

Minutes of the Meeting of the Executive Committee of the Board of Trustees of the University of Kentucky, June 27, 1935.

The Executive Committee of the Board of Trustees of the University of Kentucky met in President McVey's office at the University June 27, 1935, at 11:00 a.m.; Judge R. C. Stoll, Chairman, Miller Holland, James Park, members; F. L. McVey, President; D. H. Peak, Secretary.

1. Financial Report.

The financial report for May was filed and ordered to be recorded in the Minutes. It reads as follows:

EXHIBIT "B"

Statement of Income and Expenditures
Month of May 1935

	<u>Previously Reported</u>	<u>Current Month</u>	<u>Fiscal Year To Date</u>
General Fund Income			
Federal Appropriation	42,750.00		42,750.00
Int. on Endowment Bonds	8,644.50		8,644.50
Int. on Liberty Loan Bonds	850.00		850.00
Vocational Ed. Board	16,403.26	2,258.36	18,661.62
State Appro.-Back Sal.	71,100.00		71,100.00
State Appro.-Repairs to Bldgs.	7,169.86	293.82	7,463.68
State Appro. - Sum. Sch.	9,000.00		9,000.00
Special Agr. Appro.	23,374.13	2,125.87	25,500.00
State Appro. - General	566,702.25	67,362.61	634,064.86
Student Fees	203,853.18	2,424.14	206,277.32
Student Fees - Sum.Sch.	40,636.99		40,636.99
Student Fees - Un.H.S.	9,755.00	727.50	10,482.50
Student Fees - El.Tr.Sch.	7,354.00	100.00	7,454.00
Student Fees - Un. Exten.	20,764.15	1,067.40	21,831.55
Miscellaneous Receipts	8,994.21	620.32	9,614.50
Rentals	2,739.70	566.08	3,305.78
Men's Dormitories	15,434.45	709.65	16,144.10
Total	<u>1,055,585.58</u>	<u>78,255.75</u>	<u>1,133,781.43</u>
Expenditures			
Instruction	641,357.74	69,120.12	710,477.86
Adm., Expense & Maint.	222,368.06	17,760.34	240,128.40
Additions and Better.	12,230.37	1,206.58	13,436.95
Total	<u>875,956.17</u>	<u>88,087.04</u>	<u>964,043.21</u>
Excess of Income over Ex- penditures	<u>179,569.51</u>	<u>(9,831.29)</u>	<u>169,738.22</u>

Patterson Hall Income			
Board	43,472.38	1,171.35	44,643.73
Misc. Receipts	186.10	2.00	188.10
Room Rent - Summer Sch.	<u>1,326.00</u>		<u>1,326.00</u>
Total	<u>44,984.48</u>	<u>1,173.35</u>	<u>46,157.83</u>
Expenditures			
Expense	34,641.80	5,819.73	40,461.53
Additions and Betterments	<u>25.50</u>	<u>282.00</u>	<u>307.50</u>
Total	<u>34,667.30</u>	<u>6,101.73</u>	<u>40,769.03</u>
Excess of Income over Expenditures	<u>10,317.18</u>	<u>(4,928.38)</u>	<u>5,388.80</u>
General Fund Income	1,100,510.16	79,429.10	1,179,939.26
General Fund Expend.	<u>910,623.47</u>	<u>94,188.77</u>	<u>1,004,812.24</u>
Excess of General Fund Income over Expend.	189,886.60	(24,759.67)	205,227.02
Accounts Payable - liquidated	(71,100.00)		(71,100.00)
Excess of Expenditures over Receipts for General Ledger accounts	<u>(79,302.08)</u>	<u>1,321.83</u>	<u>(77,980.25)</u>
Excess of Receipts over Expend. for the fiscal year to date - General Fund	<u>39,484.61</u>	<u>(13,437.84)</u>	<u>26,046.77</u>
Excess of Receipts over Expenditures for the fiscal year to date - General Fund			26,046.77
Cash in Bank July 1, 1934 - General Fund			<u>(4,289.95)</u>
Cash in Bank May 31, 1935 - General Fund			<u>21,756.82</u>
Experiment Station Income			
Hatch - Federal Appro.	15,000.00		15,000.00
Milk and Butter - Cash Receipts	9,259.45	871.68	10,131.13
Beef Cattle Sales	655.60	82.75	738.35
Dairy Cattle Sales	488.22		488.22
Sheep Sales	310.51		310.51
Swine Sales	495.03		495.03
Poultry Sales	1,344.30	89.21	1,433.51
Farm Produce Sales	2,280.79	77.04	2,357.83
Horticultural Sales	383.20		383.20
Seed Test	1,548.12	6.75	1,554.87
Seed Inspection	17,574.43	1,052.59	18,627.02
Rentals	5,445.70	97.67	5,543.37
Miscellaneous	991.91	11.75	1,003.66

Fertilizer - Fees	27,052.96	1,572.50	28,625.46
Public Service -			
State Appr.	17,690.11	2,120.08	19,810.19
Public Service -			
Misc. Receipts	40.00		40.00
Feeding Stuffs - Fees	26,055.98	1,458.25	27,514.23
Adams - Fed. Appr.	15,000.00		15,000.00
Serum - Sales	943.62	150.57	1,094.19
Serum - Virus Sales	96.85	14.40	111.25
Serum - Supply Sales	133.10	9.65	142.75
Serum - Misc. Receipts	32.40	3.00	35.40
State Appr.	41,763.55	4,260.12	46,023.67
Creamery - License			
Fees	6,471.55	39.00	6,510.55
Creamery - Testers			
License	2,279.02	39.00	2,318.02
Creamery - Glassware			
Tested	587.18	9.02	596.20
Robinson - State	10,504.58	1,178.91	11,683.49
Appr.			
Robinson - Misc. Rec.	6,016.01	205.13	6,221.14
West Kentucky - State			
Appr.	12,358.55	1,143.42	13,501.97
West Kentucky - Misc.			
Receipts	5,524.93	309.46	5,834.39
Furnell - Fed. Appr.	60,000.00		60,000.00
Nursery Inspection -			
State Appr.	1,758.77	150.00	1,908.77
Nursery Inspection -			
Fees	1,775.00	135.00	1,910.00
Blood Test	20.75		20.75
Total	<u>291,882.17</u>	<u>15,086.95</u>	<u>306,969.12</u>
Expenditures			
Expense	239,710.91	29,159.10	268,870.01
Additions & Bet-			
terments	<u>7,947.02</u>	<u>452.09</u>	<u>8,399.11</u>
Total	<u>247,657.93</u>	<u>29,611.19</u>	<u>277,269.12</u>
Excess of Income over			
Expenditures	44,224.24	(14,524.24)	29,700.00
Excess of Expend. over			
Receipts for General			
Ledger Accounts	<u>(24,257.83)</u>	<u>1,000.42</u>	<u>(23,257.41)</u>
Excess of Receipts over			
Expend.	<u>19,966.41</u>	<u>(13,523.82)</u>	<u>6,442.59</u>
Excess of Receipts over			
Expend. for the fiscal			
year to date - Experi-			
ment Station			6,442.59
Cash in Bank July 1, 1934 -			
Experiment Station			<u>13,586.85</u>
Cash in Bank May 31, 1935 -			
Experiment Station			<u>20,029.44</u>

Extension Division Income			
Federal Smith-Lever	148,308.77		148,308.77
Federal Add. Co-op.	31,000.00		31,000.00
Federal Supplementary	53,091.04		53,091.04
Federal Capper-Ketcham	36,800.97		36,800.97
State Smith-Lever	107,322.70	18,677.30	126,000.00
County and Other	6,172.62	1,115.51	7,288.13
Total	<u>382,696.10</u>	<u>19,792.81</u>	<u>402,488.91</u>
Expenditures			
Expense	<u>328,864.83</u>	<u>31,619.06</u>	<u>360,483.89</u>
Excess of Income over Ex- penditures	<u>53,831.27</u>	<u>(11,826.25)</u>	<u>42,005.02</u>
Excess of Income over Ex- penditures for the fiscal year to date - Extension Division			42,005.02
Cash in Bank July 1, 1934 - Extension Division			<u>(585.04)</u>
Cash in Bank May 31, 1935 - Extension Division			<u>41,419.98</u>
Trust Fund Income			
Student Loan Fund	1,918.89	156.26	2,075.15
Student Notes Paid	<u>3,750.91</u>	<u>376.80</u>	<u>4,127.71</u>
Total Receipts	<u>5,669.80</u>	<u>533.06</u>	<u>6,202.86</u>
Expenditures			
Expense	7,262.17	2,077.80	9,339.97
Student Notes	15.00		15.00
Total Expenditures	<u>7,277.17</u>	<u>2,077.80</u>	<u>9,354.97</u>
Excess of Expenditures over Receipts	<u>(1,607.37)</u>	<u>(1,544.74)</u>	<u>(3,152.11)</u>
Excess of Expenditures over Re- ceipts for the fiscal year to date - Trust Fund			(3,152.11)
Cash in Bank July 1, 1935 - Trust Fund			<u>3,823.72</u>
Cash in Bank May 31, 1935 - Trust Fund			<u>671.61</u>

