STATUTES AND DECISIONS

RELATING TO THE

UNIVERSITY OF IDAHO

HARRISON C. DALE
President, University of Idaho

1944
An Act

Entitled an Act to Establish the University of Idaho.

Be it enacted by the Legislative Assembly of the Territory of Idaho, as follows:

Section 1. There is hereby established in this Territory, at the Town of Moscow, in the County of Latah, an institution of learning by the name and style of "The University of Idaho."

Section 2. The government of the University shall consist of a Board of Regents, to consist of nine members, chosen from the Territory at large, which Board the Governor shall nominate, and by and with the advice and consent of the Legislative Council appoint. The term of office of said Regents shall be ten years from the first Monday in February in the year in which appointed.
FOREWORD

The object of this book is to assemble within the covers of a single volume all the significant pieces of legislation affecting the state university from Territorial days to the present and to include those cases in the Supreme Court of Idaho in which the powers and responsibilities of the Board of Regents and the constitutional rights of the state university have been adjudicated. Sufficient background material of an historical and explanatory character has been included, it is hoped, to point up the meaning and significance of the statutes and the decisions.

In the preparation of this study I am indebted to the Library of Congress for the loan of some of the journals of the Territorial Assemblies and Territorial Councils that were not available in the University library. I should like, also, to express appreciation to Honorable George H. Curtis, Secretary of State, for his cooperation in helping to procure lists of the members of the Board of Regents and the superintendents of public instruction; to Dean Pendleton Howard of the College of Law, University of Idaho, for permission to include his brief on the constitutionality or rather unconstitutionality, of trying to dismember the University; and to Miss M. Belle Sweet, University Librarian, for making the University archives readily accessible.

H. C. D.

Moscow, March, 1944
I. The University and the Constitution

The first appearance of the name "University of Idaho" appears to have occurred in 1874 when the Territorial Governor, Thomas W. Bennett, made the following recommendation in his message to the Eighth Session of the Territorial Legislature, "I desire to remind you that several of our citizens, inspired with a commendable zeal for the furtherance of the cause of education in our Territory, have inaugurated a movement for the establishment of a university at Boise City to be called 'The University of Idaho.'" Governor Bennett's enthusiasm for the cause of higher education may have been largely transitory and temperamental since Governor Hawley is said to have described him as the "most jovially reckless gentleman who ever sat in the gubernatorial chair." The assembly was unmoved by the Governor's recommendation and the matter of a territorial university attracted little or no further attention until 1881 when Congress voted two townships of land each to the Territories of Idaho, Dakota, Montana, Wyoming and Arizona, the same to become available for the support of a university on admission of these territories to the Union.

The increase in population in the Territory of Idaho from 32,610 in 1880 to 84,385 in 1890, the growth of a native-born body of youth of college age, the prospects of statehood, and the chance at that time of getting two townships of land, totalling over 46,000 acres, for the support of a university, brought the need as well as the possibilities of such an institution to the fore. Accordingly, on December 22, 1886, C. B. Wheeler of Bingham County gave notice that he would "at an early date introduce a bill to establish a Territorial University in Idaho Territory." The Bill, House Bill No. 45, entitled "An Act to establish an university for the Territory of Idaho" was introduced January 14, 1887. This

1 Messages of the Governor to the Eighth Session of the Territorial Legislature, pp. 14, 15
bill, which would have located the Territorial university at Eagle Rock (Idaho Falls) in Bingham County, was referred to the Committee on Education which recommended its passage. It was duly enacted by the assembly on January 29, 1887 by a vote of eighteen to five. The five members voting against the bill were Messrs. Bradley of Ada County, Eyrea of Nez Perce County, Penn of Idaho County, Goodrich of Ada County and Goodwin of Ada County. In the council, to which the bill was sent after passage in the assembly, an amendment was proposed substituting the words “Moscow, Nez Perce County” for “Eagle Rock, Bingham County” and the bill with the proposed amendment was referred to the Committee on Education, which accepted the same. On February 8, 1887, the amended bill changing the location of the university from Eagle Rock to Moscow came up for vote in the council. The Journal reveals the tactics employed to stave off a final determination of the university’s location.

House Bill No. 45 was taken up.
Mr. Smith moved to suspend rules and read bill by its title.
Mr. Helfrich demanded a call of the Council.

ROLL CALLED.
All present except Mr. Robb.
The sergeant-at-arms was also absent.
On motion of Mr. Smith the further call of the Council was dispensed with.
The motion prevailed.
The bill was then read a third time by its title and placed upon its final passage.
Upon the question, Shall this House bill pass? it was decided as follows:
In the affirmative were: Messrs. Helfrich, Hughes, Macmah, Smith, Watson and Mr. President—6.
In the negative were: Messrs. Beatty, Crutcher, Himrod, Jordan and Larimer—5.
Absent: Robb.
So the bill passed.

Passed by a vote of six to five the amended bill would have located the University at Moscow. Instantly recognizing this Mr. H. W. Smith of Bingham County, having voted in the affirmative, moved to reconsider the vote and to table the motion.

Moscow (population, 1890, 2,861) in the north and Eagle Rock (population, 1890, 1,688) in the southeast, thus became rivals for the territorial university. The former was still in Nez Perce County which also included two other rather sizable communities, Mount Idaho and Lewiston. The following year, 1888, the people in the northern part of the county having failed in a special election to poll sufficient votes to divide the county, proceeded to take the matter before Congress which by formal enactment created the County of Latah with Moscow as the county seat.

All through the next two years, 1887 and 1888, Moscow worked vigorously to push its claims for the territorial university. In its favor was the fact that northern Idaho needed to be appeased since sentiment was strong for annexation of that section to Washington Territory. As a matter of fact an Act of Congress in 1886 to effect just such a union had failed only because of a presidential veto by Grover Cleveland. Bingham County already possessed the insane asylum at Blackfoot which somewhat lessened its claim for an additional territorial institution. Moscow, moreover, had the advantage of an aggressive and single-minded group of citizens, including W. J. McConnell, M. J. Shields, and the town’s leading attorney, a scholar, orator and skillful politician, Willis Sweet.

Although it cannot be said that the university issue was in any sense a paramount question before the Fifteenth session of the Territorial legislature which convened in
December, 1888, it is apparent nevertheless that it was one of the items being affected by the bitter religious and political dissensions which characterized this session.

The university question came up first in the assembly or house where on January 2, 1889 Mr. Ira S. Waring of Alturas County gave notice of intent to introduce a bill relating to the establishment of a territorial university. This he proceeded forthwith to do, introducing House Bill No. 29 which was read the first and second time, ordered to be printed, and referred to the Committee on Territorial Affairs. Six days later, in the council, Mr. J. W. Brigham of Latah County also gave notice of intent to "introduce a bill entitled an Act to establish the University of Idaho." The Brigham Bill was introduced the following day, January 9, became Council Bill No. 20, was read the first and second time, and referred to the committee on printing. On January 15 the printed bill was referred to the committee on education, comprising Messrs. McPherson (Alturas), Brigham (Latah), and Taylor (Bingham).

Little was heard of the Waring Bill and I have been unable to discover its provisions. On January 23 the territorial affairs committee of the assembly, to which the bill had been referred, reported that, having had the bill under consideration, "in our opinion the affairs of the Territory are not in a suitable condition for this bill to become a law, and we also believe it to be unconstitutional, and recommend that it do not pass." The following day the Waring Bill was indefinitely postponed.

Meantime the council committee on education to which the Brigham Bill, Council Bill No. 20, had been referred, studied its provisions and recommended several modifications. One of these had to do with the selection of the board of regents and the original wording was changed to read, "which Board the Governor shall nominate, and by and with the advice and consent of the Legislative Council, appoint." Section 18 (17) of the council bill as drawn provided for a one-mill levy to establish a building fund for the incipient university. The education committee added to this section the words "and provided further that such tax shall not be levied and collected for a longer period than four years." Following committee of the whole consideration the council accepted these amendments. Two days later, January 18, the bill as now amended was up for its third reading when a further amendment was adopted reducing the terms of the members of the board of regents from three years to two years. In this form the bill passed its third reading and was sent to the house where on January 23 the chairman of the committee on territorial affairs begged "leave to recommend the passage of said bill for the following reasons, to wit:"

"That the location of the University of Idaho, at the place therein named, is desirable and appropriate, (1) because it is accessible by rail from all points in Idaho, that have railway communication with any portion of the country, (2) because it is the center of one of the richest and most populous agricultural sections in the entire Northwest, and is surrounded by a healthy moral atmosphere, and in a community, the wealth of which rests upon a foundation that can not be shaken by the vicissitudes of booms, excitement or speculation. (3) It would be recognized as an olive branch in the interest of peace and good-will extended by one section of the Territory to another, between which there has been long and bitter contentions; and in the place of discord and threats of disunion, would unite the sections in the march of progress and improvement for the entire Territory, and a speedy admission into the sovereignty of States. (4) The present value of our University lands is not great, but the improvement of the public domain by irrigation and transportation facilities will add greatly thereto. Under the provisions of the bill hereby recommended, a building fund will be created, which, by the time statehood arrives, will enable the people to erect and furnish this institution with all the equipments of a great modern school. The tax would be scarcely felt, yet the institution would be established without debt; and then with the income that may be derived from the University lands without sacrificing them, a fund may be created that will nearly, or quite, cover the running expenses of the University from the first. (5) With the

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5 Fifteenth Territorial Legislature, Journal of the Assembly, pp. 46, 49.
6 Fifteenth Territorial Legislature, Council Journal, pp. 46, 68, 74.
9 Ibid., p. 87.
small appropriation asked for in the bill, the grounds may be improved in such manner as to make the University an attractive home for the sons and daughters of Idaho, from the day it opens its doors to the public. (6) It would be one of the most powerful agents in the field in the great contest now in progress in the Northwest between rival states for desirable immigration.

Respectfully submitted,

Clay, Chairman."

The bill was then considered in committee of the whole. As originally drawn it carried the one-mill levy for a building fund. Although this was reduced in committee of the whole to one-half mill an attempt was made, but without success, to table the whole proposition and on January 24 the bill passed the house as amended. The following day the council concurred in the house amendment and ordered the bill re-engrossed for enrollment. On January 26 the bill was reported correctly engrossed, on January 29 correctly enrolled and on the afternoon of January 29 was signed by the President of the Council and the Speaker of the House, and the following day, January 30, 1889, by E. A. Stevenson, Governor of the Territory.\(^\text{11}\)

The full text of this important enactment, referred to by Judge J. H. Forney as the charter of the University, follows:

THE UNIVERSITY OF IDAHO

AN ACT

ENTITLED AN ACT TO ESTABLISH THE UNIVERSITY OF IDAHO

Be it enacted by the Legislative Assembly of the Territory of Idaho as follows:

SECTION 1. There is hereby established in this Territory, at the Town of Moscow, (sic) in the County of Latah, an institution of learning, by the name and style of "The University of Idaho."

SECTION 2. The government of the University shall vest in a Board of Regents, to consist of nine members, chosen from the Territory at large, which Board the Governor shall nominate, and by and with the advice and consent of the Legislative Council appoint. The term of office of said Regents shall be two years from the first Monday in February in the year in which appointed.

SECTION 3. The Board of Regents and their successors in office, shall constitute a body corporate, by the name of "The Regents of the University of Idaho," and shall possess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by law, and shall have the custody of the books, records, buildings and other property of said University. The Board shall elect a President, Secretary and Treasurer, who shall perform such duties as shall be prescribed by the by-laws of the Board. The Secretary shall keep a faithful record of all the transactions of the Board and of the Executive Committee thereof. The Treasurer shall perform all the duties of such office, subject to such regulations as the Board may adopt, and for the faithful discharge of all his duties shall execute a bond in such sum as the Board may direct.

SECTION 4. The time of the election of the President, Secretary and Treasurer of said Board, and the duration of their respective terms of office and the times for holding the regular annual meeting and such other meetings as may be required, and the manner of notifying the same, shall be determined by the by-laws of the Board. A majority of the Board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time.

SECTION 5. The Board of Regents shall enact laws for the government of the University in all its branches, elect a President and the requisite number of professors, instructors, officers and employees, and fix the salaries and terms of office of each, and determine the moral and educational qualifications of applicants for admission to the various courses of instruction; but no instruction either sectarian in religion or partisan in politics shall ever be allowed in any department of the University, and no sectarian or partisan test shall ever be allowed or exercised in the appointment of Regents or in the election of professors, teachers or other officers of the University, or in the admission of students thereto, or for any purpose whatever. The Board of Regents shall have power to remove the President or any professor, instructor or officer of the University, when, in their judgment, the interests of the University require it. The Board may prescribe rules and regulations for the management of the libraries, cabinet, museum, laboratories and all other property of the University and its several departments, and for the care and preservation thereof, with penalties and forfeitures, by way of damages for their violation, which may be sued for and collected in the name of the Board, before any Court having jurisdiction of such action.

SECTION 6. The Board of Regents are authorized to expend such

\(^{11}\) Ibid, Journal of the Assembly, pp. 185, 186, 140, 145, 147, 153; Council Journal, p. 121.

\(^{12}\) Council Journal, pp. 121, 124, 186, 187, 188, 142.
portion of the income of the University fund hereinafter created, as they may deem expedient for the erection of suitable buildings and the purchase of apparatus, a library, cabinets and additions thereto.

Sec. 6. At the close of each fiscal year, the Regents, through their President, shall make a report in detail to the Governor, exhibiting the progress, conditions and wants of the University, the course of study, the number of professors and students, the amount of receipts and disbursements, together with the nature, costs and results of all important investigations and experiments, and such other information as they may deem important.

Sec. 8. The President of the University shall be President of the Faculty or of the several faculties as they may be hereafter established and the executive head of the instructional force in all its departments; as such, he shall have authority, subject to the Board of Regents, to give general direction to the instruction and scientific investigation of the University, and so long as the interests of the institution require it he shall be charged with the duties of one of the professorships. The immediate government of the University shall be intrusted to the Faculty, but the Regents shall have the power to regulate the course of instruction and prescribe the books or works to be used in the several courses, and also to confer such degrees and grant such diplomas as are usual in universities, or as they shall deem appropriate, and to confer upon the Faculty by by-laws, the power to suspend or expel students for misconduct or other cause prescribed by such by-laws.

Sec. 9. The object of the University of Idaho shall be to provide the means of acquiring a thorough knowledge of the various branches of learning connected with scientific, industrial and professional pursuits, and to this end it shall consist of the following colleges or departments, to wit:

First—The College or Department of Arts.
Second—The College or Department of Letters.
Third—The professional or other colleges or departments as may from time to time be added thereto or connected therewith.

Sec. 10. The College or Department of Arts shall embrace courses of instruction in mathematical, physical and natural sciences with their application to the industrial arts, such as agriculture, mechanics, engineering, mining and metallurgy, manufactures, architecture and commerce in such branches included in the College of Letters, as shall be necessary to a proper fitness of the pupils in the scientific and practical courses for their chosen pursuits, and as soon as the income of the University will allow, in such order as the wants of the public shall seem to require, the said courses in the sciences and their application to the practical arts shall be expanded into distinct colleges of the University, each with its own Faculty and appropriate title. The College of Letters shall be co-existent with the College of Arts, and shall embrace a liberal course of instruction in language, literature and philosophy, together with such courses or parts of courses in the College of Arts as the Regents of the University shall prescribe.

Sec. 11. The University shall be open to female as well as male students, under such regulations and restrictions as the Board of Regents may deem proper.

Sec. 12. No student who shall have been a resident of the Territory for one year, next preceding his admission shall be required to pay any fees for tuition in the University, except in a professional department and for extra studies. The Regents may prescribe rates of tuition for any pupil in a professional department, or who shall not have been a resident as aforesaid, and for teaching extra studies.

Sec. 13. The Board of Regents herein provided for, shall be appointed immediately after this act becomes a law; and within ninety days after the appointment of said Regents, the Board shall meet at Boise City and elect a President, Secretary and Treasurer thereof, and shall at said meeting adopt by-laws for the government of said Board and the officers chosen by virtue of this act.

Sec. 14. The sum of fifteen thousand dollars is hereby appropriated out of any money in the Territorial Treasury of Idaho, not otherwise appropriated, and the Territorial Comptroller is hereby authorized to draw his warrant on the Territorial Treasurer for said amount, and the Territorial Treasurer is hereby directed and commanded to pay the same, as hereinafter provided, which money shall be expended for the following purposes, to wit:

First—The purchase of a site or grounds for said University, said location to consist of not less than ten nor more than twenty acres of ground, and for the improvement of the same, and for keeping the same in repair.

Second—To advertise for and obtain plans and specifications for a University building under such rules and regulations as the Board may impose.

Third—For the payment of the necessary expenses of said Board, as hereinafter provided.

Sec. 15. The President and Secretary ex-officio, and one member of the Board to be appointed by the President thereof, shall constitute an Executive Committee of said Board, whose duties shall be prescribed by the by-laws of the Board.

Sec. 16. Upon executing and filing with the Territorial Treasurer a good and sufficient bond, in whatever sum the Board of Regents shall direct, provided said bond shall have been first approved by the Territorial Attorney-General, the Territorial Treasurer shall pay over to the Treasurer of said Board, the sum of fifteen thousand dollars, or
so much thereof as may be available; and in the event said sum is not paid in full upon the execution and delivery of said bond as aforesaid, then the remainder of said sum shall be transferred to the Treasurer of said Board as speedily as the fund shall accumulate therefor.

Sec. 17. The Treasurer of said Board shall, out of any moneys in his hands belonging to said Board, pay all orders drawn upon him by the President and Secretary thereof, when accompanied by vouchers fully explaining the character of the expenditure, and the books and accounts of the Treasurer shall at all times be open to the inspection of the Board. The Treasurer shall make an annual report to the President of the Board of all transactions connected with the duties of his office.

Sec. 18. There shall be levied and collected annually, a Territorial tax of one-half mill for each dollar of the assessed valuation of the taxable property of the Territory, which amount, when so levied and collected, shall be appropriated to a University Building Fund, to remain in the Treasury subject to the order of the Board of Regents; but in no event shall said Board appropriate the fund thus collected, or any portion thereof, to any purpose other than that for which said fund was provided; and provided further, that said tax shall not be levied and collected for a longer period than four years.

Sec. 19. The Regents shall receive the actual amount of their expenses in traveling to and from and in attendance upon all meetings of the Board, or incurred in the performance of any duty in pursuance of any direction of the Board; accounts of such expenses shall be duly authenticated and audited by the Board, and be paid on their order by the Treasurer out of any fund belonging to the University not otherwise appropriated; no Regent shall receive any pay, mileage or per diem except as above prescribed.

Sec. 20. This act shall take effect and be in force from and after its passage.

Approved January 30, 1889.13

This statute is of first importance because under Article IX of the State Constitution its provisions are in effect made a part of the organic law of the State. Judge Forney in fact referred to it as the university charter. Its significance was recognized in the Constitutional Convention and its virtual inclusion in the Constitution itself was indeed opposed by William H. Claggett of Shoshone County, president of the convention, who, in the course of debate on the univer-

13 General Laws of the Territory of Idaho, Fifteenth Session, p. 17 E.

control and direction of all the funds of and appropriations to the University, under such regulations as may be prescribed by law." 15

The entire debate on that portion of the Constitution affecting the University follows:

The Convention was in session Tuesday, July 23, 1889 and, after a recess, was sitting in Committee of the Whole at which time Article IX of the proposed Constitution was under consideration. Coming to a proposed Section 10, the

SECRETARY reads Section 14 (10) and it is moved and seconded that the same be adopted.

Mr. CLAGGET. I move to strike that out.

Mr. BEATTY. I move to strike out a portion of it.

Mr. SWEET. I will offer a substitute, which I will read: "The location of the University of Idaho, as established by existing laws, is hereby confirmed. All the rights, immunities, franchises and endowments heretofore granted by the territory of Idaho are hereby perpetuated unto the said University. The regents shall have the general supervision of the university and exclusive control and direction of all the funds of, and appropriations to the university, under such regulations as may be prescribed by law." I move its adoption. (Seconded). The CHAIR. It is moved and seconded that the substitute offered be accepted.

Mr. CLAGGET. It was all well enough for the territory of Idaho to provide for franchises and so on in regard to this university at Moscow, because the territory of Idaho through its legislature had the full power to modify, change or repeal those provisions at any time; but when we come in here and make it a part of the organic law of the state perpetuating the territorial status, and taking the whole subject of the control of the university and university funds away from the legislature and away from any and every other authority, and of the lands also given to the university, I think we are going altogether too far, and I offer as a substitute that the section be stricken out, and the whole matter can be left to the legislature, just as it is left to the legislature now, which is where it ought to be left.

Mr. SWEET. The substitute does leave it to the legislature, and directs that all appropriations and moneys appropriated to the university shall be handled by the regents as prescribed by law. It simply confirms an act that has been already accomplished, and does not take from the state of Idaho any control over this institution, nor do we seek to do it.

here, if we do not put it in the organic law, and change the location of this university. I am in favor of its staying where it was put. It went there by the unanimous consent of the people, almost, through the legislature, and we want it to remain there in northern Idaho. The other institutions of the state are down here in southern Idaho, and permanently located by this instrument, and I want this instrument to speak out as plainly for any institution we have in the north as it does for the institutions we have in the south.

Mr. Ainslie. It seems to me that the provisions of this Section 14 (10) are within the province of the Committee on Schedule, for this committee to take up, as they are to report (reading) "the manner and time of the submission of the constitution to the people for adoption, and to consider and report the preservation of existing rights and existing laws in the transition of the territorial to a state government." I do not believe there is any probability of the rights of the University of Idaho being interfered with. I suppose the decision of the Dartmouth College case would govern that; it is liable to be good law yet. I think the motion to strike out is correct.

Mr. Beatty. I do not want to be understood as aiming or attempting to injure the university; that is not the object of the suggestions I made at all. I claim that the provisions in that section there are simply what the law now guarantees to that university. I propose to strike out the authority and power given the regents, because the sections above that with reference to the appointment of regents are stricken out, and, more than that, I would not be willing to leave this authority and power in the hands of the regents; I would rather strike it out entirely.

Mr. Reid. I call the gentleman's attention to the fact that the danger of arbitrary power is limited by the words "as prescribed by law."

Mr. Beatty. Yes, but I will ask the gentleman then, why put it in? Why name the regents, and at the same time leave their power—

Mr. Reid. I have no particular desire to put that part in; I don't think it does any good or any harm. All I want in is the location of the university to be established, and I want the place fixed.

Mr. Beatty. Well, I think the place of the university is fixed, and I do not suppose anybody proposes to change that, and I do not suppose anyone proposes to interfere with the rights and immunities already granted by the legislature.

Mr. Reid. I think the gentleman who offered the substitute does not care particularly about that part of it, and I would suggest that he drop that part of it, so far as the powers of the regents are concerned. After the establishment of the university, it follows that it can come clothed with the machinery and powers necessary, and he could leave that part of it out; but there is a part, the establishment of the university, its location and the form of its government, which is important.

Mr. Beatty. If that is all the gentleman desires, I have no objections; for one, to that; only I think it is unnecessary to repeat in the constitution; but if they desire it and it is any benefit to them, or more permanently secures the institution to them, certainly leave it in; but I do not think it does. I think their rights are already fully provided for. But if that substitute goes in, I would insist on having stricken from it the last clause furnishing regents all their power, commencing with the words: "the regents shall have," and so on.

Mr. Ainslie. That is practically the law as it is now. Mr. Chairman, when this question was before the convention the other day on another article, it was so broad as perhaps to induce the convention to believe that there was a desire on the part of the friends of that institution to prevent any co-ordinate branch of that institution ever going to any other portion of the territory. It occurred to me in reading over this bill that the same objection might be raised to Section 14 (10). I therefore consulted the chairman of the bill and told him I believed it raised that difficulty, and asked permission to submit a substitute that I thought would obviate that objection. That substitute I have now submitted. I do not care particularly about those words submitted by Judge Beatty. It is the substance of the law as it now exists. So far as Mr. Ainslie's point is concerned, that would also go to the question raised by Judge Beatty. All I desire is, the authority under this constitution to transfer that institution, just the same as the committee on Schedule will transfer the insane asylum and the penitentiary and the capitol to the people of the state, together with the location of those institutions.

Now this provision is less specific, it does not go as far as the other articles in this constitution locating these public buildings, and I do not care that it should, because I do not wish to legislate in the matter myself, but I have simply submitted it, and I am not caring about striking out Sections 12 and 13 because Judge Claggett says they are legislation—they are all provided in this bill—which, after the substitute is adopted we can report through the committee on Schedule, as was suggested by Mr. Ainslie.

There is nothing unfair in this substitute; there is nothing in it under which the present management of the university can cut off any co-ordinate branch of that institution, and so far as I am concerned I would be most happy to see a very prosperous and successful co-ordinate branch of it in every city in Idaho, because I do think, with our climate, with our peculiar resources, our peculiar location, we should have the finest state from an educational point of view in the
Union. I believe we can have it. We have commenced without running in debt; we have commenced the building of the state university. We can commence pretty soon on its co-ordinate branches without running in debt, and in a very short time we can have a reputation second to no state on the coast, having our educational advantages, and at the same time not being in debt one solitary cent for them. And I beg leave to suggest to the convention, and I believe you will accept it if true, that there is no institution in connection with this state, there is no feature of the state, if we are admitted into the Union, that will be more cherished by the people of this country who are seeking homes, than first class educational institutions; and this simply emphasizes what the legislature has said upon that proposition, without robbing or intending to interfere in the location of any co-ordinate branch in that part or portion of the state. And when it comes to that particular work of building up the educational interests of Idaho, you will find the people of Moscow and that portion of the territory generally, who I dare say are as much interested in the educational progress of the territory, and who already take great pride in building up this institution, ready to help any other part of the territory to some co-ordinate branch of that institution.

Mr. SHOUP. I would like to hear the substitute read.

SECRETARY reads the substitute again.

Mr. BEATTY. I desire to make an amendment to that last clause first.

The CHAIR. The question is upon the adoption of the substitute.

Mr. CLAGETT. I would like to ask the gentleman if he would be kind enough to strike out that word "exclusive" in the last line?

Mr. SWEEF. Yes, I will do that.

Mr. BEATTY. Well, that is all we ask.

Mr. SHOUP. I will say, in regard to this section, that it is precisely the same as a section in the constitution of Minnesota. That territory had also a territorial university just as we have, and it was transferred to the state when Minnesota became a state, and this section is copied verbatim from the constitution of Minnesota. (Cries of "Question.")

The CHAIR. I understand it is stricken out by consent?

Mr. SWEEF. Yes, it may be stricken out, the word "exclusive."

The CHAIR. The question before the committee is upon the adoption of the substitute of Mr. Sweet. (Vote and carried.) The substitute is adopted.16

What are the rights, immunities, franchises and endowments of the University perpetuated in the Constitution? A careful reading of the statute of 1889 indicates that they may be listed as follows:

1. The location of the University of Idaho at Moscow.
2. Government of the University by an appointive board.
3. Creation of the Board of Regents as a body corporate possessing the usual corporate powers and with financial control over the University.
4. Power of the Board of Regents to
   (a) enact "laws" for the government of the institution;
   (b) appoint and remove personnel of the University;
   (c) establish entrance requirements;
   (d) set tuition fees in all professional departments.
5. Compulsory offering at the University of instruction in agriculture, mechanics, engineering, mining and metallurgy, manufacturing, architecture, commerce, language, literature and philosophy.
6. Creation of "distinct colleges of the University each with its own faculty," as need might arise.

