inquiry. We know that in the year 1901, and until the year 1913, the State appropriation for the agricultural college was one-tenth of a mill. In 1913, by the act in question here, this appropriation was increased, upon condition, to one-sixth of a mill. The appropriation made in 1901 does not fail if the act of 1913 is held invalid. The college will still receive the proceeds of a tax of one-tenth of a mill upon the taxable property of the State, and it appears that upon this basis something remains in the treasury. It is contended that the decision of this court in *Moreland v. Millen*, 126 Mich. 381 (85 N. W. 882), supports the ruling that the act may stand, notwithstanding the invalid condition, and that to hold otherwise is to overrule the decision in that case. I have read the opinions delivered in that case with
care and with no disinclination to sustain the relator in this controversy. The cases seem to me to be wholly unlike. For the purposes of the decision in that case, it was assumed in the majority opinion that the legislature, in the act there in question, sought to improve the method of administering public works in the city of Detroit. The act made radical changes in the existing law. It provided finally that a superintendent of public works should be appointed, for a designated, but short, period of time, by the governor of the State, and thereafter by the mayor of the city. It was held that the legislature exceeded its powers in providing for the provisional appointment, but that the whole law was not thereby made invalid. It was held further that, an office having been created by the act, the mayor might proceed at once to fill it by appointment. In that case the invalid portion of the act provided for a mere detail; in this case it is the condition upon which an increased appropriation is made. It is as though the legislature, in 1913, had for that year, and each succeeding year, provided a fund for the college, and for a further sum to be given it upon condition.

The whole act must fail, and, this being so, the respondent should be advised (it is unlikely that a writ will be necessary) that the act of 1913 is void; that the act of 1901 is in force; that the fund derived from the Federal government and a fund equal to the one created by that act are within the control of the relator.

McALVAY, C. J., and BROOKE, KUHN, STONE, BIRD, MOORE, and STEERE, JJ., concurred.

State Board of Agriculture v. Auditor General

226 Mich. 417, 418-36; 197 N. W. 160 (1924)

MOORE, J. The writ of mandamus is sought to compel the auditor general to issue his warrant on the State treasurer in favor of the Michigan Agricultural College for $75,000. The State administrative board is made a party defendant for the reason that the auditor general refuses to issue said warrant because said board has directed him not to do so.

This proceeding calls for a construction of Act No. 308, Pub. Acts 1923, which reads:

“For carrying on the co-operative agricultural extension work under the provisions of an act of congress approved May eight,
nineteen hundred fourteen, entitled 'An act to provide for co-operative extension work between the agricultural colleges for the several States receiving the benefits of an act of congress approved July two, eighteen hundred sixty-two, and acts supplementary thereto, and the United States department of agriculture,' and such other extension work as the State board of agriculture may designate, the sum of

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<th>For Fiscal Year 1923-1924</th>
<th>For Fiscal Year 1924-1925</th>
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<tbody>
<tr>
<td>Annual appropriation for extension work</td>
<td>$150,000.00</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>Special fund for research work</td>
<td>35,000.00</td>
<td>35,000.00</td>
</tr>
<tr>
<td>Horticultural building including green house and equipment</td>
<td>200,000.00</td>
<td>200,000.00</td>
</tr>
<tr>
<td>Extensions and additions to power house and equipment</td>
<td>75,000.00</td>
<td>75,000.00</td>
</tr>
<tr>
<td>Farm and miscellaneous buildings and incidental additions to buildings</td>
<td>50,000.00</td>
<td>50,000.00</td>
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<tr>
<td>Hospital</td>
<td>50,000.00</td>
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<tr>
<td><strong>Totals</strong></td>
<td><strong>$560,000.00</strong></td>
<td><strong>$510,000.00</strong></td>
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"Each of said amounts shall be used solely for the specific purposes herein stated, subject to the general supervisory control of the State administrative board."


"1. To aid in diffusing among the people of the United States useful and practical information on subjects relating to agriculture and home economics and to inaugurate in each State agricultural extension work to be carried on by the agricultural or land grant colleges, in co-operation with the United States department of agriculture. ** ** **

"2. The contemplated co-operative extension work to consist of instruction and practical demonstrations in agriculture and home economics to persons not attending or residing in said colleges. This work to be carried on in such manner as may be mutually agreed
upon by the United States secretary of agriculture and the agricultural college receiving the benefit of the act. ***

3. Before any college receives its share of the Federal appropriation each year, plans for the work to be carried on under this act to be submitted by the proper officials of each college and approved by the secretary of agriculture.

4. With the exception of the $10,000 preliminary appropriation above referred to, no payment to be made of Federal funds to any State until an equal sum has been appropriated for such year by the legislature of such State or until it has been provided by the State, county, college, local authority or from individual contributions within the State for the maintenance of the co-operative agricultural extension work provided for in the act.”

By Act No. 65, Pub. Acts 1915 (1 Comp. Laws 1915, § 1272), the Michigan legislature accepted the offer made in the Smith-Lever act, “under the terms and conditions expressed in said act.”

Section 2 of said act provides:

“The moneys derived by authority of said act shall be exclusively used in support of co-operative agricultural extension work, to be carried on by Michigan Agricultural College, and the secretary of the State board of agriculture is hereby designated as the officer to whom such funds should be paid.”

An agreement was made between the Agricultural College and the United States department of agriculture regarding the conduct of said co-operative extension work. It will not be necessary to quote the details of this agreement. In it the parties mutually agreed:

“(a) That all co-operative extension work be planned under the joint supervision of the director of extension work of the college, subject to the approval of the president of the college and the agriculturist in charge of demonstration work for the United States department of agriculture, and subject to the approval of the secretary of agriculture or his representative, and that the approved plans for such extension work in Michigan should be executed through the extension division of said college in accordance with the terms of so-called individual projects agreements.

“(b) That all co-operative extension work agents in Michigan, under this and subsequent agreements, be joint representatives of the college and the United States department of agriculture, unless otherwise expressly provided, and that such co-operation be plainly set forth in all literature issued either by the college or said department of agriculture.
“(c) That the plans for use of Smith-Lever funds be made by the extension division of the college, but subject to the approval of the secretary of agriculture, and when so approved, be executed by the extension division of the college.

“(d) That headquarters of the Michigan organization shall be the Michigan Agricultural College.”

A director was appointed by the plaintiff as director of extension work and his appointment was approved by the United States secretary of agriculture and he is now acting in that capacity.

Differences arose between the plaintiff and the State administrative board, which resulted, as before stated, in the auditor general refusing to issue his warrant for any part of the $150,000 appropriated by Act No. 308, Pub. Acts 1923.

The refusal of the defendant to turn over the money is based upon the provision of Act No. 308, Pub. Acts 1923, which reads:

“Each of said amounts shall be used solely for the specific purposes herein stated, subject to the general supervisory control of the State administrative board.”

Article 11 of the Constitution of Michigan reads in part:

“SEC. 7. * * * The members thus elected and their successors in office shall be a body corporate to be known as ‘The State Board of Agriculture.’

“SEC. 8. * * * The board shall have the general supervision of the college, and the direction and control of all agricultural college funds.” * * *

Act No. 269, Pub. Acts 1909 (1 Comp. Laws 1915, § 1233 et seq.), reads in part:

“SEC. 2. The government of the Michigan Agricultural College shall be vested in the State board of agriculture.

“SEC. 6. * * * The State board of agriculture shall have the general supervision of the Michigan Agricultural College; * * * of all appropriations made by the State or by congress for the support of said college, or for the support of the experiment station or any sub-station, or for any other purpose for which said college is created. * * *

“SEC. 7. The board shall fix the salary of the president, professors and other employees, and shall prescribe their respective duties. * * *
"SEC. 9. The board shall direct the disposition of any moneys appropriated by the legislature or by congress for the Agricultural College."

These provisions of the Constitution and the statute of the State were in force when Act No. 308, Pub. Acts 1923, was enacted, and, it may be safely assumed, were known to the legislature.

We deem it unnecessary to go into a discussion of the question of how far the legislature may go in granting authority to the administrative board to take part in the management of the affairs of the Agricultural College, in view of the constitutional provision we have quoted. Nor do we think we are called upon to say just what was meant by the use of the words "subject to the general supervisory control of the State administrative board." The legislature made a definite appropriation to carry out extension work under the provisions of the Smith-Lever act, "and such other extension work as the State board of agriculture may designate." The language "subject to the general supervisory control of the State administrative board," given in the concluding portion of the act, did not give the board the right to withhold the appropriation.

The writ will issue as prayed, but without costs.

McDONALD, J. I am in entire disagreement with the conclusions reached by Justice WIEST in reference to the powers and duties of the State board of agriculture. If his opinion is to prevail we will have completely overturned the well settled policy of the State relative to the management and control of the University and of the Agricultural College. These institutions of learning are very close to the hearts of the people of Michigan. They have made of them the most unique organizations known to the law, in this, that they are constitutional corporations created for the purpose of independently discharging State functions. The people are themselves the incorporators; the boards that control them are responsible only to the people who elect them; they are independent of every other department of the State government. Exercising these functions in this manner, it was quite inevitable that they should come into conflict with the State administrative board to which the legislature has delegated authority to intervene in the affairs and direct the policy of every State institution. Thus this controversy has arisen.

As viewed by the plaintiff, the question involved is whether the State board of agriculture shall continue to exclusively manage the affairs of the college as provided by the Constitution, or surrender its rights to the State administrative board. As it appears to the defendant, the question is whether it may not exercise general
supervisory control over funds received by the college by way of appropriations from the legislature without invading the constitutional rights of the State board of agriculture.

The State board of agriculture stands on the same constitutional footing as the board of regents of the University. The progress which our University has made is due in large measure to the fact that the framers of the Constitution of 1850 wisely provided against legislative interference by placing its exclusive management in the hands of a constitutional board elected by the people. The underlying idea was that the best results would be attained by centering the responsibility in one body independent of the legislature and answerable only to the people. See *Sterling v. Regents of University*, 110 Mich. 382 (34 L. R. A. 150). For this reason the Constitution gave the regents the absolute management of the University, and the exclusive control of all funds received for its use. This court has so declared in numerous decisions. *People v. Regents of University*, 4 Mich. 98; *Weinberg v. Regents of University*, 97 Mich. 254; *Sterling v. Regents of University*, supra; *Regents of University v. Auditor General*, 167 Mich. 444.