Summary

General Fund Income	1,100,510.16	79,429.10	1,179,939.26
Experiment Station Income	291,882.17	15,086.95	306,969.12
Extension Div. Income	382,696.10	19,792.81	402,488.91
Trust Fund Income	1,918.89	156.26	2,075.15
Total	<u>1,777,007.32</u>	<u>114,465.12</u>	<u>1,891,472.44</u>
General Fund Expend.	910,623.47	94,188.77	1,004,812.24
Experiment Station Expend.	247,657.93	29,611.19	277,269.12
Extension Div. Expend.	328,864.83	31,619.06	360,483.89
Trust Fund Expenditures	7,262.17	2,077.80	9,339.97
Total	<u>1,494,408.40</u>	<u>157,496.82</u>	<u>1,651,905.22</u>
Excess of Income over Expenditures	282,598.92	(43,031.70)	239,567.22
Accounts Payable - liquidated	(71,100.00)		(71,100.00)
Excess of Expenditures over Receipts for General Ledger accounts	(103,559.91)	2,322.25	(101,237.66)
Student Loan Fund	<u>3,735.91</u>	<u>376.80</u>	<u>4,112.71</u>
Excess of Receipts over Expenditures for the fiscal year to date - Combined Fund	<u>111,674.92</u>	<u>(40,332.65)</u>	<u>71,342.27</u>
Excess of Receipts over Expenditures for the fiscal year to date - Combined Fund			71,342.27
Cash in Bank and on hand July 1, 1934 - Combined Fund			<u>14,535.58</u>
Cash in Bank and on hand May 31, 1935 - Combined Fund			<u>85,877.85</u>

Abstract of item shown on statement of Income and Expenditures as "Excess of Expenditures over Receipts for General Ledger accounts \$101,237.66"

	<u>Debit</u>	<u>Credit</u>
Accounts Receivable	101,992.16	
Insurance Paid in Advance	1,229.46	
Sundry Accounts		1,983.96
	<u>103,221.62</u>	<u>1,983.96</u>
	<u>1,983.96</u>	
	<u>101,237.66</u>	

2. Condition of 1934-1935 Finances.

The Business Agent reported:

As at present indicated, there will be no balances in appropriations for College, Experiment Station, or Extension Division, from State or Federal funds. There will be a small balance in each of the revolving fund accounts; that is, College Revolving Fund and Experiment Station Revolving Fund. These funds do not revert according to latest ruling of Assistant Attorney General W. R. Attkisson.

3. Band House.

At the meeting of the Board of Trustees May 30, 1935, an order was made directing President McVey to proceed with the project of erecting a house for the band, provided funds in 1934-1935 income were sufficient to add the project to the budget of that year (Item 15). In closing the year's business, it was found that the excess of income over expenditures was not sufficient to finance the project and, consequently, no further steps have been taken.

4. Interest on Land Grant Fund.

In Item 12, Minutes of the Board of Trustees of May 30, 1935, facts regarding the act of the Auditor of Public Accounts in withholding second payment of interest on land grant investment are set out.

On request of President McVey, the Business Agent wrote to the Attorney General as follows:

June
Fifth
1935

Hon. Bailey P. Wootton,
Attorney General,
Frankfort, Kentucky

Dear General Wootton:

Some time ago I submitted to the Auditor a request to transfer to the University account \$4,322.25 for payment of second installment of interest due this year on what is generally referred to as bond on Land-Grant indebtedness. The Auditor failed to give the University credit for the amount and, upon inquiry, he stated that no fund had been set aside to take care of the charge. We then took up the question

with the State Board of Finance and on May 15th, President McVey wrote to that Board a letter, copy of which I am enclosing. He also included with his letter a copy of the statute which authorizes this bonded indebtedness. In answer to his communication, Mr. Sewell, I think, stated that the State Board of Finance had been unable to find a copy of the bond which is referred to in section of statute that is copied and sent herewith. President McVey made statement of all these facts to the Board of Trustees at its meeting on May 30th. The lawyers on the Board immediately gave it as their opinion that copy of the bond is not the bond but merely evidence thereof and that the statute referred to is the one on which the State must rely for its authority to pay to the University the interest claimed. Governor Laffoon was present and concurred in that opinion. Therefore, the Board directed that I write you, asking you to give an opinion to the State Board of Finance so that this matter may be settled without further delay.

I may state that the Auditor promptly paid the amount that was due in July upon request, I think after he had asked an opinion from you. The amount of interest due the University has been paid since the passage of the statute, usually without request to the Auditor and, in all events, after request has been made, up until payment that was due in February.

I am asking that you render this opinion without delay because it is quite necessary that this money be expended during this fiscal year so that proper report thereon may be made to the Department of Education after the first of July as is required by that department. I am enclosing blank copy of the form of report required. It is desirable on the part of the University and, I am sure, on the part of the state authorities, that there be no conflict with us and the federal department that has control of this question of finance.

Very truly yours,

(Signed) D. H. Peak
Business Agent

In answer to that letter, the following opinion was given:

COMMONWEALTH OF KENTUCKY
ATTORNEY GENERAL'S OFFICE
Frankfort, Kentucky

June 10, 1935

Mr. D. H. Peak
Business Agent
University of Kentucky
Lexington, Kentucky

Department of Finance and Budgetary Control
Building

Hon. J. Dan Talbott
Auditor of Public Accounts
Building

Dear Sirs:

By letter of June 15, 1935, Mr. Peak states that request had been made upon the Auditor of Public Accounts to transfer to the account of the University of Kentucky \$4,322.25, for payment of an instalment of interest due on the bond of the Commonwealth executed pursuant to section 4591a, Kentucky Statutes. The Auditor refused to pay the account, stating that no fund had been set aside to take care of the charge.

Section 4591a, Kentucky Statutes, enacted in 1897, Chapter 21, page 33, section 2, authorized the then Commissioners of the Sinking Fund to issue to themselves as trustees for the Agricultural and Mechanical College of Kentucky (Now the University of Kentucky) and the State Normal School for Colored Persons of Kentucky (now Kentucky State Industrial College) the bond of the Commonwealth, bearing date of July 1, 1897, for \$165,000.00, bearing interest at the rate of 6% per annum, payable semi-annually, the bond to be a perpetual obligation of the Commonwealth and the interest thereon a perpetual charge upon the treasury. The act further required the Auditor to regularly draw his warrant upon the treasury in favor of the treasurer of each of said colleges, on the 1st day of January and the first day of July of each and every year, for the sum of \$4,950.00, \$627.75 of which went to the treasurer of the colored college and \$4,322.25 of which went to the treasurer of the white college.

Section 230 of the Constitution of Kentucky in part is as follows:

"No money shall be drawn from the State Treasury, except in pursuance of appropriation made by law;"

By Chapter 2, Acts of 1934 Special Session, a lump sum appropriation was made to the University of Kentucky for the purpose of carrying on its various duties and responsibilities, Paragraph 68, of Chapter 2, Acts of the 1934 Special Session, provides as follows:

"All annual and/or continuing appropriations heretofore in effect, but not provided for in this act, and all other laws and parts of laws in conflict herewith, are hereby repealed."

In view of the sections just cited, we are of the opinion that the General Assembly intended to cancel all continuing appropriations, and embodied the amount sought by the University of Kentucky in its lump sum appropriation. The contention of the Auditor that the amount should not be paid is, in our opinion, correct.

Very truly yours,

(Signed) William R. Attkisson

William R. Attkisson
Assistant Attorney General

The Business Agent stated to the Committee that, after the receipt of the above set out opinion, he had had conferences separately with General Attkisson, the Secretary of the Board of Finance and the Assistant Auditor, and that no further action was taken. He stated further that the first installment of interest on the fund had been paid by the Auditor, who evidently relied on opinions given by Assistant Attorney General Hogan, the existence of which was not known to Business Agent until after the date of the letter copied above. These opinions are copied as follows:

Commonwealth of Kentucky
ATTORNEY GENERAL'S OFFICE
Frankfort, Ky.

