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New Jersey. Attorney General (Edward L. Katzenbach 1924-28)

[Opinion of the Attorney General as to the relations between Rutgers University and the State of New Jersey] March 7, 1927

Trenton, March 7, 1927.

Honorable William A. Stevens,
Senate of New Jersey,
Trenton, New Jersey.

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My dear Senator Stevens:

On behalf of a committee of the Legislature, of which you are the Chairman, I have been requested to express my views as to the nature of the relations between Rutgers University and the State of New Jersey. You desire to know what the connection is and whether the institution involved is the proper and appropriate subject for appropriations when voted by the Legislature in an Appropriation Act.

I am referring briefly to the subject to which your inquiry is addressed, but shall be glad to furnish in such further detail such data as you may wish concerning any of the matters mentioned in this communication. At the outset I may say that the name "Rutgers University" like that of many other universities in America, is the popular rather than the legal title of the institution. It was adopted by "The Trustees of Rutgers College in New Jersey" in June 1924 as a general designation for educational activities conducted along a number of lines and in which in general the State is interested.

In 1766 when the Province of New Jersey was under the rule of George the Third, that Monarch through his Governor, William Franklin, Esquire, delivered a charter to certain named individuals for the operation and conduct of a college called "Queen's College" in the Province of New Jersey, and conferred upon such individuals and their successors certain powers which, after the Declaration of Independence, continued in force, as was decided by the Supreme Court of the United States in the case of the Trustees of Dartmouth College v. Woodward, 4 Wheaton 518, 4 Law. Ed. 629. The name, by lawful and appropriate legislation and assent of the corporation, was in 1825 changed to "The Trustees of Rutgers College in New Jersey." Although at the time of the receipt of its charter and for

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years subsequent to that it was purely a private corporation and governed wholly by Trustees who were self perpetuating save in certain instances, the institution was nevertheless even in those days connected with the government of the Province and later of the State by reason of certain ex officio trustees. Among the officers named as such ex officio trustees and serving by reason of the ancient charter are the Governor, the Chief Justice and the Attorney General. By a very recent action of amendment there have been added the Chancellor, the President of the Senate, the President of the State Board of Education and the Commissioner of Education.

Since taking my office as Attorney General I have ever felt that I represented the State upon this Board of Trustees and that it was needful for me to inform myself concerning the interests of the State in the institution and the exact relationship which existed between the institution and the State, which information I am now passing over to you, pursuant to your request.

First, let me clear away certain misapprehensions. I have heard it stated from time to time that the institution is at the present time wholly a private sectarian institution. This is distinctly not so. There is no connection between the institution and any religious sect, and even all reference to any sectarianism which might have existed in the original charter has been long since removed. Both upon the Board of Trustees and the Board of Visitors, there are men of widely differing religious beliefs, including alike persons of the Protestant, Catholic and Jewish faiths. There are no religious requirements with respect to the student body and it is made up of persons of a variety of religious faiths. At no time certainly within my own knowledge has any question concerning religion or sectarianism and differences of view in connection with such matters been apparent in the governing boards of the institution. Of this I am confident for I have attended every meeting since my appointment. The extent to which the institution is public and controlled by the State will be apparent in what is said herein. The character of control is unusual. With respect to charitable, civil or ecclesiastical institutions it has been practiced in England and was referred to as early as the time of Sir William Blackstone when he wrote his commentaries. It has been commented upon in the opinion by Mr. Justice Storey in the case of Dartmouth College vs. Woodward (supra). It would follow that it

is perfectly competent for the Legislature to delegate the legal right of visitation, as it has been done in the instance of New Jersey, in accordance with legislation passed to that end. The control is by a Board of Visitors appointed by authority of the State rather than the more direct management of officers of the State. It is to my mind an equally competent method of control and perfectly proper when adopted by the State.

