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## "The Wild Experiment" And Its Aftermath: How Courts Settled Conflict and Questions of Power in Higher Education, 1900-1930

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**“THE WILD EXPERIMENT” AND ITS AFTERMATH:  
HOW COURTS SETTLED CONFLICT AND  
QUESTIONS OF POWER IN HIGHER EDUCATION, 1900-1930**

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**DISSERTATION**

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**A dissertation submitted in partial fulfillment of the  
requirements for the degree of Doctor of Philosophy in the  
College of Education  
at the University of Kentucky**

**By  
Rhyan Conyers**

**Lexington, Kentucky**

**Director: Dr. John R. Thelin, Professor of Educational Policy Studies**

**Lexington, Kentucky**

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## **ABSTRACT OF DISSERTATION**

### **“THE WILD EXPERIMENT” AND ITS AFTERMATH: HOW COURTS SETTLED CONFLICT AND QUESTIONS OF POWER IN HIGHER EDUCATION, 1900-1930**

Between 1900 and 1930, who determined the balance of power between higher education and the state when conflicts arose? This study presents an untold story of how courts settled disputes that stemmed from public officials' attempts to rein in spending and influence among colleges in their states. These disputes followed what Frank Blackmar in 1890 referred to as a “wild experiment” with higher education's growth and planning. Colleges desired to expand, acquire additional funding, and function as independently as possible, while public officials and legislatures sought to exercise influence and power over those colleges. This laid the groundwork for conflict and a power struggle. In the absence of coordinating boards, accrediting agencies, and a host of regulations that we are accustomed to today, courts regulated the balance of power between states and colleges. Many of the cases covered in this study have not been discussed in a scholarly setting. This study evaluates twenty-four legal cases to add another chapter to the early twentieth century history of higher education—one that highlights conflict and power struggles that helped shape the relationships between colleges and states during the decades that followed.

**KEYWORDS:** Higher Education Law, College Legal History, Land Grants, College and State Conflicts, College Power

Rhyan Conyers

April 15, 2015

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## **Chapter One:** **Introduction, Literature Review, and Methodology**

### **Introduction**

Between 1900 and 1930, who determined the balance of power between higher education and the state when conflicts arose? This study presents an untold story of how courts settled conflicts that stemmed from public officials' attempts to rein in spending and influence among colleges in their states. In the absence of the agencies that we are accustomed to today—state coordinating boards, accrediting agencies, and federal executive and legislative oversight—it was left to the courts to regulate the balance of power between states and colleges. This study presents research that has previously gone undocumented in the story of higher education's development in the early 1900s.

The prologue that gave rise to these court cases is important and set the stage for the conflicts and power struggles that we see documented in these legal proceedings. Writing for the United States Bureau of Education in 1890, Frank Blackmar referred to what had occurred with planning and funding in higher education through the late 1800s as a “wild experiment” (p. 39). If we consider the revolution that occurred within higher education during the 1800s due to increased federal and state funding of public higher education, and particularly by the 1860s due to the federal Morrill Land Grant program, it is easy to understand why Blackmar used such a colorful descriptor. The “wild

experiment” and the ensuing landscape has been characterized by historians such as Clark Kerr (1982) as having created an untidy relationship between governments and colleges: they “entered into a common-law marriage unblessed by predetermined policies and self-surveys—but nonetheless formed a very productive union” (pp. 49-50).

It was this experimentation and lack of formalized or mature policies that led to a vacuum of certainty about whether states or colleges held the higher authority in important matters. Critics helped fill the vacuum, arguing that higher education’s increasing influence was also accompanied by wastefulness and inefficiency. After all, colleges attracted such a small segment of the population but enjoyed increasingly generous appropriations via federal grant funds and/or from state coffers. As this study will show, those critics were often state constitutional officers—state auditors, treasurers, and attorneys general. Judging from their actions, they viewed themselves as lobbying on the front lines to protect limited state treasuries and taxpayers from waste or inefficiencies.

In summary, colleges desired to expand, acquire funding, and function as independently as possible, while state officials and legislatures sought to exercise influence and power over those colleges. This was the recipe for conflict. In a given state, would a college control its own destiny with minimal state influence, or would the colleges be managed and subjected to oversight by their respective states? That was the fundamental question that state courts answered. In doing so, courts became the arbiters of power.

## Research Agenda and Questions

There is a substantial quantity of cases from this time period. From 1900 to 1930, there were 443 reported court cases that involved higher education (Elliot & Chambers, 1936). The majority of these cases were argued at the state level rather than in federal courts. These cases cover a wide range of topics—constitutional autonomy of public institutions, tax-exempt status for private colleges, social issues, employment and termination disputes, eminent domain powers, race, and many others. Each of these topics is interesting and deserving of study. However, this dissertation's focus on power struggles between colleges and states necessarily excludes many of those cases. This study relies on those cases that highlight power-related conflicts between state entities (usually elected officials or legislatures) and colleges. Chapter Two explains the selection of cases.

Research questions include:

- What was the role of courts in determining the balance of power between higher education and the state when conflicts arose?
- Were court decisions meaningful either to individual states or to the national conversation about higher education? In other words, did these cases matter?
- Who were the actors in these conflicts?

- What lessons are evident about the history of higher education from studying these cases?

### **Significance of the Study**

The period of 1900 to 1930 was critical for higher education. As discussed in the literature review section, the period leading up to 1930 is often characterized by colleges having had limited or uneven intervention from governments. After all, if one looks for evidence of such intervention, it is natural to scour historical documents for evidence such as accrediting agencies or centralized governing boards. Such evidence is limited, suggesting limited involvement from governments. This study uses a different kind of evidence—legal cases, which are not utilized frequently—to build a case that many state officials actually were quite involved with managing—perhaps interfering—with public colleges. This study enhances the narrative about the time period that predates the more formal and direct methods of involvement that we have seen in American higher education for the past few decades.

## **Historical Context**

The beginning point of this study—the early 1900s—is not arbitrary, as it represents a time of great change and growth in higher education. Veysey (1965) discusses at length the changing nature of the American university in the early 1900s. Thelin (2004) also describes the late 1800s to early 1900s as the “golden age” of higher education (p. 155). Geiger (2011) notes the increasing faculties and student enrollments that, combined with an increasingly complex curriculum and structure, led to the growth of administrative functions. Veysey, Thelin, and Geiger thus characterize around 1900 as a turning point for higher education and a sensible beginning point for this study. The ending point of 1930 is used due to the onset of the Great Depression and significant changes in higher education, which Hill summarized in 1934: “Emergency legislation of 1930-1933 has not only greatly increased the control over institutional finance by the governors of some states, but has also enlarged the powers of governors to reorganize the whole administration of higher education” (p. 39). Given the significant changes that had occurred by 1900 and following 1930, this study uses those beginning and ending dates as its criteria.

As higher education grew, criticism emerged. Henry Pritchett, president of the Carnegie Foundation, was one of the industry’s chief critics—or at the very least, the person with the loudest voice who raised significant questions about its efficiency. In a 1926 article in the *American Law School Review*, he noted that, from 1890 to 1920, “the burden of taxation that has fallen upon the citizens of

every state of the Union has grown in an unprecedented fashion” (p. 172).

Describing the higher education system, he wrote, “Inquiries of an exact sort are now being made to ascertain the cost of the existing school system in various states, and to ascertain at the same time the sources of taxation whence the support of the school system comes, and to compile simultaneously a statement of the legal authorization for these expenditures” (p. 171). He also advocated efforts “to study...the present and prospective costs involved with special reference to economics and efficiency of expenditures, the relationship of educational costs to other necessary governmental expenditures...” (p. 171). Pritchett’s comments reveal that the experimentation that Blackmar (1890) discussed was facing new skepticism.

There is also evidence of a growing dissatisfaction with how government agencies were performing during this period. An article published in 1925 in the *American Bar Association Journal* echoed Pritchett’s comments in its discussion of how the growth in state governments and expenditures had led to great efficiency problems. The journal quoted Illinois Governor Frank Lowden from 1917, who characterized government in a most unflattering way:

The state has become more complex. Its sphere of action has been increased. The police power has been extended, and state regulation and control of matters pertaining to the public health, welfare and safety has assumed wide and extensive proportions. No occupation, trade or employment has escaped. A great mass of legislation, much of it illconsidered, has been enacted. . . Administrative agencies have been multiplied in bewildering confusion. They have been created without reference to their ability, economically and effectively to administer the laws. Our finance administration is chaotic, illogical and confused. . .

Something goes wrong, and we enact a law and there the matter rests. We are confronted with a problem requiring solution, and then we pass the problem on to a commission and felicitate ourselves that we have solved the problem. Progress is the law of life. The progress needed most now is progress in administration. . . . To meet these obligations, democracy must show a constantly increasing efficiency in government. That is the test which we now must meet, and if we do not meet it, democracy is doomed. (Robinson, 1925, p. 787)

Governor Lowden's comments, while not directed specifically toward higher education, supply us with a more thorough view of the landscape. Higher education, like state governments, had grown significantly in such a short period of time, and many of the legal cases discussed in this study suggest an attempt, to use Lowden's word, to "test" how higher education could be more efficient and accountable.

Some scholars have noted the additional scrutiny that higher education endured. Barrow (1990) argues that, due in part to low enrollments in college, "political support for public higher education was often tenuous and ambivalent at best. Public college administrators and state legislators were subjected to conflicting demands for the expansion of public higher educational opportunities and a hostile popular reaction to its costs" (p. 96). As a result of this scrutiny, Barrow finds that "continued growth of higher education had to be justified in terms of its rate of return to the public" (p. 96). As a practical example of this scrutiny, Barrow notes that the federal Bureau of Education published 126 policy-related publications between 1902 and 1915, compared to only two such publications prior to 1901 (pp. 96-97).



Echoing Barrow's observations, we also see scrutiny of higher education building from organized labor. In 1918, the American Federation of Labor commented on the growth and role of higher education in its convention's annual report, stating that it "believes that the upper years of elementary school should be reorganized to afford diversified training, so that boys and girls who cannot go on to higher schools, will receive training specifically designed for their needs, and not be compelled as at present to prepare for a role they will never play" (p. 320). Graham (2005) likewise reflects on the disconnect between higher education in the early 1900s and what most Americans needed and wanted: "Not until the 1890s...with the introduction of the Babcock test for milk fat devised at the University of Wisconsin, did any of the institutions have a useful, commercially viable product from their efforts. No wonder farmers were reluctant to send their children to study at these places" (p. 206). In summary, at a time when public colleges were seeking and/or receiving additional resources and sought to preserve or expand their autonomy, there were elements within society that questioned higher education's relevance.