The policy thus consistently upheld by the court has proven so satisfactory to the people that in the constitutional convention of 1908 similar action was taken with reference to the Agricultural College. The State board of agriculture was made a constitutional body; it was given the sole management of the affairs of the college and exclusive control of all of its funds. At this time a part of the college funds was received by way of appropriations from the legislature. In providing that the State board of agriculture should have control of the affairs of the college and the funds devoted to its use, the Constitution makes no exception as to funds from any particular source; it says, “All funds.” But the contention of my Brother WIEST that moneys appropriated by the legislature are not college funds in the constitutional sense, is answered by Mr. Justice GRANT in *Weinberg v. Regents of University*, supra.

“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.”

There is, however, a distinction between funds received by way of appropriations and other college funds. The appropriation may be upon condition that the money shall be used for a specific purpose, or upon any other condition that the legislature can lawfully impose. The language used in some previous decisions of this court
in reference to this question seems to have been misunderstood. For instance, the following:

"In making appropriations for its support, the legislature may attach any conditions it may deem expedient and wise, and the regents cannot receive the appropriation without complying with the conditions." *Weinberg v. Regents of University*, 97 Mich. 246, 254.

Clearly, in saying that the legislature can attach to an appropriation any condition which it may deem expedient and wise, the court had in mind only such a condition as the legislature had power to make. It did not mean that a condition could be imposed that would be an invasion of the constitutional rights and powers of the governing board of the college. It did not mean to say that, in order to avail itself of the money appropriated, the State board of agriculture must turn over to the legislature management and control of the college, or of any of its activities. This logically leads us to a consideration of the character of the condition attached to the appropriation involved in the instant case. Is it a condition that the legislature had power to make? The appropriation (Act No. 308, Pub. Acts 1923) is subject to two conditions, *first*, that the money appropriated shall be used for the specific purpose of carrying on co-operative agricultural extension work under the provisions of an act of congress, known as the "Smith-Lever act (38 U.S. Stat. p. 372)," and *second*, that it "shall be used * * * subject to the general supervisory control of the State administrative board."

It is not an easy matter to separate a supervisory control of the expenditure of money for extension work from a control of the work itself. Whatever meaning the legislature intended the term "general supervisory control" to import, there is no question as to the interpretation given to it by the State administrative board. It appears in the following resolution adopted on July 10, 1923:

"1. That the general supervision of the extension work of the Michigan Agricultural College, together with the authority to hire county agents and all other employees and to prescribe their duties and fix their salaries, be placed by the State board of agriculture by proper resolution, in the hands of the dean of agriculture of the college.

"2. That county agents receive their entire salaries and expenses from the Federal government, the State, or the several counties of the State, but from no other source.

"3. That the dean of agriculture submit to this board immediately a revised budget of salaries and expenses based under the
Smith-Lever act, the United States department of agriculture, and the State and county appropriations, and if these funds are insufficient to carry on the work as outlined, the matter be referred to this board for further attention."

From the above resolutions it will be noted that, exercising its legislative right to "general supervisory control," the State administrative board proposes to take the extension work entirely out of the hands of the board of agriculture and give it over to a dean of the college. In this the State administrative board is assuming to exercise authority vested by the Constitution solely in the board of agriculture. It is not a question as to the wisdom of the method proposed by the administrative board. The business policy and management of all of the affairs of the college belongs to the State board of agriculture. The people, speaking through their Constitution, have so decreed. It is also proposed to reject contributions from county farm bureaus, amounting to $191,489, on the theory that it is not only unlawful but a bad business policy to allow the bureaus to pay a part of the salaries of employees engaged in extension work. It may be so, but the right to accept or reject contributions to carry on any college activity is a matter to be determined exclusively by the State board of agriculture. The legislature cannot interfere nor can it delegate any authority to the administrative board which it, itself, does not possess. My Brother WIEST justifies the delegation of such authority by the legislature on the ground that it is a part of the present-day legislative policy in carrying out a modern system of State finance. The efficiency of the present system may well be conceded, but it cannot be applied to the affairs of the University or the College, because the Constitution forbids it. The legislative enactments quoted by my Brother, as giving the State administrative board the right to intervene in the affairs of State institutions and direct their expenditures, all relate to institutions over which the legislature has control. The Agricultural College and the University of Michigan are constitutionally immune from such legislation. The legislature has no control over them.

General supervisory control was not a meaningless term with the legislature. As Justice WIEST points out, it had been applied in other appropriation acts of the same session. It was understood to mean that it conferred the right not only to control the expenditure of the money, but to direct the work for which the appropriation was made. It is evident that the legislature intended to confer just such power on the State administrative board as it assumed to exercise in relation to this appropriation. In doing so, it exceeds its powers. This being true, the question arises, Does the unconstitutional
provision of the statute nullify the whole act? To hold that it does, we must assume that the legislature would not have made the appropriation except for the fact that the money was to be expended under the general supervisory control of the State administrative board. The main purpose of the legislature was to grant an appropriation to the college to enable it to carry on its extension work in co-operation with the Federal authorities. A previous legislature had committed the State to that policy. The appropriation was made to support one of the most important activities of the college. In making it the legislature was but obeying the mandate of the Constitution that it should grant appropriations for the support of the college and its various activities (Art. 11, § 10, Const. 1909). It had become a fixed habit with this legislature to confer upon the administrative board general supervisory control over all appropriations. As has been heretofore pointed out, this appears from the various acts enacted at this same session. It is not reasonable to assume, therefore, that it intended the appropriation to fail if for any reason the State administrative board could not exercise a general supervisory control over its expenditure. As we have indicated, the appropriation was necessary to carry on the very important work of taking the college to the people. Its purpose was mainly to benefit those who could not reside at the college. The legislature did not want this work to fail; it knew that an appropriation was necessary if it were to be continued. The main purpose was the appropriation. The supervisory control was but incidental, due to the legislative policy. In these circumstances, we think that the legislature did not intend the appropriation to fail and that the attempt to confer unconstitutional authority on the State administrative board did not nullify the balance of the act. See State Board of Agriculture v. Auditor General, 180 Mich. 349; Moreland v. Millen, 126 Mich. 381.

It follows that the State board of agriculture is entitled to the appropriation subject to the condition that it shall be used for the purpose specified. It is the undoubted right of the administrative board to see that the condition is complied with. We understand that the plaintiff is willing to accept the appropriation on these terms. If so, the money should be paid.

It has been suggested that only by following the fund into the hands of the board of agriculture can the administrative board compel a compliance with the condition as to the manner of its expenditure. As we have pointed out, when the money appropriated passes into the hands of the State board of agriculture, it becomes college property, and is thereafter under the exclusive control of that board, but must be used for the purpose for which it was granted. The proper method of compelling a compliance with the condition that
the money shall be expended for the purpose specified will readily suggest itself to the administrative board and its legal advisor.

In view of some statements that have been made, we are led to say that in the action it has taken with reference to the affairs of the college, the State administrative board has been but following out the directions of the legislature in the belief that the greatest efficiency will follow the supervision by the State of all appropriations. But, as we have said, the system adopted, which has apparently produced most satisfactory results when applied to other State institutions, cannot be followed into the business management of the Agricultural College. The Constitution forbids it. The history of the struggles of the University of Michigan for this constitutional policy, under which it has attained its present high standing, may be read in *Sterling v. Regents of University*, supra, and cases there cited. The same policy has been adopted for the Agricultural College, and in upholding it we are consistently following the Constitution as interpreted by all of the previous decisions of this court. For these reasons I concur in the result reached by Mr. Justice MOORE.

The writ of mandamus will issue to the auditor general, but without costs.

CLARK, C. J., and SHARPE and STEERE, JJ., concurred with McDONALD, J.

MOORE, J. I agree with Justice McDONALD in his construction of the constitutional provision he quotes and the limitation it puts upon the power of the legislature and the administrative board.

WIEST, J. (dissenting). We are not in accord with the opinion prepared by Mr. Justice MOORE.

The State board of agriculture is a constitutional body corporate. It is the duty of the legislature to maintain the State Agricultural College. Agricultural College funds, designated as such in the Constitution, are wholly under control of the State board of agriculture. Biennial legislative appropriations are not agricultural funds designated as such in the Constitution. The constitutional mandate to the legislature to support the Agricultural College does not mean that, in the matter of appropriations, the legislature shall have no voice in the amounts and expenditure thereof. The Constitution fixes no sum to be appropriated by the legislature for support of the Agricultural College, but leaves the subject to the legislature from session to session in recognition of the fact that the legislature controls the public purse strings. The Constitution, in making the State
board of agriculture a body corporate, has not raised the board above the legislative power of the State in the matter of the expenditure of public funds. There is another mandate in the Constitution:

"No money shall be paid out of the State treasury except in pursuance of appropriations made by law." Constitution, Art. 10, § 16.

Funds vested in the college by the Constitution are beyond legislative regulation or control. But what the legislature may grant, by way of an appropriation, goes only as given, may be upon condition, and provide for the intervention of a State supervising finance agency with delegated power to be exercised respecting the expenditure. To set aside money in the treasury for a specified purpose does not \textit{eo instante} vest the same in any body. The system of State finance, payment of money and accounting therefor by disbursing officers forbids. The right to the money is measured by the terms of the legislative grant thereof and such terms may impress upon the grant the condition that it shall be devoted to a specific purpose and its expenditure made subject to the general supervisory control of the State administrative board. The right of the legislature to appropriate, with or without condition, beyond general specification of object, is beyond question. If with condition attached, then the only question is the extent and nature of the condition.

In the appropriation act the legislature invoked in comprehensive language the powers theretofore granted the State administrative board. This it had an undoubted right to do. The distinction between an appropriation and its disbursement must be kept in mind. Disbursement of necessity comes after appropriation; official acts intervene. The State administrative board is under legislative mandate to exercise supervisory control over the disbursement of the appropriation in question. The legislature always has had power to ascertain whether an appropriation has been expended by an administrative body for the purpose for which it was made. The legislature also has power, and manifestly the duty, to fix the purpose for which an appropriation may be expended. Coupled with this power is the right to delegate to an administrative body the right of supervision over the acts of a disbursing body. The power to grant or withhold carries the power to grant on condition, specification of object, delegation of power of supervisory control in a governmental agency and accounting for expenditures.

There is come a time in State finance when a central power, created for the purpose of exercising supervisory control over the expenditures of appropriations, is deemed advisable, and the vesting
of this power in the State administrative board, and the command that it be exercised, are not meaningless words. The administrative board was created to stand between appropriations and use thereof, when so invoked by the legislature.