It is clear from the debates in the convention that the first of these, the permanent location of the University of Idaho at Moscow, was uppermost in the mind of Mr. Willis Sweet, who represented Latah County in the Convention and that he was ably supported by Mr. James W. Reid of Nez Perce County. It was the latter who said, "Now the capital is located, the insane asylum is located in the same bill and no objection was made to that. I am in favor of this [Section 10] and the main reason is because it located this university . . . The other institutions of the state are down here in southern Idaho and permanently located by this instrument, and I want this instrument to speak out as plainly for any institution we have in the north as it does for the institutions we have in the south."17

No sooner was the constitution adopted, statehood attained and sessions of the new state legislature under

17 Ibid., p. 768.
power either to remove from Moscow any part of the University as at present constituted or to discontinue any such part of the University and to re-establish it any other place because:

(1) The Constitution by its terms fixes in Moscow the site of the University and of all its component parts, including the College of Agriculture;

(2) Such a statute would be an unconstitutional impairment of the power of management and control over the University granted to the State Board of Education and Board of Regents of the University of Idaho.

THE CONSTITUTION BY ITS TERMS FIXES IN MOSCOW THE SITE OF THE UNIVERSITY AND ALL ITS COMPONENT PARTS, INCLUDING THE COLLEGE OF AGRICULTURE.

Article IX, Section 10, of the Constitution of Idaho provides:

"The location of the University of Idaho, as established by existing laws, is hereby confirmed. All the rights, immunities, franchises, and endowments, heretofore granted thereto by the territory of Idaho are hereby perpetuated unto the said university. The regents shall have the general supervision of the university, and the control and direction of all the funds of, and appropriations to, the university, under such regulations as may be prescribed by law."

It is to be noted that the Constitution confirms "the location of the University of Idaho as established by existing laws." The only "existing laws" to which this section could have referred was the Organic Act establishing the University of Idaho (Territorial Laws, 1889, page 17). Article 1 of this Act provides: "There is hereby established in this Territory, in the Town of Moscow, in the County of Latah, an institution of learning, by the name and style of the 'University of Idaho.'" Sections 9 and 10 of this same Act provide:

"The object of the University of Idaho, shall be to provide the means of acquiring a thorough knowledge of the various branches of learning connected with scientific, industrial and professional pursuits, and to this end it shall consist of the following colleges or departments, to wit:

First—The College or Department of Arts.
Second—The College or Department of Letters.
Third—The professional or other colleges or departments as may from time to time be added thereto or connected therewith.

"The College or Department of Arts shall embrace courses of instruction in mathematical, physical and natural sciences with
their application to the industrial arts, such as agriculture, mechanics, engineering, mining and metallurgy, manufactures, architecture and commerce in such branches included in the College of Letters, as shall be necessary to a proper fitness of the pupils in the scientific and practical courses for their chosen pursuits, and as soon as the income of the University will allow, in such order as the wants of the public shall seem to require, the said courses in the sciences and their application to the practical arts shall be expanded into distinct colleges of the University, each with its own faculty and appropriate title. The College of Letters shall be co-existent with the College of Arts, and shall embrace a liberal course of instruction in language, literature and philosophy, together with such courses or parts of courses in the College of Arts as the Regents of the University shall prescribe."

It will be noted that the Act specifically includes as a part of the College or Department of Arts instruction in agriculture and provides further that in due course the courses named may be "expanded into distinct colleges of the University, each with its own faculty and appropriate title." Pursuant to this authority the Board of Regents of the University of Idaho has expanded the course in agriculture into the present College of Agriculture.

Simple inspection of this statute, which is necessarily incorporated by reference into Article IX, Section 10, of the Constitution, should make it evident that the Constitution establishes at Moscow the College of Agriculture of the University and that the College of Agriculture can be removed only by amendment of the Constitution regularly submitted in the required manner. Any doubt as to what the legislative intent was is removed by reference to the Proceedings of the Idaho Constitutional Convention, Volume 1, pages 766-772. The reasons underlying such constitutional provisions are also set forth in detail in *Sorley v. Regents of the University of Michigan*, 110 Michigan 263, 68 N.W. 253 (1896), hereinafter discussed.

Judicial authority as to the legal effect of such constitutional provisions is necessarily scanty. It happens, however, that there are two cases in point. The Constitution of the State of Colorado provides as follows: "The following territorial institutions, to wit, the University at Boulder, the agricultural college at Fort Collins, the school of mines at Golden, the Institute for the education of youth at Colorado Springs, shall, upon the adoption of this Constitution, become institutions of the state of Colorado." Further provisions of the Constitution state: "The location of said institutions, as well as all gifts, grants, and appropriations of money and property, real and personal, heretofore made to the said several institutions, are hereby confirmed to the benefit and use of the same, respectively." In an advisory opinion entitled *In re Senate Resolution Relating to State Institutions*, 9 Colorado 626, 21 Pacific 472 (1886), the court was requested to answer the following question: "Does the Constitution prohibit the removal by either the institutions referred to in said section from their present location, or the consolidation of any two or more at the present location of any one or at some place remote from the location of either?" The court in a brief opinion said:

"If the framers of the constitution had not regarded section 5 as permanently locating the institutions named, it is reasonable to suppose that they would have made some explicit provision with regard to their permanent location, as they did in the case of the state capital (section 2), and likewise prohibited any expenditure in advance, as in section 4. The absence of such provisions supports the construction which we have given. It follows that the locations of the institutions named, or of any one of them, cannot be changed, except by an amendment to the constitution."

It is well to note the point made by the Colorado court that the failure to make any provision in the Constitution for the removal of the state institutions, while at the same time incorporating an express provision for the removal of the state capital, evidences a clear intent that the institutions shall be removed only by constitutional amendment. We have in Idaho precisely the same situation, and Article X, Section 2, of the Idaho Constitution locating the seat of government at Boise City does provide that the seat of government may be removed in a manner there prescribed.

The Regents of the University of Colorado, an institution located in the City of Boulder by the Colorado Constitution as above quoted, undertook in 1892 to remove to the city of Denver the last two years of the medical course. In *People ex rel. Jerome v. Regents of the University of Colorado*, 24 Colorado 176, 49 Pacific 286 (1897), the supreme court of Colorado ordered the Regents to cease operation in Denver and to re-establish the entire medical course in the City of Boulder as required by the Constitution. The court said, "our Constitution confirms the location of the University of Colorado at Boulder and our statute but reaffirms it. The location of the University includes all its departments and every part thereof." These two Colorado cases constitute the only judicial authority on constitutional provisions similar to those in this state. The import of these cases is clear. The people of the state by the Constitution have fixed the location of the state university and all its departments and parts expressly including, in Colorado, the College of Agriculture, and only the people of Colorado can discontinue or remove the University or any of its departments or parts. Neither the state legislature nor the Board of Regents, nor the
two combined, have authority to defeat the will of the people, as expressed in the Constitution.

II

SUCH A STATUTE WOULD BE AN UNCONSTITUTIONAL IMPAIRMENT OF THE POWERS OF MANAGEMENT AND CONTROL OVER THE UNIVERSITY GRANTED TO THE STATE BOARD OF EDUCATION AND BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO.

At this point we refer again to Article IX, Section 10, of the Constitution as quoted above. It will be noted that this provision states: "All the rights, immunities, franchises, and endowments heretofore granted thereto by the territory of Idaho are hereby perpetuated unto the said University. The regents shall have the general supervision of the university, and the control and direction of all funds of, and appropriations to, the university, under such regulations as may be prescribed by law." In considering what rights, immunities, and franchises are conferred by this section, we must again refer to the Organic Act of 1889, cited above. This statute by its terms grants to the Regents an exceedingly wide discretion in the management of the University. These provisions are substantially unchanged in Idaho Code Annotated, 1932, Title 32, Chapter 29. It has been judicially determined that this provision of the Constitution established the Board of Regents of the University of Idaho as a constitutional corporation, and as long as the Regents are acting within the scope of the authority conferred upon them by the Organic Act of 1889 frees the Regents from supervision or control by other constitutional bodies.

In State ex rel. Black v. State Board of Education and the Board of Regents of the University of Idaho et al., 33 Idaho 415, 196 Pacific 201 (1921), the problem at issue was whether the statutes of the State of Idaho referring to the State Board of Examiners could be constitutionally applied so as to give the State Board of Examiners or any other legislative agency supervision or control over funds of the University of Idaho not derived from state appropriations. In holding that the legislature could not in such manner interfere in the internal management or control of the University of Idaho, the court said:

"The regulations which may be prescribed by law and which must be observed by the regents in their supervision of the university, and the control and direction of its funds, refer to methods and rules for the conduct of its business and accounting to authorized officers. Such regulations must not be of a character to interfere essentially with the constitutional discretion of the board, under the authority granted by the constitution.

"This necessarily follows for the reason that the board of regents is a constitutional corporation with granted powers, and while functioning within the scope of its authority, is not subject to the control or supervision of any other branch, board or department of the state government . . . ."

That this would still be considered the constitutional position of the Board of Regents is plainly indicated in State ex rel. Taylor v. Robinson, 83 Pacific (2d) 982, decided October 25, 1939, in which the court again affirmed that the State Board of Education is:

"a constitutional corporation, succeeding by the Constitution to all the rights and privileges of the Board of Regents brought into existence at the time the University was established by the Territorial Legislature prior to the adoption of the Constitution, and that as such constitutional corporation, therefore the highest form of juristic person known to the law and of independent authority, had its own treasurer and fiscal set-up and thus within the scope of its authority in regard thereto was of equal dignity with the State Board of Examiners and not subservient thereto;"

There is no further direct authority as to the scope of the powers conferred upon the Board of Regents. However, since the Idaho constitutional provision is copied from Article VIII, Section 4, of the Constitution of Minnesota, it becomes pertinent to inquire as to the effect given this Minnesota provision in the Minnesota courts. In Fanning v. The University of Minnesota, 183 Minnesota 222, 236 N.W. 217 (1931), involving the question of whether the University could without any further authority contract for the erection of buildings and pledge for the payment thereof various university receipts other than those derived from the state legislature, the court held that the power of the legislature to control the disposition of the funds appropriated by it did not include the power to control the use of other receipts. This is precisely the holding in State ex rel. Black v. State Board of Education, supra. The Minnesota Court said:

"Of the effect of the adoption of the Constitution there is no doubt. The people by their Constitution chose to perpetuate the government of the university which had been created by their territorial legislature in a board of regents, and the powers they gave are not subject to legislative or executive control; nor can the courts at the suit of a taxpayer interfere with the board while governing the university in the exercise of its granted powers. This does not mean that the people created a corporation or institution which is above the law. The board must keep within the limits of its grant. It is charged with the duty of maintaining a university for the purpose of higher education. This does not mean that the
The statute and Constitution intended a university which would grow and develop and undertake activities in the way of research and in other respects not then visualized in the dreams of its founders. There are many things which the board may not do. It does not claim otherwise. In a real sense the property of the university is the property of the state which through its taxpayers is its chief supporter. The board cannot divert it to anything other than university purposes. It must govern a university which the territorial statute and the Constitution established and perpetuated. The people gave it in charge of the board and may take it away as they gave it; for, after all, when the theorizing as to the relationship of the board and the university and the state is at an end, the university is the people's university. It does not rule; it serves."

Assuming, as we must, a broad discretionary power in the Board of Regents in the management of the University, constitutionally free of legislative interference and control, the sole remaining problem is whether this discretion includes control over the departments or courses of instruction to be established or maintained as a part of the University. The only authority on this point is to be found in the State of Michigan. After several unfortunate instances of legislative interference, the people of Michigan in enacting the Constitution of 1850 created the Board of Regents as a constitutional corporation and in Article XIII, Section 8, provided that "The Board of Regents shall have the general supervision of the University and the direction and control of all expenditures from the University fund." It will be noted that this provision is not as broad as that contained in the Idaho Constitution and the Organic Act of the University incorporated into the Constitution by reference. It will also be noted that the Michigan Constitution is silent as to the location of state institutions. The Michigan cases noted below should therefore constitute exceedingly persuasive authority.

In 1899 the Michigan legislature purported to require the regents of the University of Michigan to discontinue the department of homopathic medicine theretofore conducted as a part of the University at Ann Arbor and to transfer the same to the city of Detroit. The Board of Regents refused to comply with this statute and the Supreme Court in an exhaustive opinion in Sterling v. Regents of the University of Michigan, 116 Michigan 369, 68 N.W. 253 (1899), concluded that the statute was beyond the power of the legislature. The opinion in part follows:

"By the power claimed, the legislature may completely dismember the university, and remove every vestige of it from the city of Ann Arbor. It is no argument to say that there is no danger of such a result. The question is one of power, and who shall say that such a result may not follow? The legislature did once enact that there should be a branch of the University in every judicial circuit. If the Regents comply with the present act, the next legislature may repeal it, and restore that department to the university at Ann Arbor, or place it elsewhere. Some legislatures have attached conditions, and they have the undoubted right to do so, to appropriations for the support of the university, and a subsequent legislature has removed the conditions. Some legislatures have attached to appropriations the condition for the establishment of a homopathic professorship in the old medical department. Other legislatures have refused to attach any such condition. What permanency would there be in an institution thus subject to the caprice and will of every legislature? Under this power, the legislature could remove the law department from the University at Ann Arbor to Detroit, and provide that the law library to which one citizen of Michigan has donated $20,000, could also be removed. It might scatter the great library (to the collection of which private citizens have contributed nearly or quite one-half), and also its great museums, laboratories, and mechanical appliances. Other results will readily suggest themselves. It appears to us impossible for such an act to exist. Further, it renders nugatory the express provision of the constitution that 'the regents shall have the direction and control of all expenditures from the university interest fund.'

"No state institution in America has prospered as well as independent colleges, with equal, and often with less, means. Why they have not may be ascribed, in part, to the following causes: They have not been guided by that oneness of purpose and singleness of aim (essential to their prosperity) that others have whose trustees are a permanent body—men chosen for their supposed fitness for that very office, and who, having become acquainted with their duties, can and are disposed to pursue a steady course, which inspires confidence and assures success, to the extent of their limited means. State institutions, on the contrary, have fallen into the hands of the several legislatures, fluctuating bodies of men, chosen with reference to their supposed qualifications for other duties than cherishing literary institutions. When legislatures have legislated directly for colleges, their measures have been as fluctuating as the changing materials of which the legislatures were composed. When they have acted through a board of trustees, under the shibboleth of giving a representation to all, they have appointed men of such dissimilar and discordant characters and views that
they never could act in concert; so that, whilst supposed to act for and represent everybody, they, in fact have not and could not act for anybody. Again, legislatures, wishing to retain all the power of the state in their own hands, as if they alone were competent or disposed to act for the general good, have not been willing to appoint trustees for a sufficient length of time for them to become acquainted with their duties, to become interested in the cause which they were appointed to watch over, and feel the deep responsibility of the trust committed to them. A new board of trustees, like a legislature of new members, not knowing well what to do, generally begin by undoing and disorganizing all that has been done before. At first they dig up and seed a few times, to see that it is going to come up and, after it appears above the surface, they must pull it up, to see that the roots are sound; and they pull it up again, to see if there is sufficient root to support so vigorous branches; then lop off the branches for fear they will exhaust the root, and then pull it up again, to see why it looks so sickly and pining, and finally to see if they can discover what made it die. And, as these several operations are performed by successive hands, no one can be charged with the guilt of destroying the valuable tree. Whilst state institutions have been through the jealously of state legislatures, thus sacrificed to the impatience and petulance of a heterogeneous and changeable board of trustees, whose term of office is so short that they have not time to discover their errors, it is nor surprising that state universities have hitherto, almost without exception, failed to accomplish, in proportion to their means, the amount of good that was expected from them, and much less than colleges in their neighborhood, patronized by the religious public; watched over by a board of trustees of similar qualifications for duty, and holding the office permanently, that they may profit by experience. The argument by which legislatures have hitherto convinced themselves that it was their duty to legislate universities to death is this: 'It is a state institution, and we are the direct representatives of the people, and therefore it is expected of us; it is our right. The people have an interest in this thing, and we must attend to it.' As if, because a university belongs to the people, there were reason why it should be dosed to death for fear it would be sick, if left to be nursed, like other institutions, by its immediate guardians. Thus has state after state, in this American Union endowed universities, and then, by repeated contradictory and over-legislation, torn them to pieces with the same facility as they do the statute book, and for the same reason, because they have the right."

Under the Constitution of Michigan, as it existed in 1913, the State Board of Agriculture as a supervising board of the Michigan Agricultural College was constituted as a constitutional corporation with powers similar to those of the Board of Regents of the University of Michigan, and similar to, but not so extensive as, those of the Board of Regents of the University of Idaho. By an act of 1913, the Michigan legislature, as a condition to its annual tax levy and appropriation, stipulated that no part of the money appropriated or any other funds in excess of $35,000 per year should be expended upon the engineering department of the agricultural college. With this condition the State Board of Agriculture refused to comply and brought action against the auditor-general to compel the release to the College of the state funds. The issue, as presented to the Michigan supreme court, was whether under the constitutional provisions the legislature could impair the discretion of the State Board of Agriculture in determining what courses or subjects were to be taught at the state college. The court by unanimous opinion in State Board of Agriculture v. Fuller, 180 Michigan 349, 147 N.W. 629 (1914), held that such power did not exist in the legislature, although conceding the power of the legislature to restrict the use of the money which the legislature itself appropriated. The Michigan Agricultural College, like the University of Idaho, had income from sources other than the state legislature. The court said:

"If section 1(a) be held to be valid, its effect would be legislative supervision of the college. To determine that a department of the college which has been maintained at a cost of $60,000 annually for instructors and supplies shall be from a given date maintained at a cost of $35,000 annually for instructors and supplies is to determine that it shall have fewer supplies, or fewer, or less capable, instructors, or both. It is something more than reducing a general appropriation so that the expenses in some or in all departments of the college must be reduced, leaving the proper supervisors to determine how efficiency can be best maintained under new conditions. The Constitution has given to the relator the general supervision of the college and the direction and control of all Agricultural College funds."

It is to be noted, that this case is cited with approval by the Idaho court in State ex rel. Black v. State Board of Education, etc., 33 Idaho 415, 196 Pacific 201 (1921).

In view of the Idaho constitutional provisions, as construed and applied by the Idaho court, and in view of the construction placed upon similar provisions in other states, it seems clear that it is the constitutional prerogative of the Board of Regents of the University of Idaho to determine what courses of instruction will be offered in the
CONCLUSION

In view of the authorities above cited, it seems clear that any statute of the Idaho legislature purporting either to remove or to discontinue the College of Agriculture, or any other component part of the University, would be unconstitutional and void, and so would be declared by the Supreme Court of Idaho.

Judge Forney and Dean Howard state the University’s position clearly and unmistakably, which is that the legislature may indeed create additional schools of Mines, or Agriculture or Engineering, to mention three divisions in which duplication has been from time to time proposed, or it may even create a university in every county seat, but it can not, without amendment to the State Constitution, destroy or eliminate such schools or colleges as are integral parts of the State University, or remove the University of Idaho or any of its parts from Moscow. Such a move would require nothing less than a constitutional amendment.

Prominent among the rights, immunities and franchises perpetuated to the University under the Constitution, and listed second in the above list, is the right to be governed by an appointed Board of Regents. “The government of the University shall vest in a Board of Regents, to consist of nine members, chosen from the Territory at large, which Board the Governor shall nominate, and by and with the advice and consent of the Legislative Council, appoint.”

The significant feature of this provision is the basis of selecting the Board. While the number of regents and the length of their terms may vary and in fact has varied from time to time pursuant to legislative regulations on this matter, the legislature has never undertaken to abandon appointment and substitute election as the basis of selection, nor is it likely that the Supreme Court would countenance any change in this respect. Said George Ainslie in the debate on this point in the Constitutional Convention, “I suppose

the decision of the Dartmouth College case would govern that; it is likely to be good law yet.”

The provisions of the original territorial Act whereby the entire board went into office and went out of office together naturally prevented any continuity of policy in the operation of the institution. The legislature of 1899, consequently, undertook to correct this situation, but without changing the basic principle of appointment, by providing overlapping terms so that, of the members appointed in 1899, three would serve for two years, three for four years, and three for six years, with their respective successors appointed for the full term of six years. Despite this attempt to provide continuity within the board and prevent the governor from using his power of appointment to the Board of Regents for political ends, partisan politics apparently continued to enter the picture. Governor Steunenberg, the first Democratic state governor of Idaho, it was alleged, took advantage of the provision of the act of 1899 to appoint an overwhelmingly Democratic Board of Regents. To prevent this situation from recurring, the next session of the legislature, 1901, reduced the size of the Board from nine to five, retained the principle of overlapping terms, but added the provision that “the said Board shall be non-partisan, no more than three of whom shall be of the same political party.” Here the matter rested until 1911 when the administration and direction of the state’s entire educational system was overhauled.

The second session of the state legislature, 1898, had created the Lewiston State Normal School governed by a board of six trustees with overlapping terms of six years each, and the Albion State Normal School governed by seven trustees, the seventh being the State Superintendent of Public Instruction. As in the case of the Lewiston State Normal School the appointed trustees held office for overlapping terms of six years each. Partisan politics entered
largely into the Albion situation with the result that the legislature of 1897 reduced the number of its board of trustees to five, added the provision that it should be "non-partisan," with not more than three members of the same political party and eliminated the State Superintendent of Public Instruction from membership entirely.

By the year 1911, consequently, there were no less than five educational boards. Exercising control over the public schools was the State Board of Education, a purely political body provided for in the State Constitution and comprising "the Superintendent of Public Instruction, the Secretary of State, and the Attorney General who shall constitute the Board of which the Superintendent of Public Instruction shall be president." The University of Idaho was governed by a bi-partisan board of five regents, all of them appointed by the governor with overlapping terms. Lewiston State Normal School was governed by an appointed board of six trustees without any partisan limitations and Albion State Normal School by a board of five trustees with strict partisan restrictions. In both the normal schools the trustees were appointed by the governor on the basis of overlapping terms.

The Academy of Idaho, created by the legislature in 1901, was governed by a non-partisan board of trustees consisting of six members, no more than three of whom might be of the same political party, who were appointed by the governor for overlapping terms of six years each.

The ex-officio state board of education controlling the public schools and the board of regents governing the State University were constitutional bodies whose basic composition and method of selection could not be changed without an amendment to the constitution. The two normal schools and the Academy of Idaho, on the other hand, were creations of the legislature, the composition and selection of their governing bodies subject wholly to legislative wisdom or legislative whim.

The constitutional amendment approved at the legislature of 1911 for submission to the electorate and ratified by the latter in the general election of 1912, undertook to do two things, first, to provide a non-political board of education to supervise the public school system, and, second, to accord to the other state-supported educational institutions many of the constitutional protections already enjoyed by the State University. The proposed amendment as passed by the Eleventh session is as follows:

HOUSE JOINT RESOLUTION No. 30

PROPOSING THE AMENDMENT OF SECTION 2, OF ARTICLE 9, OF THE CONSTITUTION OF THE STATE OF IDAHO; SUBMITTING TO THE ELECTORS OF SAID STATE FOR THEIR REJECTION OR APPROVAL THE QUESTION WHETHER SECTION 2, ARTICLE 9, OF THE CONSTITUTION OF THE STATE OF IDAHO SHALL BE SO AMENDED AS TO AUTHORIZE THE APPOINTMENT OF A STATE BOARD OF EDUCATION, THE MEMBERSHIP, POWERS AND DUTIES OF WHICH SHALL BE PRESCRIBED BY LAW.

Be It Resolved by the Legislature of the State of Idaho:

SECTION 1. That Section 2, Article 9, of the Constitution of the State of Idaho be amended to read as follows:

SECTION 2. The general supervision of the State Educational Institutions and public school system of the State of Idaho, shall be vested in a State Board of Education, the membership, powers and duties of which shall be prescribed by law. The State Superintendent of Public Instruction shall be ex-officio member of said board.

SECTION 2. (sic) The question to be submitted to the electors of the State of Idaho at the next general election shall be as follows: "Shall Section 2 of Article 9 of the Constitution of the State of Idaho be so amended that the general supervision of the Educational Institutions and Public School System of the State of Idaho shall be vested in a State Board of Education, the membership, powers and duties of which shall be prescribed by law?" The State Superintendent of Public Instruction shall be ex officio member of said board.

SECTION 3. The Secretary of State is hereby authorized to make publication of this constitutional amendment in each county of the State of Idaho for at least six (6) consecutive weeks prior to the next
general election in not less than one (1) newspaper of general circulation published in each county.

Passed House February 27, 1911.
Passed Senate March 3, 1911.24

This amendment deserves further comment. In the first place it will be noted that it is an amendment to Section 2 of Article IX of the constitution, the section which had provided that “the general supervision of the public schools of the state shall be vested in a board of education, whose powers and duties shall be prescribed by law; the Superintendent of Public Instruction, the Secretary of State, and Attorney General shall constitute the Board of which the Superintendent of Public Instruction shall be president.” This ex officio political board now disappears and an appointed board takes its place. The amendment, however, does not extend beyond this particular section of the constitution. It leaves unchanged and unaffected Section 10 of Article IX which governs the University, nor in submitting the amendment to Section 2 of Article IX to the electorate was there any pretense or intimation that the rest of Article IX, including Section 10 regarding the University was in any way to be affected or altered.

Can it be said, however, that this amendment to Section 2 of Article IX in effect also amends Section 10? In other words, is the University Board of Regents as provided for in the latter section dissolved and supplanted by the new state Board of Education provided for in the amended fourth section? Do the “State educational institutions” mentioned in the amendment, include the University of Idaho or is it to be thought as applying to those educational institutions created by the state as distinguished from the territorial and constitutional educational institution known as the University of Idaho? Can an amendment to one section of the constitution be so broadly construed as, in effect, to amend also some other section of the constitution without specific reference to the latter? These are nice questions. They have

never been answered. Perhaps they never need be answered.

The only question that might seemingly arise in this connection is whether or not the State Superintendent of Public Instruction is a voting member of the Board of Regents and this is only likely to be questioned in the event of a divided vote on a bond issue or other contractual obligation where strict legality must be observed. If the amendment is, by implication, an amendment to Section 10 as well as an amendment to Section 2 of Article IX, then the State Superintendent of Public Instruction is indeed a voting member of the new Board which, it would have to be assumed, supplants not only the former ex officio board of education governing the public schools, but also supersedes the former board of regents. If the amendment does not affect Section 10 then the State Superintendent is not a voting member, since the constitutional basis of selection for the Board of Regents is appointment, not political election.25 The question is likely long to remain academic. The State Superintendent of Public Instruction is close to the common schools. He reflects the needs and interests of the public schools, and consequently his counsel as well as his vote should be and are valued and the fine point of constitutional interpretation left till the emergence of some vital issue affected thereby.

The twelfth session of the Legislature, 1913, proceeded forthwith to implement the constitutional amendment adopted at the preceding general election. Chapter 77 of the Session Laws of 1913 indicates no doubt on the part of the legislature but what the intent of the amendment was to change Section 10 as well as Section 2 of Article IX. The existing terms of all members of the Board of Regents then in office were declared ended. The old board, it was specifically provided, “shall cease to exist” and the Governor was empowered to select a new board one of the requisites for


25 Advocates of more political control have occasionally urged the selection of the Board of Regents by popular election rather than by appointment. This demand usually appears when the Board has taken a state-wide rather than a merely sectional attitude on some large question of educational policy. Such a change in the basis of selection from appointment to popular election would presumably require a further constitutional amendment.
membership on which was that the appointee "shall not heretofore have been connected with any of the state educational institutions of this state, either as regent, member of board, instructor or student." 26 It was a clean sweep. 27 The act of 1913 follows:

CHAPTER 77
(S.B. No. 131.)

TO ESTABLISH A STATE BOARD OF EDUCATION AND BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO, DEFINING MEMBERSHIP, POWERS AND DUTIES OF SAID BOARD.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That for the general supervision, government and control of all State educational institutions of this State, to-wit: The University of Idaho, Lewiston State Normal School, Albion State Normal School, The Academy of Idaho, the Industrial Training School and School for the Deaf and Blind and for the general supervision, government and control of any other such State educational institutions, as may now or hereafter be founded, and, further, for the general supervision, government and control of the public schools of the State, a State Board of Education, which shall also constitute the Board of Regents of the University of Idaho, is hereby created and established, to be known as the State Board of Education and Board of Regents of the University of Idaho.

