

Minutes of the regular monthly meeting of the Executive Committee of the University of Kentucky, January 13, 1932.

The Executive Committee of the Board of Trustees of the University of Kentucky met in regular monthly session in the office of President McVey at 10:30 a. m., Wednesday, January 13, 1932. The following members were present: Judge Stoll, Mr. Park, Mr. Andrews, and Mr. Webb. Meeting with the Committee were Frank L. McVey, President of the University, and Wellington Patrick, Secretary of the Board.

1. The minutes of the previous meeting were approved and published.

2. Insurance. Mr. Thomas Scott of the firm of Klair and Scott, appeared before the Committee to make a statement regarding the insurance carried by the University. He stated that the five-year contract for insurance carried by the University expires March 14, with the exception of the insurance carried on McVey Hall which expires January 25, 1932. He also suggested that a revaluation of the buildings and contents be made. The matter was discussed and a motion was made, seconded, and carried, authorizing the President of the University and the Business Agent to have a valuation placed immediately on buildings and contents of the University and Experiment Station; this appraisal to be for the purpose of insurance and to be made by such person as may be determined. It was also directed that the President and Business Agent be authorized to place insurance on McVey Hall at their discretion.

3. Report of the Business Agent. The report of the Business Agent was read and ordered incorporated into the Minutes. The report was as follows:

EXHIBIT "B"

Statement of Income and Expenditures
Month of December - 1931

	<u>Previously Reported</u>	<u>Current Month</u>	<u>Fiscal Year To Date</u>
General Fund Income			
Fed. Appropriation	42,750.00		42,750.00
State Tax	350,662.25	37,654.12	388,316.37
Int. on Lib. Loan Bonds	850.00		850.00

Int. on Endowment			
Bonds	4,322.25		4,322.25
Student Fees	76,814.33	(172.35)	76,641.98
Student Fees - Summer			
School	46,844.15		46,844.15
Student Fees - Un.			
H. S.	6,430.00		6,430.00
Student Fees - El. Tr.			
School	6,581.05	1,125.00	7,706.05
Student Fees - Univ-			
ersity Extension	14,428.00	1,919.29	16,347.29
Misc. Receipts	14,745.14	1,089.13	15,834.27
Rentals	1,610.90	291.50	1,902.40
Men's Dormitories	12,133.38	37.70	12,171.08
Total	<u>578,171.45</u>	<u>41,944.39</u>	<u>620,115.84</u>
Expenditures			
Instruction	378,577.26	83,352.70	461,929.96
Adm. Exp. & Maint.	198,911.50	27,443.16	226,354.66
Additions and Better-			
ments	92,423.21	3,167.08	95,590.29
Total	<u>669,911.97</u>	<u>113,962.94</u>	<u>783,874.91</u>
Excess of Exp. over			
Income	<u>(91,740.52)</u>	<u>(72,018.55)</u>	<u>(163,759.07)</u>
Patterson Hall Income			
Board	33,514.48	216.00	33,730.48
Misc. Receipts	147.20	7.15	154.35
Room Rent - Sum. Sch.	4,777.75		4,777.75
Total	<u>38,439.43</u>	<u>223.15</u>	<u>38,662.58</u>
Expenditures			
Expense	18,315.55	5,305.56	23,621.11
Add. & Betterments	8,844.25		8,844.25
Total	<u>27,159.80</u>	<u>5,305.56</u>	<u>32,465.36</u>
Excess of Income over			
Expenditures	<u>11,279.63</u>	<u>(5,082.41)</u>	<u>6,197.22</u>
General Fund Income	616,610.88	42,167.54	658,778.42
General Fund Expend.	<u>697,071.77</u>	<u>119,268.50</u>	<u>816,340.27</u>
Excess of General Fund			
Expenditures over In-			
come	(80,460.89)	(77,100.96)	(157,561.85)
Excess of Receipts over			
Expenditures for General			
Ledger Accounts	<u>321,426.45</u>	<u>93,416.90</u>	<u>314,843.35</u>

