

Michigan Law Review

Volume 55 | Issue 5

1957

State Universities - Legislation Control of a Constitutional Corporation

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Recommended Citation

William P. Wooden, *State Universities - Legislation Control of a Constitutional Corporation*, 55 MICH. L. REV. 728 (1957).

Available at: <https://repository.law.umich.edu/mlr/vol55/iss5/14>

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STATE UNIVERSITIES—LEGISLATIVE CONTROL OF A CONSTITUTIONAL CORPORATION—The Utah Constitution provides: "The location and establishment by existing laws of the University of Utah, and the Agricultural College are hereby confirmed, and all the rights, immunities, franchises and endowments heretofore granted or conferred, are hereby perpetuated unto said University and Agricultural College respectively."¹ Relying on this provision, plaintiff university brought an action against the State Board of Examiners and other agencies of the state to obtain a declaratory judgment that this clause put complete control of the university in its board of regents, thereby preventing the state legislature from delegating any powers of control to other state agencies or officials. Plaintiff also sought to have defendants enjoined from ever exercising such powers. The trial court found for the plaintiff, ruling that the university was a constitutional corporation free from control by the defendants. On appeal, *held*, reversed and remanded. This clause of the constitution when interpreted in the light of prior territorial legislation does not give the plaintiff the status of a constitutional corporation, free from legislative control. *University of Utah v. Board of Examiners*, 4 Utah (2d) 408, 295 P. (2d) 348 (1956).

When a state constitution grants to a state university the authority to govern itself through its board of regents or a similar body, that university is generally classified as a constitutional corporation.² It has been said that such universities "... constitute a fourth branch of the government, co-ordinate in some respects with the executive, legislative, and judicial

¹ UTAH CONST., art. X, §4.

² For general references to constitutional provisions, statutes, decisions, and background in this general area, see: ELLIOTT AND CHAMBERS, *THE COLLEGES AND THE COURTS* (1936); ELLIOTT AND CHAMBERS, *CHARTERS AND BASIC LAWS OF SELECTED AMERICAN UNIVERSITIES AND COLLEGES* (1934). In the following list are the state universities which have the status of a constitutional corporation, the clause of the state constitutions which creates them, and the state's leading cases, if any, so construing the constitution: *Oklahoma Agricultural and Mechanical College*; OKLA. CONST., art. VI, §31; *Trapp v. Cook*

branches.”³ In the principal case the court viewed the constitutional corporation as being more like an “independent province” than a “fourth branch” of the state government. The court reasoned that if it granted the university status as a constitutional corporation the school would not be subject to the laws enacted by the legislature, any conditions attached to appropriations would be void, and the university would have a “blank check” to spend all the university funds “without any semblance of supervision or control.”⁴ The possibility that the university might even have the power to destroy the solvency of the state was also interjected by the court. The principal case concluded that since such a result would subvert many other provisions of the constitution, it could not have been intended that the plaintiff university should be a constitutional corporation free from legislative control. Although the court’s premise was that a constitutional corporation is an “independent province,” it is to be noted that other jurisdictions have construed their constitutions as creating constitutional universities without treating such universities as unrestrained entities. One court has stated that, although the university is vested by the constitution with certain exclusive powers, this is not to say “that they are the rulers of an independent province or beyond the rule making power of the legislature.”⁵ Legislative enactments will prevail over the rules and regulations made by the university where the matter in question is not an exclusively university affair.⁶ While it must be recognized that the legislature’s power to make appropriations to a constitutional university does not include and is separate from the power to control the affairs of such a university,⁷ the legislature can within reason attach conditions to its university appropriations.⁸ If a constitutional university accepts such conditioned funds, it is then bound by the conditions.⁹ There are not many decisions in this area, however, so the line between conditions the legislature can validly attach and those it cannot has not been drawn in a distinct fashion. Conditions which require the university to follow prescribed business and accounting procedures have generally been found to be

Constr. Co., 24 Okla. 850, 105 P. 667 (1909); *Michigan State University*; MICH. CONST., art. XI, §§7, 8; *State Board of Agriculture v. Auditor General*, 180 Mich. 349, 147 N.W. 529 (1914); *University of California*; CAL. CONST., art. IX, §9; *Hamilton v. Regents of Univ. of Calif.*, 219 Cal. 663, 28 P. (2d) 355 (1934); *University of Colorado*; COLO. CONST., art. IX, §14; *University of Idaho*; IDAHO CONST., art. IX, §10; *State v. State Board of Education*, 33 Idaho 415, 196 P. 201 (1921); *University of Michigan*; MICH. CONST., art. XI, §§3, 4, 5; *Sterling v. Regents*, 110 Mich. 369, 68 N.W. 253 (1896); *University of Minnesota*; MINN. CONST., art. VIII, §4; *State v. Chase*, 175 Minn. 259, 220 N.W. 951 (1928).

³ See CHAMBERS, THE COLLEGES AND THE COURTS 1936-40, 35 (1941).

⁴ Principal case at 439.

⁵ *State v. Chase*, note 2 supra, at 266.

⁶ *Tolman v. Underhill*, 39 Cal. (2d) 708, 249 P. (2d) 280 (1952).

⁷ See *King v. Board of Regents*, 65 Nev. 533 at 569, 200 P. (2d) 221 (1948).

⁸ *State v. Chase*, note 2 supra, at 268.

⁹ *Fanning v. Univ. of Minn.*, 183 Minn. 222, 236 N.W. 217 (1931); *State v. State Board of Education*, note 2 supra; *Regents v. Auditor General*, 167 Mich. 444, 132 N.W. 1037 (1911).

valid.¹⁰ The courts have also sustained conditions which require, on penalty of losing part of the appropriation, annual reports to the governor, and fair and equitable distribution of an appropriation among the departments of the university or maintenance of university departments.¹¹ It has also been held that the legislature can properly make non-teaching employees subject to the state's workmen's compensation law,¹² and can require loyalty oaths by the teachers.¹³ On the other side of the line, a condition that the university move a certain department of the school has been held to be invalidly attached,¹⁴ and an attempt to limit the amount of the funds that can be spent for a given department is likewise an invalid condition.¹⁵ It is clear that limits should be placed on the use of the conditioned appropriation, for without such limits the legislature could use the conditioned appropriation to strip the university of its constitutional authority.¹⁶ To the extent that the conclusion of the principal case is based on the premise that the constitutional corporation is beyond control it may be questioned. If the concept of the constitutional corporation developed in the cases here cited had been recognized by the court, it seems it might well have given the constitutional provision in question a broader interpretation.

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¹⁰ See *State v. State Board of Education*, note 2 *supra*.

¹¹ *Regents v. Auditor General*, note 9 *supra*.

¹² *Peters v. Mich. State College*, 320 Mich. 243, 30 N.W. (2d) 854 (1948).

¹³ *Tolman v. Underhill*, note 6 *supra*.

¹⁴ *Sterling v. Regents*, note 2 *supra*.

¹⁵ *State Board of Agriculture v. Auditor General*, note 2 *supra*.

¹⁶ See *Sterling v. Regents*, note 2 *supra*.