What are we to make of this historical context? Consider that there was an increasing focus on efficiency and outcomes combined with skepticism about whether governments were acting in the best interests of citizens. Now, let us contrast that to higher education: growing, but still directly benefitting only a sliver of the population; having received an influx of appropriations from federal land grant initiatives; asking for more funds from states; and, all the while,

seeking to preserve its independence. In summary, higher education sought more resources and greater independence at a time when resources were either scarce and/or enduring additional scrutiny. This chasm set the stage for many of the conflicts we see in the court cases presented in this study.

### **Literature Review**

Blackmar's (1890), *The History of Federal and State Aid to Higher Education in the United States*, a publication of the U.S. Bureau of Education, anticipated the debate that would occur in higher education for the coming few decades. Blackmar's notion of the balance of power is different from how we frame the issue today. Rather than arguing that colleges mismanaged public funds, he instead found that states' haphazard approaches to higher education were ineffective and that states needed to provide additional support, enact more legislation, and increase funding: "...the lawgivers of new States hastened to plant universities, which had to pass through long periods of inactivity and meager support...during which the handling of the funds, in many instances, was a wild experiment" (pp. 38-39). Blackmar states that the "wild experiment" was "partly due to the light of experience, and partly to the influence of the Congressional grant in 1862. There is also to be taken into account the fact that all of the schools, both private and public, of the South and West are crowded beyond their capacity; that is, beyond their capacity to furnish a liberal education, or even to give students what they demand" (pp. 38-39). Furthermore, he

criticizes legislative action as the source of the problems: “the facts before us show a vast amount of weak and misdirected legislation in the management of the funds granted by the Federal Government and the several States for carrying on institutions of learning. There are exceptions to this generalization, but they are not abundant” (p. 38). If we accept Blackmar’s contention that legislation was weak, ineffective, or unclear as higher education approached the beginning of the twentieth century, it makes more clear why many of the court cases cited in this study (and beyond this study’s scope) existed.

In the late 1950s, Glenny (1959) assembled one of the first publications that synthesized how public institutions were coordinated by states, perhaps recognizing that those relationships had become more complicated. The publication, *Autonomy of Public Colleges: The Challenge of Coordination*, was funded by the Carnegie Foundation. Glenny observed that, in the earlier part of the century, coordinating boards and similar agencies had been established in response to primarily two factors: the increasing complexity of higher education and the increasing size of state government agencies. Higher education was becoming increasingly complex because, “With increasing urbanization and the expansion of population ...Universities began extensive research programs in the physical and biological sciences; provided new services for farmers, industries, and other special-interest groups; added professional schools in new areas such as social work, public administration, industrial relations, and municipal management; further specialized in agriculture, medicine, and dentistry; and

increased course offerings in almost all previously existing academic fields” (p. 13).

Glenny also finds that colleges also became victims of growth: “The multiplication of institutions, as in Georgia where twenty-six were established, and the subsequent expansion of programs often exceeded the needs and the funds of the states and brought financial problems which ambitious legislatures and boards failed to anticipate. Each institution endeavored to obtain adequate appropriations by intensive lobbying” (p. 13). Regarding the second reason for increased coordination (the increasing size of state government), Glenny finds that the structure and increased funding for state universities paralleled that of other state projects, such as infrastructure, health, and social programs. Finally, Glenny writes that the need for coordination of colleges was the result of “the demands of economy- and efficiency-minded legislatures [searching] for expert appraisal of relative needs and projected expansion of the several institutions” (p. 17).

Echoing a 1933 Carnegie Foundation report that he cited, Glenny describes the environment for public institutions as one in which each college “requests support from the legislature for the programs which it believes desirable and attempts to obtain as much as possible of the funds available for higher education,” leading to a “rivalry” among a state’s public colleges (p. 17). Therefore, coordinating boards/agencies were needed to sort through requests for funds and to make sure that requests for funding for a program at one

institution did not unfairly compete with another institution. In summary, governments wanted to ensure that state funds were being used wisely and coordinating boards were logical solutions. Glenny's research in this area is important not only because it was an early attempt to define the relationships between universities and states, but also because it helped to frame the reasons why there was conflict.

Berdahl's (1971) work echoes many of Glenny's observations and provides additional insight into higher education governance at the state level. He lists states and types of coordinating agencies, with each state's coordinating board classified by type: voluntary association, coordinating board, consolidated governing board, and no state agency. Each agency's creation year is also listed. Among the 48 states with coordinating boards when he published his research in 1971, eleven were established prior to 1930, three between 1931 and 1940, two between 1941 and 1950, eight between 1951 and 1960, and twenty-four between 1961 and 1970 (pp. 34-35). For the sake of this study, it is noteworthy that less than one-quarter of states had any type of coordinating board prior to 1930, which is another possible explanation for the cases that we see.

Like Glenny, Berdahl discusses the history behind why states pursued coordinating boards. Referring to the late 1800s, he writes, "During this period of rapid growth, state governments learned that the assumption that lay governing boards would protect the public interest was only partially correct. Although the

lay trustees usually worked conscientiously to avoid wasting public funds, they were also understandably ambitious for their institutions. Thus they sometimes advanced proposals for expansion and for new programs which, taken by themselves, may have been legitimate but which...[exceeded] the state's resources or needs" (p. 27). Berdahl's commentary is important because it supports the argument that higher education by 1900 was a likely target for critics.

The arguments outlined by Blackmar, Glenny, and Berdahl overlap and are generally consistent. Although they (especially Glenny and Berdahl) focus primarily on coordinating boards and not as much on the larger picture of a power struggle, their contributions are nonetheless meaningful. However, other scholars have taken different approaches and reached different conclusions. In 2001, Zumeta published a chapter, *Public Policy and Accountability in Higher Education: Lessons from the Past for the New Millenium*, which focuses on the present state of accountability and provides a historical perspective. He describes that the period following the Morrill Act was one during which "states did not generally involve themselves deeply...They were normally satisfied to let academics decide most policy matters about what to teach and study, who was qualified to teach and enroll...and how the academic enterprise was organized" (p. 161). He explains why this was the case: "Why did legislators and governors leave the internal workings of these public institutions alone for much of their history? Early on, political leaders tended to be somewhat in awe of highly

education men. They were very proud of their state's collegiate creations and eager to see them develop and achieve greatness" (p. 161). In summary, Zumeta concluded that state/college conflict is generally a modern phenomenon and that there was a hands-off approach from policymakers.

One recent scholar who addresses the higher education power struggle in the early 1900s is McClendon (2008). As a result of many public universities being established in the late 1800s (resulting in part from the Morrill Act), states became more cognizant of governance issues by the early 1900s. McClendon points out that Florida was the first state to establish a governing board in 1905, and that, "By 1932, higher education in twelve states had been organized in a centralized manner through the creation of a single governing board for all institutions" (p. 65). McClendon also reports how the Carnegie Foundation conducted a number of studies during the 1930s that reflected upon changes in governance, and said that such studies were "ignored in many late-century [late twentieth century] commentaries on American campus-state relations" (p. 65). In a separate article, McClendon, Hearn, and Deaton (2006) contrast the accountability environment of the twenty-first century with an earlier era during which "accountability often referred to the design of statewide governance structures capable of accommodating the simultaneous need for institutional autonomy and external oversight of campus decision-making. The central question...was: Precisely which activities and functions of public colleges and universities (e.g., academic programs, budgets, tuition setting, and so forth)

should be dictated by the state and which should be left to the discretion of campuses?” (p. 1). Many of the cases presented in this study revolve around or are closely related to that central question.

Novak and Leslie (2000) also address some elements of state/college conflicts. They write about some of the Carnegie publications that McClendon, Hearn, and Deaton (2006) describe above and characterize those publications as having been ignored by scholars. Those Carnegie reports, which reflected upon state coordination of higher education and financial issues, were key studies of what was still an early history of higher education structures. Novak and Leslie argue that such studies resulted from “the nation’s Depression-era fiscal crisis” and that they sought to answer questions such as whether higher education could become more efficient with the spending of public funds (p. 58). They find that colleges “faced unprecedented scrutiny” due to severe budget shortfalls (p. 56). Although limited in scope, Novak and Leslie’s finding that tight budgets led organizations like Carnegie to ask questions about colleges’ management and efficiencies is important.

In summary, previous scholarship indicates that there was a recipe for conflict between colleges and states in the early 1900s. This research is still fairly underdeveloped, however, which some scholars have acknowledged. This study will show that a significant piece of evidence missing from scholarship is a discussion of court cases. There were clearly important issues facing higher education around 1900. With only a handful of states establishing coordinating



boards, the existence of few accrediting agencies, and limited federal oversight, the courts became the entities that considered and answered important questions about higher education.

### **Legal Analysis as History**

Using legal cases to improve our understanding of higher education has been embraced by a number of scholars. Elliott and Chambers (1936) published what was likely the first anthology of higher education legal cases and supplied updates until the 1970s. Chambers (1952) describes the study of legal cases as being designed to “provide proof of the never-ending problem of adjusting the scope, controls, and operations of our colleges and universities to the complicated and changing conditions of modern democratic life” (p. v). Several other higher education legal anthologies have followed—Alexander and Solomon’s (1972) *College and University Law*, Edwards and Nordin’s (1979) *Higher Education and the Law*, and more recent publications such as Olivas’ (2015) *The Law and Higher Education*. In these publications, one can easily find examples of how case law is used to supply information about the past and present state of higher education.

That being said, these publications tend to be written with a managerial perspective in mind rather than a historical perspective. That is, scholars aspire to educate the reader about the results of legal cases so that the reader can be more informed when encountering particular legal issues in academia. This

dissertation embraces the methodology of several higher education legal authors with its focus on case law but differs from them in a number of ways. This study focuses solely on those cases decided between 1900 and 1930, attends to the issue of how courts regulated power between states and public institutions, and is designed to show how these patterns of power struggles shaped higher education in ways that have previously gone undocumented. Using legal cases to construct a narrative has been endorsed by several scholars. For example, Russo (1996) reflects upon case law research as a method that can greatly enhance our understanding of higher education. Alder's (1996) suggestions regarding how to proceed with research in this area were also valuable.

