CHAPTER VIII
THE UNIVERSITY AND LOCAL GOVERNMENT: ZONING AND PROPERTY TAXES

1. INTRODUCTION

The relations between a state university and local governments are discussed in this chapter. Probably the most noticeable area of potential conflict between university and municipal authorities relates to the application of local zoning ordinances to the construction and operation of the physical plant of the university. So far, no case has been decided by the appellate courts of Michigan on this exact point, but it is the subject of several opinions of the Attorney General.

The cases do, however, deal with a second subject which affects the relations between city and university, i.e., the exemption of university property from taxation. Since property taxes are so important to the support of local government and since a university is likely to own a large amount of property in the city in which it is located, the exact applicability of its tax exemption is very important.

Three cases have been decided by the Michigan Supreme Court which have determined the extent to which the property of the University of Michigan is exempt from taxation. The first case, Aplin, decided in 1890, held that the property of the University of Michigan was exempt from taxation as state property, and not as the property of an educational institution. This distinction was important because the statute exempting the property of incorporated educational institutions from taxation limited the exemption to real estate "occupied by them for the purposes for which they were incorporated." The land involved in the case was Detroit real estate which apparently had not been recently used for educational purposes.

MacKinnon Boiler, the next case in this series, modified the rules by permitting one minor exception which embraced
vacant lots not used by the University. They were declared to be subject to special assessment taxes for local improvements. Since these local improvements add to the value of the property subject to the tax, this exception to the rule should not unduly burden the University.

The broadest attack on the tax exemption of the University came in the final case in this series, *Lucking v. People*. An Ann Arbor taxpayer brought suit against the State of Michigan and the University of Michigan seeking to force the payment of real estate taxes to the City of Ann Arbor on certain properties of the University which, he did not think were being used for purely educational purposes. The Supreme Court adhered to its precedents and the suit was dismissed.

Despite the establishment of the rule, however, there are enormous practical problems involved when a city which must depend for its support upon property taxes finds that a large share of the property within the city is exempt from taxation. Both the city and the university can be injured if the city cannot provide adequate services. In order to remedy this problem, a statute\(^2\) provides that state universities may enter into agreements with the cities in which they are located for police and fire protection. The agreement between the City of Ann Arbor and the Regents of the University of Michigan is appended to this chapter.

2. JUDICIAL DECISIONS

*Aplin v. The Regents of The University of Michigan*

83 Mich. 467, 467-71; 47 N.W. 440 (1890)

CHAMPLIN, C. J. Prior to July 1, 1888, certain land situated in the city of Detroit, the title of which was vested in the Regents of the University of Michigan by a grant from Walter Crane, bearing date March 22, 1880, was and has since the date of such deed been held for corporate purposes. This land was assessed upon the general tax roll of the city for the year 1887, and was returned as delinquent, and the bill is filed in this case under Act No. 195, Laws of 1889 (3 How. Stat. p. 2936), to enforce collection of such taxes. No question
is made concerning the title to the land, and the only question presented is whether the land was exempt from taxation.

The legislation affecting the organization of the University of Michigan is given in the case of *Regents v. Board of Education*, 4 Mich. 213, and need not be here repeated. Section 7 of Article 13 of the Constitution which was adopted in 1850 declares that—

"The Regents of the University, and their successors in office, shall continue to constitute the body corporate known by the name and title of 'The Regents of the University of Michigan.'"

Section 8 of the same article declares that—

"The board of regents shall have the general supervision of the university, and the direction and control of all expenditures from the university interest fund."