SEC. 2. Said State Board of Education and Board of Regents of the University of Idaho, shall consist of five (5) appointive members and, in addition thereto the State Superintendent shall be ex-officio member of such Board. The Governor of Idaho is hereby empowered, and it is hereby made his duty, not later than the first Monday of April, 1913, to appoint, as members of said State Board of Education and Board of Regents of the University of Idaho, five members, one to hold office for one year, one for two years, one for three years, one for four years, and one for five years. Annually thereafter, commencing on the first Monday of April, 1914, he shall appoint one member of said board to serve for a period of five years. The Governor shall fill, by appointment, all vacancies which may occur on the Board, such appointment to be made within thirty days after such vacancy occurs, and to be for the unexpired term of the retiring member: Provided,

27 Repealed 1933, by provision "that in the appointment of members of the board no discrimination shall be made against former instructors or students of any of the educational institutions of the state or provided such former instructors and students of any single institution shall not be represented on said board by more than one member at any one time." Session Laws, 1933, Chap. 82.

That all such members of said Board shall be appointed solely upon consideration of their ability to efficiently serve the interests of the people and of education in this State, without reference to locality, to occupation, to party affiliation or to religion: Provided, further, That any member so appointed shall not heretofore have been connected with any of the State educational institutions of this State, either as Regent, member of Board, instructor or student and shall have been a qualified elector, and tax payer in this State for at least three years prior to the date of his appointment. Said members of said Board, appointed as above provided, shall qualify for office and assume their duties in accordance with existing laws governing similar appointments to and qualifications for office on other State Boards of this State.

SEC. 3. Said State Board of Education and Board of Regents of the University of Idaho shall, upon its being established as provided in this Act, assume all powers and perform all duties now held by the Board of Regents of the University of Idaho and by the Boards of Trustees of other State educational institutions enumerated in Section 1 of this Act. The existing Board of Regents and Board of Trustees of said educational institutions shall, upon the passage and approval of this Act, surrender and transfer to the State Board of Education and Board of Regents of the University of Idaho, all duties, rights, powers and immunities granted them under existing laws of this State, together with all property, deeds, records, reports and appurtenances of any and all kinds now held by said Boards of Regents under existing laws, and, thereupon, shall cease to exist as provided by existing laws; and said State Board of Education and Board of Regents of the University of Idaho shall accept and assume all such rights, duties, powers, immunities, property, deeds, records, reports and appurtenances aforesaid and hold the same until the provisions of this Act shall have been amended or repealed. Said Board shall have and maintain its office at the State Capitol.

SEC. 4. The Governor of Idaho is hereby empowered to remove from membership on said Board of Education and Board of Regents of the University of Idaho, any member who shall have proven himself to be guilty of gross immorality, malfeasance in office, or incompetency; but no removal for personal or political reasons shall be valid without the concurrence of at least two-thirds of the members of the senate of this State.

SEC. 5. Said Board of Education and Board of Regents of the University of Idaho shall hold two regular meetings annually at such time and place as may be directed by said Board, but special meetings may be called at any time and at a place designated in such call by the President. The members of said Board shall be paid all necessary
vision and inspection over all departments of public education supported in whole or in part by State funds of this State, enforce the school laws of the State; study the educational conditions and needs of the State; and approve all proposed changes or additions to existing school laws and recommend to the Legislature all such needed changes in existing laws or additional legislation.

2. It shall, prior to each meeting of the State Legislature and in ample time for due consideration by said Legislature, prepare a financial budget setting forth the financial needs of all State educational institutions under its supervision and control for the period for which appropriations are to be made; shall supervise, direct and control all expenditures of funds appropriated for the maintenance and improvement of State Educational Institutions as designated in Section 3 of this Act; shall supervise, direct and control all plans and specifications for such improvements, including construction or alteration of buildings, equipment, fixtures, apparatus and supplies, and through its proper executive officers superintend the construction work connected with such improvements.

3. Classify, standardize and define the limits of all instruction in the State Educational Institutions of the State and promote the efficiency, harmonize the educational interests and, so far as practicable, prevent wasteful duplication of effort in such institutions; prescribe the minimum course of study for the public schools of the State, determine how and under what regulations text books shall be adopted for the use of such schools; determine whether or not text books shall be free and prescribe the regulations under which such text books may be provided.

4. Supervise, govern and direct the work of the State Summer Normal Schools and Teachers’ Institutes; decide as to the number and location of such schools and Teachers’ Institutes; establish or approve professional schools in accordance with law and determine the credit which may be granted for all work done in such schools.

5. Shall have entire supervision and control of the certification of teachers in accordance with law and shall have authority to modify or simplify at its discretion the procedure in carrying out the provisions of law.

6. Supervise, govern and direct the State Library Commission and adopt such regulations for its administration as may contribute to its efficiency in the service of the people and in promoting the educational welfare of the State.

7. In cooperation with other departments of the State Government, the Board shall see to it that the rules relating to schools, health, compulsory education, child labor and child conservation are enforced.
and, in addition, shall plan an active campaign for the public conservation of childhood.

8. In cooperation with the State Board of Health, shall standardize sanitary appliances, school furniture, school equipment and supplies and school buildings; shall provide for an efficient system of health supervision, medical inspection and physical development work in all public schools, and prepare and adopt such rules and regulations as will provide for the effective administration of such system. It shall, if deemed advisable, set aside such school funds as may be found necessary to properly administer such system.

9. It shall standardize, approve or compile and adopt for use in all State institutions and public schools of the State, a system of reports covering all essential phases of administration of such educational work and shall enforce the use of such adopted forms for reports.

10. At such times as may be deemed advisable, and consistent with its financial ability so to do, it shall prepare and order published such reports, including statistical tables, as may constitute a contribution to the general educational welfare of the State, and shall provide for the distribution of the same.

Sec. 8. The president and secretary of said State Board of Education and Board of Regents of the University of Idaho shall, on the first day of January of each year, transmit to the Governor of the State, and to the Legislature at its regular session, a report of the expenditures of the same setting forth a full report of the expenditures of the same for the previous year, giving each item in full, and the date thereof, and such recommendations as they deem proper for the good of the State educational institutions and public schools of the State.

Sec. 9. All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed.

Sec. 10. This Act constitutes a law providing for the establishment and government of a State Board of Education in compliance with Section 2 of Article 9 of the Constitution of the State of Idaho, and all acts or parts of acts which modify or tend to modify this Act or any part thereof shall be disregarded by the courts in the construction of the school laws of Idaho.

Sec. 11. Whereas, an emergency exists, this Act shall take effect and be in force from and after its passage and approval.

Approved March 6th, 1913.27

Requirement for membership on the board remained pretty much as heretofore with the added provision that members must have been qualified electors and taxpayers in the state for at least three years prior to the date of appointment. No restriction is included regarding domicile, occupation, party affiliation, or religion. Following a long custom, no governor has departed from the practice of seeing to it that there should at all times be two members from north of Salmon River and three from south of it. Beyond this broad geographical distribution, neither custom nor law prescribes, save that every governor has wisely refrained from appointing members from communities in which any of the state institutions are located. Occupation has never been a major consideration. There has been a tendency to appoint lawyers to the board and it has been customary to have one housewife and at least one member distinctively associated with agriculture. All restrictions on party affiliations have been removed and if governors continued to be chosen from the same party for a sufficient length of time all members of the board might be of the same political faith, though governors have made their appointments to this high office without regard to partisan affiliations. The notion that there must always be a Roman Catholic or a Mormon or a member of any particular denomination on the board is wholly without foundation. Sometimes adherents of one or both of these faiths have been members; sometimes they have not. In its deliberations the board in fact has been singularly free from all divisive considerations of this sort. Action is sometimes taken by less than unanimous vote but it is rarely that anyone can detect the slightest political or religious partisanship in the alignment.

The Act of 1913 thus disposes once and for all of a separate Board of Regents for the University of Idaho and might seem to have disposed also of the separate powers of that board. Such, however, has not been the case. The separate powers of the Board of Regents within the new and consolidated board have been sustained on numerous occasions and in widely different areas.

In the famous Black Case (State ex rel. Black v. State
Board of Education and Board of Regents) which upheld the independence of the Board of Regents from control by the State Board of Examiners in the administration of University finances, the Supreme Court speaks only of the Regents or Board of Regents. The powers of the State Board of Education as such were not adjudicated in this case.

In the most recent issue involving the powers of the Board of Regents as distinguished from the Board of Education, a former nurse in the infirmary sued the board to recover wages for services rendered but for which she had not been paid because of the institution's alleged violation of the Nepotism Act. Both the district court and the Supreme Court accepted the "Board of Regents" and merely the "Board of Regents," first, as defendant and then as appellant without insisting on an amendment of the brief to read "State Board of Education and Board of Regents of the University of Idaho," thereby recognizing, it would appear, the constitutionally separate powers of the latter. In the Dreps case the court held that "the legislature possesses no power to place any restrictions on the Board of Regents in the matter of their employment of professors, officers, agents, or employees; nor can they tell the Board whom they may and may not appoint. We therefore conclude it was not the intention of the legislature to extend the Nepotism Act to the University of Idaho, or the Board of Regents thereof." 22

In both the Black case and the Dreps case the court was careful to distinguish between the Board of Regents and the State Board of Education, recognizing the anterior powers of the former as being unaffected by the amendment of 1912.

In short, while the amendment of 1912 authorizes and the Act of 1913 creates a single board replacing: (1) the former ex-officio Board of Education which controlled the public schools, (2) the separate boards of trustees of the two normal schools and the Academy of Idaho, and (3) the separate Board of Regents of the University of Idaho, neither

22 Dreps v. Board of Regents of the University of Idaho, 159 Pacific, 2nd Series, p. 473. For the text of the decision in the Dreps case see below, p. 110.
II. Financial Administration

"The regents shall have . . . the control and direction of all funds of, and appropriations to, the University, under such regulations as may be prescribed by law." Financial support of the University has always come from a variety of sources. At the turn of the century state appropriations constituted less than one-quarter of the total annual revenue. The legislature of 1899 for example appropriated a mere $20,000 for the biennial period of 1899-1900 or $10,000 per year, whereas considerably more than three times that much was received from federal allotments, endowment earnings and a little local income.

The entire budget for the academic year 1900-1901 occupies less than one page of the board's minutes and is included in full below:26

<table>
<thead>
<tr>
<th>DEPARTMENT</th>
<th>SOURCE OF FUNDS</th>
<th>State Appropr'ns</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Administration:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>President</td>
<td>$1,600.00</td>
<td>$1,500.00</td>
</tr>
<tr>
<td>Principal, Prep. Dept.</td>
<td>1,000.00</td>
<td></td>
</tr>
<tr>
<td>Registrar, Clerk</td>
<td>600.00</td>
<td>60.00</td>
</tr>
<tr>
<td>Office Expense</td>
<td>60.00</td>
<td></td>
</tr>
<tr>
<td>Operation:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Janitor</td>
<td>600.00</td>
<td>200.00</td>
</tr>
<tr>
<td>Payroll</td>
<td>100.00</td>
<td>100.00</td>
</tr>
<tr>
<td>Postage, Tel. and Freight</td>
<td>200.00</td>
<td>200.00</td>
</tr>
<tr>
<td>Fuel, Light and Water</td>
<td>550.00</td>
<td>1,225.00</td>
</tr>
<tr>
<td>Printing</td>
<td>400.00</td>
<td>500.00</td>
</tr>
<tr>
<td>Repairs</td>
<td>400.00</td>
<td>150.00</td>
</tr>
<tr>
<td>Insurance</td>
<td>160.00</td>
<td>720.00</td>
</tr>
<tr>
<td>Miscellaneous Labor</td>
<td>25.00</td>
<td>75.00</td>
</tr>
<tr>
<td>Instruction—</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Agriculture</td>
<td>850.00</td>
<td>900.00</td>
</tr>
<tr>
<td>Salary</td>
<td>50.00</td>
<td>1,500.00</td>
</tr>
<tr>
<td>Contingent Fund</td>
<td>400.00</td>
<td>1,200.00</td>
</tr>
</tbody>
</table>

---

The total budget for the year amounted to $45,560.00. Of this only 18 per cent was derived from state appropriations. The remaining 82 per cent consisted of $23,705.00 of Morrill Fund money and $13,585.00 of Hatch Funds. These are federal appropriations, the former for instruction in the agricultural college and the latter for the work of the experiment station. Even a quarter of the salary of the professor of ancient languages, all of the salary of the professor of history, the professor of physical culture, the librarian and the principal of the preparatory department, as well as the entire cost of the summer school were charged to the Morrill Fund. Half the institution's postage, half of the janitor's supplies, and three-quarters of building repairs were, among other items, charged to the Hatch Fund.

By way of present-day contrast, the summary budget for the biennium, that is the two-year period, 1941-42, is included below:

UNIVERSITY OF IDAHO BUDGET
JANUARY 1, 1941, TO DECEMBER 31, 1942

GENERAL EDUCATION AND OPERATION

<table>
<thead>
<tr>
<th>BUDGET DIVISION</th>
<th>1941-42 Budget</th>
<th>Pct. of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Education and Operation</td>
<td>$1,883,119.94</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SOURCE OF FUNDS</th>
<th>Amount</th>
<th>Pct.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Appropriations</td>
<td>$151,980.72</td>
<td>8.2</td>
</tr>
<tr>
<td>Endowment Income</td>
<td>204,500.00</td>
<td>11.0</td>
</tr>
<tr>
<td>Institutional Income</td>
<td>261,622.01</td>
<td>14.0</td>
</tr>
<tr>
<td>Fund Balance</td>
<td>10,917.45</td>
<td>0.6</td>
</tr>
<tr>
<td><strong>Sub-Total</strong></td>
<td>$622,226.18</td>
<td>33.8</td>
</tr>
<tr>
<td>State Appropriation</td>
<td>1,233,899.76</td>
<td>66.2</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$1,883,119.94</td>
<td>100.0</td>
</tr>
</tbody>
</table>

* General Appropriation | $1,507,226.00 |
Adjustment in Endowment Funds | 50,024.97 |

**Total** | $1,557,250.37 |
Less: Amt. to Agr. Res. and Extension | 123,360.61 |
**Total** | $1,233,899.76 |

FINANCIAL ADMINISTRATION

AGRICULTURAL RESEARCH

<table>
<thead>
<tr>
<th>BUDGET DIVISION</th>
<th>1941-42 Budget</th>
<th>Pct. of Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Home Station</td>
<td>$289,721.50</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SOURCE OF FUNDS</th>
<th>Amount</th>
<th>Pct.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Appropriations</td>
<td>208,189.04</td>
<td>72.7</td>
</tr>
<tr>
<td>Institutional Income</td>
<td>7,697.00</td>
<td>3.2</td>
</tr>
<tr>
<td>Fund Balance</td>
<td>3,53</td>
<td>0.0</td>
</tr>
<tr>
<td><strong>Sub-Total</strong></td>
<td>$218,889.57</td>
<td>90.4</td>
</tr>
<tr>
<td>State Appropriation</td>
<td>22,841.93</td>
<td>9.6</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$289,721.50</td>
<td>100.0</td>
</tr>
</tbody>
</table>

AGRICULTURAL EXTENSION

<table>
<thead>
<tr>
<th>BUDGET DIVISION</th>
<th>Amount</th>
<th>Pct.</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Agricultural Extension</td>
<td>$409,421.23</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SOURCE OF FUNDS</th>
<th>Amount</th>
<th>Pct.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Appropriations</td>
<td>308,455.48</td>
<td>75.3</td>
</tr>
<tr>
<td>Institutional Income</td>
<td>401.07</td>
<td>0.1</td>
</tr>
<tr>
<td><strong>Sub-Total</strong></td>
<td>$308,892.55</td>
<td>75.4</td>
</tr>
<tr>
<td>State Appropriation</td>
<td>100,528.65</td>
<td>24.6</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$409,421.23</td>
<td>100.0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>BUDGET DIVISION</th>
<th>Amount</th>
<th>Pct.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pure Seed</td>
<td>$11,305.00</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SOURCE OF FUNDS</th>
<th>Amount</th>
<th>Pct.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional Income</td>
<td>1,305.00</td>
<td>11.5</td>
</tr>
<tr>
<td>State Appropriation (Pure Seed)</td>
<td>10,000.00</td>
<td>88.5</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$11,305.00</td>
<td>100.0</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>BUDGET DIVISION</th>
<th>Amount</th>
<th>Pct.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rodent Control</td>
<td>$11,000.00</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SOURCE OF FUNDS</th>
<th>Amount</th>
<th>Pct.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Institutional Income</td>
<td>100.00</td>
<td>9.1</td>
</tr>
<tr>
<td>State Appropriation (Rodent Control)</td>
<td>10,000.00</td>
<td>90.9</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>$11,000.00</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Summarized, the above operating budget for 1941-42 was derived from the following sources:
As time went on a larger and larger share of the total financial support of the University has been derived from state appropriations until it is safe to say that, as noted above, half and sometimes even slightly more than half of the total finances of the University come from that source.

The University is a complex organism carrying on a multitude of related and even unrelated duties. There is an obvious connection, for example, between instruction in animal husbandry conducted on the campus and the work of the extension division out among the farmers and livestock men. On the other hand, there is little relationship between instruction in chemistry, let us say, and the calibration of glassware used in commercial dairies, though the latter is one of the many tasks assigned to the University. Financially the picture is even more involved. Most funds are restricted in one way or another and only an expert in university financial administration can properly allocate the charges that must daily be made against them individually for the operation of the institution in its manifold phases and activities. In administering the institution's finances, the Board of Regents, however, has had from time to time to assert its constitutional powers quoted at the beginning of this section.

The board's control of federal and endowment funds in Idaho as in other states has been questioned by various state officials. To illustrate, in July, 1917, the State Treasurer having received a federal warrant for $50,000.00, being the annual Morrill Fund allotment, promptly proceeded to deposit it in the general fund of the State, whereupon the Board of Regents ordered him to pay the same to the treasurer of the University. This he declined to do except on warrant drawn by the State Auditor. The State Auditor emphatically refused to issue any such warrant but offered what now seems the sensible suggestion that the board designate the State Treasurer as its treasurer who, under suitable bond, would thereupon be the board's official depository and subject to the board's orders and instructions. Hitherto the board had usually selected as its treasurer, a Moscow banker. Although the board referred to the "insufferable spirit of dictation involved in the demands" of the State Auditor, its attorney advised the adoption of the Auditor's recommendation. Determined, however, to establish its independent power of financial control the board continued to select a separate treasurer and proceeded to mandamus the State Treasurer and State Auditor. In Melgard v. Engleson (31 Idaho 411), the Supreme Court, as was to be expected, sustained the Board of Regents, holding that Morrill funds could not properly be placed in the general fund of the state, that the "exclusive supervision of the fund is vested by the Act of Congress in the trustees of the institution," and that the "State Auditor has no duty whatever to perform with respect to this fund and no authority over it." The case follows:

(April 30, 1918)


(31 Idaho 411)


The fund in question is special and impressed with a trust, and neither it nor its income is a part of the general fund of the state. (Yale College v. Sanger, 62 Fed. 177.)

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The control of the fund is vested in the supervisors of the institution and not in the legislature, which may not interfere in any way with the fund granted by Congress to a beneficiary which has been designated. (State Board of Agriculture v. Auditor General, 180 Mich. 349, 147 N.W. 529.)

The state treasurer could not change this trust fund into part of the general fund of the state by a mere bookkeeping transaction, and the state auditor has no function whatever to perform in the handling of the fund. (Blaine County v. Fuld, ante, p. 355, 171 Pac. 1138.)

T. A. Walker, Attorney General, and A. C. Hindman and J. P. Pope, Assistant Attorneys General, for defendants, cite no authorities.

Budge, C. J.—This is an original proceeding for a writ of mandate to compel the defendants to pay over to the plaintiff the sum of $50,000 for the use and benefit of the University of Idaho and to compel them to correct the books and records of their respective offices by canceling thereon all entries showing the aforesaid sum to be a part of the general fund of the state of Idaho, and for general relief. The petition alleges in substance that the fund in question was paid by the United States to the defendant Eagleson, as state treasurer, on July 10, 1917, under the provisions of the act of Congress August 30, 1890, 26 Stat. 417, as amended by the act of Congress March 4, 1907, 34 Stat. 1256, providing for the appropriation from the public treasury of the United States of the sum of $50,000 annually for the more complete endowment and maintenance of each of certain designated classes of colleges, of which the University of Idaho is one. That thereafter the board of regents duly made an order upon the treasurer that this sum be paid over to plaintiff in his official capacity. That on July 10, 1917, the defendant Van Deusen, as auditor, issued his certificate directing that the sum be deposited in the general fund; that the defendant state treasurer issued his official receipt for the sum and purported to deposit it in the general fund, and that the state auditor and treasurer respectively have carried the sum on their books as part of the general fund. That they have refused to pay the sum to the plaintiff or to correct their books in this respect and still carry the sum as a part of the general fund. That unless the fund be turned over to plaintiff as provided by the acts of Congress, the University will be unable to obtain any use or benefit of the same to its great and irreparable injury and detriment, and that plaintiff will be unable to report to the Secretary of Agriculture and the Secretary of the Interior a detailed statement of the disbursements of said sum as he is required to do by the acts of Congress.

Defendants have demurred to the petition on the grounds:

1st. That it does not state facts sufficient to entitle the plaintiff to the relief prayed;

2nd. That it appears from the petition that the sum in question has been deposited in the general fund and that to grant the relief prayed for would be a violation of sec. 15, art. 7 of the constitution of the state of Idaho, which provides that no money shall be drawn from the treasury but in pursuance of appropriations made by law, and that it does not appear from the petition that any appropriation has been made therefor.

3rd. That the petitioner has a plain, speedy and adequate remedy at law, in that if defendant Eagleson is withholding funds properly belonging to petitioner the same can be recovered in an action at law.

By three acts of Congress, namely: Act of July 2, 1862, U.S. Compiled Statutes 1816, sec. 8979; act of August 30, 1890, 1st. sec. 8971 to 8976, inclusive, act of March 4, 1907, 1st. sec. 8977, the sum of $50,000 is appropriated for the use and benefit of the state and territory of agricultural and mechanical colleges, the beneficiary institutions to be selected by the several states. These acts provide that this sum shall be paid by the Secretary of the Treasury of the United States to the state treasurer "... who shall, upon the order of the trustees of the college ... , immediately pay over said sums to the treasurers of the respective colleges or other institutions entitled to receive the same, and such treasurers shall be required to report to the Secretary of Agriculture and to the Secretary of the Interior, on or before the first day of September of each year, a detailed statement of the amount so received and of its disbursement." (Act of August 30, 1890, c. 541, sec. 2; U.S. Compiled Stats. 1916, sec. 8972.)

Our state legislature by H.B. 192, Sess. Laws 1909, p. 38, approved the action of the board of regents in establishing and maintaining a college of agriculture in accordance with the foregoing acts of Congress.

It is apparent that the fund in question cannot properly be placed in the general fund of the state of Idaho. (Yale College v. Sanier, 62 Fed. 177.) The exclusive supervision of the fund is vested by the act of Congress in the trustees of the institution designated by the state legislature as the beneficiary entitled to receive the fund. (State Board of Agriculture v. Auditor General, 180 Mich. 349, 147 N.W. 529.) Under the acts of Congress, the state treasurer, to whom the fund is transmitted by the Secretary of the Treasury, has, with reference to this fund, a mere clerical or ministerial duty to perform, that is, to pay over the fund immediately to the treasurer of the board of trustees, in this case the board of regents, upon their order. The acts of the defendants, state treasurer and state auditor, in this instance, of placing this fund in the general fund by making appropriate entries upon their books to that end were mere nullities. (Blaine County v. Fuld, ante, p. 355, 171 Pac. 1138.) Under the acts of Congress in question the state auditor
has no duty whatever to perform with respect to this fund and no authority over it. It is therefore apparent that the defendant, state treasurer, has but one duty to perform in the premises, and that is to pay over the sum in controversy immediately to the plaintiff, as treasurer of the board of regents. The writ of mandate should issue directing him to do so, and it is so ordered. No costs awarded.

Morgan and Rice, JJ., concur.

Melgard v. Eagleson settled the power of the board so far as the Morrill Fund is concerned but there remained the control of income derived from the land endowments. Two months prior to the decision in the Eagleson case, in April, 1918, the State Auditor issued an order upon the Treasurer to transfer the current balances in these endowment funds, amounting to over $20,000.00, to the general fund of the state treasury. Thereupon the Board brought suit in the Supreme Court against the State Treasurer and State Auditor to establish its control of these funds and to prevent any balances therein from being covered into the general fund of the state. While disapproving the procedure adopted by the Board and denying its application for a writ of mandamus, the court in Evans et al. v. Van Deusen and Eagleson, nevertheless upheld the board's power of sole control over endowment income and denied the legislature any power to "appropriate" the same. The case follows:

(July 27, 1918.)
EVAN EVANS et al., as State Board of Education and Board of Regents of the University of Idaho, Plaintiffs, v. CLARENCE VAN DEUSEN, Auditor, and JOHN W. EAGLESON, Treasurer, of the State of Idaho, Defendants.

(31 Idaho 614)

Original application for writ of mandate. Denied.
J. K. Smead, for Plaintiffs.

Idaho Admission Bill, sec. 5, provides that all grants of land contained in sec. 11 "shall be held, appropriated and disbursed exclusively as herein mentioned, in such a manner as the legislature of the state may provide." (Roach v. Gooding, 11 Idaho 244, 255, 81 Pac. 642.)

32 See, however, Session Laws, 1943, Chap. 174, sec. 3.

A later holding of the court seems to modify the last cited case, to the extent that sec. 5 is not held to apply to the grants of land discussed in this brief. (Pike v. State Board, 19 Idaho 268, Ann. Cas. 1912B, 1344, 133 Pac. 447.)

The acceptance of land grants subject to the conditions specified, make the state a trustee and the proceeds a trust fund. (State v. McMullan, 12 N.D. 280, 98 N.W. 310; Roach v. Gooding, supra.)

The legislature cannot appropriate the money in these special funds, using the word "appropriate" in its true legal sense. (Jurgens v. Colpas, 106 Cal. 118, 46 Am. St. 221, 89 Pac. 816, 89 Pac. 437, 28 L.R.A. 187.)


The legal right of the plaintiff or relator to the performance of the particular act of which performance is sought to be compelled must be clear and complete. (26 Cyc. 151; Burke v. Edgar, 67 Cal. 182, 7 Pac. 468.)

The writ will be denied if the performance of the act sought to be enforced is not clearly imposed upon the officer as an official duty. (Perry v. Colpas, 97 Cal. 221, 33 Pac. 773; State v. Morrison, 18 N.M. 426, 137 Pac. 845, 125 L.R.A., N.S. 274.)

Mandamus is not an appropriate remedy to compel a general course of official conduct or a long series of continuous acts, as it is impossible for the court to oversee the performance of such duties. The proper function of a mandamus is to compel the doing of a specific thing, something which can be neither diminished nor subdivided. (19 Am. & Eng. Ency. of Law, 724.)

The income funds mentioned in the complaint can only be drawn out of state treasury and applied to the use as provided for in land grants out of which they grew, upon authority of an appropriation made by the legislature. (State v. Storer, 47 Kan. 119, 27 Pac. 850, 852; State v. Maynard, 31 Wash. 132, 71 Pac. 776, 778; Poff v. Dunn, 80 Cal. 226, 22 Pac. 143; State v. Hickman, 9 Mont. 370, 23 Pac. 740, 8 L.R.A. 102; State v. Burdick, 4 Wyo. 272, 23 Pac. 126, 24 L.R.A. 266.)

