

SCHOOLS: Board of Regents of Northwest Missouri State College authorized to make settlement for damages incurred to college property and receive payment of money resulting from said settlement.



November 29, 1951

11-30-51

Mr. M. E. Ford, President  
Board of Regents  
Northwest Missouri State College  
Maryville, Missouri

Dear Sir:

Your letter at hand requesting an opinion of this department which in part reads:

"It has undoubtedly been called to your attention that the Northwest Missouri State College suffered an extensive explosion and fire damage to the women's dormitory building on the campus last spring. The loss was caused by failure of a gas tank owned by the St. Joseph Light and Power Company located near the college premises and approximately 150 feet from the building which was damaged.

"The St. Joseph Light and Power Company and its indemnity insurance carrier have admitted responsibility for the damage, and we are negotiating for a settlement on the loss. Notwithstanding our assurances that the Board of Regents of the College, under the constitution and statutes, is a public corporation for educational purposes, has title to the property which was damaged, and by virtue of its management and control is the proper entity to settle the loss and receive the proceeds of settlement, (which assurances are actually acceptable to the St. Joseph Light and Power Company), its insurance

Mr. M. E. Ford

carrier which will provide most if not all the funds for settlement of the claim, has asked that we procure an official opinion from your office to the following effect:

"That the Board of Regents of the College is a public corporate entity for educational purposes and has full authority to make settlement of the board's claim for damage to college property and receive and receipt for proceeds of any settlement negotiated by the Board."

Regarding the powers of the Board of Regents of the Northwest Missouri State College, Section 174.040, RSMo 1949, provides as follows:

"The boards of regents shall be known respectively as 'The Board of Regents for the Northeast Missouri Teachers State College,' 'The Board of Regents for the Central Missouri State College,' 'The Board of Regents for the Southeast Missouri State College,' 'The Board of Regents for the Southwest Missouri State College,' and 'The Board of Regents for the Northwest Missouri State Teachers College'; and by their respective names they shall have perpetual succession, with power to sue and be sued, complain and defend in all courts, to take, purchase, and hold real estate, and sell and convey or otherwise dispose of the same, and to make and use a common seal and to alter the same."

It is further provided in Section 174.120, RSMo 1949:

"Each state teachers college shall be under the general control and management of its board of regents, \* \* \*."

In connection with the powers conferred upon the Board of Regents by Section 174.040, supra, the Supreme Court of Missouri in State ex rel. Thompson v. Board of Regents for

Mr. M. E. Ford

Northeast Missouri State Teachers College, 264 S.W. 698, construing a similar section appearing in the 1919 Revised Statutes said the following at l.c. 701:

"Under section 11491, the board of regents is empowered to sue and be sued, to take, purchase, and hold real estate, and to sell and otherwise disposed of same. This section invests the board with powers akin to those of a corporation, and within the limits defined recognizes the board as a legal entity, without in any wise lessening the state's sovereignty.  
\* \* \*"

In the above case the court has recognized the board of regents of a state college as being a legal entity with powers akin to those of corporations.

By statute the board is invested with the power to sue and be sued. In construing the term "sue and be sued" the Supreme Court of the United States in the case of Reconstruction Finance Corporation v. Menihan Corporation, 312 U. S. 81, 61 S. Ct. 485 said the following at S. Ct. l.c. 487:

"\* \* \*We apply the farther principle that the words 'sue and be sued' normally include the natural and appropriate incidents of legal proceedings. \* \* \*"

Under the above definition it is our thought that the Board of Regents of the Northwest Missouri State College, if such action had been required, could have instituted necessary legal proceedings to recover the damages incurred by the college as a result of the aforementioned explosion and fire, and as a natural and appropriate incident to such legal proceedings could have received the amount of damages awarded by the court upon a judgment being rendered favorable to the college. In other words, we believe that receiving payment of damages would be included in the authority to institute legal proceedings.

It is our understanding that in the situation which you have presented payment of damages incurred by the college resulting from the fire and explosion will be made without there being any legal proceedings instituted to recover same.

Mr. M. E. Ford

Such being the case we believe it would logically follow that if the Board of Regents would be empowered to institute legal proceedings to recover said damages and to receive payment of same after a favorable judgment the Board would certainly have the power to receive payment of damages resulting from a settlement being made.

We might further point out that the Supreme Court of Missouri has held that an agency of the state having power to bring suit is also authorized to settle claims and accept satisfaction of the amount claimed. In the case of Iron Mountain and Southern Railway Company v. Anthony, 73 Mo. 431, l.c. 434, the court said:

"The power to sue implies the power to accept satisfaction of the demand sued for, whether the precise amount demanded or less."

Again in the more recent case of State v. Smith, 201 S.W. (2d) 153, the court sustained the rule as above stated where at l.c. 157 it said:

"Respondent contends that since the Sales Tax Act gives him the power to sue for the tax, it necessarily gives him the implied power to settle the tax, except where he is prohibited from doing so by law. He, therefore, contends that he has the power to compromise interest and penalties. We think respondent's contention must be sustained.\* \* \*"

We believe that the above decisions would be applicable in sustaining the authority of the Board of Regents in question to make settlement of the instant claim and receive payment of the money damages negotiated by the settlement.

It also appears that the legislature has contemplated the Board of Regents acting for and on behalf of the college might receive moneys from other sources. In this connection Section 174.170, RSMo 1949, provides:

"The president of each board shall make an annual report to the state board of education, in the month of August in each year, of all receipts of moneys from appropriations, incidental fees, and all

Mr. M. E. Ford

other sources, and the disbursements thereof, and for what purposes, and the condition of said college."

Further Section 174.180, RSMo 1949, in part provides:

"\* \* \* The treasurer of each board shall also make and furnish to the state board of education in the month of August of each year, an abstract which shall contain a full account of all moneys received and disbursed by his college during the preceding year, stating from what source received and on what account paid out, and the amount paid to each professor, teacher or other officer of the college; and said treasurer shall every two years report to the general assembly, under oath, an itemized statement of all receipts and expenditures for the two calendar years preceding, showing minutely all disbursements of money received from the state or other sources, and said college shall not be entitled to any appropriation unless such statement is so made."

The Supreme Court has also recognized that a state college might come into possession of funds other than money received from state appropriation. Again in *State ex rel. Thompson v. Board of Regents for Northeast Missouri State Teachers College*, supra, the court at l.c. 701 said:

"The correctness of our construction of section 11505 is further attested by section 11506, which requires the treasurer of the board to make an itemized statement to the Legislature of the receipts and expenditures of the board, showing all disbursements of money received from the state and from other sources. In harmony with the construction given to the foregoing sections is section 11508, which requires the board at its annual meeting to set apart 'all moneys derived from incidental or other fees paid by students,' etc., thus clearly recognizing that the college has funds within its control which were never in the state treasury nor appropriated by the Legislature."

Mr. M. E. Ford

Consequently we believe it is evident that the Board of Regents of a state college would be authorized to receive money from other sources such as that to be paid in the instant case negotiated by settlement to compensate for the damages incurred by the college.

CONCLUSION

In the premises it is the opinion of this department that the Board of Regents of the Northwest Missouri State College would be authorized to make settlement of the claim for damages to college property and receive payment of money negotiated by the Board in making the settlement.

Respectfully submitted,

RICHARD F. THOMPSON  
Assistant Attorney General

APPROVED:

  
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J. E. TAYLOR  
Attorney General

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