In order to show the exact relation between the institution and the State, it will be necessary to review very briefly the history of this relationship. The fact that certain State officials have been or now are on the Board of Trustees, makes no definite difference with respect to the private or public character of the institution. That State officials serve by reason of the charter or amendment thereof upon the Board, would not in itself make the institution any less private than if they were not serving. In fact the Governor, ex officio, serves upon the Board of Princeton University and yet that institution is a wholly private institution. There are, however, other considerations which will demonstrate the institution to be a proper recipient of State appropriations. In order to do this and to show the exact degree to which the State is legally and morally bound to the institution, may I refer to the following facts.

By enactment of Congress of the United States approved July 2, 1862, and commonly called "The Morrill Act" the Federal government offered certain benefits to "each State which may take and claim the benefit of this act, to the endowment, support and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the Legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life."

By enactment of the Legislature of New Jersey approved March 21, 1862, the provisions of the Morrill Act were accepted for the purposes and upon the conditions in said act of Congress specified and a contract was thus created between the government of the United States and the State of New Jersey, by which the State of New Jersey was obliged, under the terms of the Morrill Act, to designate

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and provide for the type of college expressed to be appropriate in the Morrill Act in return for the benefits which the State accepted from the Federal government.

By enactment of the Legislature of New Jersey, approved April 4, 1864, the scientific school conducted by the Trustees of Rutgers College was designated by the Legislature of the State of New Jersey as "the Land Grant College" provided for in the Morrill Act. A portion of the language of this statute may be of importance. The act imposed an obligation upon the Trustees of Rutgers College to "devote said interest wholly and exclusively to the maintenance, in that department of Rutgers College known as Rutgers Scientific School, of such courses of instruction as (including the courses of instruction already established by said Trustees), shall carry out the intent of said act of Congress in the manner specially prescribed by the fourth section of said act."

The terms of this legislation cast certain onerous duties upon the Trustees of Rutgers College in connection with the land grant privileges which the trustees of Rutgers College assumed and have performed in accordance with the directions and instructions received from time to time from the State. By this act the State, pursuant to its contract with the Federal government, adopted the institution as "the Land Grant College" for the State and certain obligations arose with respect to this relation. It may be appropriate here to call attention to the fact that the benefits to be received by the college in those days were very slight; whereas, the benefits conferred upon the State by the college at the same time were of considerably greater magnitude. In return for comparatively little support at the moment, the college at that time saved the State the expense of an entirely new institution and placed at the service of the State from thence hitherto its accumulation not only of traditions but of endowments and serviceable equipment. The relation between the State and the college has been mutual, of course, but in the beginning and even to the present time the benefit to the State is appreciable. Following after the adoption of the Morrill Act of the designation of the "Land Grant College", the college money purchased and equipped the college farm for agricultural purposes and conducted the necessary scientific work almost wholly at its own expense and in the interests of the State.

At the present time the benefits derived by the

State, aside from its own investments in the institution, are quite considerable. They arise from the use of the Queen's Campus and the buildings erected by the college thereon, the Nelson Campus and dormitories, the athletic fields and the grounds and equipment of the Women's College, save in respect of the buildings erected thereon by the State, and the grounds and buildings of the Agricultural College, save in respect of certain buildings erected thereon with the aid of the State. To the assistance of the education of the students of the State, there is likewise appropriated the benefits of the private endowments and bequests which, from long time past, have come to "The Trustees of Rutgers College in New Jersey." This was, in the beginning, a very material assistance in connection with the State's adoption of the Land Grant College and it is even now in the larger aspect of the college not to be passed over without consideration.

The relations between the State and the institution since their inception have been contractual, but more, by reason of the fact that there was established by the State a Board of Visitors for the institution to be appointed by the Governor and confirmed by the Senate and to have "general powers of supervision and control and to report to the Legislature such recommendations as to them may seem proper." By reason of such provision the State exercised over the institution with which it had contracted and which had assumed certain obligations, such power and control as to it seemed proper, expressing in the act what control it meant. Such control was accepted by the institution. If it be assumed, as it must, that this State has a right to educate its citizens between the ages of 5 and 18 years according to the constitution of 1844 and beyond, in accordance with the determination of our Supreme Court in an opinion by Mr. Justice Swayze, in re Newark School Board, 70 Atl. 881, then it must be apparent that there is nothing unlawful in making a contractual relation for the education of citizens with an institution over which the State has exercised proper control by a Board of Visitors. In fact the basis of contract forms the basis of matters of considerable importance in the State, as well with respect to matters pertaining to education and those engaged therein, as with respect to divers and several other matters. The contract theory of relationship has been quite liberally adopted from time to time by this State as well as by others.