Excess of Receipts over Expend. for the fiscal year to date - General Fund	<u>140,965.56</u>	<u>16,315.94</u>	<u>157,281.50</u>
Excess of Receipts over Expenditures for the fis- cal year to date - General Fund			157,281.50
Cash in Bank July 1, 1931 - General Fund			<u>(107,858.56)</u>
Cash in Bank December 31, 1931 - General Fund			<u>49,422.94</u>
Trust Fund Income			
Student Loan Fund	848.18	445.10	1,293.28
Student Notes Paid	<u>1,847.32</u>	<u>684.83</u>	<u>2,532.15</u>
Total Receipts	<u>2,695.50</u>	<u>1,129.93</u>	<u>3,825.43</u>
Expenditures			
Expense	295.05	44.00	339.05
Student Notes	<u>2,300.00</u>	<u>551.00</u>	<u>2,851.00</u>
Total	<u>2,595.05</u>	<u>595.00</u>	<u>3,190.05</u>
Excess of Receipts over Ex- penditures	<u>100.45</u>	<u>534.93</u>	<u>635.38</u>
Excess of Receipts over Ex- penditures for the fiscal year to date - Trust Fund			635.38
Cash in Bank July 1, 1931 - Trust Fund			<u>1,417.64</u>
Cash in Bank December 31, 1931 - Trust Fund			<u>2,053.02</u>
Experiment Station Income			
Hatch - Federal Appro.	7,500.00		7,500.00
Milk and Butter - Cash Rec.	5,291.88	1,043.36	6,335.24
Beef Cattle Sales	402.00	350.70	752.70
Dairy Cattle Sales	86.45	29.58	116.03
Sheep Sales	20.32	285.00	305.32
Swine Sales	154.38	282.51	436.89
Poultry Sales	1,474.22	170.73	1,644.95
Farm Produce Sales	370.01	105.18	475.19
Horticultural Sales	1,031.55	42.50	1,074.05
Seed Test	17.00	2.00	19.00
Rentals	746.35	2,159.67	2,906.02
Miscellaneous	996.33	919.05	1,915.38
Fertilizer - Fees	4,820.00	10.00	4,830.00

Public Service - State			
Appropriation	3,666.66		3,666.66
Public Service - Misc.	38.60		38.60
Feeding Stuffs - Fees	14,495.60	2,775.25	17,270.85
Adams - Federal Appro.	7,500.00		7,500.00
Serum - Sales	1,548.43	210.00	1,758.43
Serum - Virus Sales	62.90	11.70	74.60
Serum - Supply Sales	68.75	4.25	73.00
Serum - Misc. Receipts	.41	1.00	1.41
State Appropriation	6,967.84		6,967.84
Creamery - License Fees	5,442.50	49.50	5,492.00
Creamery - Testers Lic.	1,658.00	54.00	1,712.00
Creamery - Glassware			
Tested	117.07	30.21	147.28
Robinson - State Appro.	3,038.02		3,038.02
Robinson - Misc. Rec.	420.34	79.75	500.09
West Ky. - State Appro.	4,523.88		4,523.88
West Ky. - Misc. Rec.	43.31		43.31
Purnell - Federal Appro.	30,000.00		30,000.00
State Appro. - Patterson			
Farm Pur.	25,000.00		25,000.00
Nursery Inspection -			
Fees	1,200.00	55.00	1,255.00
Nursery Inspection -			
State Appro.	564.85		564.85
Poultry Improvement	1,230.00		1,230.00
Cream Grading	4,850.00		4,850.00
Blood Test	751.75	161.75	913.50
Total	<u>136,099.40</u>	<u>8,832.69</u>	<u>144,932.09</u>
Expenditures			
Expense	177,866.43	29,564.66	207,431.09
Additions and Better.	1,454.39	145.06	1,599.45
Total	<u>179,320.82</u>	<u>29,709.72</u>	<u>209,030.54</u>
Excess of Expend. over			
Income	(43,221.42)	(20,877.03)	(64,098.45)
1930-1931 accounts pay-			
able liquidated during			
current year	<u>(12,223.80)</u>		<u>(12,223.80)</u>
Excess of Expenditures			
over Receipts	(55,445.22)	(20,877.03)	(76,322.25)
Excess of Expenditures			
over Receipts for the			
fiscal year to date -			
Experiment Station			(76,322.25)
Cash in Bank July 1, 1931 -			
Experiment Station			<u>60,174.95</u>
Cash in Bank December 31, 1931			
- Experiment Station			<u><u>(16,147.30)</u></u>