August 31, 1934

Bailey P. Wootton
Attorney General

Hon. J. Dan Talbott
Auditor Public Accounts
Capitol Building

Dear Sir:

Yours of the 29th addressed to Attorney General Wootton has been handed me for reply. You call attention to S. 184 of the Constitution and then call attention to S. 4591a, Kentucky Statutes, 1930 Edition. Following this you state as follows:

"The 1934 Special Session of the Legislature failed to make an appropriation to take care of the interest on this bond -- but it did make an appropriation for the interest on the Common School Irredeemable Bonds. Chapter 25, Article 5, S. 4, 1934 Acts, specifies no money shall be withdrawn from the Treasury unless appropriated by the General Assembly and allotted by the Board of Finance - exclusive of revolving funds."

You then inquire:

"Does chapter 25, Article 5, S. 4, 1934, Acts repeal S. 4591a?"

S. 184 of the Constitution has no bearing upon the question involved in your letter.

S. 4591a, Kentucky Statutes, is as follows:

"That the commissioners of the sinking fund be, and they are hereby authorized and directed to issue to themselves as trustees for the Agricultural and Mechanical College of Kentucky and the State Normal School for Colored Persons of Kentucky, in the proportion hereinafter mentioned, the bond of the Commonwealth, bearing the date of July first, eighteen hundred and ninety-seven, for one hundred and sixty-five thousand dollars (\$165,000.00), bearing interest at the rate of six per cent (6%),

payable semi-annually, and said bond shall be a perpetual obligation of the Commonwealth and the interest thereon shall be a perpetual charge upon the treasury; and it shall be the duty of the auditor to regularly draw his warrant upon the treasurer in favor of the treasurer of each of said colleges on the first day of January and on the first day of July, of each and every year, for the sum of four thousand nine hundred and fifty dollars (\$4,950.00) to pay said interest, in the following proportions to-wit: Six hundred and twenty-seven and seventy-five one-hundredths dollars (\$627.75) to the treasurer of the State Normal School for Colored Persons, and four thousand three hundred and twenty-two and twenty-five one-hundredths dollars (\$4,322.25) to the treasurer of the Agricultural and Mechanical College of Kentucky."

This section of the Statutes is chapter 21 of the Acts of 1897. We have been unable to discover where any change has been made by the General Assembly in this act from that date to the present time.

It is a settled principle of law that when a duty is imposed upon an officer, the presumption is that the duty has been performed unless the contrary is made to appear. There is nothing presented to indicate that the Sinking Fund Commission failed to do its duty as required under S. 4591a, Kentucky Statutes. Therefore, we proceed upon the assumption that the Sinking Fund Commission did issue to themselves as trustees for the Agricultural and Mechanical College of Kentucky and the State Normal School for Colored Persons of Kentucky the bond mentioned in this section of the Statutes.

Upon an examination of the Acts of 1934 regular session, commonly called the Financial Code, we find that there is created a new department to be known as the Department of Public Property and it is invested with all of the powers and duties formerly placed upon the Sinking Fund Commission. Therefore, we presume that the Department of Public Property is now the trustee for the Agricultural and Mechanical College of Kentucky and the State Normal School for Colored Persons for Kentucky, as provided for by S. 4591a, Kentucky Statutes, and must hold the bond of the Commonwealth as mentioned in this section as such trustee.

Upon an examination of House Bill 67 enacted at the special session of the General Assembly of 1934, and commonly known as the Budget Bill, we find that by S. 30b under the title of Interest on Irredeemable State Bonds, the following:

"There is hereby appropriated out of the General Expenditure Fund for the Department of Public Property for the fiscal year ending June 30, 1935, for the payment of interest upon irredeemable state bonds the sum of \$138,938.16."

In this same section a like provision is made for the fiscal year ending June 30, 1936.

By S. 57 of House Bill 67, under the heading of Common School Fund, we find this:

"There is hereby appropriated out of the General Expenditure Fund to the Common School Fund for salaries of teachers and school district officials for the fiscal year ending June 30, 1935, the sum of \$8,228,561.84, in addition to the interest, to-wit: \$138,938.16 on the irredeemable bonds of the Commonwealth due the State Board of Education under the State Constitution and herein appropriated to the Department of Public Property for such purpose."

A like provision is made in reference to the fiscal year ending June 30, 1936.

It will thus be seen that these provisions have no bearing whatever upon the \$165,000.00 mentioned in S. 4591a for the benefit of the Agricultural College of Kentucky and the State Normal School for Colored Persons of Kentucky.

The Court of Appeals has held that the appropriations to the State University and Normal Schools do not have to be divided upon a per capita basis as required by S. 186 of the Constitution, and in effect held that these two characters of institutions are no part of the common school system. 244 Ky. 826. And if no part of the common school system, then the appropriation made in the Budget Law by S. 30b and S. 57 referring to the interest on irredeemable state bonds and setting apart \$138,938.16 to pay such interest, has no reference to S. 4591a, Kentucky Statutes, and no reference to the Agricultural and Mechanical College nor the State Normal School for Colored Persons.

It will be noted from S. 4591a, which as said before was enacted in 1897, it is provided that the \$165,000.00 mentioned in this section should bear interest at the rate of 6% and that the bond executed by the Commonwealth should be a perpetual obligation of the Commonwealth and that the interest derived from this principal sum should be a perpetual charge upon the Treasury, and that it should be the duty of the Auditor to regularly draw his warrant upon the Treasurer in favor of the treasurer of each of these colleges at specified times and for specified sums each year. This was a binding obligation upon the State of Kentucky at the time the present budget bill was enacted and at the time chapter

25, article 5, S. 4 of the Acts of 1934, was enacted. This section provides as follows:

"No public money shall be withdrawn from the treasury for any purpose whatsoever unless it shall have been appropriated by the general assembly or be a part of a revolving fund and allotted as in this act provided, and for the purposes for which its withdrawal is proposed, and unless the expenditure thereof has been authorized by the administrative head of the budget unit and the state budget officer advised of such authorization, and unless a statement of indebtedness has been submitted to and approved by the Auditor and then only on the warrant of the Auditor of Public Accounts as in this act provided. The provisions of this section shall not be construed to apply to withdrawal of funds from state depository banks for immediate redeposit in other state depository banks."

You have raised the question as to whether or not this section of chapter 25 of the Acts of 1934 repealed S. 4591a, Kentucky Statutes.

S. 19 of the Constitution is as follows:

"No ex-post facto law nor any law impairing the obligations of contracts shall be enacted."

When the bond of the Commonwealth was executed to the Sinking Fund Commission as trustee for the Agricultural and Mechanical College and the State Normal School for Colored Persons of Kentucky, as required by S. 4591a, Kentucky Statutes, it became a contract between the Commonwealth of Kentucky and these colleges; and when it was provided that the interest on this \$165,000.00 should become a perpetual charge against the State Treasury it also became a contract; and to permit by the enactment of chapter 25, article 5, S. 4, of the Acts of 1934, the repeal of S. 4591a, Kentucky Statutes, would be the impairment of such contract, in violation of the foregoing provision of the Constitution. Or to permit the destruction of the requirements of S. 4591a, Kentucky Statutes, simply because the Legislature failed in its duty to include in what is commonly called the Budget Bill a setting apart of the amount of money to pay these two institutions under S. 4591a, would also be in violation of the foregoing provisions of the Constitution, and an impairment of this contract as set out in S. 4591a, Kentucky Statutes. The Federal Constitution provides practically the same as the above quoted provision of our Kentucky Constitution.

S. 230 of our Constitution is as follows:

"No money shall be drawn from the State Treasury except in pursuance of appropriations made by law, etc."

The appropriation mentioned in S. 4591a is an appropriation made in pursuance of law, and therefore, no objection could be raised to it on account of this section of the Constitution.

We have examined quite a number of former budget acts and we do not find in any of them where this appropriation has been specifically mentioned. In the Budget Act of 1930 there is a heading of "Miscellaneous", and it may be that under the "Miscellaneous" heading this appropriation contained in S. 4591a, Kentucky Statutes, was taken care of. In the Budget Act of 1932 the Miscellaneous section was not included, nor is it included in the Budget Act of the Special Session of 1934.

But irrespective of this, we are of the opinion, as heretofore said, that neither chapter 25, article 5, S. 4, of the 1934 Acts, nor the Budget Act itself contained in House Bill 67, repealed S. 4591a, Kentucky Statutes.

Yours truly,

(Signed) Overton S. Hogan
Assistant Attorney
General

Commonwealth of Kentucky
ATTORNEY GENERAL'S OFFICE
Frankfort, Ky.