### **How Cases Were Selected**

In 1936, Edward Elliott (president of Purdue University) and M.M. Chambers (staff member of the American Youth Commission of the American Council on Education) published what was likely the first book on higher education law: *The Colleges and the Courts: Judicial Decisions Regarding Institutions of Higher Education in the United States*. In the Appendix, Elliott and Chambers list 443 cases organized by state that dealt with higher education that had been ruled on by federal and state courts from 1900 to 1930. Many more cases fall outside of this time frame. This list of 443 cases was the starting point for this study.

These 443 cases cover many types of litigation: governance conflicts, employment issues, disagreements about donations, student grades, the legitimacy of degrees (diploma mills), racial tensions, and many others. This study explores how case law helps fill in gaps in our understanding of how power questions were settled from 1900 to 1930 between public institutions and states. As such, this study focuses only on a selection of cases that explore that very issue—that is, how questions of power were settled between states and colleges.

The 443 cases were reviewed based on case summaries and actual court decisions using Lexis Nexis. Using the narrow definition stated above, 43 cases emerged whose criteria fit the study. Each of those cases was reviewed more thoroughly. Some cases, such as those within the same state and with overlapping themes, were generally excluded, leading to a selection of twenty-four cases.

The selected cases are not homogeneous. Although they all address power struggles between states and colleges, the themes are quite different. Cases involve themes such as student scholarships, curricular issues, the expenditure of land grant funds, the propriety of different types of expenditures, and several others. In addition, the cases represent a variety of outcomes—some favor colleges, some favor states, and others have mixed results. In summary, even within the narrow confines of discussing power disputes, there is a wide range of topics and legal outcomes.

Although the cases address a number of different issues, this study classifies each case into one of three categories or themes: financial controls, management of federal funds, and other governance issues. These classifications are admittedly imperfect, and some cases could legitimately be included in more than one category. In fact, it becomes apparent when reading these cases that they—much like any other dramatic events that we experience in higher education—rarely are only about one issue. However, categorizing the cases hopefully makes the reading experience less daunting and aids in the identification of overlapping themes among the various cases.

Evaluating these twenty-four cases from among eighteen states allows us to identify patterns and themes. The narrative presented for each case answers the following questions: (1) who were the major players in the litigation, (2) what was the source of the disagreement between/among the parties involved, (3) what issues did the court consider when making its decision, (4) what was the court's ultimate decision, and (5) what was the case's significance?

Cases are listed in Appendix A.

## **Chapter Two: Case Findings and Discussion**

This study's review of each of the twenty-four selected cases will discuss the following elements regarding each case: the major players, the source of the conflict, a summary of each party's arguments, the outcome, the reasoning behind the court's decision, and the implications for the balance of power between the state and colleges. Because of each case's complexities, the following discussions necessarily will vary in terms of length and depth. This analysis is not intended to elaborate on each case's every detail, but instead will focus on facts that illustrate each case's importance and relevance to higher education. The order of the cases follows the outline described in Appendix A.

## **Section 1: The Power to Control Public Institution Finances**

### ***The Indiana State Board of Finance et al. v. State of Indiana, ex rel. Trustees of Purdue University (188 Ind. 36, 1919)***

Although the legal issue in this case technically addressed Purdue University's eligibility to receive certain tax revenues, the underlying issue in this case was whether the state's tax policy could extend to the public university's entities that were funded by federal sources. The discord between the Indiana State Board of Finance and Purdue followed a legislative act in 1913 that provided tax revenue to Purdue along with some other state institutions. The act stipulated that, "When the funds provided for by this act for said educational institutions shall become available, said funds shall constitute the total amounts to be paid out of the treasury of the state to said institutions for any purpose, thereafter, and all acts and parts of acts in conflict with this provision are hereby repealed" (p. 4). In summary, the legislature's act cancelled all other related taxes and revenues that the university had received in the past, so any future revenues due to university from the state would exclusively derive from the tax revenues specified in this new legislative act.

The conflict arose when the state's Board of Finance and the governor acted to cancel Purdue's appropriation for its Agricultural Research Bureau and Agricultural Experiment Station. The Research Bureau received \$30,000 in annual appropriations, while Experiment Station received \$75,000 per year. Those appropriations, so argued the Board of Finance and the governor, were

voided following the legislature's passage of the aforementioned law. The university countered that these two ancillary agricultural stations were not a core of the university's mission and therefore not directly related to the university and its funding mechanisms. As such, it argued that those stations' funding should not be impacted by the legislation.

To arrive at its decision, the court considered agricultural stations' history and their prior funding model. The court stated, "[The issue] cannot be fully understood without reading in connection therewith the history of the financial provisions for maintenance of the university...and for the maintenance of several special bureaus stations or departments" (p. 4). This indicated that the court wished to dig more deeply to understand the complex nature of how the university and its affiliates had been funded. The court observed that the source of this particular conflict was rooted in a "[f]ailure to observe the distinction" between a university's traditional departments and affiliated entities such as the Agricultural Research Bureau and the Agricultural Experiment Station.

The court found that "[h]aving given careful consideration to such history... the university proper has been maintained to a large extent by appropriations or taxes for general and current expenses and for general maintenance, while another and distinct line of appropriations has been made not for such maintenance, but, by express limitations, separated from such maintenance and confined to special purposes and departments" (p. 4). Those "special purposes and departments" included the Research Bureau and Experiment Station. In

addition, the court noted that “the board of trustees of the university had nothing to do with this appropriation” for the two entities (p. 4). The court found many other examples of how the two stations were not completely connected to Purdue University, finding that Purdue’s trustees were only tangentially involved in overseeing the stations’ activities and finances and that the employees of these stations were not actually Purdue employees. The court considered all of this evidence and found that, “the trustees, or the treasurer of the university, are only designated as agents for the specific purpose of holding such special funds, and are not acting in their general capacity as officials of the university. A prohibition of payment to the university of other than the tax, for any purpose, does not prevent a payment to the trustees as such special agents” (pp. 5-6). In summary, the court made a distinction between a university and a university’s affiliates and found that they cannot be treated as the same with this type of legislation.

In addition, this case addressed the state’s power to control a university’s federal funds. The original tax legislation exempted land grant funds from being cancelled as a result of the new tax’s implementation, meaning that the university could continue to receive both land grant revenues as well as the new state tax revenue. Although its funds were safe, the university nonetheless asked the court to consider whether the state had power over the funds and whether it was even necessary for the legislation to specify an exemption for federal funds. The university contended that, “federal appropriations belong to the university and are



not subject to repeal by legislative acts of the state” (p. 8). Conversely, the state’s Department of Finance argued that the state had the power to repeal its acceptance of the federal funds. Although there was no practical or immediate implication, the court found that “said federal appropriations may be destroyed by some act of the state, and that there was occasion for a declaration preventing the tax act from affecting the same” (p. 9). Why is this element of the case important? First, the conversation demonstrates uncertainty regarding how federal and state funds would be intermingled—a question that occurred frequently with these selected cases. Second, it is also important that the court clarified that although the state legislature does not necessarily have the power to micromanage federal funds, it does retain the power to cancel them.

***Barker, President, et al. v. Crum, et al., 177 Ky. 637 (1917)***

*Barker* is one of the few cases selected that involves a student litigant. The student, Crum, sued Henry Stites Barker, the president of the Kentucky Agricultural and Mechanical College, now the University of Kentucky. Although the student was the plaintiff, the case’s central theme was the conflict between the legislature’s powers and the college’s independence. However, it was not simply a conflict between a legislature and one college, but was a case that impacted the futures of all public institutions of higher education in the state.

At the heart of the suit was a law that the legislature passed in 1908 that initiated a new scholarship program at the college. It stipulated that, “Each county in each state, in consideration of the incomes accruing to said

institution...[shall] be entitled to select and send to said university each year one or more properly prepared students...free from all charges for tuition, matriculation fees, room rent, fuel and lights...[and] shall also be entitled to their necessary traveling expenses” (p. 3). Each county was eligible to send at least one student, and more students depending on its population size. The law also specified that the students would be selected as follows: “selection...shall be made by the superintendents of common schools in their respective counties, upon competitive examination, on subjects prepared by the faculty of the university” and that the exam would be coordinated by a board of examiners (p. 3). The law is noteworthy for a few reasons. First, the notion that colleges were expected to repay counties due to the tax revenue they (or, more accurately, their residents) supplied is unusual. In this research, there are no other examples of legislatures that established an overt link between a municipality’s residents’ payment of taxes and receiving something tangible in return from a state institution. Second, the scope of student expenses that the law covered was very generous. Third, although there is some deference to the college’s faculty regarding establishing criteria by which students were tested, it is clear that the student selections were made locally, and thus were mostly out of the hands of the college.

In supporting the county scholarship program, the students made four arguments that the law was valid, three of which were important to higher education. The students argued that (1) the law “is the result of a contract

between the state and the various counties...in consideration of the levying of a tax to support the college, certain selected students from each county can attend free of the charges in question,” (2) that the legislature’s power to establish colleges necessarily meant that it was “given discretion as to the manner in which it should be conducted, and who should attend it,” (3) the students constituted a class to which certain regulations should not apply, and (4) “that the statute will be upheld under the doctrine of contemporaneous construction” (p. 4).

The court was persuaded by none of the students’ arguments and fully supported the university’s claims about the illegality of the law. Regarding the county taxation, the court observed, “We have not...been referred to any facts existing between the state and the counties which constitute a contract...And, indeed, there is no claim that any formal contract was made or attempted” (p. 6). The court added that if there had been an agreement by which “special privileges” had been given to the counties in return for their taxes, the state constitution would have rendered them void (p. 6).

Second, the court addressed whether the legislature could control how colleges spent their funds. The court looked to the state constitution and found that it “merely declares that the tax then levied for the endowment and maintenance of...[the college] should remain until changed by law. It made no declaration as to the expenditure of the money so raised” (p. 6).

Third, the students had argued to become categorized as a special class of citizens because the state constitution generally prevented the expenditure of

public funds for individuals. The university argued that scholarships were not legal because of this constitutional prohibition. The court agreed, stating that the scholarship program provided an unfair advantage to selected students: the students are “selected by the county superintendent, and the fortunate students thus arbitrarily selected are given money from the state treasury while others who have likewise passed the required examination are required to pay their fees and traveling expenses” (p. 6).