Extension Division Income			
Federal Smith-Lever	74,155.27		74,155.27
Federal Add. Co-op.	15,500.00		15,500.00
Federal Supplementary	26,545.87		26,545.87
Federal Capper-Ketcham	18,400.59		18,400.59
Urban Gardens Fund	2,500.00		2,500.00
County and Other	898.17	675.36	1,373.53
Total	<u>137,799.90</u>	<u>675.36</u>	<u>138,475.26</u>
Expenditures			
Expense	<u>177,921.49</u>	<u>39,511.63</u>	<u>217,433.12</u>
Excess of Expenditures over Income	<u>(40,121.59)</u>	<u>(38,836.27)</u>	<u>(78,957.86)</u>
Excess of Expenditures over Income for the fiscal year to date - Extension Division			(78,957.86)
Cash in Bank July 1, 1931 - Extension Division			<u>6,905.79</u>
Cash in Bank December 31, 1931 - Extension Div.			<u>(72,052.07)</u>
Summary			
General Fund Income	616,610.88	42,167.54	658,778.42
Trust Fund Income	848.18	445.10	1,293.28
Experiment Station In.	136,099.40	8,832.69	144,932.09
Extension Div. Inc.	<u>137,799.90</u>	<u>675.36</u>	<u>138,475.26</u>
Total	<u>891,358.36</u>	<u>52,120.69</u>	<u>943,479.05</u>
General Fund Expend.	697,071.77	119,268.50	816,340.27
Trust Fund Expend.	295.05	44.00	339.05
Experiment Station Ex- penditures	179,320.82	29,709.72	209,030.54
Extension Div. Expend.	<u>177,921.49</u>	<u>39,511.63</u>	<u>217,433.12</u>
Total	<u>1,054,609.13</u>	<u>188,533.85</u>	<u>1,243,142.98</u>
Excess of Expenditures over Income, -	<u>(163,250.77)</u>	(136,413.16)	(299,663.93)
1930-1931 accounts payable liquidated during Cur- rent Year	(12,223.80)		(12,223.80)
Excess of Receipts over Ex- penditures for General Ledger Accounts	221,426.45	93,416.90	314,843.35
Student Loan Fund - Notes	<u>(452.68)</u>	<u>133.83</u>	<u>(318.85)</u>
Excess of Receipts over Expend. for the fiscal year to date - Combined Fund	<u>45,499.20</u>	<u>(42,862.43)</u>	<u>2,636.77</u>

Excess of Receipts over Expenditures for the fiscal year to date - Combined Fund	2,636.77
Cash in Bank and on hand July 1, 1931 - Combined Fund	<u>(37,360.18)</u>
Cash in Bank and on hand December 31, 1931 - Combined Fund	<u><u>(34,723.41)</u></u>

Abstract of item shown on Statement of Income and Expenditures as "Excess of Receipts over Expenditures for General Ledger Accounts \$314,843.35"

	<u>Debit</u>	<u>Credit</u>
Accounts Receivable		32,524.19
Insurance Paid in Advance	3,706.13	
Sundry		11,025.29
Notes Payable	<u>3,706.13</u>	<u>275,000.00</u>
		318,549.48
		<u>3,706.13</u>
		<u>314,843.35</u>

4. Financial Situation at the Present: A special report from the Business Agent giving an estimate of expenditures for the University until July 1, 1932, was presented and on motion ordered received and filed.

5. Payment of Note. The action of the Business Agent and Chairman of the Executive Committee in borrowing \$40,000 from the First National Bank and Trust Company of Lexington on demand, dated January 5, was approved and the note ordered paid on this date January 13, 1932.

6. Tax on Warehouse. A report from Mr. J. Pelham Johnston regarding the tax on the warehouse owned by the University was presented and on motion duly seconded, ordered incorporated into the minutes. The report was as follows:

11 January, 1932

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

Dear Sir:

In compliance with your request in regard to the taxes on the warehouse property purchased by you from the Central District Warehousing Corporation, I have examined my files and find that, under the terms of the contract with said warehousing corporation, you assumed and agreed to pay as a part of the rental of said property all taxes assessed against the same, and payable during the year 1931.