September 4, 1934

Bailey P. Wootton
Attorney General

Hon. J. Dan Talbott
Auditor Public Accounts
Capitol Building

Dear Sir:

Yours of the 1st addressed to the Attorney General has been handed me for reply. You acknowledge receipt of opinion dated August 31st in reference to irredeemable bonds issued in 1897 for the benefit of the Agricultural and Mechanical College of Kentucky and the Normal School for Colored Persons in which it was held that chapter 25, article 5, S. 4, of the Acts of 1934, does not repeal S. 4591a, Kentucky Statutes. You state:

"To our knowledge in the past this interest amounting to \$4,950.00 per year has been paid to the two schools from the Sinking Fund which was derived from a percentage of the millage tax under S. 4019. What is commonly known as the reorganization bill of 1934 abolished the Sinking Fund Commission and transferred its duties to the Department of Public Property."

You then inquire for advice as to what fund this interest is to be paid from.

S. 4618-45, 1934 Supplement, Kentucky Statutes, is in part as follows:

"The Sinking Fund Commission *** are hereby abolished and all the duties and functions heretofore vested by law in the said Sinking Fund Commission *** are transferred to and vested in the Department of Public Property."

You will note from this section that all the duties and functions heretofore vested in law in the Sinking Fund Commission are now transferred to and vested in the Department of Public Property. Therefore, the duties and functions of the Sinking Fund Commission set forth in S. 4591a, Kentucky Statutes, are now vested in the Department of Public Property by the foregoing section of the Statutes.

S. 4595, Kentucky Statutes, relating to the Sinking Fund is as follows:

"It shall be the duty of the Commission^{ers} of the Sinking Fund when they shall have fully complied with and executed the provisions of the preceding section of this chapter to notify the Auditor of Public Accounts of that fact and direct him to transfer to the Revenue Department all the remaining resources of the Sinking Fund except so much thereof as may be necessary to pay the interest on the school debt for the then current year if there be any such interest due or to become due; and it shall be the duty of the Auditor upon receiving such notice to make the required transfer and he shall during each succeeding year thereafter continue to pay all the present resources of the Sinking Fund which may be collected from time to time into the Revenue Department except the five per cent on each one hundred dollars of the taxable property of the Commonwealth now collected by law for Sinking Fund purposes. This last amount shall continue to be paid into the Treasury to the credit of the Sinking Fund as now required by law and shall be kept as a sacred fund to pay the accruing interest on the school debt."

The question then arises, what funds are appropriated to the Sinking Fund Commission or the Department of Public Property to carry out the former functions of the Sinking Fund Commission?

S. 4019, which formerly set apart in specific terms a certain percentage of the revenue to the Sinking Fund, was amended by an act of 1934, and upon an examination of this new act, which is S. 4019, Supplement 1934, to the Kentucky Statutes, we do not find that any specific amount is set apart to the Sinking Fund nor to the Department of Public Property. After providing for the annual ad valorem tax for state purposes, then by S. 4019-1, Supplement 1934, Kentucky Statutes, it is provided that the tax realized from various sources shall be credited to the general fund for the use of the expenses of the Government. Presumably the intention was to place all of these funds in the general fund, and then by the method of an appropriation or budget act distribute the fund.

Upon an examination of House Bill 67, commonly known as the Budget Act, S. 30a, under the heading of Department of Public Property, we do not find where any appropriation was made for the purpose of taking care of the interest due on the bond of the Commonwealth for the benefit of the Agricultural and Mechanical College and the Normal School for Colored Persons as provided for in S. 4591a, Kentucky Statutes, 1930 Edition. Notwithstanding that, by S. 4618-45, 1934 Supplement to Kentucky Statutes, the former duties and functions of the Sinking Fund Commission were transferred to and vested in the Department of Public Property.

By an examination of chapter 25 of the Acts of 1932, page 149, S. 84 thereof, we find under the heading of Sinking Fund the following:

"There is hereby set aside and appropriated out of the Sinking Fund for the fiscal year ending June 30, 1933, the sum of \$10,200.00 to be paid out as provided by law."

A like provision is made for the fiscal year ending June 30, 1934. It will be seen by this that the Sinking Fund Commission was authorized to expend the sum of \$10,200.00 as provided by law, and in effect is an appropriation to the Sinking Fund of this sum of \$10,200.00 for the two fiscal years mentioned.

The Budget Act of 1932 was the last budget act enacted by the General Assembly prior to House Bill 67 enacted at the special session of 1934.

S. 1992b-17, 1934 Supplement to Kentucky Statutes, is as follows:

"In the event that the General Assembly shall fail to make an appropriation for any fiscal year for any purpose or purposes required to be executed by the provisions of existing laws, or the Governor shall veto an appropriation essential to the carrying out of any such purpose or purposes, then and in that event an appropriation equal in amount to the appropriation made or deemed to have been made under the provisions of this section for such purpose or purposes for the fiscal year next preceding, exclusive of any such appropriations for extraordinary expenses and capital outlays, shall be deemed to have been made and shall continue available from year to year until an appropriation shall have been made as provided in this act and shall become effective, etc."

Therefore, it is our opinion that, under the terms of the foregoing section, the General Assembly at its 1934 special session, in the enactment of House Bill 67, included therein as fully as if written an appropriation to the Sinking Fund Commission of \$10,200.00 for each of the two fiscal years. And as said heretofore, the duties and functions of the Sinking Fund Commission, having been transferred to the Department of Public Property, this appropriation is likewise transferred to it, and the interest on the bonds provided for by S. 4591a, Kentucky Statutes, should be paid from the funds of the Department of Public Property, and such department has authority to use for the payment of this interest any part or all of the \$10,200.00 mentioned in the Budget Act of 1932.

Yours truly,

(Signed) Overton S. Hogan
Assistant Attorney
General

President McVey stated that he had referred the matter to Dean A. E. Evans for the gathering of data for conference with Attorney General Wootton, and that Dean Evans had filed with him the following:

In Re: Claim of the University of Kentucky
for the Installment of Interest Due
on the Irredeemable bond of the Com-
monwealth due June 30, 1935.

The State Auditor refuses to authorize the payment of the installment of this interest by directing a transfer of funds to the account of the University. We understand his reasons to be:

(a) Section 4591a directing the issuance of the bond of the state by the Commissioners of the Sinking Fund to themselves as trustees for the Agricultural and Mechanical College and the colored normal school and providing that the Auditor draw his warrant upon the Treasurer semi-annually, is repealed by Chapter 2 of the 1934 Acts of the Legislature, which declares all annual or continuing appropriations heretofore in effect are repealed.

(b) Even if it is not repealed, the 1934 legislature made no appropriation to take care of the interest on this bond, though it did specifically appropriate out of the general fund interest on the irredeemable bonds for the common schools fund. See Chapter 2, Sec. 30-B and Sec. 57. That is to say, there is no longer any fund from which such interest is now payable.

(c) No bond was ever issued by the Sinking Fund Commissioners in compliance with Kentucky Statutes #4591a, from which it is presumably deduced that no such obligation exists.

The University of Kentucky states its position as follows:

(a) The obligation to pay interest on the irredeemable bond was not repealed by the Act of 1934 and was in fact not repealable.

(b) The Act of Congress of 1862, later discussed, and the acceptance thereof by the State in the next year and other legislation, amount to an appropriation of the amount of this interest to the extent that an appropriation is required either by the state constitution or by statute. In further recognition of its obligation, and more fully defining the method by which this obligation should be performed, the state passed the statute, Sec. 4591a in 1897.

(c) The term appropriation is not properly applicable to funds which the state does not own, and the state cannot apply for its own benefit the use of federal funds given on a specified condition for a specific purpose.

(d) If an appropriation is necessary, it is found in Kentucky Statutes 1992b-17.

(e) When the state accepted the terms of the Morrill Act in 1863, it entered upon a contract with the United States government which it cannot escape. See Section 19 of the Kentucky Constitution.

Argument

By Act of Congress of July 2, 1862¹, commonly known as the Morrill Act, the Federal Government set apart a certain amount of public lands, part of the public domain, for the maintenance of colleges of agriculture and mechanic arts in the several states. For those states in which there was no or no sufficient amount of such lands to be so appropriated, the Congress provided that the Secretary of the Interior should issue scrip to the amount of each state's distributive share at the rate of \$1.25 per acre. The several states thus receiving scrip were permitted to sell the same and apply the proceeds to the purposes of the Act.

It was further declared in paragraph four of the same act, that all moneys derived from the sale of scrip were to be invested in securities of the United States or of the states, or otherwise, yielding not less than 5% and that the moneys so invested should constitute a perpetual fund, the capital of which should remain forever undiminished and the interest of which should be inviolably appropriated by each state claiming the benefit of the Act, to the endowment, support and maintenance of at least one college, etc.

