

**OPINION  
45-90**

July 5, 1945 (OPINION)

EDUCATION

RE: Board of Higher - Powers

Your letter of July 3, addressed to this office, has been received and contents noted.

You state that the State Auditor has raised the question as to her right to issue warrants out of the 1945-47 appropriation in payment of that portion of salaries for instructors at the summer school session during the month of June, 1945.

Summer school sessions have been part of the educational work of the state institutions practically since their establishment. Until 1941, students at the so-called "summer session," paid a stipulated fee and the aggregate of the fees so collected constituted a local fund from which the instructors were paid.

In 1941, however, the Legislature made a specific appropriation for the expenses of summer sessions at some of the educational institutions, among them, the Valley City Teachers' College. Likewise, an appropriation was made for the same purpose in 1943. In 1945, however, no special appropriation was made for summer sessions, but the appropriation for educational service was increased in sufficient amount to defray the expenses of summer sessions.

Summer sessions usually are held in June and July, and in an odd-numbered year, therefore, part of the session would be one biennium and part of the session in the succeeding biennium. Because of the fact that a part of the summer session this year was held in June, the State Auditor has raised a question as to whether she may issue warrants out of the 1945-1947 appropriation for that part of the session held in June.

There is no logical reason for differentiating between a "summer" session and any other session. The summer session is a part of the educational work and service of the school year, just the same as a winter term or fall term, or whatever name you may give these periods, and it may not be convenient to so gauge the work of the educational institutions as to have the work of a term completed prior to July 1.

As I have pointed out, summer sessions have always been part of the regular educational service of the state institutions and it was undoubtedly the intention of the Legislature in making the increased appropriation for the biennium of 1945-1947 to make provision for same.

The constitutional amendment of June 28, 1938, creating the State Board of Higher Education, gave to said board full authority over the institutions under its control, with the right among its other powers to prescribe, limit or modify the courses offered at the several

institutions. Further, the board has full authority to organize or reorganize within constitutional and statutory limitations the work of each institution under its control and may do each and every thing necessary and proper for the efficient and economical administration of said educational institutions.

It follows, therefore, that the matter of arrangement of the educational program of each educational institution, the fixing of the length of the terms, and all other things incident thereto, are entirely within the power and discretion of the said Board of Higher Education.

Since the summer sessions are part of the regular year's work of the educational institution, it is the opinion of this office that the auditor has the legal right and it is her duty to issue warrants out of the 1945-1947 appropriation for the payment of salaries of instructors at the summer sessions, even though a part of such sessions may have been held in the month of June.

NELS G. JOHNSON

Attorney General