Act No. 2, Pub. Acts 1921 (Comp. Laws Supp. 1922, § 172 [1-9]), created the State administrative board to promote the efficiency of the government of the State and vested in that board, among other things, the power and functions of the State budget commission created by Act No. 98, Pub. Acts 1919 (Comp. Laws Supp. 1922, § 277). The condition attached to the appropriation "subject to the general supervisory control of the State administrative board," is not meaningless if we indulge in a little circumspection. Why designate the State administrative board and invoke its office between the grant of the appropriation and the expenditure thereof? The answer is in section 3 of the State administrative board act:

"The State administrative board shall exercise general supervisory control over the functions and activities of all administrative departments, boards, commissioners, and officers of the State, and of all State institutions. Said board may in its discretion intervene in any matter touching such functions and activities and may by resolution or order, advise or direct the department, board, commission, officer or institution concerned as to the manner in which the function or other activity shall be performed, and may order an interchange or transfer of employees between departments, boards, commissions and State institutions when necessary. It is hereby made the duty of each and every official and employee connected with any administrative department, office or institution of the State to follow the direction or order so given; and to perform such services in the carrying out of the purposes and intent of this act as may be required by the board. Failure so to do shall be deemed to constitute malfeasance in office and shall be sufficient cause for removal. In no case shall any order issue under this act without the written approval of the governor."

General supervisory control over the expenditure of the appropriation means something more than mere permission to look on without a frown. It means that the legislature invoked all the applicable powers vested in the State administrative board in supervision and control of the expenditure of the appropriation, or it means absolutely nothing. It is found in many other appropriation acts of the same session and indicates a pronounced legislative policy. It is in line with modern State finance and centers supervision, control and
responsibility, and notes a departure from the old idea of the sufficiency of legislative disapproval of method of an expenditure of an appropriation disclosed only in an accounting. This is clearly demonstrated in the act creating the State administrative board and in vesting that board with the power and functions of the State budget commission.

In creating the State budget commission the legislature declared:

"The term 'budget system,' established by this act, shall be construed to be a systematic plan of ascertaining and meeting the financial needs of the several departments, institutions, boards, commissions and offices of the State government, and of the controlling State funds."

The legislature imposed a responsibility upon the administrative board and this cannot be met if my Brother's opinion prevails. The power under the budget commission act gives the State administrative board recommendatory supervision over appropriations asked for, and the State administrative board act gives general supervisory control over the expenditure of the appropriation granted.

The merits of the issue between the State board of agriculture and the State administrative board cannot be reviewed by this court. If the law vests in the State administrative board general supervisory control over the appropriation, and it has exercised such control, and the State agricultural board feels aggrieved thereby, the remedy is by appeal to the legislative and not to the judicial power.

We have passed upon the law involved; we find the State administrative board exercising power in the premises granted by the legislature. We cannot supervise the supervision exercised.

The writ should be denied.

BIRD and FELLOWS, JJ., concurred with WIEST, J.

BIRD, J. (dissenting). I am in full accord with the opinion of Mr. Justice WIEST in this matter, but desire to say a word on the constitutional question raised since that opinion was written. I think every thoughtful man must concede that the legislature could have refused to make this particular appropriation and, if it had, no legal complaint could have been made. If, then, the legislature was in the position where it could give or withhold the appropriation as it saw fit, it was in no different position than a private donor might be who chooses to give the college a donation of like amount with the condition that the Detroit Trust Company should have supervisory
control to see that the terms of the donation were complied with. Had some public-spirited citizen made such a donation under the condition indicated, could it be said that the condition was unconstitutional? The private citizen and the legislature stand in the same position, either could give or withhold. If this be so, then either had a right to annex a condition, and if the gift is accepted by the college it must take it subject to the condition and comply therewith. The only way the college could avoid compliance with the condition would be to refuse the gift. To reach any other conclusion, it must be said that the legislature was under obligation to make this particular donation without condition.

It is argued that the legislature had a constitutional duty to support and maintain the college. Granting this to be so, does it follow that, because it is under a constitutional obligation to maintain the college, it may not make a particular gift upon condition and appoint some agency to see that the condition is complied with? It is indeed a strange process of reasoning to say that the legislature may give or withhold but, if it does give upon condition, that the condition is unconstitutional.

This proposition was very sensibly disposed of in Weinberg v. Regents of University, 97 Mich. 246, 254, where it was said:

"In making appropriations for its support, the legislature may attach any conditions it may deem expedient and wise, and the regents cannot receive the appropriation without complying with the conditions."

Notwithstanding this court made that statement in the year 1893, it is argued in 1924 that it is of no account, that the college may reach out and lay hold of an appropriation, given upon condition, and ignore the condition on the plea that it is unconstitutional. If this argument be sound, then it must be assumed that the legislature would have made the appropriation regardless of the condition. I do not believe this court is in a position to so hold.

It was said in Warren v. Mayor, etc., of Charlestown, 2 Gray (Mass.), 84, where the question was discussed:

"If they (the parts of the act) are so mutually connected with and dependent on each other, as conditions, considerations or compensations for each other, as to warrant a belief that the legislature intended them as a whole and that, if all could not be carried into effect, the legislature would not pass the residue independently, and some parts are unconstitutional, all the provisions which are thus dependent, conditional and connected must fall with them."
“If the void part of the act is the compensation for or the inducement to the valid portion, so that, looking at the whole act, it is reasonably clear that the legislative body would not have enacted the valid portion alone, then the whole act will be held inoperative and void. It is not necessary that the invalid portion of an act of the legislature should have operated as the sole inducement to the passage of the law to render the same void. It will have that effect if the void part to any extent influenced the legislature in passing the statute.”

1 Lewis’ Sutherland on Statutory Construction (2d Ed.), § 303.


If it can be said, by any stretch of the imagination, that the condition annexed to the appropriation is void because unconstitutional, then, I insist, the whole act must fail.

FELLOWS, J., concurred with BIRD, J.

Bauer v. State Board of Agriculture

164 Mich. 415, 416-19; 129 N. W. 713 (1911)

BLAIR, J. Upon the petition of the relator an order to show cause was made by this court, directed to the respondent, the State board of agriculture, requiring it to show cause why the writ of mandamus should not issue to compel it to—

“Abrogate the contract heretofore made or attempted to be made with the United States government, whereby it, the said State board of agriculture, has agreed to furnish quarters for a United States post office at East Lansing, Mich. (b) That it cease from construction and expending moneys for construction of quarters for a United States post office at East Lansing, Mich. (c) That it cease from furnishing quarters for a United States post office at East Lansing, Mich., within such reasonable time as to this court shall seem reasonable and expedient.”

The interest of relator, as disclosed by the record, is that he is a citizen and a taxpayer of the county of Ingham, doing a mercantile business in the city of East Lansing in a building of which he has a lease to and including August 31, 1916; that there was an agreement
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entered into with W. R. Hinman, assistant superintendent of the post office department at Washington, having charge of buildings and leases, to locate the post office at East Lansing in relator's leased building; that this agreement was not executed and delivered by the post office department because of the intervention of the respondent, through its secretary, which resulted in a contract between the respondent and the post office department of the United States, whereby the respondent agreed to furnish quarters and equipment for the said post office, to be located upon the college grounds, for an annual rental of $600.

Relator contends:

"The law creating the State agricultural college and the State board of agriculture contains no provision by which it can be inferred that the State board of agriculture is clothed with power to engage in the business of building for and furnishing quarters to the United States for a post office any more than to a private individual for his private business, nor does such right arise by implication from any of the powers granted said board."

We are of the opinion that this case is ruled by *Sterling v. Regents of University*, 110 Mich. 369 (68 N. W. 253, 34 L. R. A. 150). In the Constitution of 1909 two new sections, 7 and 8, relative to the State board of agriculture, were added to article 11, the effect of which was to make the State board of agriculture a constitutional board elected by the people instead of a statutory board appointed by the governor, as it had existed since 1861, and to define the principal powers and duties of the board in the Constitution itself. It is apparent from the debates in the constitutional convention, as well as from the language of sections 7 and 8, that it was the intention to place the State board of agriculture and the agricultural college upon the same footing as the board of regents and the university. Among other expressions of the delegates to the convention, we quote the following:

"Mr. Gore: Mr. President, the last section of this proposal which was defeated yesterday, I have been informed, was defeated under some misapprehension. I know that I was laboring under an apprehension that there was very little, if any, demand for that portion of the proposal as contained in the last paragraph. I am advised that the friends of the agricultural college all over this State are very much interested in that portion of the proposal becoming a part of the revised Constitution. It is obvious that the requirements of the agricultural college are on a par with the university so far as its
management is concerned. There is no doubt that the friends of that college, the particular friends I now refer to, all over the State, will take such an interest in its welfare that it can properly be intrusted to a board of regents in the same manner as the university is now conducted. I therefore trust that this proposal will meet with the favorable judgment of the convention."

"Mr. W. E. Brown: The words 'members of the board' were stricken out of the tentative draft on page 53, line 82, and the words 'State board of agriculture' were substituted in their place. And in the same line the words 'may be' were stricken out and the words 'often as' were substituted in their place, so that the section follows the wording of the section with reference to the regents. In line 86 of the tentative draft, the word 'State,' and in line 87, the words 'of agriculture' were stricken out, and at the end of the section these words were added, 'and shall perform such other duties as may be prescribed by law.' We ascertained after the section was passed that there were other duties besides these that the law prescribes to be performed by the board of agriculture, and we took it that it was your intention that the entire duties as prescribed by law should apply to this board until such time as its duties might be changed."

The addition to the last clause of section 8 of the words, "and shall perform such other duties as may be prescribed by law," makes it clear that the duties to be prescribed by the legislature are other than "the general supervision of the college and the direction and control of all agricultural college funds," as to which, as we held in Sterling v. Regents of University, supra, the State board of agriculture has exclusive supervision and control. We do not intend to hold that an act of the board might not be so subversive of the purposes for which the board was created as to warrant the intervention of the courts, but we do not think this record presents such a case, nor do we intend to hold that the legislature may not make appropriations for specific objects or attach conditions which would be binding upon the State board of agriculture in case they accepted the appropriations; but we do hold that as to the general funds appropriated for the general purposes of the agricultural college, the board has the exclusive control and direction, to the same extent that we held such power was possessed by the board of regents in the Sterling Case above referred to.

The writ is denied, but without costs.

OSTRANDER, C. J., and McALVAY, J., concurred with BLAIR, J.
MOORE, J. I concur in the result, but do not regard mandamus as the proper remedy.