It was further provided in paragraph 1 of section 5 that if any portion of the fund or of the interest thereon should be diminished or lost, it shall be replaced by the state, so that the capital shall remain forever undiminished and the annual interest shall be paid regularly and applied without diminution to the purposes mentioned.

The provisions of the Act are set out above in some detail to indicate the irrevocable character of the transaction and the firm determination of the Congress that no state should be permitted to use the funds for any other purposes whatsoever.

In 1863² the General Assembly passed an act as follows:

"That the State of Kentucky by this act accepts and approves all the provisions of an act of Congress approved July 2, 1862, etc., and assents to the conditions specified in said act, especially all those set forth in the fifth section thereof and numbered first, etc."

The first paragraph, as shown, provided for a perpetually inviolable fund and interest thereon.

Thus, the state made a perpetual contract with the United States government. This agreement and contract was again set forth in a subsequent act of the Assembly when it authorized,

1. 12 St. at Large 503, Chap. 130; 7 U.S. Code Ann. Sec. 301.
2. Chap. 748, p. 335, Act of Jan. 27, 1863.

3

in 1865, the Commissioners of the Sinking Fund to sell the scrip so received under and appropriated under the Morrill Act. This act declares in Sec. 2:

"The proceeds of the sale shall be invested by said Commissioners in interest bearing bonds of the state or of the United States at their discretion; the principal of which bonds shall be forever held sacred for the purposes directed in the Act of Congress and the interest thereof as collected shall be paid over as directed by law."

It was thereby provided that the Commissioners might, at their discretion, lend the fund to the state and receive from the state its bond, on which the Commissioners, as trustees for the University, were to collect the interest from the state and pay it over. Thus, the State of Kentucky owes no debt which is more inviolable than this debt to these trustees, arising from its contract with the United States government.

Finally, in 1897, the obligation of the state to the United States government was more completely declared and the acceptance of the terms of the Morrill Act, set out in Sec. 459la. The Commissioners thereby are required to issue to themselves a bond of the Commonwealth in the sum of \$165,000, the amount received from the sale of scrip received from the United States, and interest thereon was made payable semiannually "and said bond shall be a perpetual obligation of the Commonwealth and the interest thereon shall be a perpetual charge upon the treasury."

(a) Thus, it is seen that Section 459la is an irrevocable obligation of the state and was not and could not be repealed by the Act of 1934, because it, with the Morrill Act and the other acts of acceptance by the state, constitute a contract with the United States government and the obligation thereof cannot be impaired under Sec. 19 of our Constitution.

It is further urged that there is nothing in the 1934 Act which shows any intention of the legislature to repeal the acceptance of the Morrill Act. It should be noted that Sec. 67 of Chap. 2 of the Act of 1934 declares: "All receipts accruing to the University of Kentucky . . . from millage and inheritance taxes are hereby discontinued and nothing is said about the interest on the irredeemable bond for \$165,000."

4

(b) As to the failure to appropriate, it is provided that if the general assembly shall fail to make an appropriation

3. See Chap. 1174 of the Acts of the Assembly of 1865, passed on Feb. 28, 1865.

4. Sec. 1992b-17, Act of 1934.

for any purpose or purposes required to be executed by provisions of existing laws..... then an appropriation shall be deemed to have been made under this section for such purpose, i.e., the appropriation of the preceding year is continued. For the preceding year, under Chap. 25 of the Acts of 1932, at page 149, s. 84, an appropriation of \$10,200.00 to the sinking fund was made for 1933 and a like amount for 1934.

Furthermore, authorities are not lacking to the effect that the constitutional and statutory inhibition against the payment of funds from the treasury without an appropriation does not apply to interest on public funds received from the United States. Thus, in Evans v. Van Deusen⁵ the court said that such funds "are not strictly speaking subject to appropriation." Again, in State v. State Board⁶, the court said, "It is admitted by the attorney general and we think rightly that the proceeds of federal land grants are trust funds and are not subject to the constitutional requirement that money must be appropriated before it is paid out of the treasury." Clearly, interest on the money received from the sale of scrip is the equivalent of proceeds of federal land grants. So, in State v. Brian,⁷ this language was used: "The funds created by Agricultural College Act of 1862 were taken by the state as a trustee for the benefit of the University and Agricultural College. These funds cannot be diverted to any other purpose and they have been specifically appropriated by the statutes mentioned."⁸

In short, the argument of the Auditor that there has been no appropriation of the sum is met in four ways.

(a) The Act of 1897, Sec. 4591a, creating a perpetual charge upon the state treasury, was not repealed, because it could not be, and because it was not intended to be.

(b) No specific appropriation of trust funds is required as the state cannot divert the use of them to its own benefit. The Commissioners of the sinking fund were formerly trustees and now the Department of Public Property is trustee of a claim against the state and cannot divert interest coming from the state on its bond to other purposes.

(c) The earlier acts of acceptance of the Morrill Act are likewise appropriations to the extent that specific appropriations are necessary.

5. 31 Idaho 614, 174 P. 122 (1917).

6. 33 Idaho 415, 196 P. 201 (1921).

7. 84 Neb. 30, 120 N. W. 916 (1909).

8. See State v. Searle, 109 N. W. 770 (Neb. 1906). (The state received federal funds but made no express appropriations out of them for the University. Held, the words of the Constitution, "all lands, money or other property granted,..... to this state for educational purposes shall be used,..... in accordance with the terms of such grant" amounted to an implied appropriation).

(d) If further appropriation is necessary, it is found in the 1934 Act, Sec. 1992b-17, continuing existing appropriations, where an essential purpose required to be executed by existing laws, is overlooked by the legislature, the appropriation of the preceding year is continued.

The state cannot repudiate its obligation arising from its acceptance of the Morrill Act and fully recognized by the state in Kentucky Statutes 459la. Thus, in Rowlands v. State Loan Board the legislature had authorized the lending of the federal funds thus appropriated to the state for the benefit of an agricultural college in such a way that the principal and interest was uncollectible. The state endeavored to remit the interest to the borrowers. It was held that the interest and principal must be used for the specific purpose for which institutional lands were granted. "The legislature would have as much right to use the interest thereon for road building as it would for giving the funds away".¹⁰

Finally, the legislative history of Section 459la shows that here provision is made neither for an annual nor a continuing appropriation. It creates a charge and the word "appropriation" is not used in it. The term "appropriation" as used in the repealing section of the 1934 special session, refers to grants and gifts by the state and not to debts or charges of the state. This claim of the University arises from a debt of the state and so is not a gift or grant repealable under the terms annual or continuing appropriation.

9. 24 Ariz. 116, 207 P. 359 (1922).

10. See also State v. Llewellyn, 23 N. M. 43, 167 P. 414 (1917). Certiorari denied, 245 U. S. 666. (Such federal funds were intended as a permanent endowment and the states are required to hold the interest thereof for the use and support of the colleges and universities); State v. Irvine, 206 U. S. 278, 51 L. Ed. 1063 (1907) (speaking of the Morrill Act, the court said: "It is so obvious that these appropriations are made to the states and that the states, acting through their legislatures, are to expend the appropriations in accordance with the trust imposed upon them, that it is unnecessary to quote the numerous expressions in this act which support that view"; See also State v. Barrett, 26 Mont. 62, 66 P. 504 (1901); In re Agricultural Funds, 17 R. I. 815, 21 A. 916 (1890) ("and of course the state cannot lawfully receive it (the Morrill fund) for any different institution or purpose").

Mr. Hogan sensed, in part, the significance of the legislative history and the connection of 4591a with the Morrill Act and the Acceptance Act of 1863; the Act creating the Agricultural College;¹¹ and the act authorizing the sale of such scrip¹² and declaring that "the principal shall forever be held sacred for the purposes directed in the Act of Congress and the interest as collected shall be paid over as directed by law."

It seems that this bit of history has escaped the observation of Mr. Atkinson and he therefore mistakenly concludes that Kentucky Statutes 4591a has been repealed by the Act of 1934.¹³

In conclusion, attention is called to the able opinion written for the Auditor by Assistant Attorney General Overton S. Hogan on August 31 and supplement September 4, 1934, in re this same issue. Mr. Hogan reviewed the pertinent statutes at length and concluded that Kentucky Statutes Section 4591a had not been repealed and was not repealable; that the claim was payable out of the sinking fund as provided in the Act of 1932, Chap. 25, p. 149, S. 84, being appropriated under 1992b-17 of the 1934 Supplement to the Kentucky Statutes.

