

**OPINION
42-14**

July 14, 1942 (OPINION)

APPROPRIATIONS

RE: Board of Higher Education

Your letter of July sixth addressed to the Attorney General has been received and contents of same have been noted.

You state that on June 30, 1941, the Board of Higher Education authorized the expenditure of \$3,500.00 by the University for certain improvements and repairs to be made at that institution, such expenditures to be made from the Board's Emergency Fund. On June 2, 1942, the University submitted vouchers for the payment of the repair work which was done and these vouchers were submitted to the State Auditing Board with the notation that they were to be charged to the Board of Higher Education Prior Emergency Fund; that is, the Emergency Fund appropriated by the 1939 Legislature for the Board of Higher Education for the biennium beginning July 1st, 1939 and ending June 30th, 1941.

The State Auditing Board refused to pay these vouchers or rather, refused to approve these vouchers as chargeable to the appropriation made for the 1939-1941 biennium, since the contract for the work was entered into after the expiration of the biennium ending June 30, 1941.

Chapter 23 of the Session Laws of 1939, the so called "Budget Bill", the general appropriation bill for the State Departments, includes the item "Emergency \$20,000.00 for the Board of Higher Education."

Section 2 of said chapter 23 provides that:

"Unless otherwise specifically stated, the appropriation herein made shall be available for the expenses to be incurred in and about the several purposes herein set out, during the fiscal period of two years, beginning July 1, 1939, and ending June 30, 1941."

The history of this matter is as follows:

On June 28, 1941, John C. West, President of the University, made a report and recommendation to the Board of Higher Education in which he requested approval for certain repairs on the buildings and grounds of the University, the cost of which was to be approximately \$3,500.00, to be made available from the Emergency Fund of the Board of Higher Education. On June 30, 1941, the Honorable R. B. Murphy, Secretary of the Board of

Higher Education, wrote President West to the effect that he had given emergency approval to said recommendation and request made. I am informed that, subsequently, the Board of Higher Education ratified the approval given by the Secretary on June thirtieth.

It appears that thereafter three contracts were let, as follows:

One to Theo B. Well, Architect, for planning, specifications and supervision of repairs to President's house in the sum of \$75.00, for which a voucher dated May 23, 1942, was presented.

Contract to Baldrey Engineering and Construction Company, for installing concrete piles under foundation of Budge Hall, in the sum of \$975.00. This voucher was presented May 23, 1942.

Contract to Baldrey Engineering and Construction Company, for installing concrete piles under foundation of Girls' Gym in the sum of \$1,225.00, for which voucher was presented May 23, 1942.

I have nothing before me to indicate that any contract was entered into prior to July 1, 1941. Neither is there anything to show that any plans were made or any estimate received by the Board of Higher Education prior to July 1, 1941, as to the probably cost of the proposed repairs and improvements.

The question then, is whether the recommendation by President West made on June 28, 1941, and the approval by the Secretary on June 30, 1941, are sufficient as a legal authorization to the Board of Higher Education and the State Auditing Board to charge the expenditures in connection with these contracts to the emergency appropriation for the biennium ending June 30, 1941.

The appropriation made by chapter 23 of the Session Laws of 1939, is specific in its terms. It provides that the appropriation therein made shall be available for the expenditures to be incurred during the fiscal period of two years beginning July 1, 1939, and ending June 30, 1941.

It seems clear that the correspondence between President West and Secretary Murphy between June 28th and 30th, 1941, cannot be construed or held to be the incurring of an expense. It is nothing more than a recommendation that certain repairs be made and an approval of such recommendation by the Secretary of the Board. No plans or specifications were submitted; nor were any expenses whatsoever incurred until after July 1, 1941; and since the voucher for the expenses in connection with such repairs were dated May 23, 1942, and not presented until in June, 1942, I fail to see on what theory it can be held that such expenses were incurred during the biennium ending June 30, 1941.

The word "incurred" is defined as:

"To render liable, to someone, to become liable for and to become liable or subject to and to render liable or subject to."

There was nothing done or no action taken by either the architect or the Engineering Company prior to July 1, 1941, which in any way would make the State or the Board of Education liable or under any obligation whatsoever to said contractors.

In the case of Stern-Siegman-Prins Co. v. Commissioner of Internal Revenue, 79 F(2d) 289, which was an action involving the question as to when expenses deductible in connection with income taxes were incurred, and it was there held that expenses are not incurred during taxable years so as to be deductible in determining tax unless legal obligations to pay them have arisen.

While the question involved here is different, nevertheless, the principle is the same, namely, the time as to when an obligation or an expense is actually incurred.

In the same case it was further held that bookkeeping entries shall not take the place of nor create expenses unless the same are actually incurred so as to constitute a legal obligation.

It is significant also, that all of the transactions had in connection with the expenditures referred to herein, were had after the enactment of chapter 29 of the Session Laws of 1941, being the Budget and General Appropriation Bill for the State Departments. This chapter 29 provides specifically, that the appropriations made therein shall be available for expenses incurred in and about several purposes therein set out during the fiscal period of two years beginning July 1, 1941, and ending June 30, 1943. Said chapter was passed with an emergency clause and was approved May 22, 1941. It provides that all Acts and parts of Acts that may be in conflict therewith are repealed and it provides also that the reason for the emergency is that it contains a general appropriation and provides the means of continuing and maintaining the State Government and to perform its proper function, and that therefore, said Act in its entirety shall go into complete operation upon approval by the Governor.

I am satisfied, therefore, and it is my opinion, that the expenses in connection with the repairs and improvements referred to herein, were not incurred during the biennium ending June 30, 1941, and therefore, cannot legally be charged against the Emergency Appropriation made by the Legislature for said biennium, but is clearly an expense chargeable against the appropriation made for the biennium beginning July 1, 1941, and ending June 30, 1943.

ALVIN C. STRUTZ
Attorney General