HOOKER, BROOKE, and STONE, JJ., concurred with MOORE, J.

BIRD, J. I concur in the result on the sole ground that mandamus is not the proper remedy.

Agler v. Michigan Agricultural College

181 Mich. 559, 559-63; 148 N. W. 341 (1914)

The applicant, who is a tinner and roofer by trade, was injured, on April 18, 1913, by falling from a ladder while making repairs on the buildings of the respondent. A claim was presented against the respondent under the workmen’s compensation law of 1912, and the case is brought here by certiorari to the industrial accident board to review an order affirming the award made to the applicant by an arbitration committee, in accordance with the provisions of the act. Neither the Michigan Agricultural College nor the State board of agriculture, which has general supervision of the college and direction and control of all its funds, elected to come under the provisions of the workmen’s compensation act. No mention is made in the act of either of the constitutional boards; the board of regents of the University and the State board of agriculture, and the question here is, Does the act bring arbitrarily under its provisions the State board of agriculture, which is a board created by the Constitution (sections 7 and 8, art. 11, Const.)? This involves a consideration of the following sections of the act:

"PART 1.

"SEC. 5. The following shall constitute employers subject to the provisions of this act:

"1. The State and each county, city, township, incorporated village and school district therein;

"2. Every person, firm and private corporation, including any public service corporation, who has any person in service under any contract of hire, express or implied, oral or written, and who, at or prior to the time of the accident to the employee for which compensation under this act may be claimed, shall in the manner provided in the next section, have elected to become subject to the provisions of
this act, and who shall not, prior to such accident, have effected a withdrawal of such election, in the manner provided in the next section. * * *

"SEC. 7. The term 'employee' as used in this act shall be construed to mean:

"1. Every person in the service of the State, or of any county, city, township, incorporated village or school district therein, under any appointment, or contract of hire, express or implied, oral or written, except any official of the State, or of any county, city, township, incorporated village or school district therein: Provided, that one employed by a contractor who has contracted with a county, city, township, incorporated village, school district or the State, through its representatives, shall not be considered an employee of the State, county, city, township, incorporated village or school district which made the contract;

"2. Every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the State who, for the purposes of this act, shall be considered the same and have the same power to contract as adult employees, but not including any person whose employment is but casual or is not in the usual course of the trade, business, profession or occupation of his employer."

In the stipulation filed in this case the following appears:

"It is agreed that the draft of the workmen's compensation act as prepared by the commission and as presented to the legislature contained a period after the word 'contract' at the end of the first subdivision of paragraph 7 of part 1."

KUHN, J. (after stating the facts). By virtue of the Constitution of 1909, the State board of agriculture was put on the same plane with the board of regents of the University of Michigan. It has been established beyond question by decisions of this court that neither the legislature nor any officer or board of this State may interfere with the control and management of the affairs and property of the University, although in making appropriations for its support the legislature may attach any conditions it may deem expedient and wise, and the appropriation cannot be received without complying with the conditions. People, ex rel. Drake, v. Regents, 4 Mich. 98; Weinberg v. Regents, 97 Mich. 246 (56 N. W. 605); Sterling v. Regents, 110 Mich. 369 (68 N. W. 253; 34 L. R. A. 150); Bauer v. State Board of Agriculture, 164 Mich. 415 (129 N. W. 713); Board of

Section 5, part 1, of the workmen's compensation law (2 How. Stat. [2d Ed.] § 3939), expressly enumerates the State and counties, cities and villages, townships and school districts. Neither of the constitutional boards is mentioned. In the case of Weinberg v. Regents, supra, there was under consideration an act of the legislature which provided:

"That when public buildings, or other public works or improvements are to be built, repaired or ornamented under contract, at the expense of this State, or of any county, city, village, township, or school district thereof, it shall be the duty of the board of officers or agents contracting on behalf of the State, county, city, village, township, or school district, to require sufficient security by bond, for the payment by the contractor, and all subcontractors, for all labor performed, or materials furnished in the erection, repairing or ornamenting of such building, works or improvements." Act No. 45, Pub. Acts 1885.

Mr. Justice GRANT, in writing the majority opinion said, 97 Mich., at pages 253, 254 (56 N. W. 607):

"The regents make no contracts on behalf of the State, but solely on behalf of and for the benefit of the University. All the other public corporations mentioned in the Constitution, which have occasion to erect public buildings or to make public improvements, are expressly included in this statute. 'Expressio unius est exclusio alterius.' It expressly enumerates the State, counties, cities, villages, townships, and school districts. If the University were under the control and management of the legislature, it would undoubtedly come within this statute, as do the Agricultural College, Normal School, State Public School, asylums, prisons, reform schools, houses of correction, etc. But the general supervision of the University is, by the Constitution, vested in the regents. **

"The University is the property of the people of the State, and in this sense is State property so as to be exempt from taxation. Auditor General v. Regents, 83 Mich. 467 [47 N. W. 440, 10 L. R. A. 376]. But the people, who are the corporators of this institution of learning, have, by their Constitution, conferred the entire control and management of its affairs and property upon the corporation designated as 'the Regents of the University of Michigan,' and have thereby excluded all departments of the State government from any interference therewith. The fact that it is State property does not bring the regents within the purview of the statute. The people may, by their Constitution, place any of its institutions or property beyond the control of the legislature."
The contract of employment in the instant case was made with the State board of agriculture, not on behalf of the State, but primarily for the benefit of the Agricultural College. For the reasons stated by Mr. Justice GRANT in the Weinberg Case, we must conclude that it cannot be said that the State board of agriculture or the regents of the University are brought under the workmen's compensation act by virtue of said section 5 of part 1 of the act, and it cannot be said that the applicant was an employee of the State within the meaning of said law. The conclusion must therefore follow that the respondent was not within the list of employers who come under the provisions of the law of 1912 automatically; and, inasmuch as the respondent has made no election to come thereunder, the applicant is not entitled to recover in this proceeding.

Because of this conclusion, it is unnecessary to discuss the other interesting and well-argued questions raised in briefs of counsel. The decision of the industrial accident board is reversed, and the claim of the applicant is disallowed.

McALVAY, C. J., and BROOKE, STONE, OSTRANDER, BIRD, MOORE, and STEERE, JJ., concurred.

Peters v. Michigan State College

320 Mich. 243, 244-63; 30 N. W. 2d 854 (1948)

REID, J. (for affirmance). On April 23, 1946, plaintiff Robert W. Peters filed an application for hearing and adjustment of claim as an employee of Michigan State College, which is under the control and general supervision of the State board of agriculture, which board is hereinafter referred to as defendant, alleging that he suffered a personal injury on February 12, 1946, which arose out of and in the course of his employment.

On May 4, 1946, defendant filed a motion to dismiss plaintiff's application for hearing and adjustment of claim on the ground that defendant, not having elected to become subject to the Michigan workmen's compensation act and amendments thereto, was not subject to the provisions of said act. A deputy commissioner entered an order denying the motion.

On July 10, 1946, the defendant applied to the compensation commission of the department of labor and industry for review of claim. The commission on January 9, 1947, pursuant to opinion simultaneously filed, entered its order denying the defendant's
motion, and remanded the case to a deputy commissioner to be heard on its merits. From this order (on leave being granted) defendant appeals.


"SEC. 2. On and after the effective date of this section, every employer, public and private, and every employee, unless herein otherwise specifically provided, shall be subject to the provisions of this act and shall be bound thereby."


"SEC. 5. The following shall constitute employers subject to the provisions of this act:

"Public 1. The State, and each county, city, township, incorporated village and school district therein, and each incorporated public board or public commission in this State authorized by law to hold property and to sue or be sued generally;

"Private 2. Every person, firm and private corporation, including any public service corporation, who has any person in service under any contract of hire, express or implied, oral or written."

The defendant is an "incorporated public board" within the meaning of section 5 above quoted. Sections 7 and 8, art. 11, State Constitution 1908, are as follows:

"SEC. 7. There shall be elected on the first Monday in April, nineteen hundred nine, a State board of agriculture to consist of six members, two of whom shall hold the office for two years, two for four years and two for six years. At every regular biennial spring election thereafter, there shall be elected two members whose term of office shall be six years. The members thus elected and their successors in office shall be a body corporate to be known as 'The State Board of Agriculture.'"
"SEC. 8. The State board of agriculture shall, as often as necessary, elect a president of the agricultural college, who shall be ex-officio a member of the board with the privilege of speaking but not of voting. He shall preside at the meetings of the board and be the principal executive officer of the college. The board shall have the general supervision of the college, and the direction and control of all agricultural college funds; and shall perform such other duties as may be prescribed by law."

We note that in section 7, above cited, the defendant is designated a body corporate, hence our conclusion that defendant is an incorporated public board.

The sole remaining question is whether it is competent for the legislature to prescribe that the defendant shall be subject to the workmen's compensation act.

Defendant claims that the provision in section 8, above cited, that the board (defendant) shall have the general supervision of the college and the direction and control of all agricultural college funds, prevents the legislature from requiring the board to expend any of the agricultural college funds for workmen's compensation.

Defendant cites Robinson v. Washtenaw Circuit Judge, 228 Mich. 225, which involved malpractice suits brought against the regents of the University of Michigan and a surgeon employed in the university hospital. The suits had been dismissed in circuit court and plaintiffs in those suits brought mandamus to compel the circuit judge to set aside his orders of dismissal. The board of regents (defendant in the original suits) had claimed immunity on the ground that the university hospital operated by the regents is a charitable institution. The opinion in the case says, page 227, that that ground is the only objection regarded as calling for serious consideration. However, at the conclusion of the opinion on page 230 we say, "On the case stated in plaintiffs' declarations we think denial of liability as to the regents could safely be rested on either ground," referring to the words, "State instrumentalities, as well as charities," in the immediately preceding excerpt quoted in that opinion. In other words, we held that the board of regents was immune both on the ground of being a State instrumentality and on the ground of their hospital being a charitable or eleemosynary institution.

Immunity of defendant in the case at bar as a State governmental agency is not provided for in our State Constitution and the legislature by force of the words, "incorporated public board" has included defendant as an employer subject to the workmen's compensation act, thus to that extent depriving defendant of its immunity as an instrumentality of government. See Benson v. State Hospital Com-
The *Robinson Case*, *supra*, does not in any wise discuss the meaning and effect of the constitutional clause giving defendant control of the funds of the college and the decision in that case does not aid the defendant in the case at bar.