Fourth, the court addressed the contemporaneous construction argument—the idea that the statute had been in place and followed for several years, therefore it should continue as a valid practice: “when a statute conflicts with a plain provision of the constitution the rule of contemporaneous construction is not applicable; otherwise it would mean that a violation of the constitution would be upheld providing it had continued long enough to give it dignity. The statute which violates the constitution is never effective for any purpose; it can not be made constitutional by repeated violations of the instrument” (p. 7). This argument can be found in other cases in this study, and courts ruled similarly—that if an act is not constitutional, it cannot be held constitutional simply because it has not been challenged in the past.

With this decision, the court made critical decisions that impacted the balance of power and the development of higher education in Kentucky. It dispelled the idea that municipalities should necessarily expect something in return for their funding of higher education. The court also clarified that higher

education's decision-making and policy-making was independent of influence from government. The court's declaration that the constitution only established a funding mechanism for higher education, but that it did not specify the authority over that funding, further solidified higher education's independence and power. This is particularly important because the constitution did not specifically grant colleges' independence from legislative interference, but the court inferred it nonetheless.

The court's finding regarding the constitutionality of providing scholarships to students is intriguing. Clearly, this is a finding that no longer deters Kentucky colleges from providing scholarships in modern times, and that evolution is beyond the scope of this study. Nonetheless, it appears that the court's decision was intended to have a democratizing effect on higher education—that is, the court did not want students to be given preference with scholarship funding ostensibly due to a student's local connections within a given county. Finally, the court's declaration that contemporaneous construction should not apply in this case may initially appear to be an esoteric legal distinction that is less important to higher education than it is to constitutional law. However, if we consider that higher education in the state was still relatively young, the idea that higher education must be guided by specific laws and policies was certainly an important precedent.

**Bosworth, Auditor, v. State University, et al. (154 Ky. 370, 1913)**

Kentucky's supreme court, like its ruling in *Barker*, made similarly important decisions in *Bosworth*. The court considered two issues critical to the future of higher education in the state. The first was whether a college may employ its own attorney rather than the state attorney general. The second issue addressed appropriations and whether a college's subsequent appropriations for a project necessarily canceled previous appropriations. Although the two issues appear to be distinct, they are actually tied together very closely in this case.

The case originated due to the state auditor's refusal to authorize money that the legislature had appropriated. The money was designated for an agricultural experiment station at the State University. The details of his refusal will follow, but court first addressed a challenge by the state attorney general who claimed that the college was forbidden from hiring its own attorney. In this case, the attorney general supported the auditor's position; if the college had been unable to hire outside counsel, its ability to challenge the auditor would have been significantly curbed, if not altogether impossible. The attorney general relied on state statutes which stipulated that, "The Attorney General and his assistants shall attend to all litigation and business in or out of the State...and no State officer, board or trustees or the head of any department of institution of the State shall have authority to employ or to be represented by another other counsel or attorney-at-law" (pp. 2-3). If a state agency wished to hire its own

counsel, the statute required that it receive permission from the attorney general in writing.

Such a requirement, if valid, would have presented quite a conundrum for the college. It needed legal counsel for advice and to move the case through the proper court channels. The court ruled that, “The purpose of this provision is to protect the State or any department or institution of the State from having to pay counsel fees...But it was not the purpose of the statute to prevent an institution of the State from bringing a suit to test its right when the Attorney General was unwilling to employ other counsel. In this case the Attorney General represents the Auditor, and it was not the purpose of the statute to prevent such a suit as this being brought” (p. 3). Therefore, the university was permitted to continue its litigation against the state auditor.

The remaining major issue—the validity of the act that expanded agricultural station funding—is one that the court addressed decisively. The auditor contended that the legislation that expanded the agricultural station in 1912 was so similar to an act passed in 1910 that the 1912 act was actually an amendment to the 1910 act. If that had been so, the 1912 legislation would have been void because state law prohibited such amendments. To be legitimate, such laws had to stand on their own and be published as their own laws. The court noted that the 1910 act and 1912 act were quite dissimilar. The 1910 act was, “An act to establish a plant for the preparation of hog cholera serum and for the distribution of same to the farmers of the State,” although the act did mention

the agricultural experiment station as the facility where the serum would be manufactured (p. 3). By comparison, the 1912 act was intended “to benefit the Agricultural Experiment Station...appropriating money and providing revenues for the maintenance of said Experiment Station and for conducting experiments in the various lines of Agriculture, and to meet the increased demands made upon it as a public institution” (p. 3). In other words, the 1910 act had a very narrow focus, whereas the 1912 act authorized a significantly broader scope for how the station would be funded and for its mission. The court concluded, “The act of 1912 is in no sense an amendment of the act of 1910. It enlarges the Agricultural Experiment station, but it does not revise the act of 1910” (p. 3).

In this case, the auditor and attorney general sought to rein in the power of the university. Imagine the implications if the court had sided with the attorney general—the attorney general could have undermined public higher education’s power to challenge matters with which the attorney general did not agree or was unwilling or unable to provide his office’s resources. It could have represented a dramatic shift in power. In this particular case, the state auditor would have been able to void the expansion of the agricultural station without the risk of being challenged. It would have resulted in a chilling effect on the independence of public higher education in the state.



**Board of Regents of the University of Michigan v. Auditor General (167 Mich. 444, 1911)**

In the first sentence of its opinion, the Michigan Supreme Court quickly summarized the issue: “the court is asked to decide whether the judgment of the auditor general or that of the board of regents shall prevail respecting the expenditure of moneys appropriated for the use and maintenance of the University” (p. 4). The moneys referred to in this case were income tax revenues collected by the state for the purpose of funding universities. This case explored several issues that were critical for determining the balance of power in Michigan’s higher education system.

The conflict arose when the state’s auditor general reviewed the university’s monthly request for tax revenue funds. The established process involved the university submitting detailed records that demonstrated its eligibility for the funds, after which point the auditor would authorize the payment of funds. The law stipulated that the funds should be “for the use and maintenance of the University of Michigan” (p. 4).

The expenditures at issue are interesting because they illuminate how college presidents were spending their time. They totaled \$557 and covered the following: “traveling expenses of Dr. Angell, president of the University, in attending alumni meetings and inaugurations of presidents of other universities, and for traveling expenses of other members of the faculty and officers...in attending intercollegiate meetings and conferences...and for the expenses of

instructors in accompanying students in inspecting mechanical engineering plants” (p. 4). The auditor general argued that these expenses “were not for the use and maintenance of the University...and consequently not for *lawful purposes* under the accounting laws of this State” (p. 4).

Upon reviewing these records from the previous month, the auditor general refused to release any additional revenues to the university “for the reason that certain vouchers made by the regents for prior expenditures, which in his opinion were unlawful, had not been audited and allowed by him” (p. 4). There are three legal issues implicit in the auditor general’s argument: (1) that he had the power to review such expenditures, (2) that he had the power to determine the propriety of the expenditures, and (3) he had the power to withhold future disbursements of tax revenues to the university if he disapproved of any submissions.

Regarding the first issue, the court cites statutes that outline the fact that the auditor general did retain such authority: “Such...receipts, when received by the auditor general, shall be examined by him, and if found correct shall be so endorsed by him; and all vouchers for expenditures, so far as the amount thereof shall appear to be for lawful purposes, he shall audit” (p. 5). Some courts could easily have ruled in favor of the auditor general given the statute’s clarity. However, the court instead relied on the constitution’s language regarding higher education, which states, “the board of regents 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 co-ordinate with and equal to that of the legislature” (p. 6). As such, even though the law permitted—in fact, required—the auditor general to audit and question such records, the constitution ultimately voided his ability to audit university expenses.

On the second issue, because the university controlled its own finances, the court did not comment on the propriety of the expenses. It did, however, cite statutes that affirmed the auditor’s ability to withhold future revenues from an agency if it had failed to satisfy audit requirements. But, the court again noted that higher education held a special place in Michigan and clarified the auditor general’s powers—or lack thereof—in his attempt to control higher education: “In this case, as in many others, his duties are purely ministerial. As against the discretion of the regents in expenditure of the University funds he exercises no judicial functions. As to him...vouchers for expenditures made within the amount of the appropriation, when authorized by the board of regents and properly authenticated by the duly constituted officials, are, within the meaning of the law, ‘for lawful purposes’” (p. 6).

We should take note of this case’s implications. In practicality, it meant that the regents ostensibly set their own laws. Of course, it is more complicated than that, but if we consider that the auditor general expressed legitimate objections to the university’s expenditures and that he was authorized by law to review those expenses, the court’s ruling is condemning of his or any other elected official’s power compared to that of the university. Clearly, the auditor’s

third contention about his ability to withhold future funds was irrelevant since he retained so little power to raise questions about university expenditures.

This ruling's implications for the state and its university system are obviously compelling, and Michigan is known for having strong constitutional provisions for higher education (Hutchens, 2007). The regents, within reason and unless a constitutional change occurred, had free reign to determine their own destiny and that of their public institutions. That it was affirmed with such clear and strong language by a court is also important. It left very little room for elected officials to hold the university system accountable, which likely created conflicts even beyond those documented in these court cases, particularly as we consider that this was a time when (as discussed in the introduction) states attempted to become more frugal and were concerned with processes and efficiency.

**State Board of Agriculture v. Auditor General (180 Mich. 349, 1914)**

As we consider the strong support for the Michigan public university system in *Board of Regents*, one might expect the Michigan legislature and elected officers to have stayed away from further controversy. Although it is speculative, we might view the *State Board of Agriculture* case as an outgrowth of frustrations that the legislature felt with how powerful the university system was becoming.

In 1913, the Michigan legislature acted to establish an additional revenue source (property taxes) that was designed to help fund public higher education—

specifically the state's agricultural college. The case documents do not specifically state the amount of the revenues, but it is implied that they would total approximately \$600,000 (p. 4). The new source of funds carried a caveat, however. In exchange for accepting the funds, the college of agriculture was forced to limit its annual spending to \$35,000 for the mechanical and engineering department. Court documents show that for the preceding fiscal year, "there was expended \$27,000 for supplies, machinery, and maintenance of buildings, and about \$34,000 for salaries of professors and instructors" (p. 3). Therefore, even the prior year's expenditures were far out of compliance with—nearly twice the amount of—the \$35,000 maximum requirement. The \$35,000 requirement is further complicated by the fact that much of the department's funding originated from federal grant sources.