The relation between the State and the institution has been further augmented and defined by acts of the Legislature enacted from time to time to only a few of which I shall refer. Some of them provided for extension

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of the system by Congress with the assent of the State, and others merely definitized and confirmed the State relation and control with respect to the institution. The Legislature of New Jersey, by act approved March 5, 1888, affirmed and represented that this institution is the State Agricultural College of New Jersey. It would naturally follow that it was such college for the purpose of carrying out the broad purposes of the Morrill Act as the terms of the Morrill Act had been previously adopted by the Legislature. It was further enacted that the "State of New Jersey hereby designates 'The Trustees of Rutgers College in New Jersey' maintaining said Rutgers Scientific School and said State Agricultural College, as the parties to whom said moneys appropriated by Congress and the said acts or supplements thereto, shall be paid for the public purposes mentioned in said acts of Congress."

In an act of the Legislature of New Jersey approved March 31, 1890, entitled "An Act to increase the efficiency of the School system of the State etc." certain free scholarships were established at the State College to be held by citizens of the State of New Jersey. The relation was further supplemented by Act of Congress approved August 30, 1890. To carry into effect the provisions of the last mentioned Act of Congress in the State of New Jersey, an act, approved February 10, 1891, provided that the benefits of said Act should be used for instruction in agriculture, the mechanic arts, the English language, and the various branches of mathematical, physical, natural and economic sciences, with special reference to their applications in the industries of life and to the facilities of such instruction, in accordance with the acts of Congress relating thereto. See also acts of March 10, 1893, June 13, 1895, March 30, 1896.

A further expansion of the relationship and a commencement of the development of the greater state-wide activities of the institution in scientific work began in 1901, when the Agricultural Experiment Station, under the direction of the institution and its Board of Visitors, was required to make scientific investigation of oyster propagation. A question having been raised as to whether, in spite of all I have said heretofore, the College was properly authorized to receive appropriations from the State, there was, practically at the instance of the Legislature, instituted the suit of The Trustees of Rutgers College, et al. vs. J. Willard Morgan, Comptroller, 70 N.J.L. 460, affirmed by the Court of Errors and Appeals in 71 N.J.L. 663.

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The opinion in this case, being delivered by Mr. Justice Van Syckle, discusses at length much of the previous relationship between the institution and the State and reaches the conclusion that it was competent for the State to establish the institution as the State Agricultural College and, in the interests of education in the State, to contribute for its support out of the general State funds, in view of the fact that it exercised over it such control as it deemed wise in its Board of Visitors. The language of Mr. Justice Van Syckle follows:

"By the Acts of 1864 and 1888, the State adopted and established Rutgers Scientific School as the State Agricultural College and provided for free scholarships therein. *** The Rutgers Agricultural College was adopted as a State College and such control was exercised over it by the State as was deemed to be necessary to secure free public education in the Department of Agriculture and the Mechanic Arts." See 70 N.J.L. 471.

By act of the Legislature of New Jersey approved March 17, 1902, the State Agricultural College was directed to establish in connection therewith courses in ceramics. Further legislation April 7, 1902, may be observed and the Legislature to assist the agricultural interests of the State and in connection with the Agricultural College, by act approved March 25, 1905, began a provision for short courses in agriculture.

A further act of the Legislature of New Jersey, affecting the College, was passed March 31, 1905. An Act of Congress relative to State Agricultural Colleges was approved March 16, 1906, and by Act of the Legislature of the State of New Jersey, was accepted May 3, 1906.