Under the workmen's compensation act as originally enacted by Act No. 10, Pub. Acts 1912 (1st Ex. Sess.), the private employer was at liberty to accept or not to accept the provisions of the act, but the State and political subdivisions thereof in general (with certain exceptions) were included as subject to the act without their consent.

In part 1, § 5, of the act, as amended by Act No. 50, Pub. Acts 1913, effective August 14, 1913 (2 Comp. Laws 1929, § 8411 [Stat. Ann. § 17.145]), under the heading, "Public. 1.," incorporated public boards are made subject to the provisions of the act. Such incorporated public boards were not subject to nor mentioned in the act as originally enacted (Act No. 10, Pub. Acts 1912 [1st Ex. Sess.]), above referred to. In the case of *Agler v. Michigan Agricultural College*, 181 Mich. 559 (5 N. C. C. A. 897), the employee was injured April 18, 1913, which was before the act of 1913, *supra*, was effective; hence in the *Agler Case* we say, page 563, that "the respondent was not within the list of employers who come under the provisions of the law of 1912 automatically." Defendant was not within such list at the time Agler received his injuries. The words just quoted must be construed to apply to the situation at the time of the occurrence of the supposed liability. The question before the Court in the case at bar was not decided in the *Agler Case*.

The case of *State Board of Agriculture v. Auditor General*, 226 Mich. 417, was brought in consequence of an effort on the part of the State administrative board to control the expenditures of the plaintiff State board of agriculture (the same board which is defendant in the case at bar) under an act of the legislature granting the State administrative board such powers. If the administrative board had been upheld in its contention, it would have exercised control over the educational activities of the college. In that case we held that the State administrative board could exercise no control over the funds of the college, such control being given to plaintiff board under the provisions of the Constitution 1908, art. 11, §§ 7, 8 (hereinbefore cited in this opinion). However, the provision of the Constitution giving the State board of agriculture sole control of the funds of the college does not generally exempt the said board from the great body of general laws of this State. It is to be noted that section 8 of article 11 of the State Constitution above quoted closes with the words, referring to the State board of agriculture, "shall perform such other duties as may be prescribed by law."
We have heretofore had occasion to pass upon the constitutionality of the workmen’s compensation act as to some one or other of its various provisions in several cases, among which are the following: Mackin v. Detroit-Timkin Axle Co., 187 Mich. 8; Wood v. City of Detroit, 188 Mich. 547 (L. R. A. 1916 C, 388); Grand Rapids Lumber Co. v. Blair, 190 Mich. 518; Wall v. Studebaker Corporation, 219 Mich. 434; American Life Insurance Co. v. Balmer, 238 Mich. 580. In none of these cases has the act been found unconstitutional as to any phase of the act brought under consideration therein.

We have heretofore decided in the Mackin Case, supra, that the title of the act in question fairly expressed its purpose.

The purpose of the workmen’s compensation act partakes of the nature of the exercise of police power. It is aimed at promoting the welfare of the people of the State. See Wallace v. Regents of University of California, 75 Cal. App. 274 (242 Pac. 892); Casey v. Hansen, 238 Iowa, 62 (26 N. W. [2d] 50).

"The sovereign power of the State includes protection of the safety, health, morals, prosperity, comfort, convenience and welfare of the public, or any substantial part of the public." (Italics supplied.) Cady v. City of Detroit, 289 Mich. 499, 504, 505.

The defendant corporation is not vested by the State Constitution with any power of a police nature. Neither is the defendant corporation vested with any power to regulate the general welfare of the people of this State. It is for the legislature to exercise such powers.

As amended in 1920, article 5, § 29, of the State Constitution provides as follows:

"SEC. 29. The legislature shall have power to enact laws relative to the hours and conditions under which men, women and children may be employed."

Before the amendment of 1920 (which added the word "men" in the above section), we had decided in Wood v. City of Detroit, 188 Mich. 547 (L. R. A. 1916C, 388), that the workmen’s compensation act was not violative of the State Constitution even as respects liability for death of an employee of a municipality through its public lighting commission, notwithstanding rights of local self-government given by the Constitution to municipalities. In that case we said, page 560,

"Whether it [the workmen’s compensation act] is or is not denominated a police regulation, municipal corporations are, for the
purpose of carrying out such a measure, subject to legislative control."

We find that the workmen's compensation act is a valid constitutional exercise of the power of the legislature even when it makes necessary the expenditure of agricultural college funds in the compensation of employees under the terms and within the provisions of the workmen's compensation act.

The act is approved as a piece of legislation aimed not at the defendant alone, nor against any of the activities of the defendant of a nature peculiar to defendant. The act is of a broad scope addressed to the subject of the liability of employers in broad fields of employment. The workmen's compensation act does not undertake to change or disturb the educational activities of the defendant board.

The control of State college funds must be considered as given to defendant for the purposes of the particular and peculiar educational activities of the State college, not for the purpose of disturbing the general relationship in this State of employer and employee, nor evading laws enacted to promote the general welfare of the people of this State. Article 11, § 8, above cited, is not to be construed as withholding from the legislature the authority to make the defendant board liable and subject to the entire workmen's compensation act in question.

The order of the department remanding the claim for hearing on its merits is affirmed. No costs are allowed, a matter of public importance being involved.

BUTZEL, J. (concurring). I concur on the ground that the workmen's compensation act is a valid exercise of the police power.

BUSHNELL, C. J., and SHARPE, J., concurred with BUTZEL, J.

DETHMERS, J. (for reversal). My attitude toward the opinion of Mr. Justice REID is well expressed in the language employed by the majority of this Court in commenting on the dissenting opinion of Mr. Justice WIEST in State Board of Agriculture v. Auditor General, 226 Mich. 417, in which Mr. Justice McDONALD, speaking for the majority of the Court, said:

"I am in entire disagreement with the conclusions reached by Mr. Justice WIEST in reference to the powers and duties of the State board of agriculture. If his opinion is to prevail we will have completely overturned the well settled policy of the State relative to the management and control of the university and of the agricultural college. These institutions of learning are very close to the hearts of
the people of Michigan. They have made of them the most unique organizations known to the law, in this, that they are constitutional corporations created for the purpose of independently discharging State functions. The people are themselves the incorporators; the boards that control them are responsible only to the people who elect them; they are independent of every other department of State government."

To the statement contained in Mr. Justice REID's opinion that plaintiff suffered a personal injury which arose out of and in the course of his employment by defendant should be added the further fact that it is not disputed that such employment and the duties which plaintiff was performing at the time of his injury were within the scope and in furtherance of college operations. May the legislature, as relates to such employment, prescribe that the defendant shall be subject to the provisions of the workmen's compensation act? I think not.

As stated in my Brother's opinion, the Michigan Constitution of 1908, art. 11, § 8, provides that the board "shall have the general supervision of the college, and the direction and control of all agricultural college funds." Plaintiff's work, at the time he became injured, was being performed squarely within the field over which the defendant board is given supervision. Furthermore, to require payment of compensation in such case directly affects the defendant's constitutionally-conferred power of direction and control over all agricultural college funds. The constitutional grant to defendant board of supervision, direction and control in these respects, must be deemed absolute to the exclusion therefrom of interference by the legislature. Sterling v. Regents of University of Michigan, 110 Mich. 369 (34 L. R. A. 150); Weinberg v. Regents of University of Michigan, 97 Mich. 246; Bauer v. State Board of Agriculture, 164 Mich. 415; State Board of Agriculture v. Auditor General, supra.

My Brother's opinion cites no decisions of this Court as authority for the proposition that the legislature may exercise control directly or indirectly over those fields as to which the regents of the university or the State board of agriculture are given the powers of supervision by the Constitution. This is not because the question has not heretofore been considered by this Court. Our decisions on the subject are numerous, ranging from shortly after the grant of powers to the board of regents by the Constitution of 1850 until recent times. Through them all runs a uniform thread of authority to the effect that the fields over which the Constitution delegates supervisory powers to the regents or board of agriculture are not to be invaded by the legislature. A review of these cases is essential here.
In *People, ex rel. Drake, v. Regents of the University*, 4 Mich. 98, this Court denied an application for mandamus to compel the regents to comply with a statute enacted by the legislature requiring appointment by the regents of a professor of homeopathy. In response to the claim that the statute was unconstitutional because it constituted an invasion of the regents’ constitutional powers, this Court said:

“We are compelled to recognize in this question what might well suggest doubts of the binding force of the law.”

In *People v. Regents of the University*, 18 Mich. 469, like application for mandamus was made as in the case reported in 4 Mich. 98 and the application was not granted because a majority of the Court could not be convinced that “the legislature had power under the Constitution to exercise any such control over the regents, who are vested with the ‘general supervision of the university, and the direction and control of all expenditures of the university interest fund’” (syllabus).

In *People, ex rel. Attorney General, v. Regents of the University*, 30 Mich. 473, like application received like treatment because the Court, as stated in its opinion, had not changed its previous views (clearly a reference to the last above cited case).

In *Weinberg v. Regents of the University of Michigan*, 97 Mich. 246, plaintiff brought suit against the regents to recover the value of materials furnished to a subcontractor in building the university hospital. Action was predicated upon a statute requiring public boards, officers or agents making contracts for the construction of public buildings to require security by bond for payment by the contractor and all subcontractors of all labor and material claims. The regents, in contracting for the building of the hospital, had required no such security by bond. A judgment for plaintiff in the court below was reversed, a majority of this Court holding that the statute in question did not control the regents. The majority opinion, in so holding, alluded to the fact that this Court had refused to compel the regents to comply with certain legislative acts in the three last above cited cases.

In *Sterling v. Regents of University of Michigan*, 110 Mich. 369 (34 L. R. A. 150), mandamus was sought to compel the regents to comply with an act of the legislature providing for removal of the homeopathic medical college from Ann Arbor to Detroit. The writ was denied on the authority of the *Weinberg Case* for the expressed reason that “the legislature has no control over the university or the board of regents.” The opinion in this case contains an extended
analysis of the entire general question before us, including the history of the constitutional grant of powers to the regents, the reasons therefor, construction of the constitutional language employed for that purpose, and a review of the decisions thereon.

In Bauer v. State Board of Agriculture, 164 Mich. 415, wherein the power of the defendant board to expend funds of the college for the purpose of constructing a building for lease to the United States government for post office purposes was challenged, this Court, in upholding such power, held that the defendant board had exclusive control and direction of the general funds of the college appropriated for the general purposes of the college.

In Board of Regents of the University of Michigan v. Auditor General, 167 Mich. 444, we granted a writ of mandamus to compel the auditor general to issue a warrant upon the State treasurer for certain university expenditures after the auditor general had refused to issue it because the university had expended moneys in violation of the accounting laws of this State. The writ was granted on the ground "that the board of regents has independent control of the affairs of the university."