By these provisions the body corporate, which was at first the creation of the legislative will, has received the sanction of the Constitution, and has become a part of the fundamental law, and in some respects is not subject to legislative control or interference. It is not, however, independent of, but is part of, the State, a department to which the education of the people in the higher branches of literature, science, and the arts is confided. As such it is fostered by the State. Appropriations are made which are raised by taxation upon the property of individuals of the State. A tax is also imposed of one-twentieth of a mill upon the taxable property of the State for the support of a university. The public character of the institution has been recognized and declared in repeated decisions of this Court. It was said in the case of *Regents v. Board of Education*, above referred to, that the corporation has been since its incorporation in 1837—

"A public corporation, created for public purposes alone. * * * The institution was erected and has been supported by a public fund, and the corporators have no private interest whatever connected with their corporate character." And again it was said that—"the corporation was created for the purpose of administering a great public trust, and the present plaintiffs are but trustees for the same great purpose."

In the case of *Regents v. Detroit Young Men's Society*, 12 Mich. 163, it was said:

"The University of Michigan is a public corporation. The people, in their political capacity, are the corporators. It is a part of the
educational system of the State, and is under the control of the Legislature, except so far as it has been placed beyond the reach of that body by the Constitution and the trust attached to the university fund. * * * It was a public corporation originally, and has been throughout. It was created to subserve a great public want,—the education of the people."

Exemption from taxation is claimed under the provision of the first subdivision of section 3 of Act No. 153, Laws of 1885 (3 How. Stat. § 1169/2), which provides that all public property belonging to this State shall be exempt from taxation.

It is contended that all of the property of the University of Michigan is public property of this State within the meaning of the above exemption. We are of the opinion that the land in question is exempt from taxation under the terms of the above statute. The property held by the Regents of the University of Michigan in their corporate capacity is the public property of the State held by the corporation in trust for the purposes to which it was devoted.

It does not follow that the State can have no property except such as is in the control and at the disposition of the Legislature. The Legislature is not the State, but only a department of the State. All subjects of legislation otherwise than such as are excepted from their authority by the Constitution are within their jurisdiction and control. They have said that all public property belonging to the State shall be exempt from taxation. The public property belonging to the State includes the property of all public departments of the State; such as the Michigan University, the Reform School, the School for the Deaf and Dumb, the State prisons, the asylums, the Agricultural College, the State Normal School, and other public institutions supported by the State through taxation or by funds or property appropriated by public or private generosity for that purpose. It cannot be supposed that the Legislature would make large appropriations for the support of these institutions, or levy taxes for the same purpose, and then assess the property held by them in trust to carry out the same object for which such taxes are levied.

It is claimed by the solicitor for petitioner that the second subdivision of section 3 is the one applicable to the Michigan University, which exempts the personal property of library and scientific institutions incorporated under the laws of this State, and such real estate as shall be occupied by them for the purposes for which they were incorporated. We think it plain that the language of this subdivision cannot apply to the class of institutions above enumerated as exempt under the first subdivision. It refers to such institutions as are incorporated under the general laws of the State for library,
benevolent, charitable, and scientific purposes, and not those institutions which may be regarded as departments of the State provided for in the organic law, or supported by direct taxation.

The decree is affirmed, without costs.

The other Justices concurred.

Auditor General v. MacKinnon Boiler & Machine Company

199 Mich. 489, 489-96; 165 N.W. 771 (1917)

BIRD, J. In the year 1905 C. A. Kent of Detroit conveyed certain lands in Bay City to the regents of the university, the same being a gift, for the use and benefit of the university. Subsequently the regents sold a portion thereof to petitioner. Prior to the sale, however, a special assessment for sewer purposes had been made thereon by the local authorities. The assessment remaining unpaid the premises were included in the auditor's annual petition filed in the circuit court of Bay county for the sale of lands for delinquent taxes. Petitioner intervened and made the objection that at the time the assessment was made it was the property of the university, and therefore invalid, as no valid tax or assessment could be levied thereon. This objection was overruled at the hearing, and petitioner has appealed.

1. The one question presented for solution is whether vacant real estate owned by the university, but not actually used for any purposes in connection with its affairs, can be subjected to a special assessment for local improvements. Counsel for relator argues that the assessment is invalid on the ground that the board of regents is a constitutional body, has independent control of the affairs of the university, and therefore its property is not subject to the acts and control of the legislature.