Congress passed a further act under date of March 4, 1907, making appropriations for the work in agricultural colleges, of which New Jersey received a portion of the benefit. The State Legislature March 14, 1907, made further provision relative to the courses in ceramics. The relationship between the College and the State was further augmented in connection with scholarships by Act of April 12, 1907, and so far as engineering was concerned, by Act of April 6, 1908.

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There was a further act to increase the efficiency of the College March 24, 1909. The State manifested its interest and control with respect to chemical engineering by providing for the furnishing and equipment of a chemistry building in 1910. Then followed the furnishing and equipment of an entomology building and of a physical laboratory in 1911. The free scholarship policy was carried out still further by enactment of March 15, 1911. By Act of the Legislature of March 8, 1912, it was provided that "The Trustees of the State Agricultural College of New Jersey be and they are hereby required to erect, equip and maintain buildings, and to establish, equip and maintain departments of instruction or experiment for the furtherance of the appropriate work of said State Agricultural College under the general powers of supervision and control possessed by the Board of Visitors of said State Agricultural College, providing that the sum or sums required for such purpose or purposes shall be appropriated in any annual or supplemental appropriation bill."

By Act of the Legislature of New Jersey, approved March 15, 1917, known as Chapter 32 Laws of 1917, it was enacted that "The Rutgers Scientific School, being the State Agricultural College, the State College for the benefit of agriculture and the mechanic arts, maintained by 'The Trustees of Rutgers College in New Jersey' and under the general supervision and control of the Board of Visitors of the State Agricultural College, be and hereby is also designated 'The State University of New Jersey' under the same general power of supervision and control of the same board of Visitors."

The Board of Visitors consists of one person from each county, nominated by the Governor and confirmed by the Senate, in accordance with P. L. 1923, c.26, p. 55, being the most recent enactment upon the subject of the Board of Visitors. The question now arises as to what constitutes "The State University of New Jersey." This requires a knowledge of the actual conduct of the institution in its several branches. There can be no doubt whatsoever but that the School of Engineering and the College of Agriculture, with everything that may be related to them and courses conducted in relation to them constitute the State University of New Jersey and are the proper subject for appropriation and support from the State. It is of no moment as to the departments in which the institution may divide its work, provided the instruction

to be given is related to agriculture, engineering in all its branches and the liberal arts, and provided the instruction is interrelated so that service is rendered to the end that persons may receive their training in liberal and industrial arts within the meaning of the acts of Congress and of the several pronouncements of the legislature. In fact, having by contract with the Federal government definitely established this institution as that which would be supported by the State for the benefit of teaching such branches of learning as are related to agriculture and the mechanic arts, without excluding other scientific and classical studies, and including military tactics, in such manner as the Legislature of the State may prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life; and further having directed courses in agriculture, engineering, chemistry, ceramics and other allied subjects, the State is lawfully and morally obligated to the support of the University. It is to be noted that the branches of liberal learning including economics as well as English and scientific studies, are obliged to be furnished to students of the State. The departments of the institution called the College of Arts and Sciences and the branch called the New Jersey College for Women, are service schools connected with the State University in furnishing such liberal instruction relating to the scientific and agricultural work of such character as is in conformity with the contract with the Federal government and the several pronouncements of the Legislature, and in the School of Education conducting summer courses for instruction, there can be no question as to the direct authority and command of the Legislature with respect to the institution of such courses and they are not unrelated to the suggestion of Congress in connection with the Land Grant Colleges.

The State University of New Jersey, therefore, touches the institution as conducted in most of its several activities. Certain of them, of course, are operated and conducted by reason of the endowments of the institution, which is highly beneficial to the State. In general, however, the institution has been brought to its expansion and has taken on in service of the State considerable obligations. As these obligations were by command and by contractual relation with the institution, as well as with the Federal government, it would seem that the institution has become literally and virtually, as well as lawfully, the State University of New Jersey, by virtue of contract and visitorial

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control and supervision. If this were not so, there could not have been the commands from the Legislature to the institution and there would be no purpose in the Visitorial Board. More recently since 1912, the appropriation acts by line items have controlled and directed the development of the institution according to the command of the several legislatures. The Legislature has deliberately spoken as to what should be done and how much should be expended in doing it. In fact, I do not know of any State University which is more directly and definitely supervised and controlled as to its expenditures than the institution which is known as The State University of New Jersey. The State in the course of time, has made very considerable investment in the institution. It ought to be expanded still further to meet current needs and the demands of the future. Interrelated with an old college as it is, it is nevertheless to my mind definitely and properly under the law as it exists, the State University and a proper subject for appropriation.