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11. Chap. 968, p. 45, passed February 22, 1865, especially Sec. 5 thereof, which shows that the Agricultural College was established for the purpose of carrying out the acceptance of the Morrill Act and was to be the beneficiary of the fund arising from the sale of the land scrip.
 12. Chap. 1174, p. 68, passed February 28, 1865.
 13. Special Session, Chapter 2, p. 97, S. 68.

The statement was approved and the President was directed to ask Dean Evans to take the statement to Attorney General Wootton and have conference with him in person. It was further ordered that, in event of continued failure and refusal of payment of the interest installments, suit be brought asking for declaratory judgment.

5. Balance of Inheritance Tax Collections, 1932.

President McVey stated that it appears that there is a balance of inheritance tax in the hands of state officials collected for the year 1932. This balance appears to be that left after payment of certain claims for refunds that the State was compelled to make to non-residents following decisions in the Federal and state courts. The payments of the refunds were made from collections of inheritance tax that, under the law, were usually paid at the end of each month to the University and the Teachers Colleges, state officials holding that such collections were liable for the refunds.

President McVey was authorized to make application to the Auditor of Public Accounts for the part of the balance on hand due the University, and to report results to the next meeting of the Executive Committee or the Board of Trustees.

6. Rearrangement of Warehouse Lease.

At the meeting of the Board of Trustees, May 30, 1935, the proposal of the Security Trust Company to refinance the warehouse lease with the Central District Warehousing Corporation was accepted (Item 11), and the question was referred to the Executive Committee for completion of details. At this meeting of the Committee, a copy of the proposed lease was presented. It showed contract for payment of \$50,000.00 as follows:

For the first year (ending July 1, 1936)	\$1,250. payable January 1, 1936, 6,350. payable July 1, 1936,
For the second year (ending July 1, 1937)	1,125. payable January 1, 1937, 6,225. payable July 1, 1937,
For the third year (ending July 1, 1938)	1,000. payable January 1, 1938, 6,100. payable July 1, 1938,
For the fourth year (ending July 1, 1939)	875. payable January 1, 1939, 5,975. payable July 1, 1939,
For the fifth year (ending July 1, 1940)	750. payable January 1, 1940, 5,850. payable July 1, 1940.
For the sixth year (ending July 1, 1941)	625. payable January 1, 1941, 5,725. payable July 1, 1941,
For the seventh year (ending July 1, 1942)	500. payable January 1, 1942, 5,600. payable July 1, 1942,
For the eighth year (ending July 1, 1943)	375. payable January 1, 1943, 5,475. payable July 1, 1943,
For the ninth year (ending July 1, 1944)	250. payable January 1, 1944, 5,350. payable July 1, 1944,
For the tenth year (ending July 1, 1945)	125. payable January 1, 1945, 5,225. payable July 1, 1945.

The lease was examined by Judge Stoll, Mr. Holland and Mr. Park and referred to Judge Stoll for approval. Upon execution by the Chairman of the Executive Committee and the Secretary of the Board, President McVey was authorized to proceed with having the transfer of lease completed.

It was ordered that the fire and tornado insurance on the building be transferred to the Security Trust Company, and the Business Agent was authorized to pay the premium on the insurance policy according to terms of contract, payment to be made from funds of the University for the year 1935-1936.

It was ordered that the balance due the Central District Warehousing Corporation, after the transfer of the lease, be paid by the Business Agent from funds of the University for the year 1935-1936. Statement follows:

Balance on principal	\$ 50,000.00
Interest due July	3,000.00
City taxes first and second halves	1,256.85
State and County taxes	<u>280.00</u>
	54,536.85
Credit of payment by Security Trust Company	<u>50,000.00</u>
Balance due	4,536.85

7. Caring for Securities.

The Business Agent made the following suggestion:

In view of the fact that the University is each year acquiring more and more securities that should be carefully cared for, I wish to suggest that some provision be made whereby these securities may be cared for jointly by the Business Agent and some other person, perhaps some member of the First National Bank and Trust Company.

It was ordered that the securities of the University be placed in the joint care of the Business Agent and the President or some vice-president of the First National Bank and Trust Company. The bank named J. E. McFarland to act with the Business Agent as joint custodians of securities of the University of Kentucky, savings accounts and student notes to Loan Fund not to be included.

8. Rent Accounts.

The Business Agent made the following report:

On University books there appear balances due for rents on University property:

Harry Lindberg	\$173.00
Robert Compton	340.00
J. H. Kirkland	133.94
F. J. Barnes	43.25
P. B. Sams	47.00

Any further collections on these debts are doubtful.

Mr. Kirkland is dead and I have filed a claim with his administratrix for the amount of the indebtedness and she told me that the estate is insolvent. I feel that this indebtedness should not be carried longer as assets on the books of the Business Office.

The Business Agent was authorized to charge off or not to carry as assets the debts listed above. However, he was directed to make due effort to collect them.

9. Uncollected Student Fees -- Emergency Student Fund.

The Business Agent made following report:

There remains uncollected for fees for the first semester of this year \$1,121.83; for the second semester \$3,197.48. The uncollected fees for the period of September 1931 to September 1934 amounted to \$4,187.57. This balance is largely due to a liberal attitude toward deferred payment of fees that the University was compelled to take during the depression and to agreements in regard to fees of F.E.R.A. students. It is my opinion that very little of this amount, except that for this past year, will be collected. It is probable that a considerable amount of the balance on the present year's fees will be collected. It is my opinion that the Business Office should be authorized to charge ~~all uncollected fees~~ off; that is, not to carry them as assets.

For some time I have had in mind a suggestion that I wish to make in regard to the disposition of old fees now due that may be collected hereafter. I suggest that the total of such collections be credited to a trust fund to be carried as a sundry ledger account, the fund to be known as Emergency Student Fund. From this fund I suggest that payments be made for students in emergency cases of sickness, either taking their notes therefor or otherwise according to the President's suggestion, the remainder of the fund to be used as a loan fund to meet the immediate requirements of students who may be in need in payment of fees and room rent. These loans should not be made for a period of time longer than the end of the semester after the loan is made. I think that the present committee on giving time to students on fees, made up of

the Registrar, Dean of Men, Dean of Women and the Business Agent, should administer this fund. This committee could carry out the present program and if, at the end of nine weeks, any part of the fees remained unpaid under the present system of giving time, the student could be loaned an amount sufficient to pay the balance of his fees from this Emergency Fund. In this way, I think that eventually there would be very little if any amount of unpaid fees at the end of any semester.

I suggest further that this Emergency Student Fund should be supplemented by setting aside thereto fifty cents of each regular student's fees for the first and second semesters of the coming year. In setting up this fund, I think it should be noted that at any time the Board of Trustees may order any balance therein to be turned into the general expense fund of the University.

It was ordered that all unpaid fees and student accounts be charged off and not carried as assets on the books of the Business Office. The President was directed to authorize the setting up of an Emergency Student Fund, the income to be derived from the collection of charged off fees and accounts and such part of future student fee collections as he deems advisable. Reports of collection of charged off fees shall comply with state laws, and the Emergency Student Fund may at any time be covered into the operating funds of the University by order of the Board of Trustees. Administration and control of the fund will be determined by the President.

10. Grants in Aid.

The Business Office records show that the Grants in Aid Fund is indebted in the years 1933-34 and 1934-35 for fees in the amount of \$8,824.75 and for room rent in the amount of \$3,561.00; for balance due the University Commons, \$1,518.80. At the end of this month there will be about \$417.20 to apply to this indebtedness.

(Signed) D. H. Peak, Business Agent.

On motion and second it was ordered that all balances of indebtedness of Grants in Aid be charged off or not carried as assets on the books of the Business Office, the Business Agent not to relax efforts to collect, however.

11. Voucher for Rental of Camp Site.

The Chairman of the Executive Committee signed in open meeting voucher for rental of camp site for CCC Camp S-51, in compliance with following request:

Co. 547 CCC
Camp S-51
Noble, Ky.

June 19, 1935

Business Manager
University of Kentucky
Lexington, Kentucky

Dear Sir:

Enclosed herewith you will find Public Voucher for Rental of Camp Site for CCC Camp S-51. Please have the person authorized to sign this, sign it, together with the title of signer, at the place indicated with cross made in blue crayon.

It is requested that this voucher be signed and returned in the next mail. If for any reason delay is necessary, please advise us at once in order that we may report the fact to Fort Thomas.

(Signed) Thos. B. Caldwell
1st Lt. Inf.-Res.
Commanding.