We think it is clear that if this property is exempt from the assessment in question it must be so by force of some legislative acts. The Constitution does not deal with exemptions from taxation. There being no constitutional restriction on this power of the legislature, it follows that it can exercise the power of exemption as it chooses. It has exercised this power by declaring in section 7 of the tax law that "all public property belonging to the State of Michigan shall be exempt from taxation." 1 Comp. Laws 1915, § 4001. This and similar language has been the subject of much construction by the courts, and in the majority of cases it has been held not to include

The holding in most of the cases is that these words of exemption apply only to *general* taxation. It appears, however, to have been settled in this State that these words of exemption protect public property from local assessments (*City of Big Rapids v. Board of Sup'rs of Mecosta Co.*, 99 Mich. 351 [58 N. W. 358]); but this has been construed to mean such property as is used for governmental purposes (*Newberry v. City of Detroit*, 164 Mich. 410 [129 N. W. 699, 32 L. R. A. (N. S.) 303]). In this case it was held that a public park was not exempt from special assessment for paving purposes because not being used for governmental purposes. If the general words of exemption in the statute do not apply to property owned by a municipality which is not used for governmental purposes, a like reasoning seems to lead to the conclusion that real estate owned by the university, but not used for governmental purposes, would not be included within the exemption. The university as well as the municipality is a corporate entity, made so by force of the Constitution, and both are State agencies.

The reason which underlies the exemption of public property from general taxation is that it would be without profit to assess public property as the tax would have to be paid out of the general fund to which all contributed, but this reason does not exist when special assessments are made for local improvements. Whenever property is exempt from special assessment the remaining property owners included within the special assessment district must pay for the benefits which accrue to the exempt property. This is so manifestly unfair that I am of the opinion that it was not the intention of the legislature to exempt property from special assessments which was owned but not used by the public authorities for governmental purposes. This question was before the California court on a similar state of facts involving its university, and the same arguments were urged in support of the exemption. But that court held that inasmuch as the property of the university was not made use of in connection with the affairs of the university, it was subject to the special assessment. It was there said in part:
"The principle is well established that where any of such lands are not directly and necessarily used for a public purpose they may be subjected to the payment of special assessments for benefits. And this is in consonance with justice and equity. For to assess certain lot owners upon a street for all the cost of the work, part of which is for the benefit of a public institution, is to enhance the value of the university property at the expense of the few, instead of by taxation upon all the people at the expense of all. So it is said in Hassan v. City of Rochester, 67 N. Y. 528:

"'A different rule would compel individual lot owners to pay assessments levied for improvements which were a benefit to the State lands, without any adequate advantage, and in many instances impose a burden which would be extremely onerous and produce great injustice.' " City Street Imp. Co. v. Regents of the University of California, 153 Cal. 776 (96 Pac. 801, 18 L. R. A. [N. S.] 451).

In view of the fact that the record discloses that the property in question was vacant unimproved lots in the city of Bay City, and that they were not being used for governmental purposes of the university, we think the conclusion of the trial court should be affirmed.

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

FELLOWS, J. (dissenting in part). I am for affirmance, but not for the reasons stated by Mr. Justice BIRD, and by the learned trial judge. I do not agree that a municipal unit of the State may enforce by sale for delinquency a special assessment upon the property held by its creator, the sovereign, the State, even though such property be not in use for governmental purposes, nor that this court committed itself to such doctrine by the case of Newberry v. City of Detroit, 164 Mich. 410 (129 N. W. 699, 32 L. R. A. [N. S.] 303). That case involved a special assessment for paving purposes, and the question involved was whether the city should assess upon property owned by itself and not used for governmental purposes its proportion of the costs. The charter provision was as follows:

"For the purpose of such assessment, the lots and parcels of real estate situated on said street, and fronting the portion thereof ordered to be improved, shall constitute one local assessment district"; * * * the cost and expense of the paving to be assessed according to frontage. Detroit Charter 1904, §§ 266, 267, pp. 182-184.
It was held that the municipality should assess upon its own property, not used for governmental purposes, its proportion of the cost of the local improvement, and that such property was not exempt from such special assessment. This was the question there before the court and there decided. That case is not authority to the point that property owned by the State is subject to sale for failure to pay local assessments, but only to the point that property owned by the municipality, and not used for governmental purposes, should pay its proportion of the cost of local improvements made under the provisions of its charter. In the instant case the State parted with its title to the property on June 24, 1912. On March 24, 1913, the tax roll for this special assessment was approved by the board of public works, and the certificate of the comptroller was attached and the entire assessment approved May 1, 1913. The ordinance ordering the improvement was passed July 3, 1911, but this special assessment did not become due until nearly a year after the State had parted with its title and the property had become subject to private ownership. In the case of *Case v. City of Saginaw*, 196 Mich. 687 (163 N. W. 115), the writer expressed the view:

"That the lands were not liable for special assessments falling due while they were owned and held by the State, but were liable for such special assessments as became due after they became subject to private ownership."

I am unable to distinguish the facts in that case from those in this case. There, as here, the property was vacant city property, used for no governmental purpose; it had been bid off by the State for delinquent taxes. One of the special assessments in that case, as was the assessment in the instant case, was for the construction of a sewer. Entertaining the views there expressed, I think this case should be affirmed.

OSTRANDER, J. (dissenting). It is a sound rule, approved by this court (*City of Big Rapids v. Board of Sup'rs of Mecosta Co.*, 99 Mich. 351 [58 N. W. 358]), that property owned by the State, or by the United States, or by a municipality for public uses, is not subject to taxation, unless so provided by positive legislation. The rule is the same whether the tax sought to be imposed is a general or a special tax, an exaction for general or for special local purposes. The application of the rule is not affected by the fact that the legislature may have expressly exempted such property from taxation.

In *Iron Mountain Public Schools v. O'Connor*, 143 Mich. 35 (108 N. W. 426), it appeared that after land had been listed for taxation, the roll completed, approved by the board of review, and
returned to the board of supervisors for equalization, the petitioner bought the land for school purposes. Subsequently, the tax was spread thereon and not paid. The land was returned delinquent and sold at the annual tax sale under the usual decree. The school district filed its petition to vacate and set aside the decree and cancel and set aside the deed made upon the sale. There was a demurrer to the petition, which was overruled. The order overruling was set aside by this court upon the ground that the land was subject to the assessment when it was made and when the township board of review passed upon and reviewed the assessment, and no power was lodged in any person to thereafter take from the roll property listed therein; that there must be some definite period when a purchaser, whose property is generally exempt, must purchase property subject to the tax levied or to be levied thereon. Usually, the question whether a tax must be paid by one person or by another arises in cases where the land is subject to taxation, and between the vendor and the purchaser. No such question is involved here.

The land here was not liable to assessment when the proceeding to assess it was begun because it belonged to the State. The title, it is true, was in the regents. But as affecting the question here involved the beneficial owner was the State. Auditor General v. Regents of University, 83 Mich. 467 (47 N. W. 440, 10 L. R. A. 376). Under the rule stated, it was not liable to be assessed for a special improvement because it belonged to the State, and there was no law which permitted land so owned to be subjected to assessment and sold for a tax or levy for special improvements. The title to the land passed to the regents of the university in 1905. The regents sold it to appellant in June, 1912. Before that time the city of Bay City had ordered the construction of the sewer, a survey and estimate of cost had been made, reported and approved, a contract for the construction of the sewer had been let, and the sewer was completed in the summer of 1912. The roll of the special assessment was made and approved in March, 1913. The proceeding was a single one; the validity of the assessment depending upon the lawfulness of the first quite as much as upon the legality of the last step or act taken therein. As between the municipality instituting the proceeding and its officers and the land in question, jurisdiction to subject it and its owner to the exaction attached when the proceeding was instituted. Appellant bought it subject to no lien. It purchased it from an owner in whose hands it was not liable to the assessment.