The court considered whether the legislature indeed knew what it was doing when it passed this requirement given that the \$35,000 figure appears arbitrary. The court even remarked that, "no reading and no analysis of the language employed leaves one entirely certain of the meaning of this provision" (p. 4). A comment made by the auditor general's attorney suggests that there is much more to this story; he referred to this provision and its relevance in determining "whether the agricultural college shall continue as a competitor against another institution maintained at State expense" (p. 2). Putting together the pieces of this argument and the facts, we may assume that the legislature wanted the college of agriculture's mechanical and engineering department to

disappear nearly or completely so that it did not threaten another public institution.

The court discussed the details of the \$35,000 requirement and the complicating factors of the external land grant funds but ultimately considered them immaterial. By imposing the \$35,000 limitation on the mechanical and engineering department's expenditures, the court stated that "its effect would be legislative supervision of the college. To determine that a department of the college which has maintained at a cost of \$60,000 annually...shall be from a given date maintained at a cost of \$35,000 annually....is to determine that it shall have fewer supplies, or fewer, or less capable, instructors, or both" (p. 5). The court relied again on the constitutional provisions that provided authority to public colleges in these matters: "The Constitution has given to the relator the general supervision of the college and the direction and control of all agricultural college funds. So long as the relator employs them for the purposes intended by the grant, it is beyond the power of the legislature to control the relator's use of the funds received from the Federal government and long ago appropriated to the agricultural college" (p. 5).

Although this case's implications may not appear as wide-ranging as the earlier *Board of Regents* decision, they are nonetheless critical. In the prior case, the court's ruling addressed a direct challenge to the public university's autonomy. In *State Board of Agriculture*, the challenge was much less direct, but it was still an attempt to assert power. By being closed to the possibility of even

this type of interference, the court effectively emasculated the legislature's attempts to establish power over the public colleges.

**State Ex Rel. University of Minnesota and Others v. Ray P. Chase, 175 Minn. 259 (1928)**

*Chase* is a case in which the court was clear about power being the central issue and the reason for the conflict. The court faced a critical question—would the power to control the Minnesota university system rest with the regents or with the legislature and governor? In 1851, the state's constitution was written such that, in the court's words, "the Board of Regents, in the management of the university, is constitutionally independent of all other executive authority" (p. 2). The state university system operated with this understanding for several decades, until the legislature passed a statute in 1925 that was intended to centralize and streamline the operations and finances of state agencies. As a result of the act, power and decision-making would be centralized within a Commission of Administration and Finance, with its members appointed by the governor with senate approval. The governor was also permitted to "remove any member of the commission at any time without cause," which clearly provided him a new avenue to control higher education's administrative and financial operations (p. 3). As discussed in Chapter 1, this was a time when many states were attempting to become more efficient, so it is unsurprising that the Minnesota legislature took this action. The court even characterized the statute as a "reorganization of state government" (p. 4).

The case was initiated soon after the law's passage, when Ray Chase, the state auditor, refused to pay an expense that the University of Minnesota incurred related to establishing group insurance for university employees. The court considered two separate but related issues: did the statute apply to the University of Minnesota and, if so, was the statute valid?

In considering the first question, the court established whether a state university is a state agency under the statute. The statute's language led to uncertainty regarding whether it even applied to higher education. The court summarized the statute with this description: the Commission of Administration and Finance "claims authority to supervise and control the expenditure of any and all moneys' by or for the university; 'the making of all contracts' by the several officers, departments, and agencies" and that, "All of said departments and all officials and agencies of the state government shall be subject to this act" (p. 3). Upon review of the statute's language, the court found that it was intended to apply to higher education, as education was "in the ordinary and functional sense, plainly an agency of the state" (p. 3). This finding is an important one, but not altogether surprising because it clarified that, despite any claims of independence, the university still is a state entity that is impacted by laws passed by the legislature.

Because the court established that the statute was applicable to the University of Minnesota, it proceeded to determine the statute's constitutionality. The court saw this case not just as a technical constitutional question, but was



also clear that it viewed this case as one that addressed critical questions of power: “On the surface of things, the contest is between the Board of Regents and the Commission of Administration and Finance...But the real issue is between the regents and the governor...The right to control finances is the power to dictate academic policy and direct every institutional activity...[The act has made] the governor, the final arbiter of all university affairs” (p. 3). The court relied on the state’s original constitutional language to guide its decision, finding that the state constitution clearly gave the power to govern the institution to its regents: “the regents were made a ‘body corporate’ with power to govern. That is the power to control...the regents were both the [university’s] sole members and the governing board...the people of the state, speaking through their constitution, have invested the regents with a power of management of which no legislature may deprive them” (pp. 4-5).

The result is not only compelling, but so are the court’s statements against the state auditor’s arguments. The auditor had maintained that the constitution did not even apply to the University of Minnesota because it (the constitution) had specified that the regents were to manage the corporation of higher education. The auditor attempted to draw a distinction between a corporation and an institution—suggesting that even if the whole of higher education within the state deserved autonomy, an individual institution did not. The court dismissed this argument, describing it as “ingenious” but also “not altogether clear” (p. 4). Despite the court’s easy dismissal, the fact that a state

constitutional officer made this argument illustrates an important divide between what the auditor saw as the university's role and how the university viewed itself.

The auditor also embraced the argument of "practical construction," which the court said "has so much factual basis that it deserves special attention" (p. 7). The auditor referred to instances when, for example, the legislature had revised the makeup of the board of regents and the university failed to object. In another example, the legislature established a new board to oversee certain financial matters, such as building construction, again without objection from the university. If these acts had gone without challenge from the university, so the auditor argued, why should this statute be any different? The court admitted that there was indeed "abundant ammunition for the argument of practical construction" (p. 7). However, it found that practical construction could not apply in this case: "A practical construction of anything written—constitution, statute, or contract—is but an aid to interpretation, not to be resorted to unless such an aid is required...All the circumstances must be considered which go to make clear sense of the words. But when that sense is made or becomes plain, the process of interpretation ends" (p. 7). In essence, the court found that legislative improvisation—particularly with an industry as new at the time as higher education—was appropriate, but only when the constitution did not provide specific guidance.

Whereas most court decisions primarily address the legal merits of a given case, the Minnesota court also described its philosophical basis for the decision

and made clear that the university should win not only on a narrow legal interpretation, but because protecting higher education from political influence was the morally just action to take. The court said that the constitution “put the management of the greatest educational institution beyond the dangers of vacillating policy, ill informed or careless meddling and partisan ambition that would be the case of management by either legislature or executive, chosen at frequent intervals...and because of qualities and activities vastly different from those which qualify for the management of an institution of higher education” (p. 8). In summary, the court viewed the notion that a higher education institution or system could be taken over by political forces as inherently dangerous.

**Lincoln University v. George E. Hackmann, Auditor (295 Mo. 118, 1922)**

This case addressed university finance issues and the legislature’s power to make appropriations. In 1921, the Missouri legislature passed a law that impacted the Lincoln Institute, a historically black college. “The act changed the name of Lincoln Institute to Lincoln University, vested the control thereof in a board of curators...[and provided money] to purchase additional land and erect necessary buildings” (p. 3). The amount of funding that the legislature designated for this purpose was \$500,000. The legislation stipulated that the \$500,000 be paid out of funds that had not already been appropriated to the public school systems in the state.

When the new Lincoln University submitted a bill from an architect charged with designing new facilities, the state auditor, George Hackmann,

rejected the expense. His refusal was based on his claim that “no portion of the public school funds or moneys was unappropriated at that time, and, therefore, there were no funds out of which to pay this requisition” (p. 3). The question of whether the funds were actually “unappropriated” was a technical one. The auditor maintained that the legislature had indeed appropriated funds for the public school system, but that the funds had simply not all been designated for the individual counties. In other words, it was technically impossible for an appropriation from the legislature not to be fully appropriated; instead, an appropriation may be undesignated. The court stated that “we have no doubt that the word ‘unappropriated’ was used inadvertently and should be rejected” (p. 4). The court went on to say that, “We have held that in construing an act of the Legislature, words may be inserted or substituted when necessary to effect the manifest intention of the framers thereof” (p. 4). If we take what the court said in those statements, it seems logical that the court would agree with the university—that the legislature clearly intended to provide the \$500,000 to the university, but that the writers who composed the legislation were innocently careless with their terminology.

However, the court identified another problem with the legislation. If the funds for Lincoln were to be paid from the school fund—even if the aforementioned issue with the appropriation was resolved—it would still be unconstitutional. The court argued that the constitution required that any funds appropriated for the public school system could be used only for that purpose,

with the exception that they could be used to support the University of Missouri. The court subsequently ruled that the “Legislature was without power to divert or appropriate any portion thereof to any use or purpose other than establishing and maintaining the free public schools and the State University...[Lincoln Institute] is not a part of the free public school system” (p. 5). The court clarified that any appropriation must be “made out of the general revenue in the State Treasury” (p. 5). In this sense, the court disagreed with the attorney general, who assumed that since, “Lincoln University is a part of the public school system of the State, it would seem that the Legislature has the same right to direct the application of a portion of the public school funds to its support that it had to direct the application of a portion of the same fund to the support of rural high schools” (p. 4). As the court disagreed with the attorney general’s interpretation of what was considered to be part of the free public school system, it ruled that the university was not authorized to spend the \$500,000.

Knowing the auditor’s and court’s true justifications behind their actions is difficult. Certainly, the auditor did not make a decision that is unlike those of other state auditors in this study. The court’s reluctance to enforce the legislature’s intent and its ignoring the attorney general’s assumption about Lincoln University being a part of the public school system—and thus eligible for the appropriation—may lead a researcher to ask if the court was swayed exclusively by the law or if its motivation was more sinister. In other words, did the court rule based on legal precedent or based on an animosity toward a

historically black institution receiving such a generous appropriation? It is unlikely that this question is answerable. The benefit of viewing this case in the context of other cases is that we see a pattern of state officials questioning expenditures, so in this study it does not seem out of the norm.

***Agricultural and Mechanical College v. B.R. Lacy, State Treasurer (130 N.C. 364, 1902)***

This case involves a state treasurer's questioning the validity of funding for a historically black college. In 1891, the North Carolina legislature established the Agricultural and Mechanical College for the Colored Race. Between 1891 and 1902 when the court case occurred, the legislature made regular appropriations for the college for construction as well as ongoing maintenance and operating costs. The court considered a challenge by the state treasurer who claimed that two separate legislative appropriations were not intended to be cumulative but rather that the most recent appropriation cancelled the previous appropriation.