12. Work Plans.

Work plans for the first six months of the year 1935-1936 for College, Experiment Station and Extension Division were presented. These plans are required to be filed with the State Board of Finance, under the fiscal laws now in operation. They are made up from budget figures of income and expenditures.

The Committee authorized the President to file the work plans with the State Board of Finance.

13. Lease of Home Management House.

The following report was submitted by Dean Cooper, and he was duly authorized to lease the property as suggested therein:

June 12, 1935

President Frank L. McVey
University of Kentucky

Dear President McVey:

The lease on the property at 162 Bonnie Brae Avenue, which is occupied as a home management house, will expire July 31, 1935.

I recommend that it be released from Mrs. May K. Duncan (who has acquired the property during the year) for the period of one year, namely August 1, 1935 to July 31, 1936, at a rental of \$60 per month. The item for this is provided in the budget in the Department of Home Economics in the teaching division of the College of Agriculture.

Very truly yours,

Thomas Cooper
Dean and Director.

14. New Construction - Experiment Station Building.

President McVey presented the following letters from Dean Cooper:

June 15, 1935

President Frank L. McVey
University of Kentucky

Dear President McVey:

Our facilities for housing workers have been tremendously overtaxed for the past year. The large amount of work which has been carried on under the AAA and in cooperation with the FERA, and the various other types of activities, have required the employment of many additional persons. We have utilized offices, classrooms and hallways and basements to the utmost. The over-crowding has greatly inconvenienced our established lines of work and the congestion has brought up many problems in the efficient handling of the work.

It now appears that with the various lines of work which will probably be added, we should look forward to relieving the situation. As you know, prospective legislation will result in increasing the force and the definite rearrangements and coordinations which have been made upon the part of governmental activities will also result in further increase of work and personnel. After canvassing the entire situation, it would seem that an additional wing to the present Experiment Station building offers the best solution for relieving the situation. I am confident that this can be financed by the utilization of various funds which may be available and that within a two- or three-year period, it can be paid for.

I request that you give this matter consideration and if you and the Board deem it desirable that authorization be given to have Frankel and Curtis prepare preliminary plans. Also that we be permitted to submit a schedule for financing the construction. If the proposal is approved, it would be my thought that construction should be begun as promptly as plans can be drawn and bids secured.

(Signed) Thomas Cooper
Dean and Director

- - - - -
June 24, 1935

President Frank L. McVey
University of Kentucky

Dear President McVey:

I am sending herewith rough and tentative plans for the proposed addition to the Experiment Station building. I have previously sent you a memorandum with reference to its need.

It is my general thought that the proposed addition shall be utilized entirely from the standpoint of offices and the service functions in the handling of bulletins, multigraph and mimeograph work, stock of office supplies, etc. In addition, further provision will be made for the technical library which has long ago outgrown its present quarters. As you know, this library is confined to the technical publications dealing with the fields in which our staff is employed.

I do not know what the cost of the proposed addition will be, possibly around \$75,000. My thought in financing

the building is that we could pay not less than \$25,000 on it this year; that the Board would arrange to execute notes for the balance payable in two and three years.

If the Board approves the construction of the addition, I recommend that Frankel and Curtis be employed as architects.

There is very great need for the structure. In fact, the overcrowding in the present building is such that the proposed addition could easily be filled.

(Signed) Thomas Cooper
Dean and Director

The President was authorized to take up the question of new construction with Dean Cooper and work out the proposal of financing it over a period of years as provided in state laws.

15. Basildon House.

President McVey reported that he had written Mrs. Ripley Hitchcock of New York, according to instruction given him by action of the Board of Trustees, meeting of May 30, 1935 (Item 24), relative to the Basildon House project. He presented a letter from Mrs. Hitchcock in which it is suggested that the amount of \$750,000 is necessary for the purchase, removal and erection of Basildon House; that the Committee Mrs. Hitchcock represents proposes to raise \$525,000 through the Public Works Administration.

President McVey was authorized to write Mrs. Hitchcock that, as soon as he can be assured of the part of the funds to be raised by her Committee, that he will recommend to the Board of Trustees of the University that application be made to the Public Works Administration for the remainder, \$225,000.

16. Progress of Public Works Proposals.

President McVey reported progress on the Public Works Administration proposals for erection of Heating Plant and Student Union Building. He was directed to proceed with these as directed by former orders of the Board of Trustees. It was suggested that projects for other buildings be taken up later.

17. Reports of College of Engineering.

President McVey presented report of Dean Graham on Bureau of Engineering Research, and he also presented report on procedure in Engineering College. These were passed for consideration at a later meeting.

18. Nomination and Election of Alumni Member of the Board of Trustees.

See Item 23, Minutes of the Board of Trustees May 30, 1935. In response to resolution made at that meeting, the Secretary of the Alumni Association made report, which report was ordered spread on the Minutes. It reads as follows:

June 24, 1935

President Frank L. McVey
University of Kentucky
Lexington

Dear President McVey:

In accordance with action taken by the Board of Trustees of the University at its meeting on May 30, 1935, you requested the Executive Committee of the University of Kentucky Alumni Association to pass on the question of the selection of names of alumni to be presented to the Governor for appointment of alumni member of the Board of Trustees, and to make recommendation to the President of the method or methods of such selection.

This matter was discussed at a called meeting of the Alumni Executive Committee, held June 24, 1935, the attached memorandum on the subject being submitted to the members of the Committee. The following action was taken:

"It was moved by Mr. Frankel, seconded by Miss King, that the following be suggested to the Board of Trustees as a method of selecting the three persons eligible for appointment by the Governor to the Board of Trustees.

"At the first regular meeting, in September, the Alumni Executive Committee, composed of the officers of the Association, the six elected members, the six appointed members, and the ex officio members, shall nominate six qualified alumni who shall become the candidates for membership on the University Board of Trustees. The secretary of the University Board of Trustees shall be given these names, with the request that they be placed in alphabetical order upon a ballot, together with three blank spaces, and that the ballots be sent to alumni of the University qualified to vote.

"The three persons receiving the highest number of votes shall be certified to the Board of Trustees and by them to the Governor, as eligible for appointment to the Board of Trustees. The motion was unanimously carried."

It is the hope of the Committee that this plan will conform with the law and the wishes of the Board in the matter.

(Signed) R. K. Salyers
Secretary of the Association.

It is, therefore, ordered by the Executive Committee of the University of Kentucky that the report be approved and that the method of selecting names of alumni to be presented to the Governor of Kentucky for appointment of an alumni member of the Board of Trustees of the University be that set out in the report as copied herein.

19. Opinion of Attorney General on Revolving Funds.

The Business Agent reported that, on request made to Attorney General Wootton on the question of whether or not any part of the revolving funds of the University not expended by the end of the fiscal year reverts under the law to the General Fund of the State, he received the following opinion:

June 10, 1935

Mr. D. H. Peak
Business Agent
University of Kentucky
Lexington, Ky.

Dear Sir:

By letter of June 4th, you stated that the University of Kentucky had established two revolving funds, one called the College Revolving Fund and the other the Experiment Station Revolving Fund, and you requested an opinion as follows:

"Will you please give me your opinion as to whether or not the unexpended balances of these revolving funds revert to the general fund of the state at the end of the fiscal year."

Chapter 2, Acts of the 1934 Special Session, making appropriations for the various departments and agencies of the state government, is silent insofar as it relates to what should become of unexpended balances in revolving funds at the end of the fiscal year.

However, we have made a careful study of the Budget and Financial Administration Act of 1934, sections 1992b-1, et seq., Kentucky Statutes, 1934 Supplement -- with special attention to section 1992b-19, relating to revolving fund accounts, and section 1992b-38, relating to the lapse of appropriations -- and are of the opinion that under that law it is now the policy of the General Assembly to make blanket appropriations to the various budget units of the state government, any balance of which remains unexpended at the end of the fiscal year, reverts to the general fund. This rule should apply to revolving fund accounts the same as to other appropriations.

Very truly yours,

(Signed) William R. Attkisson
Assistant Attorney
General.

At a later date, representatives of the University, the Teachers Colleges, and the Normal School for colored persons met with General Attkisson and discussed the questions involved in the opinion. As a result of the conference, the following opinion superseding the one dated June 10, 1935, was made:

June 10, 1935

Mr. D. H. Peak
Business Agent
University of Kentucky
Lexington, Ky.

Dear Sir:

By letter of June 4th, you stated that the University of Kentucky had established two revolving funds, one called the College Revolving Fund and the other the Experiment Station Revolving Fund, and you requested an opinion as follows:

"Will you please give me your opinion as to whether or not the unexpended balances of these revolving funds revert to the general fund of the state at the end of the fiscal year."