The legislature has a right to amend a general blanket and perpetual bill such as the acts of 1905 appropriating these income moneys. (Evans v. Houston, 27 Idaho 559, 150 Pac. 14.)

Rice, J.—This is an original proceeding in this court.

By the Idaho admission act, Congress granted to the state 90,000 acres of land as an endowment for an agricultural college or colleges, in accordance with the terms of the act of July 2, 1862 (12 Stats. at L. 658); seventy-two sections of land in accordance with the act of February 15, 1891 (21 Stats. at L. 326), and 50,000 acres in addition thereto as an endowment for the state university; 100,000 acres as an
endowment for a scientific school; 100,000 acres as an endowment for the state normal schools; also 150,000 acres for other state, charitable, educational, penal and reformatory institutions.

Art. 9, sec. 8, of the constitution, contains the following provision: "The legislature shall, at the earliest practicable period, provide by law that the general grants of land made by Congress to the state shall be judiciously located and carefully preserved and held in trust, subject to disposal at public auction for the use and benefit of the respective objects for which said grants of land were made . . . ."

In 1905 the legislature, by a series of acts, created and established a university fund, agricultural college fund, scientific school fund, normal school fund, Idaho Industrial Reform School fund, now known as the Idaho Industrial Training School fund, and the Academy of Idaho fund, now known as the Idaho Technical Institute fund. Each of the two last-mentioned funds were to receive a specified portion of the proceeds from the 150,000 acre grant for state charitable, educational, penal and reformatory institutions.

Each of these various acts creating the funds, with the exception of the scientific school fund and the agricultural college fund, contained a provision to the effect that perpetually from and after the first day of January, 1907, all moneys which might accrue to the several funds should be appropriated and set apart for the support and maintenance of the respective institutions named in the acts, and should be made available for such purpose immediately upon being credited to the various funds. In 1907 a similar perpetual appropriation was made with reference to the moneys which would thereafter accrue to the scientific school fund. In 1911 the legislature again established the agricultural college fund, and made similar perpetual appropriation of the moneys which would thereafter accrue for the support and maintenance of the said college. These various acts creating the several funds mentioned, and providing for the perpetual appropriation of the moneys which should accrue thereto, have never been repealed.

With reference to the deaf and blind school, it does not appear that any fund has been created for this institution. In 1905 an appropriation was made from the state charitable institutions fund for the education of the deaf and blind in the state for the years 1905 and 1906, but no further appropriation appears to have been made from that fund. It would seem, therefore, that the appropriation in the 1917 laws contains the entire appropriation for that institution for this biennium.

Sess. Laws 1917, chap. 70, contain the appropriation for these institutions for the period commencing on the first Monday of January, 1917, and ending on the first Monday in January, 1919. This act contains the following provisions:

"Provided, however, that when any moneys or funds, not appropriated herein and which are properly available for the expenses of the current biennium are or have been received subsequent to February 1, 1917, except federal funds, which shall be computed as of January 1, 1917, by the state treasurer, by the treasurer of any institution or institutions herein named or by any agent or employee thereof from endowment or other sources of income for the support and maintenance of any work or operation carried on under the authority, control and direction of the state board of education and board of regents of the University of Idaho or any institutions, departments, officers or employees of said board, funds in an amount or amounts equal to the money or moneys so received shall be withdrawn by the state treasurer from the funds herein appropriated for the board or institution receiving such funds and placed in the general fund of the state, and the appropriation or appropriations herein made for such board or institution shall be decreased automatically by such amount or amounts equal to such money or moneys so received by such board or institution:

"Provided, further, that all funds received by and for the use of the board or any institution named herein, except federal aid received from the government of the United States which, under the law granting said aid, must be retained by the institution receiving the same, shall be turned into the state treasury monthly by such board or institution, and if said funds so reported and turned into the state treasury properly belong to the board or institution reporting the same, the state treasurer shall place such funds to the credit of said board or institution: . . .

"All sums hereinafter appropriated shall be paid out by the state treasurer upon warrants drawn by the state auditor against the general fund of the state only. The amounts herein specified constitute the whole amounts appropriated by the legislature of the state of Idaho for the purposes specified, and no greater sum or sums shall be expended for the said purposes in any manner which will create a further claim against the state of Idaho."

It appears that the defendants have maintained the several funds above referred to and in the first instance have placed therein the moneys properly applicable thereto. It further appears that all claims against the various institutions named above, during this biennium, have been allowed and paid by warrants drawn on the general fund.

The auditor gives the following explanation of his method of handling claims against these various institutions: "Out of the general fund of the state there is set aside on the books of the state auditor the total amount of the appropriation made in said act for each institution. This then constitutes a distinct and separate appropriated
fund out of which expenditures by the various institutions are paid by warrants after the allowance of the claims therefor. Each warrant drawn shows specially the appropriation against which it is drawn and the nature of the expense. While warrants so drawn appear in the first instance against that part of the appropriation derived from the general fund, the account is properly chargeable against the combined appropriation consisting of both the general fund appropriation and the portion of the interest fund appropriated. At stated intervals, therefore, the money accumulated in the interest fund is transferred to the appropriation fund. This has not been and is never done prior to the withdrawal from said appropriation of an amount equal or greater, and in all instances it has been greater, than the accession. The transfer referred to is made by the state auditor drawing a certificate authorizing the state treasurer to make the transfer, after which both of said officers post their books accordingly.

It appears further that since December 31, 1917, the state treasurer has refused to recognize the validity of such certificates.

By this action plaintiffs seek a writ of mandate to compel the defendant Van Deusen, as state auditor, to amend and correct the books and records of his office so as plainly to open and show thereon a separate account of each and every of the said funds accrued, and hereafter to accrue, from the aforesaid respective grants of land and the proceeds thereof, for the benefit of each and every of the said institutions herein alleged to be entitled respectively to the use and benefit of said separate funds, and that he be required as auditor to draw his official warrants upon claims properly briefed and allowed against said funds respectively upon the particular fund against which such claims shall, from time to time, be properly allowed, and to command that he shall, under no circumstances, commingle or intermingle upon the said books and records of his office, any of the separate accounts of said educational funds with the records or accounts of any other funds or moneys, and that the said separate accounts and records of the same shall be perpetually maintained upon the said books and records of his office until the law pertaining to said separate fund shall be repealed or so amended as to become inconsistent with the order of this court. Similar directions are prayed for with reference to defendant Eagleson as state treasurer.

The funds referred to being declared by the constitution to be trust funds, are not, strictly speaking, subject to appropriation. They were appropriated or set apart for certain purposes designated by the terms of the grants which had been accepted by the state. The legislature, however, is required to provide the method by which they may be made available for such special purposes, and to that extent only are the funds subject to what may be called an appropriation. The courts are not concerned with the methods which the legislature may provide, further than that, upon proper proceedings therefor, they will prevent the diversion of the funds from the objects or purposes for which they have been granted. (Roach v. Gooding, 11 Ida. 244, 81 Pac. 642.)

In Evans v. Huston, 27 Ida. 559, 150 Pac. 14, it was held that the perpetual appropriation of the Albion Normal School fund was sufficient to justify the allowance of claims against it, and the drawing of warrants for claims properly allowed.

All of the perpetual appropriations above referred to are practically in the same language. The appropriation bill of 1917 was carefully drawn and is clear in its terms. It does not amend or repeal the perpetual appropriations referred to and is not inconsistent therewith. It does not provide for a combined appropriation fund composed of the amounts of income from the various endowment funds and the amount appropriated from the general fund of the state for the support of such institutions. It provides that all funds received by and for the use of any of the institutions named therein, except federal aid received from the government of the United States which, under the law granting said aid, must be retained by the institution receiving the same, shall be turned into the state treasurer monthly by such board or institution, and if said funds so reported and turned into the state treasury properly belong to the board or institution reporting the same, the state treasurer shall place such funds to the credit of said board or institution.

By the terms of the first proviso it was expressly indicated that these funds are not a part of the appropriation made by the act. Nowhere in the act is there any provision that funds belonging to the various institutions above mentioned shall be transferred to any other fund in the treasury. The bill expressly provides that "funds in an amount or amounts equal to the money or moneys so received shall be withdrawn by the state treasurer from the funds herein appropriated, for the board or institution receiving such funds and placed in the general fund of the state, and the appropriation or appropriations herein made for such board or institution shall be decreased automatically by such amount or amounts equal to such money or moneys so received by such board or institution." Moreover, the provision requiring that the warrants drawn by the state auditor shall be against the general fund of the state only, refers only to sums appropriated by that act from moneys belonging to the state and does not refer to funds already belonging to the institutions.

A writ of mandate is only properly issued to compel an officer to perform an act which the law specially enjoins upon him as a duty. It does not issue to prevent an officer from doing an unlawful act. It
The use, however, to which the University may be required to put its endowment income is not wholly unrestricted. The income and receipts from the land grants must be employed in accordance with the purposes for which Congress made the grants and for no other objects.

At the turn of the century the University instituted a building program which in proportion to the existing wealth of the state has never been equaled. It began in 1901 when the legislature authorized a state loan of $50,000.00 for the construction and furnishing of a science hall and a woman’s dormitory. The issue was to be secured “by the proceeds, as herein provided, of the sales of school of science lands and timber of such lands and of the interest on the moneys accruing from the sale of lands and timber belonging to the Agricultural College and the State University.” The Board of Land Commissioners and the Regents of the University were authorized and instructed “to invest any and all moneys from the sale or lease of any or all lands appropriated to the various institutions of the state in the bonds,” the remainder to be sold to the highest bidder. The act further provided:

“SECTION 5. For the purpose of securing the payment of the principal of the bonds numbers one (1) to twenty-five (25) inclusive, provided for in this act, the proceeds of the sale of all the lands or of the timber growing thereon, granted to the State of Idaho by the United States for the establishment and maintenance of a school of science, are hereby set apart as a separate and distinct fund to be known as the school of science building fund; and after the payment of said principal of said bonds of this act, then the proceeds of the sales of said lands or timber shall be paid into the general fund in the state treasury until the amount, equal to the total amount of interest that has heretofore been paid out of said general fund on said bonds, issued under the provisions of this act, less the amount of interest that may have been paid into the said general fund from investment of school of science sinking fund money in State warrants as herein provided, has been so paid into the general fund. When the principal of said bonds shall have been fully paid, and the general fund of the State reimbursed for the interest on said bonds provided for in this act, there and thereafter the proceeds of the sales of said lands and timber shall be disposed of as may by law be provided.

“SECTION 6. For the purpose of securing the payment of the principal of the bonds numbers twenty-six (26) to fifty (50) inclusive, provided for in this act, the interest on the proceeds of the sale of all the lands or of timber growing thereon, granted to the State of Idaho by the United States for the support and maintenance of an Agricultural College and for the support and maintenance of a State University, are hereby set apart as a distinct fund to be known as the university dormitory building fund; and after the payment of said principal of said bonds of this act, then the interest on the proceeds of the sales of said lands or timber shall be paid into the general fund in the State treasury until the amount, equal to the total amount of interest that has heretofore been paid out of said general fund on said bonds, issued under the provisions of this act, less the amount of interest that may have been paid into the said general fund from investment of university dormitory building sinking fund money in State warrants as herein provided, has so been paid into the general fund. When the principal of said bonds shall have been fully paid, and the general fund of the State reimbursed for interest on said bonds provided for in this act, then and thereafter the interest on the proceeds of the sale of said lands and timber shall be disposed of as may be provided by law.” 22

This arrangement appeared so satisfactory a way to conduct a building program that at the next session, 1903, a further bond issue of $48,000 was authorized under similar arrangements, $25,000 of which was to be raised to finance the construction of an armory-gymnasium and $18,000, the equipment of a mechanical and electrical engineering labora-

tory, the equipment of a department of domestic science
and the construction of a water supply system. Two
years later in the Eighth Session, the procedure was
repeated with the voting of a $12,000 bond issue to finance
the construction of a domestic science building and setting aside to meet the
service of this issue “one-eighth of the interest on the pro-
ceeds of the sale of all land or of timber growing thereon”
included in any and all of the federal land grants to the state
for the University.

Doubt meantime had arisen in the minds of the Board of
Regents as to the legality of using endowments or endow-
ment income in this way. At a meeting of the Board held in
Boise on March 22, 1905, at the home of Mrs. Mary E.
Ridenbaugh, who at that time was president of the Board,
the president and secretary of the Board were instructed “to
engage Wood and Wilson and Judge Richards to institute
a friendly suit to determine the legality of the grant made
by the legislature for the erection of a domestic science
building.”

The friendly suit became the case of Roach v. Gooding
in which the Board of Regents undertook through mandam-
us proceedings to have the bonds for the domestic science
building duly prepared and sold. The issue was clearly stated
in the opinion of the court as rendered by Judge Sullivan in
these words, “The main question is, Can the income, or any
part thereof, of the proceeds of the University lands and
timber be appropriated for the payment of said bond and
the interest thereof?” After reviewing similar cases in other
jurisdictions the court observed, “Congress no doubt realized
that if the grants of the government for school purposes
should be used in the erection and equipment of buildings,
that such grants might be exhausted in the erection of mag-
nificent buildings rather than in the education of the
children, and it is clear that the word ‘support’ as used in said
section means the maintenance of the schools, the ordinary

current expenses of maintaining the schools, and not the
errection of buildings or the equipment thereof.” Continuing,
the court held that “The Congress by its munificent gift of
lands, endowed the public schools of the state with a per-
manent fund, the income from which can only be used in
the support of the schools and not in the erection and equip-
ment of school buildings.”

The idea has occasionally been expressed that the ruling
in Roach v. Gooding precludes the expenditure of endow-
ment income for any purpose classified as “capital outlay.” Books
purchased for the University library for example are fre-
cquently charged to endowment income funds. Since this item
of books has sometimes been classified in the State Auditor’s
office as “other expense” and at other times as “capital
outlay,” the ordinary use for which these funds might be
employed, would, if the above interpretation held, be subject
to the passing whims of accountants’ classifications. Capital
outlay covers a wide range; only those expenditures which
can properly be regarded as construction and equipment of
buildings are, under the ruling of Roach v. Gooding, excluded
from the use of endowment income.

The case follows:

(July 1, 1905)
ROACH v. GOODING
10 IDAHO 244
APPLICATION FOR WRIT OF MANDATE—ISSUANCE OF
BONDS—PAYMENT THEREOF—UNIVERSITY LANDS—
PROCEEDS OF SALE THEREOF—PERMANENT SCHOOL
FUND—INTEREST THEREOF—SUPPORT OF SCHOOLS
—UNIVERSITY PURPOSES—CONSTITUTIONAL LAW.

1. Under the provisions of an act of Congress, approved February
18, 1891, and the amendment thereof, granting to the territory of
Idaho and other territories seventy-two sections of land for university
purposes, and under the provisions of sections 5 and 8 of the Idaho
admission act, and the fourth section of article 9 of the state constit-
tution, the interest on the proceeds of such lands can not be used for
the erection or equipment of university buildings or buildings con-
ected therewith.

2. The interest or income from the proceeds of the sale of such
lands can only be used in the support and maintenance of such university in the payment of current expenses thereof and charges for conducting the same.

3. An act providing for the issuance of twelve thousand dollars in state bonds for the erection and equipment of a domestic science building, in connection with the State University, and providing for a sinking fund for the redemption of such bonds, approved March 8, 1895, held unconstitutional and void.

(Syllabus by the court.)

APPLICATION for a writ of mandate against the governor, treasurer, secretary of state, and attorney general of the state of Idaho. Writ denied.

Wood & Wilson and Richards & Haga, for Plaintiffs, cite no authorities not found and commented upon in the opinion upon the points decided.

J. J. Guheen, Attorney General, Edwin A. Snow and P. S. Wettach, for Defendants, cite no authorities not found in the opinion.

SULLIVAN, J.—This is an application for a writ of mandate to compel the governor, secretary of state, treasurer and attorney general, of the state of Idaho, to advertise and negotiate the sale of bonds to the amount of $12,000, as provided by an act entitled “An act providing for the issuance of state bonds for the erection and equipment of a domestic science building, and prescribing how such bonds shall be issued and how the proceeds of the sale of such bonds shall be expended, and providing for a sinking fund for the redemption of such bonds,” approved March 8, 1905 (Sess. Laws 1905, p. 221).

The petitioners, who constitute the board of regents of the university of the state of Idaho, recite in their petition their appointment and qualification, the passage and approval of the act above referred to and the several provisions of said act, and the refusal of said state officers to comply with the provisions thereof in the negotiation and sale of said bonds, and pray that an alternative writ of mandate be issued and directed against said officers to compel them to proceed and negotiate and sell said bonds as in said act provided. To said petition the defendants demurred on the ground that the petition did not state facts sufficient to constitute a cause of action.

It is alleged in the petition that said act provides that the payment of said bonds shall be secured by the interest upon moneys accruing from the sale of lands and timber belonging to the University of Idaho, and the act itself discloses the fact that no other provision is made for the payment of said bonds and interest. The main question is, Can the income, or any part thereof, of the proceeds of the university lands and timber be appropriated for the payment of said bonds and the interest thereof?

Section 1 of article 18 of the constitution provides, among other things, that the legislature shall not in any manner create any debt or liability unless it provides at the same time for the payment of the interest of said debt or liability as it falls due, and also for the payment and discharge of the principal of such debt or liability within twenty years of the time of contracting the same. Under the provisions of said section, if an indebtedness is created by legislative enactment, the payment of the principal and interest thereof must be provided for in such act.

It is contended by the attorney general on behalf of the defendants that said act is unconstitutional and void, for the reason that no legal provision has been made in said act for the payment of the proposed issue of bonds when they become due and the interest thereon, as the interest and income upon moneys accruing from the sale of lands and timber belonging to the University of Idaho is prohibited from being used for that purpose by the various acts of Congress granting said lands to the state and by the fifth and eighth sections of the Idaho admission act (26 Stats. at Large, p. 216), and the fourth section of article 9 of the state constitution. Under an act of Congress approved February 15, 1881 (21 U.S. Stats. at Large, p. 329), there were granted to the territories of Dakota, Montana, Arizona, and Idaho, each, seventy-two sections of land for university purposes. Subsequently to the approval of said act, the legislature of Idaho, by an act approved January 30, 1889 (Sess. Laws 1889, p. 21), created the University of Idaho, and located the same at Moscow. Thereafter, and on the third day of July, 1890, Congress passed an act commonly known as the Idaho admission bill, admitting the territory of Idaho into the Union as a state, which bill provided for certain grants of land to the state for educational and other purposes, and also provided how the proceeds of the sale of such lands should be used, and also how or for what purpose the interest and income on such proceeds must be used. Section 5 of said admission act provides, inter alia, “That all lands herein granted for educational purposes shall be disposed of only at public sale, the proceeds to constitute the permanent school fund, and the interest of which shall only be expended in the support of said schools.”

Section 8 of said act provides, among other things, that “The act of Congress granting said seventy-two sections of land to the state shall be so amended as to provide that none of said lands shall be sold for less than $10 per acre, and that the proceeds shall constitute a permanent fund to be safely invested and held by the state, and that the income thereof shall be used exclusively for university purposes.”

Section 4 of article 9 of the state constitution provides that the public school fund of the state shall consist of the proceeds of such lands as have heretofore been granted, or may hereafter be granted,
to the state by the general government, and known as school lands, and those granted in lieu thereof, and lands acquired by gift or grant from any person or corporation under any law or grant of the general government, etc.

It is conceded by counsel for both parties that the provisions of said section 5 of the admission bill relate to all grants made by the government to the state for educational purposes, but the court is called upon, in this case, to only pass upon the disposition or use that may be made of the interest and income to accrue from the proceeds of the sales of the lands or timber thereon included in the seventy-two sections granted by Congress to the territory of Idaho under said act approved February 18, 1881, as amended by the admission act; then, what means that provision of section 5 of said admission act, to wit, "the interest of which (permanent school fund) only shall be expended in the support of said schools," and that clause in section 8 of said admission act, to wit, "the proceeds shall constitute a permanent fund to be safely invested and held by said state, and the income thereof to be used exclusively for university purposes."

The provisions of said sections 5 and 8 are contained in the admission acts of North Dakota and Washington, and have been, by unanimous opinions of the supreme courts of those states, held to apply to all grants of lands by Congress to those states for educational purposes.

The supreme court of the state of Washington in *State v. Maynard, State Treasurer*, 131 Wash. 122, 71 Pac. 775, in construing section 11 of the admission act of that state, which is precisely the same as section 5 of the Idaho admission act, said: "It is contended by the relator that the last sentence of section 17 (which is the same as section 13 of our admission act) contains the only limitations upon the legislature with reference to the disposition of lands granted to the state normal schools, and that the limitations in section 11 (section 5 of our act) have reference only to sections 16 and 36 granted by section 10 (section 4 of our act) of the enabling act for the support of common schools, and a very plausible argument is made to sustain this contention. But this argument necessarily eliminates section 11 of this act as an independent section of the act and also limits the general words used therein, namely, 'all lands herein granted for educational purposes' to mean all lands granted in section 10 (section 4 of our act) for common school purposes. If Congress intended section 11 to be only a limitation to section 10, and not to apply to the whole act, it was very unfortunate in the use of words to express that intention, even if the making of section 11 an independent section was an inadvertence. But, taking the section as we find it, an independent section, in connection with the general words used, it seems conclusive, to our minds that Congress intended to make it refer, not only to the preceding section, but to the whole act, and that the words 'herein', and 'educational purposes' were used advisedly and refer to all lands granted for such purposes in the whole act."

"The clause in section 17 (section 12 of our act) as follows: 'and the lands granted by this section shall be held, appropriated and disposed of exclusively for the purposes herein mentioned in such manner as the legislature of the respective states may severally provide,' refers to the manner of holding and appropriating and disposing of the lands, and must be construed with reference to the limitations contained in section 11 as to the lands granted for educational purposes. The manner of disposition or sale of such lands, and the manner of holding or investment of the proceeds and the appropriation of interest and income, is subject to the limitations contained in section 11 of the act. The states of North Dakota, South Dakota and Montana have all placed the above construction upon the land grants for normal schools by adopting constitutional provisions declaring the proceeds of such lands a permanent fund. (See N. Dak. Const., art. 9, sec. 168; S. Dak. Const., art. 9, sec. 17; Mont. Const., art. 11, sec. 19.) We think this construction accords with the general policy of the federal government toward educational institutions named in the enabling act. It does no violence to any of the provisions of the act, and conduces to the permanency of the normal schools. If we are correct in this construction of the enabling act, it follows that the act of the legislature of 1895 is void, in so far as it attempts to appropriate the proceeds of the lands granted for normal schools, instead of the income and interest thereof, and that the treasurer cannot be compelled to pay out any part of the funds derived from the sale of the lands for either principal or interest on the warrant in question."

It is true that that decision only involved the proceeds of lands granted for normal schools, and not the interest and income thereof. The purposes for which such interest and income might be used was not decided in that case.

The question as to the use that the interest and income of the school fund might be devoted to was directly passed on in the case of *Sheldon v. Purdy*, 17 Wash. 135, 49 Pac. 230, where the court said: "That portion coming from the irreducible common school fund is devoted to the payment of current expenses. The building of new schoolhouses and the purchase of schoolhouse sites do not come within any authorized signification of 'current expenses.' Neither do they come within any well-defined acceptation of 'support of common schools.' Both the terms 'support' and 'current expenses,' when applied to the common schools of the state, mean continuing regular expenditures for the maintenance of the schools. Building a new schoolhouse
and purchasing a site, while at times necessary and proper, are, as a rule, unusual and extraordinary expenditures."

The case of Mitchell v. Colton, 122 Cal. 296, 54 Pac. 905, was a case involving the Whittier Reform School Fund, and the word "support" that is used in the act establishing said reform school was construed in that opinion. The court there said: "Of course, the word 'support,' as plaintiffs claim, may be said to mean 'for the use of said institution,' but, conceding this, it does not, in our opinion, aid plaintiff's construction; on the contrary, as we view it, it is strong proof that the legislature never intended to give the trustees unlimited power to divert the county and state money to the erection of buildings, which money was appropriated by the state and contributed by the counties for the 'support' and the 'care and keeping' of the children committed to the school." And it is clear to me that when Congress declared in section 5 of the admission act that the interest and income on the public school fund could only be expended in the "support" of the schools, it was not intended that any portion of it should be used in the erection or equipment of buildings, but only for current expenses, the support and maintenance of the school, for ordinary annual school purposes. Congress no doubt realized that, if the grants of the government for school purposes should be used in the erection and equipment of buildings, such grants might be exhausted in the erection of magnificent buildings rather than in the education of the children, and it is clear that the word "support" as used in said section means the maintenance of the school, the ordinary current expenses of maintaining the school, and not the erection of buildings or the equipment thereof. Something was left for the people themselves to do, to wit: To erect and equip the buildings, which does not come within the meaning of the word "support."

As incidentally bearing on the question here involved, see State v. McMillan, 12 N. Dak. 290, 96 N.W. 310. It is there stated in the syllabus, which is by the court, that the lands granted to the state of North Dakota by Congress for educational purposes, and the proceeds of the sale thereof, constitute a permanent trust fund, the interest and income of which alone may be used by the state and then only for the support of such schools as are designated by the enabling act and the state constitution. The precise question involved in the case at bar was not decided in that case, but it is apparent from the language there used, what the decision of that court would have been had the question at bar been involved there.

Counsel for plaintiffs further contend that the words "university purposes," as used in section 8 of the admission act includes the erection of buildings. We cannot agree with that contention, as the provisions of that section must be construed in connection with the other provisions of said act taking them all together. It is clear that it was not intended to permit the interest or income from such funds to be used in the erection or equipment of buildings. As we view it, the "purpose" of the university is not in any sense the erection or equipment of buildings therefor. As is clearly shown from the various acts of Congress from that of July 2, 1862, including the act of February 18, 1881, and the amendments thereof, and the acts of admission, admitting many states into the Union, the general attitude and policy of Congress has been to provide an endowment fund for educational purposes, the income thereof only to be used to support the institution, leaving the people of the state to furnish the buildings. Observation and experience has shown that that is a correct policy, for the history of the various states show that the inclination of the several legislatures has been to use a great portion of such grants to erect magnificent buildings for school purposes, regardless of the necessity for such buildings. Even in our own state numerous attempts have been made by the legislature to pledge or pawn not only the interest and income of the proceeds of such lands, but the proceeds as well, in the erection, construction and equipment of buildings. In State v. McMillan, supra, the court, in construing section 11 of the enabling act of that state, which is identical with section 5 of the Idaho admission act, after reciting the different land grants made to said state by Congress, said: "It is entirely clear from all the provisions of the enabling act just quoted that the entire grant of lands to the state for educational purposes was in trust, and that the express terms of the grant require the state, as trustee, to maintain the permanency of the funds so granted. And, further, that it limits the state to the use of the interest of the permanent fund, and requires that such interest shall be used only for the support of schools."

In Stein v. Morrison, 9 Idaho, 426, 75 Pac. 246, this court, when discussing the state debt limitations as imposed by the constitution, said: "A large portion of the remaining indebtedness, however, is not an obligation against the state to be met by taxation or any other method of raising revenue, but is payable out of the interest from permanent funds derived from donations made by the general government upon our admission as a state." In that case there was not contended that the indebtedness then referred to could not be met and paid out of the income of the permanent school fund. It was apparently admitted in that case that such indebtedness was a valid and subsisting indebtedness—at least unless it exceeded the state indebtedness as limited by the constitution. In that case the right to use the income from the permanent school fund in payment of bonds and interest was not even mooted. What was there said by the court was based upon the assumption, apparently common to counsel on both sides of the case, that
the legislature had authority to issue bonds payable out of said funds, and that therefore no tax levy was necessary to meet them, and consequently no state debt was created thereby as limited and defined by the constitution. Again, the language there used was rather made by way of argument, as it was held that the aggregate amount did not reach the debt limit. The court did not intend in the above quotations to pass upon the authority of the legislature to make the principal or interest of the bonds referred to in that case payable out of the income arising from the permanent school fund. The debt limit as provided by the constitution was the main point in that case.