In Agler v. Michigan Agricultural College, 181 Mich. 559 (5 N. C. C. A. 897), discussed at greater length later in this opinion, we held that the defendant was not subject to the workmen's compensation act for the reasons stated in Weinberg v. Regents of University of Michigan, supra.

In People for use of Regents of the University of Michigan v. Brooks, 224 Mich. 45, involving condemnation proceedings for the use and benefit of the regents, we said:

"The 'board of regents' is a separate entity, independent of the State as to the management and control of the University."

State Board of Agriculture v. Auditor General, (syllabus 2) supra, reads as follows:

"The condition attached by Act No. 308, Pub. Acts 1923, that the money thereby appropriated to the State board of agriculture for the purpose of carrying on agricultural extension work in co-operation with the United States department of agriculture should be subject to the general supervisory control of the State administrative board, held, beyond the power of the legislature to impose, being in conflict with the Constitution (Art. 11, § 8) giving to the State board of agriculture exclusive control of all of its funds."

This concludes a summary review of all the Michigan decisions on the subject, disclosing the uniform position taken by this Court
over a period of almost 70 years, in unmistakably clear opposition to the views now expressed by Mr. Justice REID.

In *Agler v. Michigan Agricultural College*, supra, we said:

"By virtue of the Constitution of 1909 (1908), the State board of agriculture was put on the same plane with the board of regents of the university of Michigan. It has been established beyond question by decisions of this Court that neither the legislature nor any officer or board of this State may interfere with the control and management of the affairs and property of the university."

From this quotation it is clear that all which this Court has heretofore said concerning the independence of the board of regents of the university applies with equal force and effect to the State board of agriculture under its present constitutional powers.

I am not in accord with my Brother's analysis of the *Agler Case*. In that case, we said, in part, as follows:

"For the reasons stated by Mr. Justice GRANT in the *Weinberg Case*, we must conclude that it cannot be said that the State board of agriculture or the regents of the university are brought under the workmen's compensation act."

The reasons stated by Mr. Justice GRANT in the *Weinberg Case*, and quoted in the *Agler Case*, are as follows:

"'If the university were under the control and management of the legislature, it would undoubtedly come within this statute, as do the agricultural college, normal school, State public school, asylums, prisons, reform schools, houses of correction, et cetera. But the general supervision of the university is, by the Constitution, vested in the regents. * * *'

"'The university is the property of the people of the State, and in this sense is State property so as to be exempt from taxation. *Auditor General v. Regents of the University of Michigan*, 83 Mich. 467 (10 L. R. A. 376). But the people, who are the corporators of this institution of learning, have, by their Constitution, conferred the entire control and management of its affairs and property upon the corporation designated as "the Regents of the University of Michigan," and have thereby excluded all departments of the State government from any interference therewith. The fact that it is State property does not bring the regents within the purview of the statute. The people may, by their Constitution, place any of its institutions or property beyond the control of the legislature.'"
This language from the *Weinberg Case* I deem controlling here. In that case we also said “under the Constitution, the State cannot control the action of the regents.”

In *Sterling v. Regents of University of Michigan*, supra, in commenting on the *Weinberg Case*, we said:

“We might with propriety rest our decision upon that case, and should be disposed to do so were it not for the urgent contention of the counsel on the part of the relator that that case does not apply. We are therefore constrained to state some further reasons to show that the legislature has no control over the university or the board of regents.

“(1) The board of regents and the legislature derive their power from the same supreme authority, namely, the Constitution. In so far as the powers of each are defined by that instrument, limitations are imposed, and a direct power conferred upon one necessarily excludes its existence in the other, in the absence of language showing the contrary intent. Neither the university nor the board of regents is mentioned in article 4, which defines the powers and duties of the legislature; nor in the article relating to the university and the board of regents is there any language which can be construed into conferring upon or reserving any control over that institution in the legislature. They are separate and distinct constitutional bodies, with the powers of the regents defined. By no rule of construction can it be held that either can encroach upon or exercise the powers conferred upon the other.”

In *Board of Regents of the University v. Auditor General*, supra, we said:

“By the provisions of the Constitution of 1850, repeated in the new Constitution of 1909 (1908), the board of regents 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. By the old Constitution it is given ‘direction and control of all expenditures from the university interest fund’ (section 8, art. 13); and by the new Constitution ‘general supervision of the university, and the direction and control of all expenditures from the university funds.’ Section 5, art. 11. That the board of regents has independent control of the affairs of the university by authority of these constitutional provisions is well settled by former decisions of this Court.”

In *State Board of Agriculture v. Auditor General*, supra, 423, we also said:
"The State board of agriculture stands on the same constitutional footing as the board of regents of the university. The progress which our university has made is due in large measure to the fact that the framers of the Constitution of 1850 wisely provided against legislative interference by placing its exclusive management in the hands of a constitutional board elected by the people. The underlying idea was that the best results would be attained by centering the responsibility in one body independent of the legislature and answerable only to the people. See *Sterling v. Regents of University of Michigan*, 110 Mich. 369, 382 (34 L. R. A. 150). For this reason the Constitution gave the regents the absolute management of the university, and the exclusive control of all funds received for its use. This Court has so declared in numerous decisions. *People, ex rel. Drake, v. Regents of the University*, 4 Mich. 98; *Weinberg v. Regents of the University of Michigan*, 97 Mich. 246, 254; *Sterling v. Regents of University of Michigan*, supra; *Board of Regents of the University v. Auditor General*, 167 Mich. 444."

Mr. Justice REID writes that the State Constitution does not provide for the "immunity of defendant * * * as a State governmental agency" and that the legislature by including defendant within the terms of the workmen's compensation act has deprived it of such immunity, citing *Benson v. State Hospital Commission*, 316 Mich. 66. The *Benson Case* is not in point inasmuch as it involved an action brought against the State under the court of claims act, Act No. 135, Pub. Acts 1939 (Comp. Laws Supp. 1940, § 13862-1 et seq., Stat. Ann. 1940 Cum. Supp. § 27.3548[1] et seq.), and the construction of section 24 of that act as amended by Act No. 237, Pub. Acts 1943 (Comp. Laws Supp. 1943, § 13862-24, Stat. Ann. 1944 Cum. Supp. § 27.3548[24]), which waived the defense of governmental immunity in certain cases brought before the court of claims. That act never had application to claims for compensation brought before the compensation commission of the department of labor and industry. See *Rogers v. Kent Board of County Road Commissioners*, 319 Mich. 661, 668, decided on rehearing January 5, 1948. Furthermore, said section 24 of the act as thus amended in 1943 was expressly repealed by Act No. 87, § 2, Pub. Acts 1945 (Stat. Ann. 1947 Cum. Supp. § 27.3548[42]), and was no longer in effect when the cause of action in the instant case, if any, arose. The matter of governmental immunity is irrelevant here, the question before us being whether the legislature may, constitutionally, apply the workmen's compensation act to employees of the State board of agriculture.

Mr. Justice REID bases his conclusion that it is competent for the legislature to impose the provisions of the workmen's
compensation act upon the defendant on the theory that it constitutes an exercise of the police power vested solely in the legislature. The people, through the State Constitution, may vest the powers of State government or limit them where and as they will, consistent with the guarantee contained in article 4, § 4, of the Constitution of the United States. As said in *Clements v. McCabe*, 210 Mich. 207:

“It is beyond question that, when the people of this State adopted their Constitution, police power was placed in the legislature, *except as distinctly reserved or conferred elsewhere.*”

In the field of “general supervision of the college and the direction and control of all agricultural college funds,” the people have “distinctly reserved or conferred elsewhere” than in the legislature the power to supervise, direct or control, and by the Constitution itself have barred legislative intrusion.

*Wood v. City of Detroit*, 188 Mich. 547 (L. R. A. 1916C, 388), relied upon by Mr. Justice REID, is distinguishable. There the defendant city claimed that its constitutionally conferred powers of local self-government were invaded by the legislature’s attempt to apply the workmen’s compensation act to certain of the city’s employees. The Court, referring to article 8, § 21, of the State Constitution authorizing cities and villages to adopt and amend charters and pass laws and ordinances “subject to the Constitution and general laws of this State,” said:

“The Constitution of 1909 [1908] has pointed out the extent of the local powers and capacities of cities and villages * * * thus restricting the power of the legislature to grant or to deny to particular communities the enumerated capacities and powers, at will, but it has not * * * denied the power of the legislature to enact general laws applicable to cities.”

The situation in the instant case is different because the powers conferred upon the defendant board of agriculture by the Constitution are not expressly declared to be subject to the general laws of this State. We do not overlook the concluding words in article 11, § 8, that the defendant board “shall perform such other duties as may be prescribed by law.” These words do not give the legislature the power to invade the field granted exclusively to the board of agriculture by the Constitution. As was said in *Bauer v. Board of Agriculture*, 164 Mich. 415:

“The addition to the last clause of section 8 of the words, ‘and shall perform such other duties as may be prescribed by law,’ makes
it clear that the duties to be prescribed by the legislature are other than 'the general supervision of the college and the direction and control of all agricultural college funds,' as to which as we held in *Sterling v. Regents of University of Michigan, supra,* the State board of agriculture has exclusive supervision and control."

Plaintiff is apprehensive as to certain suggested consequences were we to hold the defendant "immune from all legislation." Similarly, Mr. Justice REID writes, "However, the provision of the Constitution giving the State board of agriculture sole control of the funds of the college does not generally exempt the said board from the great body of general laws of this State." To ascribe such immunity to defendant or to hold it thus exempt is not necessary to decision for defendant on the facts before us. Suffice it to say that within the confines of the field of "general supervision of the college, and the direction and control of all agricultural college funds" it is the clear intent of the people, as expressed in the Constitution, that the defendant shall exercise exclusive authority therein without legislative intrusion.

I can only conclude that the employment of persons for the prosecution of college business, functions or operations is within defendant's exclusive supervision; that the payment of compensation, from college funds, in the event of personal injury arising out of and in the course of such employment involves an act of direction and control of agricultural college funds which, again, is within the exclusive power of the defendant board; that for these reasons it is not competent for the legislature to impose the workmen's compensation act on the defendant with respect to the type of employment here involved.

The order of the department denying defendant's motion to dismiss and setting the case for hearing on its merits should be set aside and the cause remanded to the department for entry of an order granting defendant's motion to dismiss plaintiff's application. No costs, a public question being involved.