The small piece of property which you purchased outright at the time this deal was made seems to have been omitted from taxation for the year 1931. We arrived at this conclusion in the following manner:

The total consideration paid for said property was approximately \$124,000.00. Property is generally assessed at eighty per cent of its value, which would make the property assessable for approximately \$90,000. You paid for the piece purchased outright, the sum of \$25,000, eighty per cent of which would be \$20,000; deducting this \$20,000 from \$90,000 leaves a total of \$70,000, at which the property is at present assessed.

There are two possible ways to obviate this heavy taxation. First, if the University could pay a sufficient amount under the terms of its contract to procure a deed to the same from said warehousing corporation, this property would no longer be subject to taxation. If this can not be done, the same could be taken up with Mr. Carpenter of the said warehousing corporation and with Mr. William White, Tax Assessor of Fayette County, and have the assessed value of said property reduced.

Hoping that this will answer your inquiry in a satisfactory manner, I am,

Yours very truly,

J. P. Johnston

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7. Campus Book Store. A recommendation was presented from the Faculty Committee on the Campus Book Store, recommending the continuance of the agreement with Mr. J. E. Morris for a period of three years on the same basis. The motion was carried.

8. Granting of Degrees. A committee of the Board consisting of Judge Stoll and Mr. Park was appointed with power to act, for the purpose of passing on degrees for the mid-year commencement.

9. Opinion of Attorney General -- Borrowing Money. The following opinion from the Attorney General of the State regarding the borrowing of money for the University was read and ordered incorporated into the minutes:

October 28, 1931

Judge Rainey T. Wells, President
Murray State Teachers College
Murray, Kentucky

Dear Judge:

Your letter of October 8, 1931, received and is copied in full herein.

"In the maintenance, management and operation of the State Teachers Colleges you will know by past experience that at certain periods it is necessary for the Boards of Regents to borrow certain sums of money to meet the operating expenses until the sheriffs settle with the State Auditor at the end of the year. In order that we may be able to present this matter in legal form to our banks, I will be pleased to have you write me an official opinion that the Board of Regents has power to borrow money for the operation and maintenance of this institution, limited only by the revenue set apart by the State and which will be received by it during the fiscal year.

"We would not consider extending such indebtedness beyond the revenue that will be received on or before July first of the budget year. Probably this indebtedness might be extended so far as the millage tax is concerned, but I only desire your opinion as to the revenue which is provided for this purpose for the fiscal year, including any annual appropriation made for that purpose and the millage tax which is set apart generally for this object.

"May I refer you to the Acts of the General Assembly of 1924, creating the Board of Regents for this institution. The language of this Act provides, 'Said Boards shall be bodies incorporate with perpetual succession and power to contract and be contracted with, to sue and be sued, to plead and be impleaded, etc.' This act has been amended two or three times since this college has been established, but this language remains the same in each amended Act. As you know, this is the general phraseology used for incorporating bodies and empowering them with full authority to operate, manage and control the business or institution placed in their charge and in all acts necessary for this purpose. The courts have held that if the incorporating Act undertakes to specify the particular powers designated to the governing body, that the authority would be limited to the specific powers designated; but, when general authority is given as in the above language, then the governing body has full power and authority to do all things necessary for the successful operation of said institution or business.

"If you will please write me in order that I may present it to the Board and our bank advising that under this corporate authority they have the power to contract for the loan of money, I shall appreciate it. Will you please get me this information immediately, as it is necessary to have same at the earliest moment."

Section 4535b-4a, Kentucky Statutes, Carroll's 1930 Edition, provides that the governing body, the Board of Regents of the Murray State Normal School, shall be a body "incorporate with perpetual succession and power to contract and be contracted with, to sue and be sued, to plead and implead, to receive by any legal mode of conveyance property of any description, to have and to hold and enjoy the same in their official capacity, to purchase or sell and convey property necessary for the proper management of their respective institutions, and to

condemn real estate in the same manner as provided by law in the condemnation of lands for railroad purposes; to have power to adopt by-laws, rules and regulations for the government of their members, officials, agents, and employes; and with full power to make and adopt all rules and regulations for the efficient management and control of their respective schools."