The legislature passed the initial appropriation mentioned in the case in 1891: "the sum of \$2,500 is hereby annually appropriated to the said college, and the Treasurer of the State is hereby authorized and directed to pay the said amount" (p. 1). The legislature, which passed biennial budgets, made \$5,000 appropriations for 1893-94, 1895-96, and 1897-98. (Court documents do not mention 1899-1900, so it is unclear whether this was an omission in court records or if the state failed to make an appropriation for that biennium.) In 1901-

02, the legislature specified that, “\$5,000 be appropriated to the Colored Agricultural and Mechanical College, of Greensboro, for each of the years 1901 and 1902, in addition to its standing appropriation” (p. 1). As such, the total appropriation for the college for the given years was \$2,500 plus \$5,000, or a total of \$7,500.

As a basis for this suit, the state treasurer asserted that, “the act of the General Assembly passed during its session of 1895 repealed the act of 1891 by implication, and that the standing appropriation to the said Agricultural and Mechanical College for the Colored Race is only \$5,000 per annum” (p. 2). The state treasurer not only wanted to reduce the appropriation to \$5,000, but also withheld \$2,500 of the appropriation because he viewed that his predecessor had mistakenly overpaid the college. Therefore, he planned to pay the college only \$2,500 of its \$5,000 appropriation for 1902.

The court closely reviewed the appropriations that had been passed during the preceding decade. It found that the original \$2,500 was intended for organizational expenses (such as paying to establish the college) and that the \$5,000 appropriations that followed were for more specific purposes such as buildings and maintenance. Not only were the appropriations intended for different purposes, the court also found that the latter act “has no repealing clause...If it was the intent of the Legislature...to appropriate \$5,000 annually...*in addition* to the amount appropriated in the organic [original] act, then it has done so clearly and without doubt. But if it intended to make this to cover and in

substitution for and to repeal the other, then we fail to find any expression or suggestion to indicate any intent” (p. 4). The court considered not only the legal basis for the argument, but also considered the practical nature of the appropriations: “The former [the original \$2,500] would be totally inadequate to meet the future needs of the institution...With this increase of property and progress in promoting one of its institutions of learning and usefulness...we would not be justified in holding that the Legislature intended to deprive it of that sum of money” (pp. 4-5).

This case possesses a unique quality among most of the other cases in this study—a vigorous dissent in the court opinion. One justice (with another concurring) wrote that “the error in the judgment of the court below is so clear” (p. 5). He wrote that the original \$2,500 appropriation was intended for start-up expenses. Furthermore, he states, “The law, it is true, does not favor implied revocations; but whenever a statute in a different manner makes provision for the same thing provided for in a former statute, the former statute is repealed” (p. 5).

In this case, the court settled the distribution of power between the treasurer and the college—and between the treasurer and legislature, for that matter. It is uncertain whether the college’s role in serving minority students was a reason that the treasurer objected to the funding. While history is full of examples of racial strife during this period, it is also a fact that many other institutions faced similar questions from state officials. Although it is impossible



to rule out race as a motivator, the context of other cases makes such an argument more difficult to make.

**Cincinnati (City) v. Frank J. Jones (16 Ohio Dec. 343, 1905)**

*Cincinnati* is a case similar to others in which we see a government official challenging the ability of a public university to spend money in a certain way. The case highlighted a conflict between the city solicitor who claimed that the college was spending taxpayer funds improperly, particularly considering the university's status as a city college. The court considered issues such as the propriety of taxpayer funds being used to construct a president's home, the use of a president's home, the purpose of a city college, and the standards for its management.

The University of Cincinnati had a comprehensive mission. The court notes that it had over one thousand students and its departments included "a law college, a medical college, an engineering college, and technical school and colleges where general academic training is given" and even an athletic field (p. 2).

The university planned to construct a president's home for several reasons: "building will be occupied by the president...where he can meet the various faculties and committees thereof and directors and other officers of the university and the students, and confer with them upon university business and affairs, and as a place where college receptions may be held, and for the many hospitalities incident to the president's functions" (p. 2). The college also noted

that the president's home being located on campus would be, "advantageous... in order that the students and affairs of the university may at all times be properly guided and superintended" (p. 2). This logic is relevant even today, and it is interesting that even more than a century ago that colleges viewed presidents' responsibilities as not simply the academic management of the institution but also student affairs and even fundraising.

The city solicitor saw no such advantages and argued much differently. He "contends that our university differs from all other American universities, in being a municipal university; that as such institution, being part of the municipality of Cincinnati, its government and the powers of the city and university board pertaining thereto are regulated by statute, and that in the construction of the statutes pertaining to such universities...we must apply the same rule which is applicable to other municipalities and their institutions" (pp. 4-5). The relevant statutes included language that directed a municipal entity to levy taxes only to pay for "the chief work of such university, college or institution [that involves]...the maintenance of courses of instruction" (p. 5). In summary, the city solicitor viewed the city college as very similar to any other city service and thus subject to the same rules and expectations.

The court faced two issues—did the university's board control the institution's expenses and was the construction of a president's home an appropriate expense? The court pointed to the statutes authorizing the university's existence. That statute outlines that the university's board of

directors “shall have all the authority, power and control vested in, or belonging to...property and funds, given, transferred, covenanted or pledged...[and] may provide all the necessary buildings, books, apparatus, means and appliances and may be all such by-laws, rules and regulations concerning the president” and other staff (p. 5). As such, the court ruled that “the scope of the university therein described does not differ from that of any other university” (p. 5). The court explained that “the occupation of these houses by the president and professors was shown not to have been for the private benefit only of those parties but to make it more convenient for the transaction of college business and for closer intercourse with the student body” (p. 4).

However, the court’s ruling did not rest solely with its legal finding. After all, a court might have read the above legal defense but still deferred to the city solicitor’s judgment that using tax revenues to pay for a president’s home was just as improper as, for example, building a home of the city’s director of maintenance or a city council member. To justify the construction of a president’s home, the court reviewed the history of higher education. The court reflected upon how students lived in the same buildings as their professors and staff members during the middle ages. The court also commented on modern European and American universities which “consist of the scholars’ rooms, fellows’ rooms, warden’s lodgings, president’s chambers, library, chapel, etc. From the beginning, the corporations and the owners of Harvard College have considered the college to be a community of teachers and students housed and

fed in the college, living in college buildings” (p. 4). In researching and considering these issues, the court took the questions about what powers the university should have and diligently researched the topic in its attempt to arrive at a fair decision. As a result of the court’s decision, the university was able to construct the president’s home.

This case differs from many others in this study, as it did not rely on the court’s interpretation of a state constitution to help inform its decision. The court considered not only the city statutes but its interpretation of what appeared to be in the best interest of the university. Furthermore, the court’s reliance on the history of higher education was a compelling factor in how it crafted its ruling.

***Regents of the State University v. Trapp, Auditor (28 Okla. 83, 1911) and Peebly v. Childers, State Auditor (95 Okla. 40, 1923)***

These two cases are discussed concurrently because they are so closely related and the details relevant to this study are quite brief. Despite the brevity, the two cases address critical questions of power and to what extent a governor has the authority to change an institution’s appropriation after the legislature has approved it and when he signs into law other parts of the appropriation.

In *Trapp* from 1911, the conflict arose when the university asked the state auditor to process payments for a general (and, based on court records, noncontroversial) expenditure for the State University at Norman. The auditor refused to pay the expense because “there are not sufficient funds appropriated to pay the same” (Trapp, p. 3). The court could not articulate the auditor’s logic

because, quite curiously and without explanation, the auditor failed to provide any additional information. The court explained that the auditor believed he was correct in failing to pay the expense because, even though the expense was authorized by the legislature and signed by the governor, the governor reduced the appropriation upon signing the bill into law. The court stated that, "It appears that the Governor...was of the opinion...that he was authorized thereby not only to approve or disapprove any item *in toto*, but to reduce any item or items to a smaller sum than approved by the Legislature" (p. 3). We might think of this as a modern-day line item veto attempt, except that the governor was not vetoing the appropriation, but rather attempting to reduce it. In total, the legislature approved \$285,810 and the governor attempted to reduce the university's budget by about \$94,800, or approximately one-third of the total appropriation.

The court's record does not provide a justification for the governor's actions. In the governor's State of the State Address, which was presented to the legislature the same month as the court decision, Governor Charles Haskell referred to progress being made in higher education. We may infer that the governor was attempting to be thrifty with public funds based on his statement that, "the economy of Oklahoma has been the result of curtailing unnecessary expenditures, notwithstanding that we have liberally provided for education, charity, and beneficial, development" (Haskell, 1911, p. 11). Court records show the details of the governor's wide-ranging reductions. For example, he attempted to reduce funding for 34 full professors from \$55,750 to \$48,450. Likewise, he

attempted to reduce funding for 14 associate professors from \$19,250 to \$14,250. He made similar cuts in many other areas, including the elimination of summer school.

The court ruled that, although it was confused by the governor's actions, it did not have the power to authorize the expenditures that the university sought: "since he was without authority thus to approve the bill, his sanction of parts of the bill was ineffectual to give those parts the force of a law. Whether, if the Governor had understood his powers relative to the bill differently he would have approved the whole bill, including those items disapproved by him because in his judgment they were excessive, can only be conjectured" (p. 11).

In *Peebly v. Childers*, the set of facts are very similar, although the case occurred more than a decade later and with a different governor (J. C. Walton). The legislature had passed a \$700,000 authorization for the University of Oklahoma for 1923-24 and \$720,000 for 1924-25, which the governor "after the final adjournment of the Legislature drew a line with red ink through each of these sums and then wrote... 'Approved in the sums of \$500,000 only, and \$500,000 only,'" thus reducing the budget for each year by about 30 percent (p. 3). In a brief biography maintained by the University of Oklahoma, it is noted that Governor Walton attempted to make political friends and, "To earn patronage from conflicting factions [within the legislature], he made appointments to positions in state government and higher education. For example, at the University of Oklahoma, Walton sought gubernatorial favors from the Board of

Regents, the president and faculty. Walton sought to reorganize the institution on a political basis and pressured University President, Stratton D. Brooks, to resign” (University of Oklahoma, n.d., pp. 1-2). The same article notes that Walton was impeached and removed from office in 1923 due to “illegal collection of campaign funds, padding the public payroll, suspension of habeas corpus, excessive use of pardon power, and general incompetence” (p. 3). It is speculative to assume that Walton reduced the appropriation as a political ploy or because he was a crook, but it is not an unreasonable speculation.