It is my opinion, therefore, that the decree should be reversed and one entered annulling the tax complained about.

STONE, J., concurred with OSTRANDER, J.
Lucking v. People

320 Mich. 495, 498-505; 31 N.W. 2d 707 (1948)

BOYLES, J. Plaintiff herein, as a resident of Washtenaw county and one of the testamentary trustees of the estate of Alfred Lucking, deceased, the owner of real estate in the city of Ann Arbor, filed this bill of complaint in the circuit court for the county of Washtenaw in chancery, said to be on behalf of himself and all other taxpayers of said city, and naming as defendants the people of the State of Michigan, the regents of the university of Michigan, and the city of Ann Arbor. The prayer of the bill seeks the following relief:

That the board of regents of the university be estopped from claiming that the lands, buildings and equipment of the university within the city limits are exempt from taxation by said city; that said property be placed upon the general tax rolls of said city; that the university hospital, the athletic buildings and stadium, the Michigan Union and the Michigan League buildings, and the Hill auditorium, not used solely for educational purposes, be placed upon said tax rolls; that an accounting of the purposes and uses and values of all other university property be had and that their taxability or nontaxability be determined by the court; that the defendants State of Michigan and regents of the university be required to account to the city of Ann Arbor for all sums of money expended since the enactment of the Michigan Constitution (1908) for the protection, support, upkeep and maintenance of the lands, buildings and equipment of the university within the corporate limits of said city of Ann Arbor, and that final "judgment" be entered therefor against the State of Michigan and said board of regents; that the State of Michigan and the said board of regents be enjoined from claiming any exemption from taxation in the future except as an educational corporation or institution, and then only as to such lands, buildings and equipment as are occupied and used solely for educational purposes; that the exemption from taxation by the city of Ann Arbor of the property of the university of Michigan within the city limits be decreed to be invalid as the taking of said city's property and its taxpayers' property without due process of law and without the equal protection of the laws; that the tax exemption statutes of the State of Michigan be adjudged to be unconstitutional as a violation of the 14th amendment of the Federal Constitution, and the Constitution of Michigan; that a "judgment" be entered against the people of the State of Michigan and the board of regents of the university in favor of the city of Ann Arbor for all sums expended by said city to maintain the university of Michigan since the effective date of the
Michigan Constitution (1908); that the city of Ann Arbor be required to protect and enforce the rights and interests of the taxpayers of said city as against the people of the State of Michigan and the board of regents of the university; that the court require the people of the State of Michigan and the board of regents of the university to account to the plaintiff and the city of Ann Arbor for the reasonable value of all services furnished by said city to the people of the State of Michigan and said board of regents since August 28, 1929; and that the court find by a declaratory "judgment" the rights of the plaintiff as an individual, and as representing the taxpayers, and enforce the same against the people of the State of Michigan, the regents of the university, and the city of Ann Arbor, by final judgment and injunction of the court.

On filing the bill of complaint, service of process on the people of the State of Michigan was made by serving summons on the governor and the attorney general. The attorney general, on behalf of the people of the State of Michigan, entered a special appearance and moved to set aside the service of process on the ground that the State could not be sued without its consent and that the State had not so consented. The board of regents of the university filed an answer in the form of a motion to dismiss the bill of complaint on the above ground, that the plaintiff was not authorized to institute the suit, and that the bill of complaint did not state facts sufficient to constitute a valid cause of action in equity or at law. The city of Ann Arbor did not file a motion to dismiss, but filed an answer to the bill of complaint, concluding with a prayer that the bill of complaint be dismissed.