Said section further provides that the "management, control and supervision of the Murray State Normal School is hereby vested in the board of regents of the Murray State Normal School." This section of the Kentucky Statutes vests in the Board of Regents of the Murray State Normal School broad general corporate powers in addition to the express powers conferred by said section. All other corporate powers ordinarily exercised by corporations which are not limited or prohibited by either statutory or constitutional provision, which are reasonably necessary in the performance of the duties of said Board in the management, control and operation of the Murray State Normal School, are implied from the broad language used in said section of the statute. In the absence of any constitutional or legislative limitation or prohibition, said Board, in the exercise of its general corporate powers, would have the right and authority to borrow money. There is no legislative act limiting or prohibiting the exercise of such power of the Board of Regents, except that the Board must not incur obligations during any fiscal year in excess of the money appropriated and allocated to said Board by the General Assembly for that fiscal year and which it is reasonably certain will be received during the fiscal year. Section 1992a-18, Kentucky Statutes, Carroll's 1930 Edition. Therefore, the question is narrowed down to a consideration of whether there is any constitutional limitation or prohibition on the authority of the Board to borrow money in anticipation of the revenues which have already been levied by the General Assembly and specifically appropriated to said Board and which it is reasonably certain will be collected during the fiscal year which will end June 30, 1932.

While the Board of Regents of the Murray State Normal School is a separate corporate entity, it is nevertheless an agency of the Commonwealth of Kentucky and its acts, within the scope of its authority, are the acts of the Commonwealth of Kentucky.

Each department of the State government is required to conduct its business on the basis of the revenue provided by the General Assembly and appropriated to that department, and which it is reasonably certain will be received during the fiscal year. State Highway Commission v. Coleman, 236 Ky. 444, 33 S. W. (2d) 318; Billiter & Wiley v. State Highway Commission, 203 Ky. 15, 261 S. W. 855; Section 1992a-18, Kentucky Statutes, Carroll's 1930 Edition; 1928 O. A. G. No. 68.

In the case of Rhea v. Newman, 153 Ky. 604, 156 S. W. 154, 158, the Court of Appeals of Kentucky stated that:

"Revenues of the State assessed and in process of collection may be considered as constructively in the State treasury, and may be appropriated and treated as though actually and physically there; and an appropriation of them by the legislature does not constitute an incurring of indebtedness within the meaning of Section 49 of the Constitution."

Section 49 of the Kentucky Constitution provides that:

"The general assembly may contract debts to meet casual deficits or failures in the revenue; but such debts, direct or contingent, singly or in the aggregate, shall not at any time exceed five hundred thousand dollars (\$500,000.00) and the moneys arising from loans creating such debts shall be applied only to the purpose or purposes for which they were obtained, or to repay such debts; Provided, The General Assembly may contract debts to repel invasion, suppress insurrection, or, if hostilities are threatened, provide for the public defense."

Section 50 of the Kentucky Constitution provides that:

"No act of the general assembly shall authorize any debt to be contracted on behalf of the Commonwealth except for the purposes mentioned in Section 49, unless provision be made therein to levy and collect an annual tax sufficient to pay the interest stipulated, and to discharge the debt within thirty years; nor shall such act take effect until it shall have been submitted to the people at a general election, and shall have received a majority of all the votes cast for and against it: Provided, The general assembly may contract debts by borrowing money to pay any part of the debt of the state, without submission to the people, and without making provision in the act authorizing the same for a tax to discharge the debt so contracted, or the interest thereon."

Section 171 of the Kentucky Constitution provides in part that:

"The general assembly shall provide by law an annual tax, which with other resources, shall be sufficient to defray the estimated expenses of the Commonwealth for each fiscal year."

The Court of Appeals has uniformly held that Sections 49 and 50 of the Kentucky Constitution apply only to indebtedness created in excess of the revenues of the State and which are assessed and in the process of collection, and which it is reasonably certain will be received into the State treasury during the fiscal year or biennial period in which the obligations and debts involved are created. In other words, it has been uniformly held that debts or obligations may be created in any fiscal year in anticipation of the revenues already assessed and appropriated and which it is reasonably certain will be collected during that fiscal year. *Billiter & Wiley v. State Highway Commission*, supra; *James v. State University*, 131 Ky. 170, 114 S. W. 767; *Rhea v. Newman*, supra, and numerous other cases which are cited in the annotations under Sections 49 and 50 of the Kentucky Statutes as compiled in Carroll's 1930 Edition of the Kentucky Statutes.