Our state constitution was adopted some time before the Idaho admission bill was passed, and for that reason we find no direct acceptance therein of any land grants made to the state for educational purposes, but, of course, in our admission as a state, the terms of such grants as therein provided had been accepted by the state, and the provisions of section 4, article 9 of our constitution are broad enough to include all grants for educational purposes, and after declaring of what moneys the public school fund of the state shall consist, said section provides, inter alia, "that all other grants of land or money made to the state from the general government for educational purposes shall constitute the public school fund." The public schools of this state include the little log cabin in the remote district, as well as the magnificent normal schools, the academy and the state university. The university is as much a public school as is the district school.

The supreme court of Kansas in the case of State v. Board of Regents of the State University, 55 Kan. 389, 40 Pac. 656, 22 L.R.A. 378, in discussing the powers and duties of the board of regents, and the mission of the State University as only public schools, that court said: "We are unable to mention another corporation in whose keeping interests are confided which it is more appropriate to protect by the exercise of the power of the court than those confided in the regents. The education of the youth by the public is, of all the powers exercised by the state, the most certain and unalloyed benefit to the people. The university crowns the great public school system." And so the University of Idaho crowns the great public school system of our fair young state. Of course we have in the United States many universities that have no connection whatever with the state government in which they are located, but such is not the case with the State University of Idaho, as the Idaho University is under the control and direction of the state. If the income derived from the investment of the permanent school funds of the state could be used for the erection of buildings, then, of course, the support and maintenance of such schools must be provided for by direct taxation. The Congress by its munificent gift of lands, endowed the public schools of the state with a permanent fund, the income from which can only be used in the support of the schools, and not in the erection and equipment of school buildings.

It is shown by several acts passed by the legislature of the state during the past several years that an effort has been made to appropriate not only the interest and income of the permanent school fund, but a part of the fund itself, for the payment of bond issues, the proceeds of which bonds have been used in the erection and equipment of school buildings.

In addition to the act under consideration, the legislature at its last session passed an act entitled "An act creating and establishing the university fund, providing that moneys received into the state treasury from certain sources shall be placed in and constitute such fund, and appropriating all of the moneys credited thereto for the support and maintenance of the university." (Sess. Laws 1905, p. 417.)

The second section of said act is as follows: "That no moneys shall ever be appropriated out of the university fund for any purpose other than the support and maintenance of the university, nor shall any moneys properly belonging to the said fund ever be diverted therefrom for any other purpose whatsoever." It will thus be seen that the legislature undertook to appropriate a part of the income from such fund for the payment of the bonds under consideration and the accruing interest thereon, and also by the last-mentioned act appropriated the entire interest and income from such fund for the support and maintenance of the university; and by the fourth section of said act, made such appropriation perpetual. I only refer to this matter to show that the legislature at its last session undertook to appropriate a part of such income for the payment of said bonds and interest, and also appropriated the whole of such income for the support and maintenance of the university. This probably was an oversight. However, the tendency has been to encroach upon the public school fund and divert it from the purposes for which it was created.

I must therefore conclude that the legislature had no power or authority to appropriate or set apart for the payment of the interest or principal of the bonds referred to any part of the proceeds of the permanent fund created by the sale of the whole or any part of said seventy-two sections of land or the timber thereon. That being true, the act under consideration is unconstitutional and void, because it fails to provide any means for the payment of the interest or debt that would be created by the issuance of such bonds. The demurrer must be sustained and the writ denied. No costs are awarded.

Stockalager, C. J., concurs.
Alshie, J., concurs in the conclusion reached.

Not all the uncertainties had been resolved in the cases
of Melding v. Eagleson and Evans v. Van Deusen. To be sure the power of the Board of Regents to exercise sole control over the federal appropriations to and the endowment income of the University had been upheld by the Supreme Court of Idaho as it had been upheld in the supreme courts of other jurisdictions. Efforts on the part of the legislature or more particularly on the part of the State Treasurer and the State Auditor to control these particular revenues had been definitely blocked. The freedom and integrity and political independence of the University had been maintained. But there continued to be other sources of occasional irritation and uncertainty.

The State Board of Examiners, comprising the Governor, Secretary of State and Attorney General, next took a hand in attempting to run the finances of the University. Balked in attempts to control federal and endowment income, the Board of Examiners suddenly developed an interest in the local or institutional funds of the University, that is, money derived from the sale of farm products grown on experiment station land or from miscellaneous sales of one kind or another. The department of Public Works, moreover, moved into the picture by asserting a claim to compel all purchasing for the University to be handled through its office. At length, as a result of an accumulation of these encroachments the Board determined once and for all (it was hoped) to find out who was to run the University, whether it was to be the constitutional board provided by the founders, or an ex-officio political board made up of various state officials in the capital at Boise. Accordingly at a meeting held on September 30, 1920, the Board adopted the following resolutions:

The State Board of Education and Board of Regents of the University of Idaho being in session and a quorum being present, and the affairs of the University of Idaho being under consideration, the following preamble and resolutions were submitted, and on motion duly seconded were carried unanimously:

WHEREAS, under Art. IX, Sec. 10, of the constitution of the State of Idaho, the Board of Regents of the University of Idaho have not only the general supervision of the University but the control and direction of all the funds of, and appropriations to, the University, subject only to such reasonable regulations as may be prescribed by law; and

WHEREAS, by the same article and section, the constitution perpetuated in the Board of Regents all the rights, immunities, franchises and endowments prescribed by the then existing laws of the territory of Idaho, which included all the powers necessary or convenient for carrying out the purposes of the University, as defined in the act of the territorial legislature approved January 30, 1889; and

WHEREAS, various state officers and particularly the State Board of Examiners, the State Treasurer, the State Auditor and the Department of Public Works, acting as a Purchasing Bureau for the State, have interpreted their duties as prescribed by the legislature so as to infringe upon and limit the Board of Regents in the exercise of its constitutional duties to the detriment of the welfare of the University; and

WHEREAS, the Board of Regents denies that a claim against the University is a claim against the state of Idaho and subject to the regulations prescribed for the latter; and

WHEREAS, the Board of Regents denies the authority of the legislature under the guise of 'regulations' to deprive the said Board, which is a coordinate constitutional body of the state government, of the absolute exercise of full discretionary powers in the purchase and sale of property, and the employment of services, or to interfere in any way with the expenditure of the fund belonging to the University; and

WHEREAS, the Board of Regents denies that in the expenditure of the funds received under direct or indirect grants from the federal government, or from funds received for services rendered, or from the sale of any property belonging to the institution, it is under any legal obligation to submit to the Board of Examiners for examination and approval claims against the University which are to be paid from the said funds; and

WHEREAS, the Board of Regents denies that the legislature has authority under the constitution to require it, or any of its agents, to pay into the state treasury the proceeds of any sales or rentals of moneys received for services, or any other moneys coming into its possession from any source whatsoever;

NOW, THEREFORE, BE IT RESOLVED, by the State Board of Education and Board of Regents of the University of Idaho that the said Board when acting as regents of the University is a constitutional corporation having exclusive supervision of the University and the

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exclusive control and direction of all the funds of, and, appropriations
to, the University.

RESOLVED, that the executive officers of the Board of Regents and
of the University be and hereby are instructed to act in accordance
with the spirit of this resolution and in subordination alone to the
Board of Regents, and without regard to any pretended legislation
infringing upon the constitutional rights and duties of the Board.

Specifically: The Board of Regents of the University hereby directs
its executive officers and agents not to pay into the state treasury
moneys coming into the hands of its treasurer, or other agent, any
pretended law to the contrary notwithstanding.

The Board of Regents directs its executive officers and agents,
upon the sole authorization of this Board, to buy or purchase any-
thing necessary to carry out the purposes of the act creating the
institution, any pretended legislative acts to the contrary notwith-
standing.

The Board of Regents will demand of the State Auditor and
Treasurer the payment from time to time of the proceeds of the
interest on the endowment funds and rentals of endowment lands on
claims of the University against the state for such funds and not
upon the vouchers of individual claimants against the University.

RESOLVED, that the bursar of the University be and he is hereby
directed to pay to the treasurer of the University and to refuse to
pay to the State Treasurer, any and all moneys received for services
and from other sources.

RESOLVED, that the bursar be and he is hereby authorized to
vouch against the moneys so deposited with the treasurer of the
University any claims against the University which may be properly
paid therefrom, without submitting such claims to the Board of
Examiners of the State.

RESOLVED, that whereas there has been sold to the Preston Machine
Co. of Moscow two condemned boilers, the payment for which has
been received and is now in the custody of the bursar of the University,
Frank M. Stanton, the said Bursar, Frank M. Stanton, be and hereby
is directed to disregard the provisions of the statute directing this
money to be paid to the state treasurer, and instead to pay the same
to the treasurer of the University.

RESOLVED, that the bursar be and be is hereby authorized to let
printing contracts and to purchase necessary supplies and apparatus,
without requisitioning the Department of Public Works, acting as
state purchasing agent for the State of Idaho, and to pay for the same
without submitting the vouchers therefor to the State Board of
Examiners; but in letting said contracts and in making said purchases
and in drawing vouchers therefor said bursar shall be subject only to
such rules and regulations as may be prescribed by the Board of
Regents.

RESOLVED, that the bursar is hereby directed to purchase from
Julia A. Moore, of Moscow, Idaho, a certain tract of land necessary
for agricultural experimentation, which tract is described as follows:
"Commencing at a point 121½ rods west and 76.8 rods south of the
northeast corner of the northwest quarter of Sec. 16, Township 89 N.
Range 5W., Boise Meridian; thence running West 206.5 feet, thence
south 60.5 feet; thence east 206.25 feet; thence 60.5 feet to the place
of beginning. And to pay therefor a sum not to exceed $100, one-half
of said purchase price to be paid upon execution and delivery of the
deed by warrant upon the treasurer of the University, without sub-
mitting the voucher for the payment of said sum to the Board of
Examiners of the state for allowance; the balance of said purchase
price to be paid six months from the date of execution of said deed by
warrant upon the treasurer of the University, without submitting the
voucher for the payment of said sum to the Board of Examiners of
the state for allowance.

RESOLVED, that the bursar of the University be and hereby is
directed to submit from time to time vouchers to the state auditor
suitable for the payment to the University of the proceeds of the
interest endowment fund arising from the sale or rental of University
lands, agricultural college lands, and scientific school lands, which
may be in the state treasury.

RESOLVED, that the executive officers of the Board are hereby
authorized to employ counsel to aid in the enforcement of this resolu-
tion and the establishment in Court of the constitutional rights of this
Board; also to employ accountants or auditors to determine the correct
amount of public funds heretofore deposited in the state treasury or
derived from the sale of University lands for which the state is indebted
to the Regents.

The Board of Examiners promptly reacted by taking the
case to the Supreme Court and seeking a writ of prohibition
from the attorney general, Mr. Roy L. Black. Thus was
instituted the famous case of State ex rel. Black v. State
Board of Education et al. The decision in the case was sweep-
ing and upheld the Board of Regents on every count. It
cleared away for a generation any doubt as to who was
legally and constitutionally in control of the State Univer-
sity. Specifically the court held (1) that any rules and regu-
lations enacted by the legislature to govern the Board of
Regents in its administration of University funds "must not be of a character to interfere essentially with the constitutional discretion of the Board," (2) that "the proceeds of federal land grants, direct federal appropriations, and private donations to the University . . . are not subject to the constitutional requirement that money must be appropriated," (3) that claims against such funds need not be passed upon by the Board of Examiners, (4) that "if the Regents have funds available for the purpose of making purchases of supplies they may do so without requisition upon and without the consent of the Commissioner of Public Works" and (5) that "there is no obligation resting upon them [the Board of Regents] to pay to the State Treasurer the proceeds of the sale of property."

Nothing could be more explicit or better calculated to preserve the integrity and freedom of the University. The decision moreover was wholly in line with similar decisions in other jurisdictions, some of which had been even more sweeping, such as that in Michigan which declared that the Board of Regents of the University of Michigan (created under a provision of the constitution virtually identical with that of Idaho) "is made the highest form of juristic person known to law, a constitutional corporation of independent authority, which, within the scope of its functions is coordinate with and equal to that of the legislature," a pronouncement quoted approvingly by the Supreme Court of Idaho.

The complete text of State ex rel. Black v. State Board of Education et al. follows:

STATE, on the Relation of ROY L. BLACK, Individually and as Attorney General of the State of Idaho, Plaintiff, v. STATE BOARD OF EDUCATION AND THE BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO, a Body Corporate, and RAMSAY M. WALKER, J. A. LIPPINCOTT, EVAN EVANS, LOTTE M. GRAVELEY, IRVIN E. ROCKWELL and ETHEL REDFIELD, as Members Thereof, and FRANK M. STANTON, Bursar of the University of Idaho, Defendants.

(33 Idaho 418)

Original application for writ of prohibition. Denied.

FINANCIAL ADMINISTRATION

Roy L. Black, Attorney General and Dean Driscoll, Assistant, for Plaintiff.

So far as any of these funds constitute trust funds, or moneys held by the state for a specific purpose and no other, irrespective of any constitutional proviso giving the board of regents any power over them, they would, by reason of their character as trust funds alone, be not subject to the constitutional provision requiring appropriation and requiring allowance of claims against them by the board of examiners. (State v. Fosson, 125 Minn. 67, 145 N.W. 607; Commonwealth v. Dollar Savings Bank, 259 Pa. 125, 102 Atl. 569, 1 A.L.R. 1048; State v. Taylor, 33 N.D. 76, Ann. Cas. 1918A, 528, 156 N.W. 561, L.R.A. 1918B, 156; State v. McMillan, 86 Nev. 383, 386 Pac. 108; State v. Collins, 21 Mont. 448, 53 Pac. 1114.)

The funds derived from the various land grants are trust funds. Not only are they permanent funds in the control of the state, and hence in the control of the state treasurer, but the proceeds will be available in such manner only as the legislature shall make so. (Evans v. Van Deusen, 31 Idaho 621, 174 Pac. 122.)

Direct federal appropriations require no appropriation or action from the state legislature, are not subject to the custody of the state treasurer and may be expended without any action of the board of examiners. (Molgaard v. Eagleson, 31 Idaho 411, 172 Pac. 655.)

The provision of art. 3, sec. 1, vesting the entire legislative power of the state in the Senate and House of Representatives, seems quite inclusive in its terms. There is no exception as to the state board of regents, or appropriations made in their favor. The mere creation of the office of the state treasurer makes him, under the decisions of this court, custodian of all the state funds. There is nothing in the constitution which makes any exception as to appropriations for the university. The construction placed upon the constitutional provision for a board of examiners by the decisions of this court seems to be equally ironclad. (Pyle v. Steunenberg, 5 Idaho 614, 51 Pac. 614; Bregaw v. Gooding, 14 Idaho 288, 94 Pac. 438.)

There is language in the section creating the board of regents (art. 9, sec. 10) under which all these various provisions can be given force and effect.

"The regents shall have the general supervision of the university and the control and direction of all funds of, and appropriations to the university, under such regulations as may be prescribed by law." This section originally gave the regents exclusive control and direction in express words, but after considerable debate in the convention, the word "exclusive" was stricken out. (1 Idaho Const. Convention, 766-772.)
Conflicting or apparently conflicting statutes will be construed, if possible, to give effect to both. (Brown v. Bryan, 51 Wash. 668, 95 Pac. 1066; State v. Beagum, 15 Idaho 265, 65 Pac. 908; Olson v. L.R. Co., 28 Idaho 214, 153 Pac. 424; Oneida Co. v. Evans, 25 Idaho 456, 138 Pac. 377; Perrault v. Robinson, 29 Idaho 267, 168 Pac. 1074.)

It is not competent for the state board of regents, who are simply state officers, to divest either the attorney general or the county attorneys of their lawful duties and deprive them of the control of litigation which the law places in their hands. (Sec. 178, 3655, C.S.)

Henry Z. Johnson, O. P. Cockerill, and Oppenheim & Lampert, for Defendants.

All the rights, immunities, franchises and endowments granted by the territorial legislature are perpetuated unto the state university under the control of the board of regents as a constitutional corporation. (Const., art. 9, sec. 10; Trapp v. Cook Const. Co., 24 Okla. 860, 105 Pac. 667; Sterling v. Regents of University of Michigan, 110 Mich. 369, 68 N.W. 268, 34 L.R.A. 160.)

The state board of examiners has jurisdiction only of claims against the state. (Const., art. 4, sec. 18; C.S., sec. 242.)

A claim against the board of regents of the University of Idaho is not a claim against the state. (Pyke v. Steinberger, 5 Idaho 614, 51 Pac. 614; Hollister v. State, 9 Idaho 8, 71 Pac. 541; American Bonding Co. v. Regents, 11 Idaho 63, 81 Pac. 604; Moscow Hardware Co. v. Regents, 19 Idaho 420, 113 Pac. 731; First Nat. Bank v. Regents, 26 Idaho 19, 140 Pac. 771; Phoenix Lumber Co. v. Regents, 197 Fed. 425; Interstate Construction Co. v. Regents, 199 Fed. 509.)


General statutory provisions do not derogate from or restrict specific powers conferred upon the regents of the University of Idaho.

FINANCIAL ADMINISTRATION

(State v. Clausen, 51 Wash. 548, 99 Pac. 743; State v. Carr, 111 Ind. 335, 21 N.E. 358.)

Various funds have been given to the state by the federal government for educational purposes. The state has accepted these funds and designated the university as the beneficiary. In accepting the funds and designating the university as the beneficiary thereof, the funds become trust funds under the control and direction of the regents, and any claim arising against the fund or funds does not create a claim against the state but a claim only against the fund itself or against the regents. (Melgard v. Eagleson, 31 Idaho 411, 172 Pac. 655; People v. Davenport, 117 N.Y. 549, 23 N.E. 544; State v. Cook, 17 Mont. 529, 48 Pac. 928; State v. Collins, 21 Mont. 448, 53 Pac. 1114.)

If we interpret the phrase “claims against the state” as used in art. 4, sec. 18, as not including claims against the regents, then there is no conflict either in the statutes or the separate provisions of the constitution. This we submit is the usual and ordinary method of construing statutory language. If these provisions may be interpreted so as not to conflict, it is the court's duty to so interpret.

“This rule is applicable with special force to written constitutions, in which the people will be presumed to have expressed themselves in careful and measured terms.” (Cooley, Const. Lim., 92.)

BUDGE, J.—This is an original action in this court for a writ of prohibition by the state, upon the relation of the attorney general. It is sought to prohibit the state board of education, acting as the board of regents of the University of Idaho, from pursuing a course of conduct and from doing certain specific acts in furtherance thereof. The sufficiency of the petition is attacked by general demurrer.

The course of conduct on the part of the regents sought to be prohibited is set forth in a resolution passed by them October 1, 1920, as follows:

“The State Board of Education and Board of Regents of the University of Idaho being in session and a quorum being present, and the affairs of the University of Idaho being under consideration, the following preamble and resolutions were submitted, and on motion duly seconded were carried unanimously:

WHEREAS, under Art. IX, Sec. 10, of the Constitution of the State of Idaho, the Board of Regents of the University of Idaho have not only the general supervision of the University but the control and direction of all the funds of, and appropriations to, the University, subject only to such reasonable regulations as may be prescribed by law; and

WHEREAS, by the same article and section, the constitution perpetuated in the Board of Regents all the rights, immunities, franchises and endowments prescribed by the then existing laws of the territory
of Idaho, which included all the powers necessary or convenient for carrying out the purposes of the University, as defined in the act of the territorial legislature approved January 30, 1889; and

"WHEREAS, various state officers, and particularly the State Board of Examiners, the State Treasurer, the State Auditor and the Department of Public Works, acting as a Purchasing Bureau for the State, have interpreted their duties as prescribed by the legislature so as to infringe upon and limit the Board of Regents in the exercise of its constitutional duties to the detriment of the welfare of the University; and

"WHEREAS, the Board of Regents denies that a claim against the University is a claim against the state of Idaho and subject to the regulations prescribed for the latter; and

"WHEREAS, the Board of Regents denies the authority of the legislature, under the guise of 'regulations', to deprive the said Board, which is a coordinate constitutional body of the state government, of the absolute exercise of full discretionary powers in the purchase and sale of property, and the employment of services, or to interfere in any way with the expenditure of the fund belonging to the University; and

"WHEREAS, the Board of Regents denies that in the expenditure of the funds received under direct or indirect grants from the federal government, or from funds received for services rendered, or from the sale of any property belonging to the institution, it is under any legal obligation to submit to the Board of Examiners for examination and approval claims against the University which are to be paid from the said funds; and

"WHEREAS, the Board of Regents denies that the legislature has authority under the constitution to require it, or any of its agents, to pay into the state treasury the proceeds of any sales or rentals or moneys received for services, or any other moneys coming into its possession from any source whatsoever:

"NOW, THEREFORE, BE IT RESOLVED, by the State Board of Education and Board of Regents of the University of Idaho that the said Board when acting as regents of the University is a constitutional corporation having exclusive supervision of the University and the exclusive control and direction of all the funds of, and appropriations to, the University.

"RESOLVED, that the executive officers of the Board of Regents and of the University be and hereby are instructed to act in accordance with the spirit of this resolution and in subordination alone to the Board of Regents, and without regard to any pretended legislation infringing upon the constitutional rights and duties of the Board.

"Specifically: The Board of Regents of the University hereby directs the executive officers and agents not to pay into the state treasury moneys coming into the hands of its treasurer, or other agent, any pretended law to the contrary notwithstanding.

"The Board of Regents directs its executive officers and agents, upon the sole authorization of this Board, to buy or purchase anything necessary to carry out the purposes of the act creating the institution, any pretended legislative acts to the contrary notwithstanding.

"The Board of Regents will demand of the State Auditor and Treasurer the payment from time to time of the proceeds of the interest on the endowment funds and rentals of endowment lands on claim against the University for such funds and not upon the vouchers of individual claimants against the University.

"RESOLVED, that the bursar be and he is hereby directed to pay to the treasurer of the University, and to refuse to pay to the State Treasurer, any and all moneys received from the sale and rental of property of the university; and moneys received for services and from other sources.

"RESOLVED, that the bursar be and he is hereby authorized to voucher against the moneys so deposited with the treasurer of the University any claims against the University which may properly be paid therefrom, without submitting such claims to the Board of Examiners of the State.

"RESOLVED, that whereas there has been sold to the Preston Machine Co. of Moscow two condemned boilers, the payment for which has been received and is now in the custody of the bursar; Frank M. Stanton; the said Bursar, Frank M. Stanton, be and hereby is directed to disregard the provision of the statute directing this money to be paid to the state treasurer, and instead to pay the same to the treasurer of the University.

"RESOLVED, that the bursar be and he is hereby authorized to let printing contracts and to purchase necessary supplies and apparatus, without requisitioning the Department of Public Works, acting as state purchasing agent for the State of Idaho, and to pay for the same without submitting the vouchers therefor to the State Board of Examiners; but in letting said contracts and in making said purchases and in drawing vouchers therefor, said bursar shall be subject only to such rules and regulations as may be prescribed by the Board of Regents.

"RESOLVED, that the bursar be hereby directed to purchase from Julia A. Moore, of Moscow, Idaho, certain tract of land necessary for agricultural experimentation, . . . And to pay therefor a sum not to exceed $100, one-half of said purchase price to be paid upon execution and delivery of the deed by warrant upon the treasurer of the
was vested in a board of regents to be appointed by the Governor.

"The Board of Regents," it was provided, "shall constitute a body corporate, by the name of "The Regents of the University of Idaho," and shall possess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by law, and shall have the custody of the books, records, buildings and other property of said University." The board elects its own president, secretary and treasurer, whose duties are similar to those of corresponding officers in private corporations. By-laws may be adopted by the board, prescribing specific rules for the conduct of its officers and fixing the amount of the treasurer's bond. It was also vested with power to enact laws for the government of the university, to make expenditures for the erection of suitable buildings, and for the purchase of apparatus and library, and to employ and discharge professors and instructors. "The treasurer of said board," the act provides, "shall, out of any moneys in his hands belonging to said board, pay all orders drawn upon him by the President and Secretary thereof, when accompanied by vouchers fully explaining the character of the expenditure." At the close of each fiscal year, the regents, through their president, are required to report in detail to the governor the progress, conditions and wants of the university, the amount of receipts and disbursements, and such other information as they may deem important.

This act was amended by Sess. Laws 1899, p. 392, sec. 2, by extending the terms of the regents from two to six years; by Sess. Laws 1901, p. 15, reducing the number of regents from nine to five; and by implication by Sess. Laws 1913, p. 828, which latter act created the state board of education, "which shall also constitute the Board of Regents of the University," and provided in sec. 3, that said state board of education and board of regents "shall have control of all moneys so appropriated." Sess. Laws 1891, p. 42 and 1893, p. 48, amended the provisions of the act of 1889 relating to the annual levy for the university building fund. With the exception of these amendments, the constitutionality of which is not involved, the act of 1889 has not been altered, and was the only law in force when art. 9, sec. 10, of the constitution was adopted.

Art. 9, sec. 10, permanently located the university in Moscow, and confirmed unto the said university all the rights, immunities, franchises and endowments theretofore granted thereunto by the territory of Idaho, and perpetuated the same unto the university, giving to the regents, then consisting of nine members, "the general supervision of the university, and the control and direction of all of the funds of, and appropriations to, the university, under such regulations as may be prescribed by law."

With the italicized provision omitted, the similar constitutional
provisions of the states of Michigan and Minnesota are essentially the same as art. 9, sec. 10, of our constitution. Construing the Michigan constitutional provision, the supreme court of Michigan said: "It is made the highest form of juristic person known to the law, a constitutional corporation of independent authority, which within the scope of its functions is coordinate with and equal to that of the legislature." (Board of Regents v. Auditor, 187 Mich. 444, 132 N.W. 1037.)

The regulations which may be prescribed by law and which must be observed by the regents in their supervision of the university, and the control and direction of its funds, refer to methods and rules for the conduct of its business and accounting to authorized officers. Such regulations must not be of a character to interfere essentially with the constitutional discretion of the board, under the authority granted by the constitution.

It is admitted by the attorney general, and we think correctly so, that the proceeds of federal land grants, direct federal appropriations, and private donations to the university, are trust funds, and are not subject to the constitutional provision that money must be appropriated before it is paid out of the state treasury. Claims against such funds need not be passed upon by the board of examiners, and the moneys in such funds may be expended by the board of regents subject only to the conditions and limitations provided in the acts of Congress making such grants and appropriations, or the conditions imposed by the donors upon the donations. (Melgard v. Eagleon, 31 Ida. 411, 172 Pac. 655; Evans v. Van Deusen, 31 Ida. 614, 174 Pac. 122.)

If a claim against the regents is a claim against the state, it must be presented to the board of examiners for approval. The supreme court has original and exclusive jurisdiction to hear claims against the state, which have been disallowed in whole or in part by the board of examiners. There is no other authority in the constitution or statutes authorizing an action against the state, and such authority must be so expressed.

Const. art. 4, sec. 18, is as follows: "The Governor, Secretary of State and Attorney General . . . shall also constitute a Board of Examiners with power to examine all claims against the State except salaries or compensation of officers fixed by law . . ."

Const. art. 5, sec. 10, provides: "The Supreme Court shall have original jurisdiction to hear claims against the State, but its decision shall be merely recommendatory; no process in the nature of execution shall issue thereon. They shall be reported to the next session of the Legislature for its action."

That an action may be maintained in the district court on a claim against the board of regents and that court has jurisdiction, and the supreme court is without original jurisdiction, has been frequently held, and is well settled as the law of this state.