The court ruled—as the Board of Regents requested—that “the action of the Governor complained of was unauthorized by the Constitution and the effect of such action was to leave the entire sum appropriated by the Legislature for salaries and maintenance in full force and effect and available for the payment of warrants properly drawn and presented for payment” (p. 3). The court also referred to the governor’s actions as “an unauthorized and futile gesture and wholly ineffectual for any purpose” (p. 7). As such, the funds were reinstated as passed by the legislature and the college was able to make payments as it had wished.

It may be tempting to dismiss these cases as unimportant in the context of this study. After all, the evidence suggests that this conflict resulted (at least in part) from a governor who (in *Trapp*) was incompetent and (in *Peebly*) was both corrupt and incompetent. Therefore, one may argue that this case is less about higher education and more about incompetence or political corruption. However,

the fact remains that these were serious conflicts that highlighted a power struggle between the university and the governor (and perhaps between the legislature and the governor). It was the court that settled these important disputes. In *Trapp*, the court could find no justification to support the college's argument, whereas the court that heard *Peebly* did so. This highlights the fact that courts can make different rulings when confronted with seemingly comparable cases. For example, in *Peebly*, a different court (perhaps the one that ruled on *Trapp*) could easily have ruled differently and shifted the power back to a governor (Haskell or any future governor).



## **Section 2: The Power to Manage Land Grant Funds**

### ***H. Melgard, Treasurer of the Board of Regents of the University of Idaho, Plaintiff v. John W. Eagleson, Treasurer of the State of Idaho, and Clarence Van Deusen, Auditor of the State of Idaho, Defendants (31 Idaho 411, 1918)***

Two cases heard by the Supreme Court of Idaho within months of each other highlight a university's concern that state officials were not properly handling land grant funds. As will be noted in many cases, including this one, the arrangement that Congress determined would be most efficient in administering land grant funds is that each state's treasurer would be responsible for the disbursement of any funds to universities. In *Melgard*, the University of Idaho challenged how the state treasurer, John Eagleson, treated those funds.

The conflict arose after Eagleson deposited \$50,000 of land grant income into the state's general fund instead of into a restricted fund that was designated for land grant income. Only funds from the restricted account were guaranteed to be directed into the University of Idaho's coffers. Furthermore, Eagleson refused to disburse the \$50,000 to the University. The University complained that the treasurer had misdirected the funds into the general fund, that he refused to pay the funds to the University as directed by law, and that the treasurer endangered future receipt of federal funds because the University would be unable to report to the federal government how the federal funds were being handled.

The court's brief opinion states unequivocally that Eagleson lacked the power to deposit the grant funds into the state's general fund nor could he withhold the funds from the university. The court described the treasurer's role as follows: "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" (p. 3). The court further clarified that "the state auditor has no duty whatever to perform with respect to this fund and no authority over it" (p. 3).

Eagleson's motives are not explicitly stated, but he directed \$50,000 in land grant funds to be deposited into the state's general fund rather than in a restricted account as required by the state constitution. Court documents do not always reveal the motivations behind why a person makes a certain choice. As such, we do not know why Eagleson took this action. Was Eagleson attempting to exert control over a state university, or to improve the state's own finances by funneling land grant funds into the state's general fund? The answer to those questions is unclear. The implications of the case are evident, however. By declaring that a state treasurer and auditor have "clerical or ministerial" duties regarding these funds, the court declared them to be nearly powerless in matters regarding the distribution of land grant funds. If the court had decided differently, or at least had not been so clear that the treasurer and auditor were without

significant power, higher education in Idaho—particularly for the land grant institutions—could have been constrained financially.

***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, 1918)***

Although this case appears initially to be a victory for the state auditor and treasurer, the decision—although not a technical win for the university—clarified policies that ultimately protected the university from state interference. This case addressed an issue very similar to what we saw in *Melgard*, which was decided only a few months earlier. Perhaps still skeptical that the state treasurer and auditor would handle land grant funds properly, the University of Idaho again sued both officials because the university argued that land grant funds were being deposited into the state’s general fund.

The auditor explained to the court—to the court’s satisfaction—that the funds were indeed not being designated as general fund monies. The auditor’s explanation is highly technical and the details are not relevant to the scope of this study. In summary, the auditor used the general fund as a temporary holding place until the grant funds could be transferred to a proper restricted fund. One might consider this to be a victory for the auditor and treasurer. After all, the court endorsed their method of accounting for the land grant funds. However, we must keep in mind several factors. First, we know from the *Melgard* case that the court viewed the auditor’s role as clerical and ministerial. Therefore, even with

this ruling that endorsed the auditor's accounting tactics, one should not have expected the auditor and treasurer to have gained significant power in the management of these funds. But, the court went a step further in *Evans* and clarified how the funds must be managed: "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...shall be transferred to any other fund in the treasury" (p. 4).

The case's result is not inconsistent with the victory that the university enjoyed with *Melgard*. The court, although it permitted the accounting maneuvers that the university found unpalatable, affirmed that the land grant funds belonged to the university and that the auditor and treasurer were performing clerical duties in managing them. Furthermore, the court clarified that even if the funds were erroneously placed into the state's general fund, they were still not subject to appropriation and legislative interference.

**State Ex Rel. Koch, Relator v. Barret, State Treasurer, Respondent (26 Mont. 62, 1901)**

This case reveals a power struggle between the state board of education and the state treasurer and attorney general. The state treasurer and attorney general not only argued that the state board of education lacked the power to spend money and questioned how the money was spent, but they also raised a critical question about how the land grant funds were generated such that—if

they had succeeded—would have derailed the federal land grant funding system in Montana.

The case originated after the state treasurer refused to pay a \$1,500 expenditure that was funded by land grant revenues. The treasurer outlined three arguments regarding why the board was not eligible to claim the funds. The first is that “the legislature of the state of Montana has not appropriated the sum demanded’...and ‘that there is no law authorizing the payment to the relator of moneys derived from the leasing of lands donated to the state” (p. 3). This is similar to arguments we see in several other cases—that is, the idea that state institutions could only expend funds that the legislature specifically appropriated. The treasurer relied upon the land grant’s stipulation that the funds would be allocated “in such a manner as the legislatures of states may prescribe” (p. 4). The court found, however, that this language did not imply that the legislature must appropriate the funds. The state constitution established a “state board of education...[that would receive] from the government of the United States, any and all funds, incomes, or other property to which any of the said institutions may be entitled, and to use and appropriate the same” (p. 4). Therefore, the court ruled that there were sufficient mechanisms in place to ensure that funds were being spent in accordance with federal and state constitutional guidelines and without the legislature needing to be involved.

The treasurer’s second argument is “that the claim for which the warrant was drawn is a claim against the state other than for a salary of compensation of

a public officer, and should be audited and allowed by the state board of examiners and paid upon the warrant of the state auditor” (p. 4). The court clarified that the land grant funds constituted a trust and that, as such, the expenses were drawn upon the trust rather than acting expenses of the state. Therefore, they were not subject to the same level of auditor review as an ordinary state expenditure. The court further clarified the role of the board of education by stating that Congress “intended that this board should be clothed with the special and exclusive power of executing it free from the limitations and restrictions of the constitution as to the expenditure of ordinary revenues from the state. It may be that a different rule would apply to expenditures of any moneys appropriated by the legislature out of the revenues of the state to supplement the revenues derived from the trust fund thus left to the control of the board” (p. 5). With this language, the court went beyond the scope of this one question by ruling that no land grant proceeds were subject to state oversight and delineated and differences between federal and state funds.

The final argument that the court addressed is the most unusual—and the most important among the three issues that it considered. Based on what we have seen in other cases, the process of receiving land grant revenues involved Congress allocating the land, the state selling the land, and then the funds being deposited into an institution’s permanent endowment fund. This happened in Montana as well but with one critical exception. Instead of selling the land, the land was typically leased. The lease income provided revenue which was

deposited into the permanent fund, but the treasurer objected to the fact that it did not constitute a sale of land: “the attorney general argued that congress, in making the grant, intended that it should become available only after a sale of the lands granted, and an investment of the moneys thus obtained, so as to provide an income from interest” (p. 5). The court noted that most of the revenues were derived from leases, so if a university could not benefit from lease income, the result could have been devastating. The court interpreted Congress’ wishes more loosely than the attorney general, however. “We think the manifest intention of congress was to create a permanent endowment...and to require that the revenues derived therefrom should be faithfully applied to the support of the institutions created...So long as this intention is carried out, we think it makes no difference what mode is adopted. The grant was made in view of conditions existing at the time, and others which might arise” (p. 5). Addressing the specific topic of leasing, the court said, “It certainly could not have been intended that lands which could not be readily and speedily sold, but which...could be made to yield a revenue by a system of leasing, should be allowed to lie idle and unprofitable until such time as the state could sell them, and thus comply with the strict letter of the grant” (p. 5).

This case’s outcome was important for public higher education in Montana. That a treasurer and attorney general would challenge the board of education’s ability to raise money through land grant funds, that they would argue that the legislature must appropriate any expenditures, and would contend that

the treasurer must audit expenditures demonstrates a clear rift between the universities and state officials. For each element of the conflict, the court ruled in the board's favor, even admitting that it was unnecessary to "comply with the strict letter of the grant" (p. 5). The court's findings, particularly related to its comfort with not adhering to the "strict letter" of Congress' land grant requirements, demonstrates a clear deference to the universities, permitting them much broader power than the treasurer and attorney general argued that they should have.