I am making special mention of the New Jersey College for Women as related to the State University as it is a service department related to the State University and offering the courses in science, arts and home economics which are requisite, and the State Agricultural College operates in connection with it for certain of its work as it does in connection with the College for men. It is the extension for women of the privileges which existed previously for men, and it is interesting that it develops almost contemporaneously with the enfranchisement of women.

There has been some question raised from time to time as to whether the erection of buildings in connection with the institutions has been upon the ground of the institution privately owned or upon State property. Some years ago it was customary for the Legislature to command the erection of a building and contribute to it and for the institution to declare that it held such property in trust for the State and the work of the State in connection with the institution. For some time past and ever since I have been in office, it has been customary for the lands to be definitely owned by the State, when a building has been erected by reason of State appropriation. This, of course, constitutes the direct ownership by the State of any building which it erects, though said building is dedicated to the use of education in connection with the

State University. The relation of the several departments of the institution to the program of the State may not be so clear to those who do not have the opportunity to study it. To one who examines it, however, in the light of the history of its development it will be perfectly apparent that the entire institution is operating to serve according to the desires of Congress and the State Legislature in equipping the people of the State with the means of obtaining a livelihood in the several arts and callings. No other view could possibly be gained from a study of the recent appropriation acts in the light of the legislation which has gone before than that the State was deliberately developing an institution under suitable control for the education of its people. The relation is contractual, as I have said before, but with equal force it may be said that the State has created a certain trust relation which casts obligations upon the Trustees of Rutgers College to see to the carrying out of such trusts for the benefit of the State and such persons as may properly avail themselves of the privileges offered. The State has gone further and, through the operation of the Board of Visitors, has supervised such trust relationship so that there can be no doubt as to its proper conduct. The Board of Visitors has positive powers by legislative enactment of supervision and control. The Legislature has delegated these powers, which are of great magnitude, to the Board of Visitors who are charged with a knowledge of the State's expenditure of money and to see to its proper application. The provision made for courses in general and scientific education indicates the direct legislative control referred to hereinabove, even to the extent of providing for courses in journalism. The command was not to exclude the arts and they have been deliberately included.

I trust that I have been able to give you information which will lead you to understand the relationship of the institution to the State by reason of the contractual relations between the State and "The Trustees of Rutgers College in New Jersey" together with the general supervision and control of the Board of Visitors. On the other hand, may I say, because of my own obligation as a Trustee ex-officio and therefore to a certain extent representing the State upon the Board, and not by reason of anything which you have asked me, that I regard the work of this institution of a high order and well worthy of the name of the State University of New Jersey. It is doing a meritorious educational work among the young men and women of the State, to whom in the near future the doors of institutions out of the State will necessarily be less available.

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It is necessary for New Jersey to conduct higher education, even in ever increasing branches, to the end that its citizens may be trained in the arts and the professions. Each State must provide for its own. The extension of the institution would be highly creditable to the State and no less highly creditable because it is one of the few very ancient institutions of the country bearing an honorable record for almost a century before its association with the State as the State College or the State University of New Jersey. Few States can have the privilege of an association with an institution with such a record and dating back even beyond the independence of the State. The connection is worthy of the fine old State of New Jersey, and, while the State must exercise control, it is not needful that the control should in anywise destroy the old Charter of the institution. The State can be amply and fully protected without committing such a crime against history, and that honorable sentiment to which both the State of New Jersey and Rutgers University are justly entitled. Other States have had no difficulty in this connection and have honored themselves by honoring the institutions, for one of the glories of America has been the continuity of its Colonial educational corporations. None of them has passed away as yet.

Very sincerely yours,

Attorney General.