Since there is no doubt as to the authority of the Board of Regents to incur contractual obligations and debts in anticipation of revenues already appropriated by the Legislature and which it is reasonable to anticipate will be collected during the fiscal year, there can be no distinction between other classes of contractual obligations and obligations issued in the form of notes executed for borrowed money in so far as the question here involved is concerned.

Therefore, we are of the opinion that the said Board of Regents may borrow money in anticipation of the revenues which have already been appropriated to that Board by the General Assembly for the current fiscal year and which are sufficiently definite and certain as to come within the rule above quoted from the *Rhea v. Newman* case and the *Billiter & Wiley* case as to anticipating revenues.

By Section 43 of Chapter 164 of the Acts of the General Assembly of 1930 there was appropriated to the Murray State Teachers College "the funds now authorized by law, or that may hereafter be authorized by law, in distribution of the state revenues for the maintenance and operation of said institution."

There was also appropriated by said section for the fiscal year beginning July 1, 1931, and ending June 30, 1932, "for the use and benefit of said institution for the payment of the construction, heating and equipment of a library and/or boys' dormitory, and the extension and installation of the water, light and sewerage systems and other capital investments and improvements at said institution" the sum of \$125,000.00.

By Section 4019, Kentucky Statutes, 1931 Supplement, being Chapter 152 of the Acts of the General Assembly of 1930, the Legislature appropriated two per cent of the ad valorem taxes imposed by said section "plus six and one-fourth per cent ($6\frac{1}{4}\%$) of the inheritance taxes, for the support and erection of buildings for the Murray State Normal School and Teachers College at Murray."

By Section 4535b-42, Kentucky Statutes, the Legislature has impliedly granted to the Normal Schools all moneys which may be derived from tuition or other fees paid by students.

By Section 4535b-5, Kentucky Statutes, there was appropriated by the General Assembly of Kentucky of 1922 the sum of \$30,000.00 annually, and this appropriation not being repealed was expressly recognized and continued by the General Assembly of 1930 by the enactment of Section 43 of Chapter 164 of the Acts of the General Assembly of 1930.

The foregoing revenues are all that have been appropriated by the General Assembly to said School, and by virtue of said appropriations said Board of Regents may obtain from the Auditor of Public Accounts warrants upon the State treasury during the present fiscal year which will end June 30, 1932, for the following amounts, less amounts already drawn, to-wit:

(a) Two per cent of the estimated amount of ad valorem taxes levied under Section 4019, Kentucky Statutes, which it is reasonable to anticipate will be collected and paid into the State treasury prior to June 30, 1932.

(b) The amount of \$125,000.00 appropriated by Section 43 of Chapter 164 of the Acts of 1930.

(c) \$30,000.00 appropriated by the General Assembly of 1922 by Chapter 10 of said Acts, being Section 4535b-5, Kentucky Statutes, Carroll's 1930 Edition, recognized and continued in effect by the 1930 session of the General Assembly as Section 43 of Chapter 164 of the Acts of 1930.

(d) Warrants for six and one-fourth per cent of the inheritance taxes as and when collected and paid into the State treasury. The amount of inheritance taxes can not be anticipated in advance of collection because of its uncertainty and the rule as to anticipated revenues assessed and in the process of collection can not be applied to the inheritance taxes. Overall v. City of Madisonville, 125 Ky. 684, 102 S. W. 281, and Billiter & Wiley v. State Highway Commission, supra.

The revenues authorized to be received by the Board of Regents during the present fiscal year as stated in clauses (a), (b) and (c), next hereinabove, and all moneys which may reasonably be expected to be collected during the present fiscal year as tuition or other fees paid by students may be anticipated in arriving at the amount of obligations and indebtedness which said Board of Regents may incur during the present fiscal year. Some consideration may also be given to the inheritance taxes which will be received by the Board, but the amount thereof is too indefinite and uncertain to estimate with any degree of certainty.

Very truly yours,

Clifford E. Smith
Assistant Attorney General.

Approved:

J. W. Cammack
Attorney General

CES:AD.

