

**OPINION
46-89**

April 26, 1946 (OPINION)

EDUCATION

RE: Board of Higher - Trust Fund

This is in reply to your letter of April 3 asking for our opinion on two propositions; namely:

1. May the State Board of Higher Education authorize the institutions under its jurisdiction to set up on their books a local trust fund to which will be credited the payments from the Veterans Administration and expended for the maintenance under such rules and regulations as may be prescribed by the Board? (As a matter of accounting procedure the Board would likely direct that \$45.00 and \$60.00, whichever the case may be, will be deposited with the State Treasurer as an institutional collection and the difference between this figure and the amount received from the Veterans Administration deposited in the local trust fund.)
2. With reference to the handling of institutional collections at the state institutions, the Legislature estimates the amount of same and deducts such amount from the total amount of the appropriation. In other words, the Legislature estimates the amount of institutional collections and makes an appropriation for the balance necessary for the maintenance of the institutions for the biennium. May the state board of higher education authorize the institutions to set aside in a local trust fund the excess of institutional collections and expend the same for purposes similar to those suggested in proposition No. 1?

Subdivision (e) of section 6 of the constitutional amendment which establishes the board of higher education provides that the said board, "shall have the control of the expenditure of the funds belonging to, and allocated to such institutions and also those appropriated by the Legislature, for the institutions of higher education in this State; provided, however, that funds appropriated by the Legislature and specifically designated for any one or more of such institutions, shall not be used for any other institution."

You will note that the constitutional amendment quoted vests the state board of higher education with broad powers. It shall have the control of the expenditure of the funds belonging to and allocated to such institutions and also those appropriated by the Legislature.

The Legislature may appropriate any sum deemed necessary for the maintenance of the several state institutions, but it would appear that the Legislature has no control over other institutional funds. Or, stating it differently, the Legislature, of course, has control over all funds raised by any method of taxation, but the board of

higher education has the control of other funds such as institutional collections, income and interest which under the constitution belong to and are allocated to the several state institutions.

The funds referred to in your first proposition are received, as I understand it, from the Veterans Administration and are not the proceeds of taxation by the state or its political subdivisions. Therefore, the funds and the expenditure of the same would be entirely within the control of the state board of higher education.

If it is the purpose of the state board of higher education to set up or establish a trust fund from a portion of the institutional collections and other institutional incomes, it is our opinion that such board has a right under its constitutional powers to do so, and has full power to disburse such funds for the maintenance and legitimate expenditures of the institutions.

It should be observed, however, that if the Legislature should be of the opinion that the board of higher education is taking too many liberties with the institutional collections by expanding the activities of the several state institutions, the Legislature may reduce the appropriations to an extent which will require the board of higher education to resort to the institutional collections for general maintenance purposes.

We do not doubt, however, that a proper equilibrium will be maintained by the board of higher education in making use of the institutional collections, and that such funds will be expended for only such purposes as are appropriate and necessary in maintaining the educational standards of the institutions.

I believe that the foregoing discussion answering your first proposition will also answer your second proposition.

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Attorney General