BOYLES, NORTH, and CARR, JJ., concurred with DETHMERS, J.
Jackson Broadcasting & Television Corp. v. State Board of Agriculture

360 Mich. 481, 496-98, 499; 104 N. W. 2d 350 (1960)

DETHMERS, C. J. . . .

Plaintiff's bill seeks injunctive relief to prevent defendant from entering into a construction contract or expending any public funds for the erection of a television broadcasting station. It bases its claimed right to such relief on the grounds that defendant, in so doing, would be proceeding under and in furtherance of its written agreement with Television Corporation of Michigan, Inc., and that this would be unlawful in the following 2 respects: (1) that the construction and operation of the television station under that agreement would be a self-liquidating project within the meaning of PA 1958, No. 224, § 11, under which such construction contract is prohibited because approval thereof by the legislature was not first obtained, and (2) the agreement with Television Corporation of Michigan, Inc., constitutes an attempt on the part of defendant to grant the credit of the State to or in aid of that corporation in violation of Michigan Constitution of 1908, art 10, § 12.

The trial court, finding plaintiff's said 2 claims of illegality, as in its bill alleged, not well founded as a matter of law, dismissed the bill. We think he was correct and that the order dismissing, from which plaintiff appeals, should be affirmed. Our reasons follow:

(1) No facts are alleged in the bill from which a conclusion may be drawn or a finding may be made that the project in question is self-liquidating, as in the statute mentioned. That appellation appears in the bill as plaintiff's legal conclusion, without supporting averments. If its conclusion were to be accepted as correct, there are no allegations in the bill that moneys appropriated by Act No. 224 on the supposed condition contained in its section 11 are to be expended on this project, warranting enjoining thereof. If section 11 of that act were to be construed as a general prohibition against the board of trustees of Michigan State University, without regard to the source of the funds to be used or involved, it would exceed legislative authority. Michigan Constitution of 1908, art 11, § 8.* State Board of Agriculture v. Auditor General, 180 Mich. 349; State Board of Agriculture v. Auditor General, 226 Mich. 417; Weinberg v. Regents of University, 97 Mich. 246.

(2) Defendant's first sworn answer contained language tending to admit plaintiff's second charge of illegality of the agreement.
Thereafter defendant filed an amendment sworn answer, to which it attached as an exhibit a copy of the agreement referred to and relied on in plaintiff's bill of complaint. It shows by its express terms that defendant was not, thereunder, to advance credit to the other contracting party but only to permit it use of the television studio and facilities on a time-sharing and rental basis. Plaintiff made and makes no denial of the correctness of the copy of the agreement attached to defendant's amended sworn answer. By the agreement's express terms plaintiff's second claim of invalidity collapses.

Is defendant bound by its apparent admission in its first answer or may it stand on its amended sworn answer? That the latter is the rule is apparent from Carroll v. Palmer Manfg. Co., 181 Mich. 280, 285, City of Lebanon v. DeBard, 110 Ind. App. 79, 82 (37 NE2d 718); Staley v. Espenlaub, 128 Kan. 1, 2 (275 P 1095); Dahl v. Winter-Truesdell-Diercks Co., 62 ND 351 (243 NW 812); 71 CJS, Pleading, § 321, p 716.

In the above view of the case plaintiff's bill stated no cause of action as a matter of law and was properly dismissed.

* * *

An important public project is here involved. It being obvious that plaintiff has no legal cause of action, we should not permit technicalities to stand in the way of our saying so and disposing of the case accordingly, without need for further fruitless proceedings. This is the more so in view of the well-known fact, not in the record but of which we may take judicial notice, that for over a year the entering into and performance of the contract for the erection of the television station and facilities have been a fait accompli with the station and facilities fully constructed and in operation by defendant and its lessee, Television Corporation of Michigan, Inc., leaving the question of enjoining the entering into the contract by defendant and its expending money for the project moot.

Affirmed. No costs.

KELLY, SMITH, EDWARDS, and SOURIS, JJ., concurred with DETHMERS, C. J.

KAVANAGH and BLACK, JJ., dissented.

CARR, J., did not sit.
2. COMMENT

Several important legal principles may be deduced from the cases in Chapters II and III. They may be summarized as follows:

1. The Michigan Constitution vests in the Board of Regents, as well as in the governing boards of other state institutions of higher education, the "general supervision of its institution and the control and direction of all expenditures from the institution's funds." (Art. 8 § 5.) The words "general supervision" must be construed to mean complete authority over all the internal affairs of the University.

2. On the other hand, the University is subject to the general laws of the state concerning the public health, safety, morals and welfare. A university campus cannot be an extraterritorial state within a state.

3. Appropriations made by the legislature become the "property" of the University when the appropriations act becomes effective. Therefore, the legislature cannot subject University appropriations to change or to the control of state administrative officers.

4. The legislature may attach conditions to its appropriations for University support. However, a condition to an appropriation will be struck down as unconstitutional if its effect is to deprive the Board of Regents of any substantial part of its discretion over the educational policy or operation of the University. If such a condition is constitutional, the University must comply with it in order to be entitled to the appropriated money.

Another important legal principle is set forth in the Michigan Constitution (Art. 8 § 4) although it has not been involved in any of the cases in these chapters. To the end that higher education may be maintained and encouraged, the constitution commands the legislature to provide financial support for the University of Michigan and other state institutions. Of course, the amount of this support must be consistent with the other needs and revenues of the state. Therefore, this provision of the constitution probably creates a moral obligation which cannot be enforced by a court of law.
The existence of these rules has guaranteed the independence of the University, and they are in large measure responsible for its pre-eminent status.

3. OPINIONS OF THE ATTORNEY GENERAL CONCERNING AUTONOMY

The University has been often protected in the preservation of its important constitutional powers by opinions of the state's chief legal officer, the Attorney General.\(^1\) Of course, when the Attorney General makes a ruling adverse to the University, as he did in 1868 by deciding that the University was bound to have a homeopathic professor, he must go to court to enforce his opinion. As a legal corporation with the right to sue and to be sued in its own name, the University can hire its legal counsel, and, as the homeopathic cases make so obvious, the Attorney General does not always prevail.

As respects the ordinary non-corporate state agency, however, the Attorney General has enhanced authority since it is he who by virtue of his office represents the agency in court and provides all legal advice. Thus, advice to such an agency very often takes the place of a court case. Attorneys General, however, seem to have much more freedom to change their minds than the courts do under the doctrine of *stare decisis*, and it seems that old opinions of the Attorneys General are almost never cited by the courts as authority, at least not in the cases with which this volume is concerned, although they probably very often reflect current legal doctrines which are taken too seriously to be challenged in court.

Citations for all opinions here discussed appear at the end of these comments. Many opinions simply reiterate the clear doctrine of the case law to officials who are not familiar with it. For example, in 1922, citing *Weinberg*, the Attorney General ruled that the University was not required to obtain bonds from its construction contractors.\(^2\) On other occasions, however, the Attorney General may venture into controversies completely untouched by judicial opinion. In 1955, for example, the Attorney General ruled as unconstitutional legislation forbidding the University of Michigan and Michigan State University from
operating television stations and from self-liquidating projects without legislative consent. Seven years later, the television issue arose in the *Jackson Broadcasting and Television* case previously discussed.

Cataloguing opinions of the Attorney General under the general heading of the University’s freedom from legislative control in the conduct of its general operations, we find many rulings. In 1898, the construction of an addition to the Law Department was not governed by a general statute purporting to control construction at all state institutions. In 1900, the Auditor General had to approve vouchers for the purchase of land by the University without regard to whether the funds came from the University interest fund or from the mill tax. In 1912, the Auditor General was informed that the University might buy its own fire insurance on its own buildings. In 1924, the Board of Regents, with the consent of the State Administrative Board, could obtain low-cost fire insurance within a system set up for state property only. In 1927, a statute requiring the registration and supervision of laboratories within the state, applied to University laboratories only if they were in the business of selling laboratory products at a profit. A tuberculosis unit built with state funds in 1930 as an addition to the University Hospital was outside the authority of the State Tuberculosis Commission. In 1943, the University was not covered by a statute forbidding state institutions from serving oleomargarine. In 1953, the provisions of the School Building Code were intended by the legislature to apply only to classroom buildings. In 1954 the question of whether the University was required to follow the State or City Plumbing Codes was not answered because of voluntary compliance by the University.

In one of the most recent, and most significant opinions, the Attorney General ruled in 1965 that the 1963 Constitution did not permit the legislature to delegate authority over building programs at the ten constitutionally autonomous state colleges and universities to the State Administrative Board and the State Controller. The device of appropriating money to the Controller rather than to the governing boards could not be used to subvert the constitutional status of the educational institutions.

Another category of opinions concerns legislation which affects the governing board’s control of its employees. In 1905,
before Michigan State College had achieved constitutional status, the Auditor General was supported in his refusal to pay for out-of-state travel by a professor which could only "indirectly" result in improving performance of employee's duties. However, in 1907 an act purporting to control salaries at all state institutions did not apply to the University of Michigan. Similarly, in 1932, Veterans Preference Laws did not apply to the then two constitutional schools, and neither did the Civil Service Law in 1937. In 1931, statutory delegation of the control over Michigan State's financial affairs could be upset by the governing State Board. And, in 1955 the statutory delegation to the faculty of the control of students, laboratories, museums and libraries was overturned by constitutional provisions which, of course, placed the general supervision of everything in Michigan State in the State Board.

Legislation purporting to affect students has also been disregarded by the Attorney General. In 1901, and again in 1936 and 1959, he ruled that only the constitutionally established governing boards, and not the legislature, could determine the tuition. The statute forbidding tuition for Michigan residents is C.L. para. 390.13 and is reproduced in this volume on page 119. Similarly the children of certain veterans who are residents are purportedly exempted from tuition by C.L. para. 35.111 (see page 123). In 1911, an attempt by the legislature to set the entrance standards for the University of Michigan was rejected, as was a statute enacted in 1949 which exempted members of the Michigan National Guard from military instruction at Michigan State. Complete control over intercollegiate athletics was affirmed in opinions directed at legislators who, provoked by the NCAA television blackout of football in 1951, were considering corrective legislation.