Judge Robert M. Toms of the Wayne circuit court, sitting in the Washtenaw circuit, after hearing the motions and considering briefs filed, entered an order setting aside the service of process as to the defendant board of regents and the defendant people of the State of Michigan. The trial court held that inasmuch as no motion to dismiss had been made by the city of Ann Arbor, the cause would stand at issue as between the plaintiff and that municipality. From the aforesaid order of dismissal, the plaintiff appeals. The record here does not indicate what further action, if any, has been taken in the case against the city of Ann Arbor.

The bill of complaint, consisting of some 70 paragraphs, consists mainly in statements of law, conclusions therefrom, and arguments in relation thereto. However, well-pleaded material allegations of fact must be taken as true. The substance of the bill of complaint is that city of Ann Arbor is now and has been giving free fire and police protection and other city services to the property owned by
the people of the State of Michigan, under the control of the board of regents, for which no compensation has yet been paid to the said city of Ann Arbor; that the State of Michigan should pay into the treasury of the city of Ann Arbor as a reasonable value for such services at least $200,000 per year; that the regents of the university have received from said city the same fire protection and other city services as do all property owners and taxpayers, that the students in the university have received municipal advantages and facilities, including fire and police protection and the use and enjoyment of city parks and streets, transportation, lighting and water, the same as used by taxpayers of said city; that for those reasons the State of Michigan is estopped from claiming that the lands, buildings and equipment of the university of Michigan within said city limits are exempt from taxation by said city; that some of said lands, buildings and equipment are actually used and occupied as noneducational facilities for profit-making purposes, that upwards of $20,000,000 of the assets of the university are unlawfully exempted from taxation of the city of Ann Arbor in that they are not occupied solely for educational purposes.

As to the defendant, the people of the State of Michigan, the controlling question here is whether this suit may be maintained by a taxpayer against the people of the State of Michigan without the express consent of the State to be sued, for the purpose of compelling the State to account to and pay the city of Ann Arbor for moneys expended by the city for police and fire protection and other services rendered by the city to the board of regents of the university. The answer is "No." Cunningham v. Macon & Brunswick R. Co., 109 U.S. 446 (3 Sup. Ct. 292, 609, 27 L. Ed. 992); Hans v. Louisiana, 134 U. S. 1 (10 Sup. Ct. 504, 33 L. Ed. 842); United States v. Sherwood, 312 U.S. 584 (61 Sup. Ct. 767, 85 L. Ed. 1058); McDowell v. Warden of Michigan Reformatory at Ionia, 169 Mich. 322; Missouri Tie & Lumber Co. v. Sullivan, 275 Mich. 26; Manion v. State Highway Commissioner, 303 Mich. 1; Mead v. Michigan Public Service Commission, 303 Mich. 168; McNair v. State Highway Department, 305 Mich. 181.

The order of the circuit court setting aside the service of process on the governor and the attorney general and dismissing the bill of complaint as against the people of the State of Michigan as defendant is affirmed.

As to the board of regents of the university of Michigan is defendant, it is obvious that a money judgment cannot in this suit belawfully entered against said defendant; and, if so entered, could not be enforced. It is equally obvious that if such relief were sought by writ of mandamus, such writ cannot issue in a chancery court and,
furthermore, no circuit court has jurisdiction to issue a writ of mandamus against State officers such as the regents of the university. 3 Comp. Laws 1929, § 15186 (Stat. Ann. § 27.2230). The Michigan Constitution (1908), art. 11 § 5, provides that the board of regents shall have general supervision of the university and direction and control of all expenditures from the university funds. Appellant places much reliance on Act No. 98, § 1, Pub. Acts 1929 (1 Comp. Laws 1929, § 441), as amended by Act No. 214, Pub. Acts 1937 (Comp. Laws Supp. 1940, § 441, Stat. Ann. 1947 Cum. Supp. § 4.191). However, this act is not mandatory but permissive only and merely authorizes the State administrative board, the board of regents of the university and other public agencies to contract for the furnishing of sewage and garbage disposal facilities, lights, water, fire protection, and other public facilities. The act does not form any basis for a decree to compel the board of regents to enter into such contracts.