10. Opinion of the Attorney General -- Free Scholarships.
The following from the Attorney General regarding the free scholarships was read and ordered incorporated into the minutes:

October 21, 1931.

Dr. H. L. Donovan
Richmond, Kentucky

Dear Friend:

Your letter of October 19 received and is copied herein:

"The question has frequently arisen since I have been here relative to our awarding scholarships covering free board and room rent, to worthy students who might like to attend this institution. This request has been put to me on several occasions. I have answered it by saying that the State provided free tuition to all Kentuckians but did not permit the College to spend the revenue it receives for defraying the cost of board and room rent for those who desire to attend.

"I should like your opinion as Attorney General, on the legality of awarding scholarships that would cover the cost of board and room for students. Would it be possible -- if it seemed expedient -- for the Board of Regents to award a number of scholarships out of the revenue which we receive from the State?"

You have submitted an important question and I will endeavor to answer it by calling your attention to the following provision in Section 4019, Kentucky Statutes, 1930 Edition, viz:

"Sixty-nine per cent (69%) shall be used for the support of the common schools;

"Three and five-sixths per cent (3 5/6%) for the use of the sinking fund;

"Six and seven-tenths per cent (6 7/10%) thereof, plus fifty per cent (50%) of the inheritance taxes collected, for the support and erection of buildings for the University of Kentucky, at Lexington;

"Two and one-third per cent ($2\frac{1}{3}\%$) thereof, plus twelve and one-half per cent ($12\frac{1}{2}\%$) of the inheritance taxes, for the support and erection of buildings for the Eastern Kentucky State Normal School and Teachers College, at Richmond;"

"Two and nineteen-thirtieths per cent ($2\frac{19}{30}\%$) thereof plus twenty-five per cent (25%) of the inheritance taxes for the support and erection of buildings for the Western Kentucky State Normal school and Teachers College, at Bowling Green;

"Two per cent (2%) thereof, plus six and one-fourth per cent ($6\frac{1}{4}\%$) of the inheritance taxes, for the support and erection of buildings for the Murray State Normal school and Teachers College, at Murray;

"Two per cent (2%) thereof, plus six and one-fourth per cent ($6\frac{1}{4}\%$) of the inheritance taxes, for the support and erection of buildings for the Morehead State Normal School and Teachers College, at Morehead, *****".

You notice the paragraph referring to the University of Kentucky and the four Kentucky State Normal Schools uses the identical language "for the support and erection of buildings." It is evident to my mind that the word "support" means to maintain, conduct and operate the institution. There is no provision of law which authorizes the trustees of the Kentucky University or the regents of either of the Kentucky State Teachers Colleges to award scholarships by using the revenue which either the Kentucky State University or the State Teachers Colleges derives from taxation.

Section 186 of the Constitution deals with the distribution of school funds and provides a per capita distribution and makes no distinction whatever in the distribution of such funds. This section of the constitution is called to your attention for the purpose of showing how considerate the framers of the constitution were to put the means of acquiring an education of every child upon the same basis. Section 3 of the Constitution condemns this practice and uses the following language.

"...and no grant of exclusive, separate public emoluments or privileges shall be made to any man or set of men, except in consideration of public services;"

The Court of Appeals dealt with a proposition similar to this in the case of Barker, President, v. Crum, etc., 177 Ky. 637. Judge Miller wrote a very exhaustive opinion for the Court which shows that great research was made before it was written.

Subsection 7 of Section 4636a, Acts of 1908, provided:

"That every county shall be entitled to at least one annual appointment. Said student shall be entitled free of any cost whatever, to the benefits enumerated above for a term of years necessary to complete the course of study for which he or she matriculates for graduation, or during good behavior."

The defraying of the costs of board and room rent for a student in either the University of State Teachers Colleges is granting a privilege to a student so favored that other students are not permitted to enjoy. It does not matter in what way the discrimination is brought about, whether each regent is permitted to name one or more students who shall receive board and room rent free, or whether the student is selected by any other means. The Court, in the Barker case, quoted from State v. Switzler, 143 Mo. 287, 40 L. R. A. 280, using this language:

"In that case it was held that the maintenance of a state university established by the state constitution was a public purpose, but that the maintenance of free scholarships therein for the support of those students who were dependent upon their own exertions for their education and were financially unable to obtain it otherwise, and who should pass the most meritorious examinations, constituted a use of public funds, for private purposes, and a statute appropriating public moneys therefor violated the Missouri constitution prohibiting grants in aid of any individual."

