

OPINION
44-16

April 3, 1944 (OPINION)

APPROPRIATION

RE: Board of Higher Education

I have your letter of March 27, in which you inquire whether the State Board of Higher Education has authority to increase the salary of a college president in excess of the amount appropriated by the 1943 Legislative Assembly.

The appropriations for all of the schools of higher education in the state contain specific items for president's salary. That appropriation is in a definite and specific amount. Those appropriations, however, were passed in view of the existing provisions of section 283c2 of the 1925 supplement. The section above cited provides that whenever it shall be made to appear to the emergency commission by an itemized, verified petition of any board, commission or officer authorized to expend public funds "that an emergency exists," the emergency commission may order money transferred from one fund to another, belonging to or appropriated for the same institution. In no event shall it be within the authority of the emergency commission, however, to increase the amount to be expended for any specific purpose by more than ten percent. The law further provides that the "term emergency shall be limited to calamities or unforeseen happenings, subsequent to the time of the making of appropriations to be affected by such transfer, and which were clearly not within the contemplation of the Legislative Assembly and the Governor at the time of making such appropriation."

If the Board of Higher Education makes an application for such transfer of funds to the president's salary fund and is able to satisfy the emergency commission that an emergency exists, and the emergency commission does, in the exercise of its sound discretion, find that an emergency exists, as defined by the statute, then such salary appropriation may be increased not to exceed ten percent.

You point out that under the constitutional amendment, establishing the Board of Higher Education, there is a provision that gives to the Board the control of the expenditure of funds belonging to and allocated to the institution. That is true, in a general sense, but the moneys must still be used for the purposes designated in the appropriation by the legislative assembly. If the legislative assembly appropriates money for one purpose, the State Board of Higher Education would have no authority, under the constitutional amendment you cite, to spend such moneys for another purpose, except as to such portions as are transferred by order of the emergency commission.

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