Appellant points to the Constitution (1908), art. 11, § 10, which provides that "the legislature shall maintain the university," and from this argues that the court in chancery should compel the board of regents to account to the city of Ann Arbor for moneys expended by the city for police and fire protection and other services provided by the city for the university property; or *a fortiori* that the city should be compelled to levy a tax on the State property under the control of the board of regents to provide for such services. Appellant's argument that the legislature is not properly maintaining the university, perhaps might be addressed to the legislature. However, we do not conceive that it is within the province of the court in chancery to compel such action. As well stated by the trial judge, the arm of the chancellor may be long, but it is not that long.

Appellant devotes much time to argument that the statutes which exempt State-owned property under the control of the board of regents are unconstitutional. However, appellant does not point to any provision in either the United States Constitution or the Michigan Constitution (1908) which imposes any limitation upon the
power of the State legislature to exempt property from taxation. The tax-levying authority of the State is vested in the legislature, and this necessarily includes the power to exempt property from taxation. *Auditor General v. MacKinnon Boiler & Machine Co.*, 199 Mich. 489; *Harsha v. City of Detroit*, 261 Mich. 586 (90 A. L. R. 853).

The court has no power to compel the city of Ann Arbor to levy a tax upon State property within the control of the board of regents which the legislature has declared exempt from property taxation. The legislative classification of property into exempt and nonexempt categories does not in itself necessarily offend the due process* or equal protection† clauses of either the State or Federal Constitutions. 26 R. C. L. p. 253, 254, §§ 224, 225; *Union Steam Pump Sales Co. v. Secretary of State*, 216 Mich. 261; *Banner Laundering Co. v. State Board of Tax Administration*, 297 Mich. 419.

It is not for the court to consider the propriety of a contract between the city of Ann Arbor and the board of regents for the city to furnish police or fire protection or other public facilities for State property within the corporate limits. Nor is the city of Ann Arbor here before us seeking affirmative relief against the people of the State of Michigan or the board of regents. The plaintiff herein does not represent the municipality. The levying of municipal taxes is a matter of municipal prerogative and concern to be exercised by the proper authorities of the city of Ann Arbor. The court in chancery cannot substitute its judgment for that of the proper municipal authorities, or the board of regents, as to whether taxes should be levied or contracts entered into to provide for the furnishing of police facilities by the city. We are unable to conclude from the facts and circumstances alleged in appellant’s bill of complaint that either the appellant or the taxpayers of the city of Ann Arbor are being deprived of property without due process of law. The relief sought by appellant does not come within the jurisdiction of a court of chancery, at least in so far as such relief is sought against the people of the State of Michigan or the board of regents of the university. Any issues between the plaintiff and the city of Ann Arbor are still pending in the circuit court and are not here for decision.

The order dismissing the bill of complaint as to said defendants is affirmed and the cases remanded. No costs, questions of public interest being involved.

BUSHNELL, C. J., and SHARPE, REID, NORTH, BUTZEL, and CARR, JJ., concurred. DETHMERS, J., did not sit.

*See U.S. Const. am. 14; Mich. Const. 1908, art. 2, § 16.—REPORTER.
†See U.S. Const. am. 14; Mich. Const. 1908, art. 2, § 1.—REPORTER.
3. AGREEMENT FOR THE FURNISHING OF POLICE AND FIRE PROTECTION SERVICES

AGREEMENT made this 15th day of October, 1964, by and between The Regents of the University of Michigan, a Michigan constitutional corporation of Ann Arbor, Michigan, (hereinafter referred to as the University) and the City of Ann Arbor, Michigan, (hereinafter referred to as the City).