In Thomas v. State, 16 Ida. 81, 100 Pac. 761, it is held that: "The district court has no jurisdiction of an action against the state which involves a claim against the state, such jurisdiction being vested in the supreme court under article 5, section 10, of the constitution."

American Bonding Co. v. Regents, 11 Ida. 65, 61 Pac. 604, was an action commenced in the district court and appealed to the supreme court, where a judgment in favor of the board of regents was affirmed.

Moscow Hardware Co. v. Regents, 19 Ida. 420, 118 Pac. 731, was an action for a recommendatory judgment brought originally in the supreme court, and this court of its own motion in the course of its opinion says: "It is clear that this court has no jurisdiction to render a recommendatory judgment herein" (p. 430). To the same effect is First Nat. Bank v. Regents, 19 Ida. 440, 113 Pac. 735.

That a claim against the regents is not a claim against the state is finally disposed of in First Nat. Bank of Moscow v. Regents, 26 Ida. 15, 140 Pac. 771, in the following language:

"There is no merit in the contention that the district court was without jurisdiction, and that the only jurisdiction to hear this case was in the supreme court . . . The doctrine there announced (Moscow Hardware Co. v. Regents and First Nat. Bank v. Regents, supra), is sound and consonant with the provisions of the constitution and statutes and is affirmed in so far as it applies to the board of regents of the state university."

This necessarily follows for the reason that the board of regents is a constitutional corporation with granted powers, and while functioning within the scope of its authority, is not subject to the control or supervision of any other branch, board or department of the state government, but is a separate entity, and may sue and be sued, with power to contract and discharge indebtedness, with the right to exercise its discretion within the powers granted, without authority to contract indebtedness against the state, and in no sense is a claim against the regents one against the state.

To hold that art. 4, sec. 18, of the constitution, and C.S., sec. 242, confer upon the board of examiners power to pass upon claims against the board of regents would make the latter board subservient to the former, and in the final analysis would operate to deprive the board of regents of the control and direction of the funds of and appropriations to the university.

When a constitutional provision or legislative act is fairly open to two constructions, one of which will carry out and the other defeat some great public purpose for which it was designed, the former construction should be applied.
of Regents early in March, 1920, a committee of business men representing the Chamber of Commerce, the Rotary Club, the Ad Club, and other civic groups in Moscow, met with the Board to discuss a proposal for constructing a much-needed men's dormitory with private funds. At the April meeting of the same year the Board by formal motion accepted in principle and delegated to the Executive Committee the power to work out the details of a plan whereby dormitories at the University would be constructed with private capital, the Board “agreeing to rent the buildings for ten or more years on the basis of a gross ten per cent on the investment.” The Board of Regents, so it was averred, “therefore becomes a sort of trustee or go-between the owners of the building and the persons who receive the service. Meanwhile the state will be at small or no expense for this purpose.” Under the plan as worked out, the citizens' committee through its agent, the First Trust and Savings Bank of Moscow, entered into a contract with the Board of Regents agreeing to construct the dormitory and convey the property to the University by deed in escrow, the University in turn applying gross receipts from dormitory room rentals on the purchase price, thereby meeting both principal and interest.

Two years later this somewhat informal arrangement was systematized with the organization of the University of Idaho Building Association made up of Moscow business men and the selection of the executive secretary to the president of the University as secretary of the association. The association was created to finance the construction of two additional dormitories, one of which was planned for women and the other for men. The latter was later abandoned in favor of a second woman's residence hall. The Board of Regents borrowed $20,000 on its note, agreeing to set up a "dormitory fund" into which the rentals of Ridenbaugh Hall and Jenkins House, existing dormitories, were
to be turned and which was to be pledged in its entirety to
the Building Association debt." The latter in turn contracted
with a firm of investment bankers to borrow approximately
$80,000 toward the repayment of which the University
agreed by contract with the Association to pledge the income
from the so-called dormitory fund, to the resources of which
were added the rentals from the new dormitories to be con-
structed. If this should prove insufficient, the Board of
Regents agreed to pledge "all other local income and other
free income in sufficient amount to meet the annual pay-
ments required by the terms of the contract...and to
meet the payments on the bond issue". Thus the construc-
tion of Forney Hall was financed.

Although there was probably little doubt about the legal
powers of the Board of Regents to proceed with the type of
financial arrangement described above, including the pledg-
ing of University local income in meeting its payments to
the Building Association, a certain amount of uncertainty
had been expressed in various quarters by purchasers or
prospective purchasers of the Building Association's bonds.
In the case of the other educational institutions, where simi-
lar housing needs had also become pressing, real doubt had
been expressed regarding the powers of the Board in this
connection when acting as the State Board of Education
rather than as the Board of Regents. To establish without
question its legal position in both capacities, a bill was intro-
duced and passed in the 1923 legislature empowering the
Board when financing the construction of dormitory facili-
ties to enter into contracts with building associations or
other similar agencies, pledging dormitory rentals to the
payment of such indebtedness as might be incurred thereby,
and specifically authorizing the setting up of "dormitory
funds" to be derived from these dormitory rentals and to be
devoted exclusively to the service of such loans. The act
follows:

40 Minutes of the Board of Regents, Vol. IV, p. 11.
41 Ibid., p. 34.
exceed seven per cent per annum payable semi-annually or annually.

Sec. 2. Said board is hereby authorized to create a separate fund for each of said four institutions, to be known as the "dormitory fund." Said board is hereby authorized to pay into each of said respective dormitory funds, all room, dormitory or housing rentals received by said respective institutions, not including the proceeds of any anticipated appropriations made by the state nor the interest from the permanent endowment, and to pledge on behalf of each of said respective institutions, its said dormitory fund for the payment of all rental or other charges agreed to be paid on account of such dormitory or dormitories as well as for the payment of the purchase price of land or lands and buildings, or the payment of the agreed cost of construction of such buildings or building, so as to be used for dormitory or housing purposes by said respective institutions, and such dormitory funds, or so much thereof as may be necessary, are hereby appropriated for the purposes herein set forth.

Sec. 3. The powers hereby conferred upon the said board of education shall inure to the body, commission, commissioners, officer or officers that may at any time succeed said board.

Sec. 4. The present dormitory and housing facilities of the institutions named in this act being inadequate, an emergency is hereby declared to exist, and this act shall be in force from and after its passage and approval.

Approved March 8, 1923. 43

At the session of 1929 this act was amended to add provisions for the financing not only of the dormitories themselves but also "for the purchase and installation of fixtures, furniture, furnishings and equipment in such buildings." 44

One of the most far-reaching enactments in extending the financial powers of the Board of Regents came in 1935 when at the Extraordinary Session of the legislature in that year a bill was introduced and passed "to constitute and confirm certain educational institutions of the state as separate legal entities." 44 The principal purpose of this enactment was to enable the institutions governed by the Board of Regents and the State Board of Education "to borrow money and accept grants from any federal agency, to issue bonds and to provide for the payment of such bonds and interest thereon." To implement these powers the institutions, including the University, were given the right of eminent domain, permission to accept grants of money or any sort of property from a federal agency, and to borrow money through bond issues having a maturity up to thirty years. In serving these bond issues the institution was granted authority to levy fees, rentals and other charges on students, faculty members and others using any of the facilities thus financed and specifically empowered to employ for such purposes "matriculation, hospital, laboratory, athletic, admission and other fees."

Chapter 55, as it came commonly to be called, permitted the issuing of such bonds only through June 30, 1937. This time limit was extended by the legislature of 1937 to June 30, 1939, by the legislature of 1939 to June 30, 1941, and finally the legislature of 1941 removed the time limit entirely, thereby extending indefinitely the terms of all the provisions of Chapter 55. 45

The text of this important enactment follows:

CHAPTER 55
(H.B. No. 4)

AN ACT
TO CONSTITUTE AND CONFIRM CERTAIN EDUCATIONAL INSTITUTIONS OF THE STATE AS SEPARATE LEGAL ENTITIES; TO CONFER POWERS UPON SUCH EDUCATIONAL INSTITUTIONS, INCLUDING THE POWERS TO PURCHASE, CONSTRUCT, BETTER, AND EQUIP BUILDINGS AND TO MAKE OTHER IMPROVEMENTS TO THEIR PLANTS; AND FOR SUCH PURPOSES TO BORROW MONEY, AND ACCEPT GRANTS FROM ANY FEDERAL AGENCY; TO ISSUE BONDS AND TO PROVIDE FOR THE PAYMENT OF SUCH BONDS AND INTEREST THEREON AND TO SECURE SUCH PAYMENT; TO CONFER FURTHER POWERS FOR THE MAKING OF AGREEMENTS WITH THE HOLDERS OF SUCH BONDS; TO SUPERSEDE INCONSISTENT PROVISIONS OF ALL OTHER LAWS; AND TO DECLARE AN EMERGENCY.

43 Session Laws, 1925, Chap. 72, p. 76 ff.
Be it Enacted by the Legislature of the State of Idaho:

SECTION 1. This Act may be cited as "The Educational Institutions Act of 1955."

SEC. 2. The following terms, wherever used or referred to in this Act, shall have the following meanings unless a different meaning clearly appears from the context:

(a) The term "institution" shall mean any institution named in Section 2 of this Act;

(b) The term "board" shall mean the state board of education, board of regents, board of trustees or other governing body, by whatever name known, of an institution;

(c) The term "bonds" shall mean any bonds of an institution issued pursuant to this Act;

(d) The term "project" shall mean and include buildings, structures, improvements, and equipment of every kind, nature and description, which may be required by or convenient for the purposes of an institution, including, without limiting the generality of the foregoing, administration, dining, exhibition, lecture, recreational and teaching halls, or parts thereof, or additions thereto; heat, light, sewer and water works plants or systems, or parts thereof, or extensions thereto; common, dining halls, dormitories, auditoriums, libraries, infirmaries, laundries, laboratories, metallurgical plants, museums, swimming pools, watertowers, fire prevention and fire fighting systems, gymnasiums, stadia, dwellings, green houses, farm buildings, and stables, or parts thereof, or additions thereto; or any one, or more than one, or all of the foregoing, or any combination thereof;

(e) The term "to acquire" shall include to purchase, to erect, to build, to construct, to repair, to replace, to extend, to better, to equip, to develop, to improve, and to embellish a project;

(f) The term "Recovery Act" shall mean the act of the Congress of the United States of America, approved June 16, 1933, entitled: "An Act to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works and for other purposes," and Acts amendatory thereof and Acts supplemental thereto, and revisions thereof, and any further Acts or Joint Resolutions of the Congress of the United States to encourage public works or to reduce unemployment or for work relief;

(g) The term "federal agency" shall mean the United States of America, the President of the United States of America, the Federal Emergency Administrator of Public Works, or such other agency or agencies as may be designated or created to make loans or grants.

SEC. 3. Each of the following institutions is hereby constituted and confirmed a body politic and corporate and a separate and independent legal entity and is hereby further constituted and confirmed as a governmental instrumentality for the dissemination of knowledge and learning: "The Regents of the University of Idaho," "Lewiston State Normal School," "Albion State Normal School," and "Southern Branch of the University of Idaho." A corporate purpose of every institution in addition to any other purposes thereof, shall be to acquire any project. The powers of every institution delegated to it by this Act shall be vested in and exercised by a majority of all the members of its board, and a majority of all the members of such board shall be a quorum for the transaction of any business authorized by this Act, but a lesser number may adjourn and compel the attendance of absent members.

SEC. 4. Every institution shall have power in its proper name as aforesaid:

(a) To have a corporate seal and alter the same at pleasure;

(b) To sue and be sued;

(c) To acquire by purchase, gift or the exercise of the right of eminent domain and hold and dispose of real or personal property or rights or interests therein and water rights;

(d) To make contracts and to execute all instruments necessary or convenient;

(e) To acquire any project or projects, and to own, operate, and maintain such project;

(f) To accept grants of money or materials or property of any kind from a federal agency, upon such terms and conditions as such federal agency may impose;

(g) To borrow money and issue bonds and to provide for the payment of the same and for the rights of the holders thereof;

(h) To perform all acts and do all things necessary or convenient to carry out the powers herein granted, to obtain loans or grants or both from any federal agency, and to accomplish the purposes of this Act and secure the benefits of the Recovery Act.

SEC. 5. The bonds shall be authorized by resolution of the board. The bonds may be issued in one or more series, may bear such date or dates, may be in such denomination or denominations, may mature at such time or times, not exceeding thirty years from the respective dates thereof, may mature in such amount or amounts, may bear interest at such rate or rates, not exceeding four per centum per annum, payable semi-annually, may be in such form, either coupon or registered, may carry such registration privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without premium, as such resolution or other resolutions may provide. The bonds if sold to a federal agency, may be sold at a private sale at not less than par and accrued interest without advertising the same at
competitive bidding. If not sold to a federal agency, the bonds shall be sold publicly in a manner to be provided by the Board. The bonds shall be fully negotiable within the meaning and for all the purposes of Title 26, Idaho Code, 1932.

Sec. 6. Any institution in connection with the issuance of the bonds, or in order to secure the payment of such bonds and interest thereon, shall have power by resolution of its board:

(a) To fix and maintain (1) fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to be served by any project, (2) matriculation, hospital, laboratory, athletic, admission and other fees from students, faculty members and others matriculated attending or employed at such institutions, and from the public in general, for the facilities afforded by such institution, which shall be sufficient to pay when due the bonds issued hereunder to acquire such project, and interest thereon, and to create and maintain reasonable reserves therefor;

(d) To covenant with or for the benefit of the holder or holders that of bonds issued hereunder to acquire any project so long as any such bonds shall remain outstanding and unpaid, such institution will fix, maintain and collect in such installments as may be agreed upon (1) an amount of the fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, any project, and any existing buildings, stadia, and other structures which, together with (2) an amount of the matriculation, hospital, laboratory, athletic, admission and other fees from students, faculty members and others matriculated, attending or employed at such institution, and from the public in general, for the facilities afforded by such institution, shall be sufficient to pay when due the bonds issued hereunder to acquire such project, and interest thereon, and to create and maintain reasonable reserves therefor and to pay the costs of operation and maintenance of such project, including, but not limited to, reserves for extraordinary repairs, insurance and maintenance which costs of operation and maintenance shall be determined by the board in its absolute discretion;

(e) To make and enforce and agree to make and enforce parietal rules that shall insure the use of any project by all students in attendance at such institution to the maximum extent to which such project is capable of serving such students, or if such project is designed for occupancy as living quarters for the faculty members, by as many faculty members as may be served thereby;

(f) To covenant that so long as any of the bonds issued hereunder shall remain outstanding and unpaid, it will not except upon such terms and conditions as may be determined (1) voluntarily create or cause to be created any debt, lien, pledge, assignment, encumbrance or other charge having priority to or being on a parity with the lien of the bonds issued hereunder upon any of the income and revenues derived from fees, rentals and other charges from students, faculty members and others using or being served by, or having the right to use, or having the right to be served by, any project and any existing buildings, stadia, and other structures, and from matriculation, hospital, laboratory, athletic admission and other fees from students, faculty
members and others matriculated, attending or employed at such institution, and from the public in general, for the facilities afforded by such institution, or (2) convey or otherwise alienate the project to acquire which such bonds shall have been issued, or the real estate upon which such project shall be located, except at a price sufficient to pay all the bonds then outstanding issued hereunder to acquire such project and interest accrued thereon, and then only in accordance with any agreements with the holder or holders of such bonds, or (3) mortgage or otherwise voluntarily create or cause to be created any encumbrance on the project to acquire which such bonds shall have been issued or the real estate upon which it shall be located.

(g) To covenant as to the procedure by which the terms of any contract with a holder or holders of such bonds may be amended or rescinded, the amount or percentage of bonds the holder or holders of which must consent thereto, and the manner in which such consent may be given.

(h) To vest in a trustee or trustees the right to receive all or any part of the income and revenue pledged and assigned to, or for the benefit of, the holder or holders of bonds issued hereunder, and to hold, apply and dispose of the same and the right to enforce any covenant made to secure or pay or in relation to the bonds; to execute and deliver a trust agreement or trust agreements which may set forth the powers and duties and the remedies available to such trustee or trustees and limiting the liabilities thereof and describing what occurrences shall constitute events of default and prescribing the terms and conditions upon which such trustee or trustees or the holder or holders of bonds of any specified amount or percentage of such bonds may exercise such rights and enforce any and all such covenants and resort to such remedies as may be appropriate.

(i) To vest in a trustee or trustees or the holder or holders of any specified amount or percentage of bonds the right to apply to any court of competent jurisdiction for and have granted the appointment of a receiver or receivers of the income and revenue pledged and assigned to or for the benefit of the holder or holders of such bonds, which receiver or receivers may have and be granted such powers and duties as such court may order or decree which powers and duties may include any and all such powers and duties as are usually granted under the laws of the State of Idaho to a receiver or receivers appointed in connection with the foreclosure of a mortgage made by a private corporation.

(j) To make covenants with any federal agency to perform any and all acts and to do any and all such things as may be necessary or convenient or desirable in order to secure its bonds, or as may in the judgment of the board tend to make the bonds more marketable, notwithstanding that such acts or things may not be enumerated herein, it being the intention hereof to give any institution issuing bonds pursuant to this Act power to make all covenants, to perform all acts and to do all things not inconsistent with the Constitution of the State of Idaho, in the issuance of bonds and for their security, including any and all powers granted to a private corporation under the laws of the State of Idaho.

SEC. 7. No moneys derived from the sale of bonds of any institution or otherwise borrowed by such institution under the provisions of this Act, shall be required to be paid into the State Treasury but shall be deposited by the treasurer or other fiscal officer of the institution in a separate bank account or accounts in such bank or banks or trust company or trust companies as may be designated by the board and all deposits of such moneys shall, if required by the board, be secured by obligations of the United States of America or of the State of Idaho, of a market value equal at all times to the amount of the deposit and all banks and trust companies are hereby authorized to give such security. Such money shall be disbursed as may be directed by the board and in accordance with the terms of any agreements with the holder or holders of any bonds. This section shall not be construed as limiting the power of the institution to agree in connection with the issuance of any of its bonds as to the custody and disposition of the moneys received from the sale of such bonds or the income and revenue of the institution pledged and assigned to or in trust for the benefit of the holder or holders thereof.

SEC. 8. The bonds bearing the signature of officers in office on the date of the signing thereof shall be valid and binding obligations, notwithstanding that before the delivery thereof and payment therefor any or all the persons whose signatures appear thereon shall have ceased to be officers of the institution issuing the same. The validity of the bonds shall not be dependent on nor affected by the validity or regularity of any proceedings to acquire the project financed by the bonds or taken in connection therewith.

SEC. 9. Nothing in this Act contained shall be construed to authorize any institution to contract a debt on behalf of, or in any way to obligate, the State of Idaho, or to pledge, assign or encumber in any way, or to permit the pledging, assigning or encumbering in any way of appropriations made by the Legislature or revenue derived from the investment of the proceeds of the sale, and from the rental of such lands as have been set aside by the Idaho Admission Bill approved July 3, 1890, or other legislative enactments of the United States, for the use and benefit of the respective state educational institutions.

SEC. 10. All bonds issued pursuant to this Act shall be obligations of the institution issuing such bonds payable only in accordance with
the terms thereof and shall not be obligations general, special or otherwise of the State of Idaho. Such bonds shall not constitute a debt, legal or moral, of the State of Idaho, shall so recite on their face, and shall not be enforceable against the State, nor shall payment thereof be enforceable out of any funds of the institution issuing said bonds other than the income and revenues pledged and assigned to, or in trust for the benefit of, the holder or holders of such bonds.

Sec. 11. Any institution may submit to the Attorney General of the State of Idaho any bonds to be issued hereunder after all proceedings for the issuance of such bonds have been taken. Upon the submission of such proceedings to the Attorney General, it shall be the duty of the Attorney General to examine into and pass upon the validity of such bonds and the regularity of all proceedings in connection therewith. If such proceedings conform to the provisions of this Act, and such bonds when delivered and paid for will constitute binding and legal obligations of such institution enforceable according to the terms thereof, the Attorney General shall certify in substance upon the back of each of said bonds that it is issued in accordance with the Constitution and Laws of the State of Idaho. When delivered and paid for, any bond bearing upon its back such certificate shall in any suit, action or proceeding involving its validity be conclusively deemed to be fully authorized by this Act and to have been issued, sold, executed and delivered in conformity with the Constitution and Laws of the State of Idaho and shall be deemed to be valid and binding and enforceable in accordance with its terms, and such bonds shall be incontestable for any cause.

Sec. 12. If any provision of this act, or the application thereof to any person, body or circumstances shall be held invalid, the remainder of the act and the application of such provision to persons, bodies, or circumstances other than those as to which it shall have been held invalid shall not be affected thereby.

Sec. 13. The powers conferred by this Act shall be in addition to and supplemental to, and the limitations imposed by this Act shall not affect the powers conferred by any other law, general or special, and bonds may be issued hereunder notwithstanding the provisions of any other such law and without regard to the procedure required by any other such law. Insofar as the provisions of the Act are inconsistent with the provisions of any other law, general or special, the provisions of this Act shall be controlling.

Sec. 14. Except when performing a contract or agreement theretofore entered into by and between any institution and any federal agency, no institution shall have power to issue bonds under this Act after June 30, 1937.

Sec. 15. To preserve the public peace, health and safety, it is necessary that this Act shall become immediately operative. An emergency is therefore declared to exist, and this Act shall be in full force and effect from and after its passage and approval.

Approved April 1, 1935.

Some questions arose at once as to the constitutionality of this piece of legislation, the most important of these being whether the Board of Regents could issue bonds for so long a period as thirty years to be repaid from infirmary or other similar charges and whether gross or only net income could be pledged to the service of these loans. Utilizing the declaratory judgment device the Board of Regents entered into pro forma litigation with the Attorney General to obtain answers to the above questions and to settle other issues involved in the constitutionality and interpretation of Chapter 55. Although disapproving the manner in which the declaratory judgment procedure had been employed, the Supreme Court upheld the borrowing power of the Board as provided in the Act and ruled that the income pledged meant net income rather than gross income.

The case follows:

(No. 6318. December 7, 1935.)

STATE on the Relation of BERT H. MILLER, Attorney General, Appellant, v. STATE BOARD OF EDUCATION and BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO et. al., Respondents.

(56 Idaho 210)

APPEAL from the District Court of the Second Judicial District, for Latah County. Hon. Gillies D. Hodge, Judge.


BERT H. Miller, Attorney General, and Ariel L. Crowley, Assistant Attorney General, for Appellant.

The subject matter of chapter 55, First Extraordinary Session Laws of 1935, falls within the scope of the Governor's call. (Const., art. 4, sec. 11; Cooley, Const. Lim., 326, 8th ed., and cases there cited; Carver v. Charleston, 113 W. Va. 518, 169 S.E. 521; In re Senate Resolution, 94 Colo. 101, 31 Pac. (2d) 325.)
Subject of legislation need only be germane to subject of call for legislative session. (59 C.J. 528, sec. 22, and cases in notes 51-60; In re Governor's Proclamation, 19 Colo. 333, 35 Pac. 530; Parsons v. People, 32 Colo. 221, 76 Pac. 666; Dec. Dig., Statutes, sec. 5.)

Article 8, section 3 of the Constitution of Idaho is not applicable to the State Board of Education and Board of Regents of the University of Idaho. The term "board of education" used therein has reference to local boards. (1 Idaho Constitution Conv. 589; Moscow Hdw., Co. v. Regents, 19 Idaho 420 (481), 113 Pac. 751; State v. State Board of Education, 35 Idaho 416, 136 Pac. 201.)

Vernor R. Clements and Murray Estes, for Respondents.

The former rule requiring a positive conflict between plaintiff and defendant in proceedings for declaratory judgment has been modified under the uniform act to this extent. It is only necessary that there exist a real, not a merely theoretical, question; that the person raising it have a real interest in its determination; and that there be joined as party defendant the person in such position that he may oppose the declaration sought, if he choose. (Miller v. Miller, 149 Tenn. 463 [containing an elaborate examination of authorities], 261 S.W. 965 [1931]; Holly Sugar Corp. v. Frisler, 42 Wyo. 446, 296 Pac. 206. See extensive compilations and annotations at the following places: 50 A.L.R. 42 et seq.; 12 A.L.R. 62; 19 A.L.R. 1124; 68 A.L.R. 110; 87 A.L.R. 1206.)

AILSHIE, J.—This proceeding was instituted in the district court by the state of Idaho on relation of the Attorney General, under the Uniform Declaratory Judgment Act (chap. 70, 1933 Sess. Laws), for the purpose of procuring a judgment declaring the validity or invalidity of chapter 66, First Extraordinary Session, Laws 1935.

The district court sustained the act and the state has appealed.

It appears that there are some 2,300 students enrolled at the University of Idaho; that the only hospital facilities they have are in an old residence building, in which about fifteen beds are available for use of students; and that there exists an emergency for an infirmary and hospital facilities. The State Board of Education and Board of Regents of the University proposed to enter into a contract with the United States, whereby the government will grant to the University for construction of an infirmary, as a relief project, $49,682 as a gift and $68,500 on a 30-year amortized loan; and that the loan shall be repaid to the government from gross revenues accruing from the operation of the infirmary to be constructed by the use of such funds, and the income from the dormitory known as Lindley Hall.

It is also alleged by the Attorney General as relator, "that the pledging of the gross revenues from the infirmary contemplated by said defendants, as hereinafter set forth, will necessitate the expendi-

ture of large sums of money by way of administrative and maintenance expense from general legislative appropriations to be made from the treasury of the State of Idaho, during the term of such assignment" (of revenues pledged).

It is also alleged that Lindley Hall is one of the established and existing dormitories of the University of Idaho, and is owned by the defendant corporation (State Board of Education and Board of Regents of the University of Idaho); and that no liens or encumbrances exist against the same; that this hall or dormitory was not purchased or procured by state or federal funds but was a gift to the Regents for the use of students; and that the title thereto is in defendant corporation (Board of Regents).

Although a considerable number of questions were submitted to and passed upon by the trial court, it is suggested by the briefs of both parties that there are really only three questions properly or necessarily involved and here presented for decision, namely:

1. Is chapter 66, First Extra. Sess. 1935, properly embraced within the call of the Governor for the special session?

2. Does the act (chap. 66, First Extra. Sess. 1935) conflict with sec. 3, art. 8 of the state Constitution, and particularly in so far as it authorizes the Board of Regents of the University of Idaho as a corporation to issue bonds to be amortized over a period of 30 years from revenues accruing from the operation of the proposed infirmary?

3. If the act is valid, does it authorize the application of gross or only net revenues accruing from the operation of the proposed infirmary; and may the regents also pledge the income from dormitories otherwise unencumbered?

(1) First: The proclamation of the Governor issued on the 8th day of March, 1935, calling the legislature into extraordinary session, stated, among other things, the following object of the session:

"For the purpose of considering and enacting such laws as may be deemed advisable or necessary to enable the State of Idaho or any subdivision thereof or therein to fully cooperate with the government of the United States or any of the departments or agencies thereof, in matters relating to planning boards, emergency relief or employment, . . ."

We hold that the act in question (chap. 66, First Extra. Sess. 1935) is clearly within the provisions of the call and consequently the answer to the first question is in the affirmative. (Brewer v. City of Point Pleasant, 114 Wn. 572, 172 S.E. 717; In re Senate Resolution No. 2, 94 Colo. 101, 31 Pac. (2d) 825; State Note Board v. State, 188 Ark. 605, 65 S.W. 2d) 696; In re Governor's Proclamation, 19 Colo. 338, 35 Pac. 530.)

(2) Second: The answer to the second question is in the negative.
Art. 8 of the Constitution is devoted to "Public Indebtedness and Subsidies" and sec. 3 thereof is dealing specifically with "Limitations on County and Municipal Indebtedness" and provides as follows:

"No county, city, town, township, board of education, or school district, or other subdivision of the state, shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the consent of two-thirds of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provision shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within twenty years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void: provided, that this section shall not be construed to apply to the ordinary and necessary expenses authorized by the general laws of the state."