If either of the institutions mentioned are receiving pupils who are favored with scholarships at the expense of the taxpayers, the practice should be stopped at once. The trustees or regents of either of these institutions who permit such practice are personally liable to the Commonwealth because of the lack of exercising in the administration of their duty that degree of care which is required of officials in the discharge of their duties. I, therefore, recommend that you, as president of the Eastern Kentucky State Teachers College, at Richmond, do not receive a student who has been favored with a scholarship or privileges which are not authorized by law.

A copy of this opinion is being sent to each Dr. Frank L. McVey, Lexington, Kentucky; President John Howard Payne, Morehead, Kentucky; President H. H. Cherry, Bowling Green, Kentucky; and Judge Rainey T. Walls, Murray, Kentucky.

Yours truly,

J. W. Cammack
Attorney General.

JWC/S

11. The Request for Legislative Budget. President McVey presented to the Committee a modified statement regarding the request of the University for expenditures for the biennium beginning July 1, 1932. The matter was discussed and on motion duly made and seconded, approved.

12. The Report on Research in Coal. The following report regarding research in coal, a fund for which was established by the C. & O. Railway Company, was read and ordered incorporated into the minutes. The report was as follows:

REPORT OF COAL RESEARCH FUND
as of December 18, 1931

Receipts:

July 27, 1931	\$2,000.00	
September 8, 1931	3,000.00	
November 7, 1931	5,412.00	10,412.00
	<u>5,412.00</u>	

Expenditures:

To December 1, 1931	8,317.54	
Outstanding December 1, 1931	765.16	
Foxboro Company (paid in December)	118.11	
Salaries for December	850.00	10,050.81
	<u>850.00</u>	<u>10,050.81</u>

Balance in fund as of December 18, 1931 361.19

13. On

13. Appointments, Changes in Status. The following list of appointments and changes in status was presented by President McVey and on motion duly made and seconded, approved:

Continuation of employment of Miss Dorothy Threlkeld, Home Demonstration Agent, Fayette County, at a salary of \$158- $\frac{1}{3}$ a month from January 1 to December 31, 1932.

Continuation of employment of Mr. H. R. Forkner, county agent, Boone County, at a salary of \$208- $\frac{1}{3}$ a month, from January 1 to December 31, 1932.

Continuation of employment of Mr. G. H. Karnes, county agent, Monroe County, at a salary of \$166- $\frac{2}{3}$ a month, from January 1 to December 31, 1932.

Continuation of employment of Mr. J. B. Williams, county agent, Edmncson County, at a salary of \$150 a month from January 1 to December 31, 1932.

Appointment of Miss Lucy Gragg as Librarian in the Training School, at a salary of \$135 a month, effective January 15, 1932.

Temporary appointment of G. Z. Farmer as tobacco grader for the federal-state tobacco grading service in Kentucky, at a salary of \$9.68 a month, effective January 4, 1932.

Temporary appointment of Charles V. Farmer, as tobacco grader, Murray, Kentucky, at a salary of \$8.87 a month, effective January 4, 1932.

Temporary appointment of Thomas E. Williamson, Murray, Kentucky, as tobacco grader, at a salary of \$7.81 a month, effective January 4, 1932.

Temporary appointment of B. H. Mizell, Mayfield, Kentucky, as tobacco grader, at a salary of \$9.68 a month, effective December 10, 1931.

Temporary appointment of Miss Genevieve Farwell for testing work in the Experiment Station at a salary of \$100 a month, effective January 1, 1932.

Appointment of Miss Mary E. Stilwell as clerk in the Experiment Station, at a salary of \$90 a month, effective January 1, 1932.

Appointment of George S. Terry as Bacteriologist in the Public Service Laboratories of the Experiment Station, at a salary of \$2400 a year, effective January 4, 1932.

20.

Resignation of Miss Elizabeth Guyn, clerk in the Extension Division, effective December 15, 1931, was accepted.

Respectfully submitted,

Wellington Patrick; Secretary
Board of Trustees