WITNESSETH:

WHEREAS, under date of March 14, 1947, the parties hereto entered into an agreement pursuant to the provisions of Act No. 98 of the Public Acts of Michigan of 1929, as amended, which agreement among other things provided a formula for determining the amount that the University would pay to the City for the police protection rendered by the City to the University; and

WHEREAS, under date of July 31, 1956, the parties hereto entered into a similar agreement providing for furnishing of fire protection by the City and payment therefor by the University; and

WHEREAS, the parties desire to provide for the furnishing of such police and fire protection and the payment therefor in a single agreement;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. In consideration of the police and fire protection services to be furnished by the City, the University shall pay to the City:
   a) An amount equal to 18% of the City’s Police Department budget annually, plus related employee benefits;
   b) An amount equal to 18% of the City’s Fire Department budget annually, plus related employee benefits.

2. The payments provided in Paragraph 1, a), and b) above are to be made quarterly in advance for each fiscal year beginning July 1, 1964, on the basis of the estimated budgets and adjusted at the end of each fiscal year on the basis of actual expenditures.
3. In determining the amount payable by the University under this contract, there will be deducted from the Police Department budget (and the actual expenditures) the amount which the University pays to the City under a separate contract for policing the University parking regulations. Any amounts collected by the City from others for police or fire protection services as such shall be credited to the University in determining the actual expenditures for the year-end adjustment of charges.

4. The amounts provided herein shall constitute complete payment for all services furnished to the University by the City Police and Fire Department; except the services for enforcing parking regulations provided under separate contract. This paragraph shall not be interpreted as preventing the City from collecting for special police services furnished during varsity football games under agreement with the Board in Control of Intercollegiate Athletics of the University.

5. This agreement supersedes, as of July 1, 1964, all provisions of the aforesaid agreement dated July 31, 1956, relative to fire protection services and all provisions relating to the furnishing of police services or the payment therefor of the aforesaid agreement of March 14, 1947.

4. OPINIONS OF ATTORNEY GENERAL

The freedom of the University from local zoning restrictions has been the subject of several opinions. In 1929, the Attorney General ruled that the University of Michigan was exempt from the provisions of the Ann Arbor Building Code.\(^1\) In 1943, the Attorney General issued a broader opinion which ruled that no city or county could control the construction of buildings by any state institution within its boundaries.\(^2\) In 1954, however, the Attorney General refused to rule as to whether either the State Plumbing Board or the City of Ann Arbor could set plumbing standards for the University of Michigan. The University was following the Ann Arbor standards at that time; so the question was entirely hypothetical.\(^3\)
Rulings of the Attorney General have also dealt with the problem of tax exemptions. An illustration of the technicalities of the exemption of the property of private educational institutions as contrasted to the broad exemption of state institutions established in *Aplin*⁴ are rulings made in 1928 concerning certain properties of Olivet College. The Attorney General ruled that the college president's house and a vacant lot owned by the college and occasionally used for athletics were not taxable, but a college-owned house occupied by the college secretary was subject to taxes.⁵

Dormitories financed under the "self-liquidating plan,"⁶ in which the bondholders had an interest, raised questions as to tax exemption in 1928. The Attorney General decided that the dormitories remained nontaxable because the bondholders' interest pertained to a leasehold, and leaseholds are not taxable as such.⁷

In another opinion, the Regents were instructed in 1932 that they were not liable for real estate taxes; and a failure to notify the assessor of a change in ownership would not subject University property to taxes.⁸ In 1940, following the *MacKinnon*⁹ case, the Attorney General ruled that the University must pay drainage district taxes on lands not then being used by the University.¹⁰ In 1942 he ruled that the property of the separately incorporated Michigan Union and Lawyers Club was exempt from taxation because these two corporations were merely the instrumentalities of the Board of Regents.¹¹

**FOOTNOTES**

Section 1 - Introduction

1. The decisions mentioned appear after this Introduction.

Section 4 - Opinions of Attorney General