The "State Board of Education and Board of Regents of the University of Idaho" is the constitutional and statutory successor (House Joint Resolution No. 30, 1911 Sess. Laws, p. 791; chap. 77, 1913 Sess. Laws; sec. 32-108, I.C.A.) of the original territorial board of "Regents of the University of Idaho" (15th Territorial Sess. Laws 17; sec. 10, art. 9, Const.). At the same time and by the same organic charter that adopted sec. 3, art. 8 of the Constitution, the independent, separate, corporate existence of the Territorial Board of Regents was recognized, approved and confirmed. (Sec. 10, art. 9, Const.).

Had it been intended by the framers of the constitution to place the same limitations and restrictions on "the Regents of the University of Idaho" as a corporation that were placed on counties, cities, towns and other municipal corporations by sec. 3, art. 8, they would have undoubtedly incorporated in this section (sec. 3, art. 8) the name of the Regents of the University, and placed the Board of Regents among the prohibited classes specified.

There is another reason why it is evident to us that it was not intended for this section (3 art. 8) to include the Regents of the University, and that is: The Regents have not and never had any taxing power; they could not levy or collect taxes of any kind and were not and are not representatives of any municipality, territory, subdivision or taxing unit of the state in any respect. They are merely the managers and corporate representatives of an educational institution which is dependent wholly on state and federal appropriations and donations for its finances and operating expenses. The Regents so recognized by the Constitution as a corporate entity were acting and were intended to act as an instrumentality of the state for the purpose of advancing the education of the youth of the state.

(3) Third: Addressing ourselves to the third question we find it of a more complex and doubtful character. The "income" to be pledged must necessarily mean net income; otherwise it would amount to incurring a state liability, for the reason that if the entire gross receipts from the operation of the proposed building as well as Lindley Hall can be hypothecated for the payment of such bond issue, it will entail the use of state funds or subsequent state appropriations in considerable sums to defray the overhead and operating expenses. On the other hand, the act declares:

"Such bonds shall not constitute a debt, legal or moral, of the State of Idaho, shall not recite on their face, and shall not be enforceable out of any funds of the institution issuing said bonds other than the income and revenues pledged and assigned to, or in trust for the benefit of, the holder or holders of such bonds."

Furthermore, the word "income," in common parlance, is generally understood as "gain" or "profit" (Webster's New Internat. Dictionary; In re Redding, (1897) 1 Ch. 376, 379; Laussel v. Sullivan, (1881) 6 App. Cas. 373, 378); and it was evidently not thought by the legislature to mean gross receipts. To so hold would run counter to the declared purpose of the act to create no "legal or moral" obligation against the state.

It follows that this branch of the third question must be answered that: it means net income remaining after payment of operating expenses. The same answer will apply to Lindley Hall. That appears to be the only building owned by the defendant Board of Education and Board of Regents in their corporate capacity that was not acquired by state or federal appropriation. It appears, therefore, that the net income from these buildings may properly be pledged to the payment of the proposed loan.

Whatever indebtedness may be incurred or bonds issued under the authority of this act (chap. 55, First Extra. Sess. 1935) may be made a lien on the net income of the proposed infirmary and Lindley Hall, but cannot in any manner or form become a charge against, or obligation of, the state of Idaho; nor will the state be under any "legal or moral" obligation to appropriate anything whatever therefor; "nor shall payment thereof be enforceable out of any funds of the institution issuing said bonds other than the income and revenues pledged and assigned." (State v. State Board of Education, 35 Idaho 418, 190 Pac. 281.)

The foregoing discussion disposes of the essential and material portions of the judgment brought up by this appeal. Other answers therein contained, not subsidiary to and covered by this opinion, are
thought to be only responses to moot and hypothetical questions, not properly invoking the judicial function and not sufficiently real or substantial on which to predicate a judgment. (Sec. 6, Decl. Act.)

(4) Although the state has brought this case here on appeal, we have been confronted with the unusual and extraordinary situation of both appellant and respondents taking the same position in urging the validity of the act and the correctness of the judgment of the trial court. Notwithstanding the fact that no one raises the question of procedure here, and both parties are seeking a review of the case in this court, we feel constrained to announce, as a warning to future litigants, that the assumption of jurisdiction in this case shall not be taken as a precedent for future cases. It is only what seems to be the public importance of the matters involved and the exigencies of the situation that have induced us to consider this appeal.

No reason or argument is advanced to the effect that the act (chap. 55, 1935 First Extra Sess.) is not embraced in the call of the Governor for the extraordinary session; nor is it contended by anyone that the act is in conflict with any other specific provision of the Constitution, either state or federal. It is true that the affirmative is urged by both sides, i.e., that the act is valid and does not violate any constitutional provision. We are consequently invited to examine and pass upon the whole range of constitutional law, both state and national, to ascertain for ourselves whether the act so submitted to judicial scrutiny is in any respect open to valid constitutional objection. This situation illustrates the unwisdom of courts entertaining "friendly actions."

(5) The Declaratory Judgment Act (chap. 70, 1933 Sess. Laws) contemplates some specific adversary question or contention based on an existing state of facts, out of which the alleged rights, status and other legal relations" arise, upon which the court may predicate a judgment "either affirmative or negative in form and effect." (Sec. 1 of Declaratory Act.)

The questioned "right" or "status" may invoke either remedial or preventive relief; it may relate to a right that has either been breached or is only yet in dispute or a status undisturbed but threatened or endangered; but, in either or any event, it must involve actual and existing facts. (Heller v. Shapiro, 209 Wis. 310, 242 N.W. 174, 87 A.L.R. 1201; Kershner's Petition No. 1, 284 Pa. St. 465, 131 Atl. 265; Hunt-Forbes Const. Co. v. City of Ashland, 250 Ky. 41, 61 S.W. (2d) 873; Greene v. Rietdahn, 97 Cal. App. 462, 276 Pac. 141; Morton v. Pacific Const. Co., 36 Ariz. 97, 283 Pac. 281; Poore v. Poore, 201 N.C. 791, 161 S.E. 532; Nashville C. & St. L. R. Co. v. Wallace, 228 U.S. 249, 55 Sup. Ct. 345, 77 L. Ed. 730, 87 A.L.R. 1191; vol. 31 (No. 2) Mich. Law Review (1932), 180.)

The judgment is affirmed in the particulars and respects herein stated and in other respects it is held to be moot and advisory on questions not yet justiciable. No costs awarded.

Givens, C.J., and Budge and Morgan, JJ., concur.

HOLDEN, J., Concurring Specially.—June 16, 1938, an act of the Congress of the United States was approved, entitled: "An Act to encourage national industrial recovery to foster fair competition and to provide for the construction of certain useful public works and for other purposes," generally known as the National Recovery Act April 1, 1933, an act of the First Extraordinary Session of the state legislature was approved, entitled: "An Act to constitute and confirm certain educational institutions of the state as separate legal entities; to confer powers upon such educational institutions, including the powers to purchase, construct, better, and equip buildings and to make other improvements to their plants, and for such purposes to borrow money and accept grants from any federal agency; to issue bonds and to provide for the payment of such bonds and interest thereon and to secure such payment; to confer further powers for the making of agreements with the holders of such bonds; to supersede inconsistent provisions of all other laws; and to declare an emergency." (Chap. 55, 1935 First Extraordinary Sess. Laws.)

Chapter 55, supra, was enacted for the purpose of enabling and authorizing certain educational institutions of the state "To accept grants of money or materials or property of any kind from a federal agency, under such terms and conditions as such federal agency may impose," and "to obtain loans or grants or both from any federal agency" for the purposes stated in the statute.

Respondents desire to construct an infirmary and to that end propose to enter into a contract with the United States whereby the federal government will grant to the State University for the construction of an infirmary, as a relief project, $49,682 as a gift and $68,500 on a thirty-year amortized loan.

Grave uncertainties existing as to the right of the respondents to enter into the proposed contract, this action was commenced under the "Uniform Declaratory Judgment Act" (chap. 70, 1933 Session Laws), for the purpose of procuring a declaration of construction and validity of chap. 55 supra.

The Uniform Declaratory Judgment Act was enacted for the express purpose of removing just such substantial uncertainties as confronted the respondents. "Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations, and it is to be liberally construed and administered," declared the legislature by section 12 thereof. But for the enactment of the Uniform Declaratory Judgment Act, the respondents
would have been compelled to first enter into the proposed contract, and to incur considerable expense in connection therewith, and then and thereafter (the right to enter into the contract being challenged) have the courts determine whether the contract was valid or invalid. In other words, the respondents would have been compelled to take a step in the dark. Put in the language of Congressman Gilbert, as quoted in Borchard on Declaratory Judgments, p. 43: “Under the present law you take a step in the dark and then turn on the light to see if you stepped into a hole. Under the declaratory judgment law you turn on the light and then take the step.” Or as observed by Chief Justice Peasly in Faulkner v. Keene, 85 N.H. 147, 155, 155 Atl. 195, 200: “The court does not have to say to the prospective victim that the only way to discover whether the suspect is a mushroom or a toadstool is to eat it.”

In conclusion: The proposed contract may be lawfully entered into by respondents, and the judgment of the trial court in the case at bar ought to be affirmed in the particulars stated in the opinion of Justice Alfahie.

III. Other Powers of the Board of Regents

It was noted above that under the Act of 1889, the so-called Charter of the University, the Board of Regents has powers, second only in importance to its financial powers, to “enact laws for the governing of the university,” to appoint and remove personnel, to establish entrance requirements and to set tuition fees in all professional departments.

Over the years the Board of Regents has wisely left the regulation of the internal affairs of the University to the faculty. Rules and regulations governing requirements for degrees, prerequisites for particular courses, student conduct and discipline, while subject of course to review at all times by the Board of Regents, have consistently been left to faculty determination. There are a few exceptions—the University calendar for example regularly receiving formal approval of the board.

All appointments except of a strictly temporary or casual sort are submitted to the Board’s approval. Under formal rules of the board affecting tenure faculty with the rank of professor and all who have been employed for three years are considered permanent members of the staff subject of course to competent discharge of their duties. Except in case of gross insubordination, immorality, or other serious breach, members of the faculty, however unsatisfactory their services may have proved to be, are continued through an academic year and given several months notice before the termination of their appointment. Although the board’s power in such matters remains final, the rather summary procedure by which two members of the faculty were dismissed in 1909 is not likely to commend itself to the present-day members of the board. For its historic interest and in confirmation of the powers of the board, the case of Hyslop v. Board of Regents is included below:
Powers of Board of Regents

Employment and continued in such employment until September 1, 1909, when he was summarily dismissed by the president of the Board of Regents, and that said action of the president of said board in dismissing plaintiff was not considered by said board until October 26, 1909, on which date said board ratified the action of its president in dismissing the plaintiff; that the interests of the university did not require the removal of the plaintiff from such employment and that his dismissal was malicious and in violation of the legal rights of the plaintiff under his said contract; that immediately after his dismissal plaintiff sought similar employment elsewhere, but was unable to procure it, and was not engaged in his said vocation, or in any vocation, for a period of one year following his dismissal; that plaintiff was physically and mentally able, ready and willing to continue his employment in accordance with the terms of his contract; that he is entitled to recover $1,416.66; that he filed his claim for said sum with the Board of Regents and that said claim was disallowed by said board; that he thereafter filed said claim with the Board of Examiners of the state of Idaho and said claim was disallowed by said board; and prays for a recommendatory judgment against the state for that amount.

To this complaint a demurrer was filed by the Board of Regents. The main ground of said demurrer is that the complaint does not state facts sufficient to constitute a cause of action against the defendants, the Board of Regents. It is contended under said demurrer that the power of removal by said board is absolute and that they have the power to remove the president, any professor, instructor or other officer of the university when in their judgment the interests of the university require it. Sec. 490, Rev. Code, provides, among other things, as follows:

"The board of regents shall have power to remove the president or any professor, instructor or officer of the university, when in their judgment, the interests of the university require it."

That provision of said section is a part of the contract of employment of any of the persons therein named, and the Board of Regents are thereby given plenary power to remove any of the employees therein named whenever they may think best to do so. That being true, the complaint does not state a cause of action. As bearing upon the question here involved, see Ewing v. Independent School Dist., 10 Ida. 102, 77 Pac. 222.

Said demurrer must be sustained and the action dismissed, and it is so ordered, with costs in favor of the defendants.

Alisleie, C.J., and Steward, J., concur.44

44 Similar decision in the case of Shinn v. The Board of Regents of the University of Idaho.
In selecting personnel for the faculty and staff of the University the board is not bound by the so-called Nepotism Statute" passed by the legislature in 1915, which imposes penalties on any "executive, legislative, judicial, ministerial or other officer of this state ... who appoints or votes for the appointment of any person related to him or to any of his associates in office by affinity or consanguinity within the third degree."

Regarding the power of the legislature to limit or restrict the Board of Regents in this respect the court has said "in considering the powers and authority of the legislature in this respect, as compared with the power and authority of the Board of Regents, we must bear in mind that each gets its authority direct from the people and each is created by the constitution itself, so that the one has no authority over the other, unless it is specifically so granted by the constitution under which each was created."

The Dreps Case, in which this matter was adjudicated, follows: 48

DREPS V. BOARD OF REGENTS OF THE UNIVERSITY OF IDAHO.

No. 7094
SUPREME COURT OF IDAHO
July 7, 1943.
(139 Pac., 2d Ser., 467)

Appeal from District Court, Second Judicial District, Latah County; A. L. Morgan, Judge.
Action by Leona Dreps against the Board of Regents of the University of Idaho, a corporation, to recover salary. Judgment for plaintiff, and defendant appeals.
Affirmed.
Elam & Burke, of Boise, for appellant.
Elder & Elder, of Coeur d’Alene, for respondent.
AISIEH, Justice:
This appeal involves the powers and duties of the "Regents of the University of Idaho."
November 1, 1940, respondent was appointed by the Board, then

47 Idaho Code Annotated, Section 5-701.
48 139 Pacific, 2d Series, 467 ff.
the creation of "colleges and departments" (sec. 9) in the different branches of knowledge and learning.

Following the creation and organization of the university, the constitutional convention met in August, '89, drafted and submitted to the people a constitution which was ratified and approved November 5, 1889, in and by the terms of which the "University of Idaho" was recognized as a separate and independent educational institution of the new state to be. Article 9 of the constitution was devoted to the subject of "Education and School Lands." Section 10 of that article provides:

"The location of the university of Idaho, as established by existing laws, is hereby confirmed. All the rights, immunities, franchises, and endowments, heretofore granted thereto by the territory of Idaho are hereby perpetuated unto the said university. The regents shall have the general supervision of the university, and the control and direction of all the funds of, and appropriations to, the university, under such regulations as may be prescribed by law. No university lands shall be sold for less than ten dollars per acre, and in subdivisions not to exceed one hundred and sixty acres, to any one person, company or corporation."

The foregoing provision of the constitution, ratified and approved by the people of the state, definitely fixed the location of the University of Idaho as established by existing laws and then provided, "All the rights, immunities, franchises, and endowments, heretofore granted thereto by the territory of Idaho are hereby perpetuated unto the said university." By this provision, the territorial act, creating the university and prescribing the powers, duties and authority of the Board of Regents, was written into the constitutional corporate charter of the university as fully as if it had been set out at length in the constitution. Wright v. Callahan, 61 Idaho 167, 99 P. 2nd 961. Its rights, immunities, franchises and endowments were placed definitely and permanently beyond the power of the legislature to disturb, limit or interfere with them.

It is contended, however, that the following sentence confers certain law-making power on the legislature: "The regents shall have the general supervision of the university, and the control and direction of all the funds of, and appropriations to, the university, under such regulations as may be prescribed by law." (Italics supplied.) It is not believed that the framers of the constitution meant any such thing by using the words, "under such regulations as may be prescribed by law," for the reason that to give this clause such a construction would contradict and repudiate the terms of the preceding sentence and likewise impair the authority conferred by the territorial act, which was made a part of the constitutional charter and declared "hereby perpetuated."

It seems reasonable and consonant with the other portions of the section (10), to believe that "such regulations as may be prescribed by law" were intended to refer only to appropriations the legislature might make to the University from time to time. This thought finds support in the answer of Mr. Sweet to an inquiry made by the President (Mr. Claggett) of the Convention (Vol. I, Debates, Const. Conv., pp. 366-367), to the effect that the clause "directs that all appropriations and moneys appropriated to the University shall be handled by the Regents as prescribed by law." See also Vol. II, Debates, p. 1291.

"Regulate" does not mean to prohibit, or destroy or change, but rather signifies "to adjust by rule, method or established mode; to direct by rule or restriction" (Black, Law Dictionary); "to reduce to order, method or uniformity." Webster, International Dictionary; Warren v. Indiana Tel. Co., 217 Ind. 93, 26 N.E. 2d 398; New Jersey Good Humor v. Board of Com'rs, 124 N.J.L. 162, 11 A. 2d 113, 118; State v. Leonard, 154 Ore. 579, 102 P. 2d 197, 129 A.L.R. 1125. It is the antonym of "disorder, upset, disarrange."

The foregoing definitions all carry the implication that the word "regulations" used in this section of the constitution refers more to the manner, method, procedural and orderly conduct of the business than to mandatory or prohibitive legislation. This view of that provision was evidently entertained and recognized by the court in State v. Board of Education, 33 Idaho 415, 196 P. 201, wherein the same section was under review and it was said:

"3. Const., art. 9, sec. 10, vests in the Board of Regents of the University of Idaho, 'the general supervision of the university, and the control and direction of all the funds of, and appropriations to, the University, under such regulations as may be prescribed by law.' The regulations which may be prescribed by law and which must be observed by the regents in their supervision of the University, and the control and direction of its funds, refer to methods and rules for the conduct of its business and accounting to authorized officers. Such regulations must not be of a character to interfere essentially with the constitutional discretion of the board, under the authority granted by the Constitution."

It is true the university is "under the exclusive control of the state" but that does not make it a department of state government or subordinate to the legislature. See People v. Barrett, 285 Ill. 321, 46 N.E. 2d 961. It is also true that the university is a "state agency," in the sense that it has been created by the state and exists as a public corporation for educational purposes; but the legislature has no power to impair, dissolve or destroy it. It received its charter and authority from the people at the same time and in the same manner the legisla-
ture was created, each independent and exclusive of the other in the
sphere of its own purpose and objects.

In State v. State Board of Education, 56 Idaho 210, 214, 52 P. 2d 141,
142, we had under consideration the powers and authority of the
State Board of Education and State Board of Regents of the Univer-
sity of Idaho, under the provisions of sec. 10, art 9, and said:

"At the same time and by the same organic charter that adopted
section 8, art. 8 of the Constitution, the Independent, separate cor-
porate existence of the territorial board of regents was recognized,
approved, and confirmed."

In considering the powers and authority of the legislature in this
respect, as compared with the power and authority of the Board of
Regents, we must bear in mind that each gets its authority direct
from the people and each is created by the constitution itself, so that
the one has no authority over the other, unless it is specifically so
granted by the constitution under which each was created. The legis-
lation is the constitutional law-making body established by the people
and composed of many individuals but acting as a whole as the law-
making branch of the government. While, on the other hand, the
University of Idaho is a constitutional corporate body created by the
same instrumentality and approved by the same electorate endowed
with specified powers. Moscow Hardware Co., Ltd., v. Regents of U. of I.,
19 Idaho 420, 421, 118 P. 731.

Other courts have been called upon to consider kindred questions
in relation to the powers of regents of state universities. The Univer-
sity of Michigan was chartered by the constitution in many respects
in the same manner as was done in Idaho. In Sterling v. Regents of
the University of Michigan, 110 Mich. 369, 68 N.W. 253, 257, 34 L.R.A.
156, the question arose as to the power of the legislature to require
the Regents "to establish a homoeopathic medical college as a branch
or department of said university, which shall be located in the city of
Detroit," etc. The court held that the legislature had no such power
over the Regents, saying:

"The board of regents and the legislature derive their power from
the same supreme authority, namely, the constitution. In so far as
the powers of each are defined by that instrument, limitations are imposed,
and a direct power conferred upon one necessarily excludes its exis-
tence in the other, in the absence of language showing the contrary
intent."

Later and in the case of Board of Regents v. Auditor General, 167
Mich. 444, 182 N.W. 1057, 1040, the question arose as to the power
and authority of the Auditor General to direct or control the expendi-
ture of moneys appropriated for the use and maintenance of the
university. The court held that no such power existed and that the
Regents of the university had sole and exclusive power and authority
over the matter and, among other things, said:

"By the Constitution of 1850, and repeated in the new Constitu-
tion of 1908, the Board of Regents is made the highest form of juris-
cratic person known to the law, a constitutional corporation of independent
authority, which, within the scope of its functions, is coordinate with
and equal to that of the Legislature. By the old Constitution it is
given 'direction and control of all expenditures from the University
interest fund' (section 8, art. 13); and by the new Constitution 'general
supervision of the University, and the direction and control of all
expenditures from the university funds.' Section 5, art. 11. That the
Board of Regents has independent control of the affairs of the Univer-
sity by authority of these constitutional provisions is well settled by
former decisions of this court. People v. Regents, 4 Mich. 98; Weinberg
v. Regents of the University, 97 Mich. (246) 254, 66 N.W. 605; Sterling
v. Regents of the University, 110 Mich. (389) 582, 68 N.W. 253, 34
L.R.A. 150; Bauer v. State Board of Agriculture, 164 Mich. 415, 129
N.W. 718. Strong and unequivocal language is used in these decisions.
The respondents are constitutional officers to whom was confided by
the Constitution the general supervision of the University, and the
direction and control of all expenditures from the University interest
fund. * * * To their judgment and discretion as a body is committed
the supervision of the financial and all other interests of an institution
in which all the people of this state have a very great interest. People
v. Regents, supra. 'But the general supervision of the University is by
Constitution vested in the Regents. * * * So when the state appro-
priates money to the University it passes to the Regents and becomes
the property of the University, to be expended under the exclusive
direction of the Regents, and passes beyond the control of the state
through its legislative department. * * * Under the Constitution, the
state cannot control the action of the Regents. * * * It cannot add to
or take away from its property without the consent of the Regents.
In making appropriations for its support the Legislature may attach
any conditions it may deem expedient and wise, and the Regents
cannot receive the appropriation without complying with the condi-
tions. This has been done in several instances.'"

The University of Minnesota was chartered by the territorial
legislature in 1851 and granted powers and authority almost identical
with the territorial act which created the University of Idaho. On
coming into statehood in 1858, the constitution (Art. 5, sec. 4) con-
formed the establishment and location of the university as follows:

"And said institution is hereby declared to be the "University of
the State of Minnesota." All the rights, immunities, franchises and
endowments heretofore granted or conferred are hereby perpetuated
unto the said university; and all the lands which may be granted
hereafter by Congress, or other donations for said university purposes,
shall vest in the institution referred to in this section." State ex rel. Uni-
versity of Minnesota v. Chase, 175 Minn. 259, 220 N.W. 951, 953.

In commenting on this constitutional provision, the supreme court
of Minnesota in State v. Chase, supra, 220 N.W. at page 954, said:

"That a corporation was created by the act of 1851 and 'perpetu-
ated' by the Constitution with 'all the rights, immunities, franchises
and endowments' which it then possessed is plain. Of that corporation
the regents were both the sole members and the governing board.
They were the corporation in which were perpetuated the things
covered by the constitutional confirmation. The language has a definite
legal import; the terms are those of confirmation in perpetuity of a
prior grant of corporate rights. So the University, in respect to its
corporate status and government, was put beyond the power of the
Legislature by paramount law, the right to amend or repeal which
exists only in the people themselves."

The opinion in that case is very interesting and elucidating, when
considering the powers and authority granted to the University of
Idaho and its Board of Regents. See also, State Board of Agriculture
v. State Administrative Board, 226 Mich. 417, 197 N.W. 160; State
Board of Agriculture v. Fuller, 180 Mich. 349, 147 N.W. 529, 532;
Civil Service Comm. of Michigan v. Auditor General, 392 Mich. 673,
5 N.W. 2d 538, 541.

In the recent case of People v. Barrett, 382 Ill. 321, 46 N.E. 2d
951, 964, the issue rose as to whether the attorney general of Illinois
had the right or authority to represent the University of Illinois, "A
public corporation" organized under the laws of that state, in litigation
or whether the trustees of the corporation had the right to employ
their own counsel. The opinion goes into the question at great length
and considers the nature of the corporation, its relation to the state,
its freedom from and independence of the legislature and, among other
things, says:

"In the sense that it is a department or branch of the State gov-
ernment, the University of Illinois is not an agency or instrumentality
of the State. It is a separate corporate entity, which functions as a
public corporation. It is not the duty of the Attorney General to
represent either the corporation or the trustees, by virtue of his office,
as chief law officer of State. He has no right to do so. Both the univer-
sity as a public corporation and its trustees are entitled to select their
own legal counsel and advisor and to be represented in all suits by
or against them by counsel of their own choice."

We conclude that the legislature possesses no power to place any
restrictions on the Board of Regents in the matter of their employment

of professors, officers, agents, or employees; nor can they tell the
Board whom they may and may not appoint. We therefore conclude
that it was not the intention of the legislature to extend the Nepotism
Act (sec. 57-701, I.C.A.) to the University of Idaho or the Board of
Regents thereof. Gries v. Clearwater Timber Co., 20 Idaho 70, 77, 117
P. 112; Garrett Transfer, etc., Co. v. Pfoest, 54 Idaho 676, 690, 33 P. 2d
743; Johnson v. Dieffendorf, 56 Idaho 629, 647, 57 P. 2d, 1068; Robinson

The judgment is affirmed. Costs to respondent.

HOLDEN, C.J., concurrs.

GIVENS, Justice (concurring specially).

I concur that two questions may be involved, as indicated in the
majority opinion by AILSHIE, J.: "(a) Does the Nepotism Act apply
to the Board of Regents of the University of Idaho? And (b) If it
was intended to so apply, did the legislature have the power to make
it applicable to the Board of Regents of the University of Idaho?"

Likewise, I concur in the second conclusion at the end of the
opinion, namely, that "it was not the intention of the legislature to
extend the Nepotism Act * * * to the University of Idaho or the
Board of Regents thereof." Such conclusion, it seems to me, is clearly
1917D, 729 and In re Rogers, Randall & Pit et al, 55 Idaho 521, 57 P. 2d
342. If the statute was not intended to apply, it seems to me that it
is unnecessary to discuss the constitutional interpretation of the
statute, and that under repeated holdings of this court we should not
do so. Jack v. Village of Grangerville, 9 Idaho 291, at 316, 74 P. 969;
Mills Novelty Co. v. Dunbar, 11 Idaho 671, at 677, 83 P. 322; Logan
v. Carter, 49 Idaho 395, at 403, 288 P. 424; In re Allmon, 50 Idaho
223, at 226, 224 P. 528; Garrity v. Board of County Com's, 64 Idaho
342, at 357, 84 P. 2d 949; In re Brainard, 55 Idaho 168, at 167, 39
P. 2d 769; United Mercury Mines Co. v. Pfoest, 57 Idaho 293, at 296,
65 P. 2d 162; Abraham v. State, 60 Idaho 715, at 718, 96 P. 2d 457;
McLean v. Hecla Mining Co., 62 Idaho 75, at 78, 108 P. 2d 259; Peck

I therefore concur in the result, based upon the second conclusion,
but refrain at this time from concurring or dissenting as to the first
conclusion, as the same is unnecessary to a proper determination of
the case, thus adhering to the above rule reiterated by this court.

DUNLAP, Justice (concurring specially).

I agree with the conclusions reached by Mr. Justice GIVENS, in
his special concurrence herein.

HUDGE, J., did not sit at the hearing or participate in the fore-
going opinion.
Entrance or admission requirements are subject to board review though the recommendations of the faculty have been followed as a matter of custom and procedure. Admission in the early days was by examination. Later graduation from an accredited high school was made equally acceptable. Both procedures continue in effect.