Other rulings illustrate the wide diversity of issues on which the Attorney General has ruled. In 1919, and again in 1958, constitutional status was found to exempt academic publications from control by the State Board of Auditors and the statutory requirement of in-state printing. In 1939, the Attorney General ruled that the legislature had no authority to waive the sovereign immunity of the then Michigan State College and the University of Michigan. Compare this result with the Branum case in Chapter VII, page 239. The State Administrative Board therefore, could not be authorized to dispose of minor claims
against the universities.\textsuperscript{25} In 1938 a legislator was advised that money could be appropriated to Michigan State on the condition that it be used solely to build and equip 4-H buildings at Chatham, Michigan.\textsuperscript{26} On the other hand, a 1962 opinion advised the legislature of the unconstitutionality of conditioning the whole appropriation for Michigan State University on the retention of a labor relations center.\textsuperscript{27}

4. STATE STATUTES RELATING TO UNIVERSITY OF MICHIGAN

This section contains the basic statutes which purport to govern the University of Michigan. Although some of these statutes are relatively recent, many of them are very old. Because of the constitutional posture of the University, some of these statutes are of doubtful validity. Several of these statutes have even been declared unconstitutional by the Supreme Court or by the Attorney General, but they remain on the statute books unrepealed—for example, the provisions of statutes requiring the appointment of a homeopathic professor, and prohibiting tuition charges for certain categories of students (§§ 390.5, 390.41, and 390.12, 390.13, 35.111).

Other statutes, although perhaps not technically invalid have become completely obsolete—such as the elaborate provisions for the use of interest on the University fund. This fund was at one time the principal support of the University, but today it is insignificant. Moreover, the 1963 Constitution eliminated all reference to the interest fund contained in Section 11 Article XI of the 1908 Constitution. No payments of interest are now made to the University.


AN ACT to provide for the government of the state university, and to repeal chapter 57 of the Revised Statutes of 1846.

The People of the State of Michigan enact:

390.1 University of Michigan

Sec. 1. That the institution established in this state and known as the university of Michigan, is continued under the name and style heretofore used.
390.2 Same; object

Sec. 2. The university shall provide the inhabitants of this state with the means of acquiring a thorough knowledge of the various branches of literature, science and arts.

390.3 Same; government

Sec. 3. The government of the University is vested in the board of regents.

390.4 Board of regents; body corporate, suits, seal

Sec. 4. The board of regents shall constitute the body corporate, with the right, as such, of suing and being sued, of making and using a common seal, and altering the same.

390.5 Same; powers; professor of homeopathy

Sec. 5. The regents shall have power to enact ordinances, by-laws and regulations for the government of the university; to elect a president, to fix, increase and reduce the regular number of professors and tutors, and to appoint the same, and to determine the amount of their salaries: Provided, That there shall always be at least 1 professor of homeopathy in the department of medicine.

390.6 Same; removal power

Sec. 6. They shall have power to remove the president, and any professor or tutor, when the interest of the university shall require it.

390.7 Same; appointive power

Sec. 7. They shall have power to appoint a secretary, librarian, treasurer, steward, and such other officers as the interests of the institution may require, who shall hold their offices at the pleasure of the board, and receive such compensation as the board may prescribe.

390.8 Departments of university

Sec. 8. The university shall consist of at least 3 departments:
1. A department of literature, science and the arts;
2. A department of law;
3. A department of medicine;
4. Such other departments may be added as the regents shall deem necessary, and the state of the university fund shall allow.
390.9 Special courses

Sec. 9. The regents shall provide for the arrangement and selection of a course or courses of study in the university, for such students as may not desire to pursue the usual collegiate course, in the department of literature, science and the arts, embracing the ancient languages, and to provide for the admission of such students without previous examination, as to their attainments in said languages, and for granting such certificates at the expiration of such course or term of such students, as may be appropriate to their respective attainments.

390.10 Repealed. P.A. 1957, No. 87, § 1, Eff. Sept. 20

390.11 Authority of regents, president and faculty; degrees

Sec. 11. The immediate government of the several departments shall be entrusted to the president and the respective faculties; but the regents shall have power to regulate the course of instruction, and prescribe, under the advice of the professorships, the books and authorities to be used in the several departments; and also to confer such degrees and grant such diplomas as are usually conferred and granted by other similar institutions.

390.12 Fees and tuition; literary department; free courses

Sec. 12. The fee of admission to the regular university course in the department of literature, science and the arts, shall not exceed 10 dollars, but such course or courses of instruction as may be arranged under the provisions of section 9 of this act,¹ shall be open without fee to the citizens of this state.

¹Section 390.9.

390.13 Same; residents of state

Sec. 13. The university shall be open to all persons resident of this state, without charge of tuition, under the regulations prescribed by the regents, and to all other persons, under such regulations and restrictions as the board may prescribe.

390.14 Same; payment to treasurer; expenditure

Sec. 14. The moneys received from such source shall be paid to the treasurer, and so much thereof as shall be necessary for the purpose, shall be expended by the regents in keeping the university
buildings in good condition and repair, and the balance shall be appropriated for the increase of the library.

390.15 Annual report of regents to superintendent of public instruction

Sec. 15. The board of regents shall make an exhibit of the affairs of the university, in each year, to the superintendent of public instruction, setting forth the condition of the university and its branches, the amount of receipts and expenditures, the number of professors, tutors, and other officers, and the compensation of each; the number of students in the several departments, and in the different classes; the books of instruction used; an estimate of the expenses for the ensuing year, together with such other information and suggestions as they may deem important, or the superintendent of public instruction may require, to embody in his report.

390.16 Interest on university fund; use for erection of buildings

Sec. 16. From the increase arising from the interest of the university fund, the board of regents may erect, from time to time, such buildings as are necessary for the uses of the university, on the grounds set apart for the same; but no such buildings shall be erected until provisions shall be made for the payment of the existing indebtedness of the university, nor until 1 branch of the university shall be established in each judicial circuit of the state.

390.17 Same; use for improvement of grounds and purchase of apparatus

Sec. 17. The board of regents shall have power to expend so much of the interest arising from the university fund, as may be necessary for the improving and ornamenting the university grounds, for the purchase of philosophical, chemical, meteorological, and other apparatus, and to keep the same in good condition.

390.18 Branches of university; support

Sec. 18. As soon as the income of the university interest fund will admit, it shall be the duty of the board of regents to organize and establish branches of the university, 1 at least, in each judicial circuit or district of the state, and to establish all needful rules and regulations for the government of the same. They shall not give to any such branch the right of conferring degrees, nor appropriate a sum exceeding 1,500 dollars, in any 1 year, for the support of any such branch.
390.19 Same; establishment

Sec. 19. The regents may establish and organize a branch or branches, by the creation of a trusteeship for the local management of the same, or they may in their discretion select for a branch, under the restrictions aforesaid, any chartered literary institution in the state.

390.20 Meeting of regents; quorum

Sec. 20. The meetings of the board may be called in such manner as the regents shall prescribe; 5 of them shall constitute a quorum for the transaction of business, and a less number may adjourn from time to time.


390.22 Expenses of regents and board of visitors

Sec. 22. The regents and visitors of the university shall each receive pay for the actual and necessary expenses incurred by them in the performance of their duties, which shall be paid out of the university interest fund.

390.23 Orders on treasurer; signatures

Sec. 23. All orders on the treasurer shall be signed by the secretary, and countersigned by the president.


AN ACT to establish an institute of gerontology; to prescribe its functions; and to make an appropriation for its operation.

The People of the State of Michigan enact:

390.31 Institute of gerontology; authority to establish, purposes

Sec. 1. There may be established by the university of Michigan and Wayne state university jointly, an institute of gerontology for the purpose of developing new and improved programs for helping older people in this state, for the training of persons skilled in working with the problems of the aged, for research related to the needs of our aging population, and for conducting community service programs in the field of aging.
390.32 Same; duties

Sec. 2. The institute shall:

(1) In the field of training,

(a) Stimulate and contribute to training in gerontology in the various schools and departments of the universities.

(b) Offer specialized interdisciplinary training in gerontology at the graduate and postgraduate levels for those entering or already working in the field.

(2) In the fields of research and publications,

(a) Encourage, foster and conduct research in all important areas of gerontology.

(b) Provide research support for university instructional staff and other investigators in gerontology.

(3) In the field of community service, organize and promote programs of community education and services in the field of aging, and shall conduct courses and educational activities designed to serve those working with our older citizens.

390.33 Same; establishment and government by boards

Sec. 3. The institute shall be established by, and governed in accordance with the rules and regulations of the board of governors of Wayne state university and the board of regents of the university of Michigan.

P.A. 1875, No. 128, Eff. Aug. 3

AN ACT for the establishment of a homeopathic medical department of the university of Michigan.

The People of the State of Michigan enact:

390.41 Homeopathic medical department, authority of regents to establish

Sec. 1. The board of regents of the university of Michigan are hereby authorized to establish a homeopathic medical college as a branch or department of said university, which shall be located at the city of Ann Arbor.
390.51 Board of regents; holding property in trust

Sec. 1. That it shall be competent for the regents of the university to take, by gift, devise or bequest, and hold in perpetuity any land or other property in trust for any purpose not inconsistent with the objects and purposes of the university.

35.111 Children of deceased or disabled serviceman; educational aid

Sec. 1. Any person not under 16 and not over 22 years of age who has been a resident of the state of Michigan for 12 months, who is a child of a member of the armed forces of the United States who was killed in action or died from other cause during any war or war condition in which the United States has been, is, or may hereafter be a participant, or who as a result of wartime service has since died or is totally disabled, shall be admitted to and may attend any state tax supported educational or training institution of a secondary or college grade. Such persons admitted to tax supported institutions shall not be required to pay any matriculation fee, athletic fee, tuition or any other fee which takes the place of tuition charges during the time in which he is a student at said state institution.
FOOTNOTES

Section 1 - Cases Interpreting the Constitution of Separation of University & State

1. This term as used in this chapter shall include all educational institutions referred to in the 1963 Constitution authorized to grant baccalaureate degrees.

2. The legislation relating to the University of Michigan has been included at the end of this chapter.

3. Buehler and Draper, Chapter X.

4. This issue is now before the Circuit Court for the County of Ingham. The Regents of the University of Michigan et al. v. The State of Michigan et al., Civil Case No. 7659-C.

5. The Washtenaw County Circuit Court has ruled that the statute embraces the University. The Regents of the University of Michigan v. The Labor Mediation Board, Civil Action 1952. The decision has been appealed.

Section 3 - Opinions of the Attorney General Concerning Autonomy

1. The office of the Attorney General states that it has bound volumes containing opinions of the Attorney General from 1837 to date. Each volume is indexed, and there is a cumulative index in four volumes for all opinions rendered after July 1, 1913.


4. Supra p. 111.