Chapter 2, Acts of the 1934 Special Session, making appropriations for the various departments and agencies of the state government, is silent in so far as it relates to what should become of unexpended balances in the revolving funds at the end of the fiscal year. However, Chapter 2 provides for lump sum or blanket appropriations in the case of certain budget units and for a lump sum or blanket appropriations and also the operating receipts in the case of certain other budget units. The University of Kentucky, Eastern State Teachers College, Western Kentucky State Teachers College, Murray State Teachers College, Morehead State Teachers College, The Kentucky State Industrial College for Colored Persons, The West Kentucky Industrial College for Colored Persons, the Department of Public Property -- Division of the State Parks, and certain fee-supported bureaus of the Department of Health are specifically appropriated by Chapter 2 in addition to blanket or lump sum appropriations, also the operating receipts of such units and bureaus to be expended for the general purpose of operating and maintaining the agencies supported wholly or in part from said operating receipts.

We have also made a careful study of the budget and financial administration act of 1934, Sections 1992b-1, et sec., Kentucky Statutes 1934 Supplement, with special attention to Section 1992b-8 relating to the appropriation and revenue acts, the state budget and budgetary allotments, Sections 1992b-19, relating to revolving fund accounts, and Section 1992b-38, relating to the lapse of appropriations. We are of the opinion that under that law it is now the policy of the General Assembly to make to certain budget units of the state government blanket or lump sum appropriations and in addition thereto the said operating receipts to be used by the said budget units according to the provisions of Section 1992b-19. Section 1992b-8 specifically provides that "the appropriation act or acts shall authorize the maximum amount to be expended in addition to the net balance of the operating receipts by each budget unit for all its ordinary recurring expense of operation and maintenance, etc., etc." It was the clear intent of the General Assembly to appropriate to certain budget units the net balances of the operating receipts in addition to lump sum or blanket appropriations and it is our opinion that the net balances of the operating receipts of such units do not lapse with each fiscal year, but constitute a continuing revolving fund and inviolate under the provisions of Section 1992b-19 in addition to the biennial lump sum legislative appropriations. The provisions of Section 1992b-38 relating to the lapse of appropriations is not, therefore, applicable to the net balance of operating receipts of such budget units and bureaus of the state government as have specifically appropriated to them their operating receipts under the provision of Chapter 2, Acts 1934, Special Session.

Since the net balance of operating receipts of a budget unit or bureau of the state government having its operating receipts specifically appropriated according to the provisions of Chapter 2, Acts 1934, Special Session, does not lapse at the end of the fiscal year, any obligations of such budget unit or bureau properly incurred either prior to the closing of the fiscal year or thereafter are payable from said revolving fund accounts may be paid from such net balances or revolving fund accounts.

(Signed) William R. Attkisson
Assistant Attorney General

20. Percy Lewis, Student -- Personal Injury.

President McVey presented the following letter:

July 22, 1935

President F. L. McVey
University of Kentucky

Dear President McVey:

Some time ago I spoke to you about the case of Percy Lewis who had his jaw broken in boxing class in Physical Education.

When the fracture was discovered by means of the x-ray here at the Dispensary he was referred to Dr. J. S. Daily, with the explanation that he should make arrangements with Dr. Daily about the cost. After he left the hospital his mother sent the bills to us asking us to take care of them. I am enclosing you the correspondence and the statements.

(Signed) J. S. Chambers

J. S. Chambers, M.D.

This was accompanied by a letter from the mother of Percy Lewis, Mrs. J. Lewis, of Ashland, Kentucky, and a total of bills amounting to \$215.45. There follows correspondence of Doctor Chambers, President McVey and Professor Potter.

The matter was passed without order of disposition.

21. W. B. Waskom, Instructor, Salary.

The Business Agent reported:

"W. B. Waskom left the University in April. The May and June salaries were pledged to certain institutions for loans. Unless Mr. Waskom is entitled to May or June salaries in whole or in part, no payment can be made on the pledges of salary."

No order was made, but the members of the Committee were of the opinion that nothing is due Mr. Waskom, and consequently nothing is available with which to pay pledges, and further that individuals or institutions taking pledges for future salaries of employees of the University do so at their own risk.

22. Pat Hale, Employee -- Injury and Age.

President McVey presented the following letter from the Superintendent of Buildings and Grounds:

June 24, 1935

President F. L. McVey
University of Kentucky
Campus

Re: Mr. Pat Hale

My dear President:

Mr. Hale fell down the back steps at his home three weeks ago and broke his right wrist. I have dropped him from the payroll temporarily because with such an injury he will not be of any service to us for several weeks. Some time ago we carried him for a period of three weeks or so when he had his teeth removed. I am wondering if he will ever regain proper use of his hand at this age.

This leaves us without a mill man which means that cabinet work, sash doors and special machine work is at a standstill. We have several orders on hand and should be starting on next year's sash repairs now.

Mr. Hale will be 70 years old March 2, 1936, and has been with the University since 1917 or 18 years. I would like to make this suggestion viz:- that he be placed on half time basis of about \$60.00 per month and that we employ a young mill man at a salary of \$100.00 per month.

Should we allow him any compensation for time off?

(Signed) M. J. Crutcher
Superintendent

It was ordered that Mr. Hale be placed on half time basis of pay, subject to further orders of the Board of Trustees, and that the Superintendent of Buildings and Grounds be authorized to employ a mill man at a salary of \$100.00 per month.

23. Appointments and Other Staff Changes.

Appointments

J. D. Williams, Director of the University High School for the year 1935-36, salary \$2850 on ten months basis.

Mrs. Mary Lee Collins, social director of residence halls for women, salary \$1500 on twelve months basis, for year beginning September 1, 1935.

Mrs. Katherine Winfrey, mimeograph operator in Stenographic Bureau, salary \$70.00 per month.

C. K. Cain, graduate assistant in Chemistry for year 1935-36, salary \$400, ten months basis.

Alice Webster, typist and clerical assistant in Department of History, for the summer of 1935 dating from June 24, salary \$12.00 per week.

James D. Colliver, assistant in Chemistry for year 1935-36, salary \$400.00, ten months basis.

W. G. Starnes, assistant in the Department of University Extension, salary \$1800 per year. Mr. Starnes was also appointed for the remainder of the fiscal year 1934-35, beginning June 8 at the rate of \$150 per month.

R. S. Proctor, Frances Wortham and Mrs. Phoebe Worth as lecturers in education for courses at the Guidance Institute at Jackson, Kentucky, paid from fees collected by the county superintendent.

D. E. Bayless, assistant in Farm Management in the Experiment Station, effective July 1, 1935 to June 30, 1936, salary of \$125 per month.

C. E. Wyatt, assistant in Soil Survey at rate of \$100 per month plus travel and subsistence expense while in the field, both salary and expense to be paid from funds provided by the Tennessee Valley Authority. Employment to become effective when the work is undertaken in Calloway County.

The following recommendations by Dean Boyd were approved: Kenneth L. Palmquist, Graduate Assistant; F. W. Donaldson, Graduate Assistant; L. P. Hutchison, Graduate Assistant; all in the Mathematics Department; all salaries raised to \$500.00.

Changes in Employment

On recommendation of Dean P. P. Boyd, the salary of Brooks Hamilton in the Department of Hygiene was increased from \$2000 to \$2400, twelve months basis, effective July 1, 1935.

On recommendation of Dean T. P. Cooper the following changes were made: Salary of A. B. Poundstone increased from \$2200 to \$2400. Salary of David W. Young increased from \$1260 to \$1500.

Leave of Absence.

Dr. W. W. Dimock, granted leave of absence with pay for thirty days, beginning approximately August 20, 1935. He is to visit England and France on invitation of the British Blood Stock Agency, for advice and lectures on breeding problems.

Resignation

Lillian Brinkman, Field Agent in Home Economics, Extension Division, effective June 15, 1935.

Employment - Extension Division.

Beach Craigmyle, Harrison County, at a salary of \$1200 per year, plus auto allowance of 5¢ per mile not to exceed \$50 per month, effective July 1 to December 31, 1935. Salary paid by K.E.R.A.

Justus L. Ellis, Monroe County, at a salary of \$1800 per year, plus auto allowance of 5¢ per mile not to exceed \$50 per month, effective July 1 to December 31, 1935. Salary paid by K.E.R.A.

R. B. Wyatt, Campbell County, at a salary of \$1200 per year, plus auto allowance of 5¢ per mile not to exceed \$50 per month, effective July 1 to December 31, 1935. Salary paid by K.E.R.A.

On motion, duly seconded, the Committee adjourned.

D. H. Peak
Secretary, Board of
Trustees