The University has adhered strictly to the provision of the Act of 1889 as confirmed in the State Constitution whereby "no student who shall have been a resident of the Territory for one year, next preceding his admission, shall be required to pay any fees for tuition in the University, except in a professional department and for extra studies." Even the exception in respect to professional departments and extra studies is not now recognized although at one time a tuition fee was charged students in the Law School. The University of Idaho occupies an almost unique position in this respect since tuition fees are regularly charged in all the publicly supported higher institutions of learning in the surrounding states of Montana, Wyoming, Utah, Nevada, Oregon and Washington, and, for that matter, pretty generally throughout the United States. Under the provisions of this Act, moreover, the Regents can and do set "rates of tuition" for those "who shall not have been a resident as aforesaid." Although the board may not charge residents of Idaho fees for "tuition," it has always made nominal charges to cover costs of materials and supplies consumed in the various laboratories, to meet the expenses of recording grades and furnishing transcripts of academic records, for the operation of the health and infirmary service, the use of extra-curricular facilities such as the Student Union, the stadium, the golf course and the like, including small amortization charges to meet the cost of the same under the various legal provisions noted above.

IV. The University as an Accrediting Agency

One of the derived powers of the University has to do with the accrediting of other collegiate institutions in the state. The University's responsibilities as an accrediting agency rests on a two-fold basis. In the first place, as in every state of the Union, the University's evaluation of the courses of instruction offered in the other educational institutions of the state, public and private, determines the evaluation which colleges and universities in other parts of the country give to the work of these institutions. In other words the University of Illinois or Stanford University will accept credits presented by a student from the West-Central Idaho Technological Institute (a purely hypothetical institution) if the University of Idaho accepts credits from that institution. Otherwise, not. This places a great responsibility on the University which, despite local pressure exerted from time to time, it has discharged fairly and constructively to the advantage not only of educational standards in Idaho but to the long-run advantage of the institutions seeking accreditation.

The second basis for the University's accrediting responsibilities rests very definitely on legal enactments. In point of time the oldest provision on this matter is the clause in the Southern Branch Act (1927) which declares that that institution shall give "instruction, as nearly as is practicable, equivalent to the first two years as prescribed for the University of Idaho." Manifestly only the administration and faculty of the University is in a position to judge the "equivalence" of such instruction or in other words to accredit the courses offered at the Southern Branch. In this responsibility there is no difference between this procedure and that followed in appraising and accrediting the courses offered in any other division of the University. These legal accrediting responsibilities were further extended in the Junior College Act of
1939** which provided that “The junior college established pursuant to the provisions of the act shall give instruction, as nearly as is practicable, equivalent to the first two years as prescribed for the University of Idaho.” Section 9 of this act goes on to provide that “the courses given and the instruction therein shall be of such standard as to coordinate the work in the junior colleges with the grade of instruction at the University of Idaho, and the grades and credits given for work performed in such junior colleges as have met the requirements of the State Board of Education shall be accepted by the University and credit given therefor.” This provision, by giving legal sanction to the general practice mentioned above concerning the accrediting duties of state universities, places on the administration and faculty the implied obligation of determining the extent to which such junior college courses and instruction are “of such standard as to coordinate the work with the [corresponding] grade of instruction at the University of Idaho.” The ultimate responsibility of course rests with the board but the latter would scarcely undertake itself to measure and compare standards of instruction in organic chemistry or biology or music but would naturally leave such evaluation to appropriate committees of the University faculty familiar with national requirements and standards in these and similar fields.

** Session Laws, Chap. 82, sec. 2.

V. The University Today

Whatever else the University of Idaho is and may become it is first and foremost a part of the public educational system of the state. Educationally it is not less a component of the public school system than the remotest and humblest rural school. Idaho may be considered fortunate in that so many of its educational agencies are under the direction and control of a single board of trustees. Only the so-called Class A public school districts and others similarly constituted are literally as well as traditionally “independent school districts.” And even over them the State Board of Education, through its certification regulations and its standards, maintains an effective though indirect control.

Fully seventy per cent of the total budget of the University in all its activities normally goes for strictly educational and administrative purposes, that is the education of the boys and girls of Idaho on the campus of their state university, and of the total income of the institution, as noted earlier, approximately half comes from state appropriations ear-marked for student instruction. The fame of the University and its future rests on the proper and effective performance of this important function. The standing of the institution nationally as an accredited institution depends above all else on the quality of this phase of its work. It is sometimes implied or even charged that the institution’s demands for funds are insatiable. The charge is undeniably true so far as its educational work is concerned. The University can never have enough to pay the salaries required to engage the services of top-rank scholars on its faculty, never enough to purchase the books it ought to have in its library or the apparatus and equipment it needs in its laboratories. Every dollar expended in its institutional work produces dividends of the highest social and intellectual value.

The campus of the University at Moscow is the seat and scene of this activity and has been for fifty years. But an
important portion of the University's instructional work is
carried on at the Southern Branch of the University in
Pocatello. The conversion of what had been known origi-
nally as the Academy of Idaho and later as the Idaho
Technical Institute into a coordinate branch of the State
University was the statesmanlike achievement of the Board
of Regents of 1927, comprising Messrs. Asher B. Wilson,
Clency St. Clair, Huntington Taylor, Stanley Easton, and
Mrs. J. G. H. Graveley, ably advised as to educational
details by President A. H. Upham of the University.

That the University might operate branches was no new
idea for it was definitely contemplated by the framers of the
constitution. In the course of the debate on the section of
the constitution pertaining to the University the following
discussion took place:

"Mr. Reid. They went so far as to provide for the location of
the penitentiary before the government turned it over to us, and
there is no state in the Union that has a university system that does not
provide for it in its constitution, and part of it at least should be
adopted, that part which locates and establishes the university, which
simply goes so far as to say that the university is established, and then
puts it upon the legislature to support and maintain it. Now the
capital is located, the insane asylum is located, in the same bill, and
no objection was made to that. I am in favor of this, and the main
reason is because it located this university. It does not locate every
branch of it that may be established under it—we may want branches
established in other places—but this establishes a permanent university
and provides for the general control of it. I am as much in favor of
striking out legislation as anybody, but I don't want it left to the
legislature to come in here, if we do not put it in the organic law, and
change the location of this university. I am in favor of its staying
where it was put. It went there by the unanimous consent of the
people, almost, through the legislature, and we want it to remain
there in northern Idaho. The other institutions of the state are down
here in southern Idaho, and permanently located by this instrument,
and I want this instrument to speak out as plainly for any institution
we have in the north as it does for the institutions we have in the south."^{66}

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Continuing the discussion Mr. Sweet, it will be remem-
ered, said:

"... so far as I am concerned I should be most happy to see a very
prosperous and successful coordinate branch of it in every city in
Idaho; because I do think, with our climate, with our peculiar resources,
our peculiar location, we should have the finest state from an educa-
tional point of view in the Union. I believe we can have it. We have
commenced without running in debt; we have commenced the building
of the state university. We can commence pretty soon on its coordinate
branches without running into debt, and in a very short time we can
have a reputation second to no state on the coast, having our educa-
tional advantages, and at the same time not being in debt one solitary
cent for them. And I beg leave to suggest to the convention and
I believe you will accept it if true, that there is no institution in con-
nection with this state, there is no feature of the state, if we are
admitted into the Union, that will be more cherished by the people
of this country who are seeking homes, than first class educational
institutions; and this simply emphasizes what the legislature has said
upon that proposition, without robbing or intending to interfere in the
location of any coordinate branch in any part or portion of the state.
And when it comes to that particular work of building up the educa-
tional interests of Idaho, you will find the people of Moscow and that
portion of the territory generally, who I dare say are as much inter-
ested in the educational progress of the territory, and who already
take great pride in building up this institution, ready to help any
other part of the territory to some coordinate branch of that insti-
tution."^{61}

It is not necessary to describe at this point the early
history of the Southern Branch and its substantial growth
in the quarter century, 1902-1927. Its future had become
a matter of rather bitter sectional discussion and debate. In
the Nineteenth Session of the state legislature a bill had
been introduced to convert the Idaho Technical Institute
into an additional degree-granting institution, another uni-
versity. A similar bill had been defeated in the Eighteenth
Session. In the Nineteenth Session, moreover, a bill was
introduced to transfer the agricultural college of the Univer-
sity to Pocatello. This bill also was defeated. Finally toward

^{61} Ibid., pp. 771-772.
the close of the session, much of which had been devoted to heated and somewhat acrimonious discussions regarding the educational institutions, House Bill 160 was introduced and passed:

**AN ACT AMENDING SECTION 1110 OF THE IDAHO COMPILED STATUTES AND PROVIDING THAT ALL REFERENCES IN EXISTING STATUTES AND LAWS OF IDAHO TO THE IDAHO TECHNICAL INSTITUTE SHALL BE CONSIDERED AND CONSTRUED AS REFERRING TO IT UNDER ITS NEW NAME "SOUTHERN BRANCH OF THE UNIVERSITY OF IDAHO," AS PROVIDED IN THIS ACT, AND DECLARING AN EMERGENCY.**

**Be It Enacted by the Legislature of the State of Idaho:**

Sec. 1. That Section 1110 of the Idaho Compiled Statutes be and the same is hereby amended to read as follows:

"Sec. 1110. ESTABLISHMENT OF JUNIOR COLLEGE. A *college which shall be called the 'Southern Branch of the University of Idaho,' heretofore called the 'Idaho Technical Institute,' is hereby established in the city of Pocatello, Idaho, the purpose of which shall be the giving of instruction as nearly as is practicable, equivalent to the first two years, as prescribed for the University of Idaho, in such vocational, scientific, literary and technical subjects as will meet the educational needs of the students enrolled: Provided, That the course shall include two years and not more than two years of college grade * * * and Provided further, that * * * as to the school of pharmacy in said college, the course shall be such as shall meet the standard of requirements as now, or hereafter, recommended by the American Association of Colleges of Pharmacy."  

Sec. 2. All references in existing statutes and laws to the Idaho Technical Institute, the former name of the school or college mentioned in Section 1 of this Act shall be considered and construed as referring to said college under its new name, "Southern Branch of the University of Idaho."

Sec. 3. An emergency existing therefor, which is hereby declared, this Act shall be in force and effect from and after its passage and approval.

Approved February 14, 1927.**

Immediately after the passage of this act, at a meeting of the board of Regents on February 14, 1927, the following resolution was adopted:

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44 Session Laws, 1927, Chap. 21, p. 25 ff
In the early days of our State, the need of a State institution to bridge over the gap between the grade schools and the University, was paramount. Few high schools then existed within the borders of the entire state, and these were accessible only to the urban children. The Legislature created the “Academy of Idaho” and located it at Pocatello. The location as well as the nature of the institution gave it an immediate standing among the educational institutions of the Northwest. The phenomenal development of high school education over the country soon left the Academy without a real function. Along with the rapid growth of the high school came a demand for teachers in manual training, domestic science and agriculture, and Idaho had no institution prepared to develop such teachers. Gradually, the Pocatello institution undertook this work, eventually changing its name to correspond to this new function. In 1817, the old Academy of Idaho became the Idaho Technical Institute. Another change in the educational program came with the World War. The demand for teachers in manual training and domestic science dropped off very suddenly. What teachers were needed must present college preparation, which the Institute was not prepared to give, hence arose the question as to whether Idaho with its 600,000 population was financially able to support two full-fledged universities. The Legislature of 1927 thought not, hence shifted for an alternative. The result of long and careful deliberation was the creation at Pocatello of a Junior College under the immediate direction of the University, thus creating out of the former Technical Institute, the Southern Branch of the University of Idaho, thereby placing our State in the very vanguard of educational practice, for the experts throughout the United States favor the Junior College idea and most of them believe the growth should come from the University subdividing its undergraduate work into Junior and Senior colleges, rather than the high school function upward.

Educators and laymen all over the country have been keenly interested in the new development. Idaho citizens have watched the rapid progress of this new institution with pride and satisfaction.

The Southern Branch of the University of Idaho, with two years of marked success behind it is no longer an experiment, it is a real growing, functioning institution, meeting a real demand and serving well, more than five hundred college students.  

Another quarter century has elapsed since the establishment of the Southern Branch at Pocatello. Here the University offers all its work in pharmacy except such general pre-


pharmaceutical courses as chemistry and certain of the biological sciences which are also given at the University campus at Moscow. The remainder of the academic work at the Southern Branch has been carried on “as nearly as practicable, equivalent to the first two years as prescribed for the University of Idaho.” In addition a large range of vocational courses have been developed in cooperation with the State Department of Vocational Education, and, for the duration of that agency, with the National Youth Administration. The contribution made in these vocational fields has been outstanding and is likely to be even more significant in the post-war period.

In the teacher training field the University has prepared elementary teachers in a two-year curriculum at the Southern Branch and, for those desiring the longer period of preparation, a four-year curriculum at the state campus. By action of the Board of Education in December, 1943, the scope of the teacher training program at the Southern Branch was extended to include the first two years of secondary (high school) teacher preparation and training.

Like the branch experiment stations or branch farms, the Southern Branch has its separate budget and is financed from funds separate from the allotment given to the rest of the University. Administratively, however, it is integrated with the older institution, providing, among other things, office space to members of the agricultural college staff operating in that section of the state.

Through its division of non-resident instruction the University not only offers correspondence courses in University subjects but also high school courses for the benefit of those who have been deprived of secondary school opportunities. This “extension of the campus” reaches into every corner and section of the state. The University, moreover, has on various occasions operated a summer school in cooperation with the public school system of Boise.

All the manifold services that the University renders are for the public good and in the public interest and for the
The Adams, Hatch and Purnell funds are outright grants, the Bankhead-Jones Experiment Station Fund requires an equal offset from the State amounting currently to $28,189.04. Of this, $22,841.98 came from state appropriations and the balance from institutional income, derived largely from the sale of breeding cattle, poultry products, milk and the like produced at the experimental farms.

Idaho is a state possessing unusually divergent conditions of climate, soil, elevation, and precipitation. To adapt agricultural practices and methods of cultivation to such widely differing conditions the University agricultural experiment station operates branch experimental farms at Aberdeen in Bingham County, Felt in Teton County, Caldwell in Canyon County, and Sandpoint in Bonner County. Normally these branch stations are financed about half from institutional income derived from the sale of their crops and stock and half from state appropriations. They are not, however, operated in any sense as “model” farms but rather as laboratories where all sorts of methods, good and bad and indifferent are followed in the cultivation of specific crops, usually on small test plots whose output is carefully measured, weighed, stored and tested and they are staffed not only with farm workers but with agricultural scientists directing the experimentation. If they were model farms they should of course be completely self-sustaining, nay, profitable; otherwise they would certainly serve as poor models. As stated above, however, they are not model farms at all but experimental and research laboratories and consequently like the laboratories of great industries are productive of scientific farm information which eventually adds to the wealth of the state. They are not and are not intended to be immediately productive of large cash incomes. Some years ago the threats to Idaho’s present position as a potato-growing state were becoming so serious from disease, pests, crop deterioration in storage, etc., that the legislature more than doubled the state appropriation of the experimental farms raising the biennial appropriation from $25,000 to $51,000. The 1941-42 budget for these branch
stations called for a total outlay of $86,881 derived as follows:

<table>
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<tr>
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<th>Pct. of Total</th>
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<td>40.3</td>
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<td>State Appropriations</td>
<td>51,881.00</td>
<td>60.7</td>
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<tr>
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<td>$ 86,881.00</td>
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Research in mining and metallurgy, on the other hand, presents an entirely different organizational picture. The State Bureau of Mines, which is governed by an ex-officio board comprising the Governor as chairman, the dean of the School of Mines of the University ex-officio director of the Bureau and secretary of the Board, the State Mine Inspector, the president of the Idaho Mining Association and either the head of the department of mining and metallurgy or the head of the department of geology at the University, whichever is designated by the Governor, has its headquarters, offices and laboratories on the campus of the University. Not only are there these ex-officio affiliations noted above between the University and the Bureau, but several members of the staff of the University School of Mines are also employed partly by the Bureau. In the summer months when field work can be carried on and classes in the School of Mines are suspended, many of the faculty serve on the Bureau staff. The Bureau also normally maintains one or two scientists, full-time, who use the headquarters and the resources of the University School of Mines in carrying on mining and metallurgical research for the Bureau. This dual and somewhat overlapping relationship between the University and State Bureau of Mines has still further ramifications in the provisions governing the Bureau whereby the latter is authorized and financed to carry on cooperative work with "departments and bureaus of the U.S. government in the activities and investigations for which said Bureau is created, providing the federal expenditure for such purpose shall at least equal that of the state."5

Customarily this cooperation is carried on with the U.S. Geological Survey with which joint projects are undertaken, financed half by federal funds and half by Bureau funds but under the direction of the dean of the University School of Mines as ex-officio director of the Bureau. Involved as this arrangement may seem, it works smoothly enough in practice and affords the state at very little expense the services of the technical faculty of the University in a field of research and experimentation of great importance to Idaho.

The University, moreover, exercises what amounts to police powers in various fields, chiefly agriculture. Part of the work is financed by direct appropriations to the University for specific purposes and part of it is undertaken at the request of other agencies of government to which appropriations are made. The state seed laboratory comes in the first of these categories. For years the University has been receiving a biennial appropriation formerly of $10,000 but recently of over $15,000 to analyze seed samples submitted to it for testing and certification. The laboratory is maintained in Boise and the proceeds received from the services rendered which considerably exceed their cost are covered into the general fund of the State Treasury. A department, Rodent Control, to protect state-owned land against predatory rodents is financed by direct appropriation to the University for these purposes. The University buys and mixes bait for this poisoning work and derives part of its income for carrying on the activity from the sale of the bait to private parties wishing to use it on their land. It is estimated that in the biennium 1943-45 the University's funds for this activity will be roughly as follows:

<table>
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<tr>
<td>Institutional Income (sale of bait)</td>
<td>$2,000.00</td>
<td>23.5</td>
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<td>State Appropriations</td>
<td>6,500.00</td>
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<td>$ 8,500.00</td>
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Funds for leaf-hopper control, on the other hand, are

50 Staton Lews, 1933, Chap. 22, p. 80.
appropriated to the Governor and become a part of the
executive budget and are not subject to control of the Board
of Regents. The Governor in turn designates the University
as the agency to handle this work, expending as much of
the appropriation as is necessary. Usually the University has
turned back a considerable portion of this appropriation into
the general fund, each biennium. It reports its operations
to the Governor.

The pea inspection service is an example of scientific
policing carried on in cooperation with the federal govern-
ment. An Act of Congress, 1884, provides for federal inspec-
tion of dried peas. The College of Agriculture of the Uni-
versity designates a member of its staff to cooperate in con-
ducting this work, including general administrative oversight
over the licensed inspectors, examining and testing samples
both of peas and beans submitted for checking and approval,
and collecting fees and charges for the service rendered. Of
the amounts collected, the University retains eighty-five per
cent to cover costs of the services, including salaries and
operating expenses and remits the remaining fifteen per
cent to the federal treasury.

These are merely examples of the wide ramifications of
the University's activities and responsibilities. Others too
numerous to describe in detail include the materials testing
laboratory of the College of Engineering where highway and
other materials are tested; the Clark-McNary nursery oper-
bated by the School of Forestry in the growing and selling of
trees for shelter breaks and other farm uses, the financial
support of which is derived partly from federal appropri-
ations and partly from the sale of trees; the calibration of
glassware for accuracy in measuring, especially for dairy
uses; and most recently the administration of the Emergency
Farm Labor allotments in Idaho under Congressional appro-
priation and pursuant to agreements with the United States
Government.

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**Public Law No. 131, Seventy-Third Congress.**

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### Appendix A

#### REGENTS OF THE UNIVERSITY OF IDAHO

<table>
<thead>
<tr>
<th>Name</th>
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<th>Expiration</th>
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<tr>
<td>H. B. Blake</td>
<td>February 3, 1891</td>
<td>February 3, 1893</td>
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<tr>
<td>Nathan Falk</td>
<td>February 3, 1891</td>
<td>February 3, 1893</td>
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<tr>
<td>John A. Finch</td>
<td>February 3, 1891</td>
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<tr>
<td>J. H. Forney</td>
<td>February 3, 1891</td>
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<tr>
<td>R. Z. Johnson</td>
<td>February 3, 1891</td>
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<tr>
<td>J. W. Reid</td>
<td>February 3, 1891</td>
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<tr>
<td>M. J. Shields</td>
<td>February 3, 1891</td>
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<tr>
<td>George L. Shoup</td>
<td>February 3, 1891</td>
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<tr>
<td>Willis Sweet</td>
<td>February 3, 1891</td>
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<tr>
<td>A. D. Norton</td>
<td>October 6, 1891</td>
<td>February 3, 1893</td>
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(Resigned October 13, 1892)

**A. V. Scott**  May 16, 1892  February 3, 1893
(To fill unexpired term of N. Falk)

G. M. Waterhouse  October 17, 1892  February 2, 1893

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<td>A. J. Crook</td>
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<tr>
<td>I. C. Hattabaugh</td>
<td>February 6, 1893</td>
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<td>Henry H. Hoff</td>
<td>February 6, 1893</td>
<td>February 6, 1895</td>
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<td>R. Z. Johnson</td>
<td>February 6, 1893</td>
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<tr>
<td>Willis Sweet</td>
<td>February 6, 1893</td>
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<td>Philip Tillinghast</td>
<td>February 6, 1893</td>
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<td>W. W. Watkins</td>
<td>February 6, 1893</td>
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<td>A. A. Crane</td>
<td>June 7, 1893</td>
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<td>John W. Daniels</td>
<td>May 21, 1894</td>
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<tr>
<td>J. F. Ailshie</td>
<td>February 4, 1895</td>
<td>February 4, 1897</td>
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<tr>
<td>W. E. Borah</td>
<td>February 4, 1895</td>
<td>February 4, 1897</td>
</tr>
<tr>
<td>William Budge</td>
<td>February 4, 1895</td>
<td>February 4, 1897</td>
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<tr>
<td>Sherman Coffin</td>
<td>February 4, 1895</td>
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</tr>
<tr>
<td>Frank Cornwall</td>
<td>February 4, 1895</td>
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<tr>
<td>John Donaldson</td>
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<td>I. Green</td>
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<td>C. L. Heitman</td>
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<td>Caleb P. Jones</td>
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<td>William Kaufman</td>
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<tr>
<td>George Parkinson</td>
<td>February 4, 1895</td>
<td>February 4, 1897</td>
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<tr>
<td>C. W. Schaff</td>
<td>February 4, 1895</td>
<td>February 4, 1897</td>
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*Appointed December 14, 1896, to fill unexpired term of W. E. Borah.
**Succeeding John Donaldson.
<table>
<thead>
<tr>
<th>Name</th>
<th>Date Commissioned</th>
<th>Expiration</th>
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<tr>
<td>John G. Brown</td>
<td>February 1, 1897</td>
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<tr>
<td>Frank Cornwall</td>
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<td>J. H. Forney</td>
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<td>James H. Hawley</td>
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<td>Frank Martin</td>
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<td>Asby Turner</td>
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<tr>
<td>Mrs. M. J. Whitman</td>
<td>February 1, 1897</td>
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<td>Warren S. Truitt</td>
<td>June 4, 1897</td>
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<td>J. H. Hawley</td>
<td>October 14, 1898</td>
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<td>(Vice Ashby Turner, resigned)</td>
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<td>Albert Alford</td>
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<td>F. N. Gilbert</td>
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<td>F. E. Cornwall</td>
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<td>A. B. Campbell</td>
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<td>March 7, 1903</td>
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<td>George E. Robethan</td>
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<td>C. E. Harris</td>
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<td>Josiah Hickman</td>
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<td>John B. Goode</td>
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<td>Mrs. George A. Williams</td>
<td>March 7, 1899</td>
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<tr>
<td>John B. Goode</td>
<td>March 9, 1901</td>
<td>March 9, 1905</td>
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<tr>
<td>Mary E. Ridenbaugh</td>
<td>March 9, 1901</td>
<td>March 9, 1907</td>
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<tr>
<td>John W. Jones</td>
<td>March 9, 1901</td>
<td>March 9, 1907</td>
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<tr>
<td>H. E. Wallace</td>
<td>March 9, 1901</td>
<td>March 9, 1905</td>
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<tr>
<td>George C. Parkinson</td>
<td>March 9, 1901</td>
<td>March 9, 1903</td>
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</table>

Note: The Legislature of 1901 amended the law to provide for only five Regents. New appointments were made in 1901, thereby terminating the appointments made in 1899.

George Chapin          | February 10, 1902 | (Vice John W. Jones, deceased) |
Charles H. Heitman     | March 9, 1903     | March 9, 1909                |
Edward S. Sweet        | March 9, 1903     | March 9, 1907                |
Mary E. Ridenbaugh     | March 9, 1903     | March 9, 1907 (Reappointed after resignation) |
George C. Parkinson    | March 9, 1903     | (Vice H. E. Wallace, resigned) |
James F. McCarthy      | July 28, 1903     | (Vice John B. Goode, resigned) |
O. W. McCutcheon       | January 9, 1905   | March 9, 1911                |
E. H. Moffitt          | April 29, 1905    | March 9, 1911                |
APPENDIX B

SUPERINTENDENTS OF PUBLIC INSTRUCTION

TERRITORIAL

J. R. Chittenden.................................. Appointed December 26, 1864
W. R. Bishop................................... Appointed July 25, 1866
Horace T. Lane.................................. Appointed January 27, 1867
William R. Bishop.................................. Appointed May 14, 1867
Daniel Cram.................................. Appointed January 1, 1868
Joseph Perrault.................................. Appointed January 15, 1875
James L. Onderdonk.................................. Appointed February 14, 1881
Silas W. Moody.................................. Appointed February 7, 1885

(From 1865 to 1887 the Comptrollers were ex-officio Superintendents of Public Instruction.)

Silas W. Moody.................................. Appointed February 11, 1887
Charles C. Stevenson.................................. Appointed February 11, 1889

STATE

Joseph Harroun.................................. 1891-1898
B. B. Lower.................................. 1899-1895
C. A. Foresman.................................. 1895-1897
Louis N. B. Anderson.................................. 1897-1899
Permeal J. French.................................. 1899-1903
Mae L. Scott.................................. 1903-1907
S. Belle Chamberlain.................................. 1907-1911
Grace M. Shepherd.................................. 1911-1915
Bernice McCoy.................................. 1915-1917
Ethel E. Redfield.................................. 1917-1923
Elisabeth Russum.................................. 1923-1927
Mabelle McConnell Lyman.................................. 1927-1929
Myrtle R. Davis.................................. 1929-1933
John W. Condie.................................. 1933-1941
C. E. Roberts.................................. 1941-1944
A. H. Chatburn.................................. 1944-
Appendix C

Cases

Molgard v. Eagleson (31 Idaho 411) .......................... 1918
Evans v. Van Deusen (31 Idaho 614) ......................... 1918
Roach v. Gooding (10 Idaho 244) .......................... 1905
State ex rel. Black v. State Board of Education, etc. (33 Idaho 415) 1921
State ex rel. Miller v. Board of Regents (56 Idaho 210) .......... 1935
Hyslop v. Board of Regents (33 Idaho 841) .................. 1913
Dreps v. Board of Regents (129 Pacific, 2nd Ser., 467) .......... 1943

Statutes

Act of 1889 creating the University.

Constitution of Idaho, Article IX, Section 10, The University.

Constitutional Amendment of (1911) 1912 regarding the Board of Regents. Session Laws 1911, Extraordinary Session, House Joint Resolution No. 30, p. 791.

Act of 1913 creating the State Board of Education and Board of Regents of the University of Idaho. Session Laws, 1913, Chapter 77, p. 328 ff.

Act of 1923 providing for University bond issues. Session Laws, 1923, Chapter 72, p. 79.