**State Ex Rel. Haire, Relator v. Rice, as State Treasurer, Respondent (33 Mont. 365, 1906) and Montana ex rel. Haire v. Rice, State Treasurer (204 U.S. 291, 1907)**

These cases are discussed together, as the latter case represents an appeal to the U.S. Supreme Court in 1907 from a Montana Supreme Court ruling in 1906. At issue is a law that the Montana legislature passed in 1905—"An Act to enable the Normal School Land Grant to be further utilized in providing Additional Buildings and Equipment for the Montana State Normal College" (p. 8). As the act's title suggests, the legislature proposed to use lands sold as a result of the federal Enabling Act as a way to help provide bond funding for buildings and equipment at the state's normal school: "The funds realized from the sale or leasing of the lands granted by the United States to Montana for State Normal School purposes (100,000 acres), and the licenses received from permits to cut timber on any of said lands, are pledged as security for the payment of the principal and interest on such bonds, except such sums as may be necessary to



pay other bonds heretofore issued” (p. 8). As discussed in other cases in this study, the Enabling Act was a federal act that Congress passed that allowed states to sell or lease lands in order to generate revenue to help fund educational enterprises in their respective states. Congress charged the states to develop regulations for the expenditure of those revenues in their constitutions, but was not prescriptive regarding the method for how lands would be sold nor the use of the funds. In compliance with the Enabling Act, the Montana state constitution outlined the use of any resulting funds: “The various funds shall be respectively invested under such regulations as may be prescribed by law, and shall forever remain inviolate and sacred to the purpose for which they were dedicated...The interest of said invested funds, together with the rents from leased lands or properties, shall be devoted to the maintenance and perpetuation of these respective institutions” (p. 9).

Due to the apparent conflict between the Montana constitution (which required that any revenues be invested into permanent endowment funds) and the legislative act (which allowed funds to be used to pay for construction-related bonds), the state treasurer refused to pay a bill from an architect who was working on a construction project at the state university. The treasurer contended that the state constitution’s word on the matter was final—that is, that funds must be invested in the university’s permanent endowment fund. The university argued that the Enabling Act offered the legislature latitude to spend the money as it saw fit, and also supported its argument by stressing the ambiguity in the

state's constitution which outlined that funds could be expended as "prescribed by law" (p. 9). In other words, the university contended that the legislature simply prescribed the law that the constitution allowed it to prescribe.

The court ruled that, despite the apparent ambiguity, it was the constitution's intent that should be given the greatest consideration. The court chided the legislature for attempting to take the lands from the state and give them to the legislature: "The lands were granted to the state of Montana, not to the Legislative Assembly. The legislature may say how the lands shall be held; but it is the state which holds them, which has title to them. It is the state which says what shall be done with the lands...The state may act through its constitutional convention, and, if it does so, such action is conclusive. In the absence of constitutional provision, it may act through its legislative assembly" (p. 10). The court admitted that the constitution provided the legislature the ability to make regulations, but those regulations could not overrule the intent of the constitution which was to ensure that the revenues were deposited into the permanent endowment.

The legislature and the normal school were undeterred by the state supreme court ruling above. In early 1907, they argued the case at the U.S. Supreme Court. The Supreme Court considered many of the arguments above and they do not bear repeating. The justices found that the Enabling Act authorized—and required—the state to hold a constitutional convention. The convention was charged with making two important decisions relevant to this

case: the constitutional convention established a legislature and it established regulations regarding the sale of the lands at issue. The court declared that, “the natural inference is that Congress, in designating the legislature as the agency to deal with the lands, intended such a legislature as would be established by the constitution of the State...It follows, therefore, that in executing the authority entrusted to it by Congress the legislature must act in subordination to the state constitution, and we think that in so holding the Supreme Court of the State committed no error” (p. 7). The Supreme Court—as was the case for several other state courts and decisions cited in this study—had greater faith in the continuity of the state constitution than in the legislature, given that it was subject to political pressures and its members’ whims. This case therefore clarified that the legislature lacked the power to change the use of land grant funds. As a result, the college’s flexibility with spending the funds was significantly inhibited.

**State, Ex. Rel. Spencer Lens Company, Relator, v. Edwin M. Searle, Jr., Auditor, Respondent (77 Neb. 155, 1906)**

*Spencer* addresses whether the legislature should appropriate funds that had federal origins. Beginning in 1887, the United States Congress authorized \$15,000 per year to be given to the University of Nebraska “for the purpose of carrying on experimental work in agriculture” (p. 1). From 1887 to 1899, the federal government disbursed the funds directly to the university. In 1899, the state legislature passed a law that specified that the state treasurer would be the custodian of university funds. Funds continued to be funneled to the university

(from the federal treasury to the state treasury and then to the university) without incident until 1906, when the state auditor refused to authorize a payment for the university's agricultural station. The state auditor argued that, "the legislature had not specifically appropriated the fund in question for that purpose" (p. 2). In other words, the auditor was willing to authorize expenditures only with legislative approval, regardless of whether the funds came from the state, the federal government, or some other source.

The auditor declared that the statute that prescribed him the power to control university expenditures was the same statute that had designated the state treasurer as the custodian of university funds. The law outlined that "the fund having been paid to the state treasurer, it cannot be expended by the board without a specific appropriation thereof by the legislature" (p. 2). The auditor noted that courts had held in similar cases not involving higher education that, indeed, state agencies could spend funds only following legislative authorization. The court considered this argument but ruled that the university—not the auditor or treasurer—retained the power to execute the expenditures. The court articulated two arguments. First, the court relied on the state constitution, which stated that "lands, money, or other property granted, or bequeathed to this state in educational purposes, shall be used and expended in accordance with the terms of such grant, bequest, or conveyance" and that the "board of regents not only has the power to accept the fund in question, but it is also its duty to do so and to expend it for the purposes declared by the acts of congress" (p. 2). The

federal government had provided these funds to the university, and it was therefore within the university's purview to spend those funds according to the federal government's guidelines. With its ruling, the court clarified that the regents and the university—not the state auditor or the legislature—had the power to decide how to spend outside grant funds.

Second, the court clarified that Congress' funds for the agricultural station were never the property of the state at all: "[the property] never belonged to the state. It was donated by the United States to the experiment station of the university for a specific purpose...It never was, and is not now, any part of the funds of the state" (p. 2). This ruling's implication is that the state had no constitutional justification to interfere in these matters, nor did the court feel that the state even had a property interest because the money came from a source outside of the state treasury.

Although the court's decision was relatively brief, its implications are compelling. The court deferred to the university regents and clarified the powers given to them by the state constitution. This case's attention-grabbing element is how the court viewed federal funds. Due to federal legislation that established funding for projects such as Nebraska's agricultural station, significant sums of money were being funneled from the federal treasury to states universities. With its ruling, the court established that the state had little or no power to dictate the expenditure of those plentiful federal funds. The university was accountable and had to answer to the federal treasury and to Congress—not the state legislature

or state elected/appointed officials. The court's ruling ostensibly allowed the university to function outside of the realm of state control and oversight when federal funds were involved. This case not only addressed the balance of power between the state and university, but also clarified the distribution of power among Congress, the state, and the university.

**Regents of University of New Mexico v. Graham, State Treasurer, et al. (33 N.M. 214, 1928)**

At issue in this case is Congress' intent regarding how land grant funds were to be allocated to the University of New Mexico. A disagreement ensued when the state treasurer, state auditor, and state commissioner of public lands challenged the university's plan to use certain oil drilling royalties to pay general university budget obligations rather than being invested into the institution's permanent endowment. The university justified this plan based on an act passed by the state legislature, so the treasurer, auditor, and commissioner challenged how both the university and the legislature wished to process the royalties.

The specifics of the case address the differences between the Ferguson Act and the Enabling Act. The Ferguson Act, passed by Congress in 1898, provided 65,000 acres of land for the University of New Mexico and 100,000 acres for an agricultural college. With this act, lands belonging to the university could only be leased rather than sold. Congress further stipulated that any funds deriving from such leases or from products such as oil "shall constitute permanent funds, to be safely invested, and the income thereof to be used

exclusively for the purposes of such University and Agricultural College” (p. 4). The Enabling Act, which Congress passed in 1910, provided 200,000 acres to the University of New Mexico. However, the language in the latter Enabling Act was vague compared to the Ferguson Act. The Enabling Act allowed that the grant to be used “for University purposes” (p. 3). Since the Enabling Act appeared to permit the funds to be directed into accounts that were not permanent endowment accounts, the legislature felt justified in prescribing that the funds be used in that way. In 1917, the legislature passed a law that stated, “The permanent funds created by this act shall consist of the proceeds of sales of lands...and the income and current funds created by this act shall consist of rentals, sale of products from lands, interest on permanent funds, and anything else other than money directly derived from sale of all state lands so granted” (p. 4). It is important to note that the “act” referred to above actually refers to both the Ferguson and Enabling Acts—that is, the legislature designed the law so that the apparent flexibility afforded by the Enabling Act could be applied to the Ferguson Act. The legislature reasoned that the Ferguson Act’s requirement that funds be placed into a permanent endowment was overridden by the Enabling Act.

The university was understandably content to follow the legislature’s direction. Although the court documents do not specify the amount of money that was at stake, we can assume that the amount of oil royalties from 100,000 acres was substantial—or at least had the potential to be. The objection raised by the

aforementioned state officials indicates that, between the act's passage in 1917 and June 1925, the royalties were indeed deposited into general income funds with the university as the legislature directed. But, beginning in June 1925, state officials directed the royalties into the college's permanent endowment fund. The central question that the court considered was, "Was it competent for the Legislature to direct the placing of oil royalties in the income fund?" (p. 4).

The legal arguments each side presented are straightforward. The university argued that "there is nothing in...the Enabling Act fairly to indicate that Congress intended to restrict the right of the Legislature to adopt such policy as it might see fit with reference to the proceeds from the lands granted; that it was entirely competent for the Legislature to establish or not to establish an endowment" (p. 5). Furthermore, the university reasoned that it would have been illogical for Congress to have established similar land grant programs, with one restricting revenues to be deposited into a permanent fund while the other prescribing lax restrictions. Therefore, the university pushed for the looser restrictions outlined by the Enabling Act to be those that guided policy.

The treasurer, auditor, and commissioner of public lands disagreed with this interpretation, and it was an opinion that the court supported. Regarding the notion that the Enabling Act cancelled the permanent endowment provisions set forth in the Ferguson Act, the court rejected the argument: "The later [act] is additional and supplemental. In the earlier [act] Congress had plainly pursued its historic policy of endowing Universities and Agricultural Colleges. Having once



expressed that purpose, it was deemed unnecessary to reiterate it...Of course, Congress could have reversed such policy. But it did not” (p. 7). But, the court did not stop with this ruling. It also declared that the Ferguson and Enabling Acts were so intertwined that they must be considered together. In doing so, the court found that even funds deriving from the Enabling Act—which Congress had not technically designated as creating a permanent fund—must still be invested into the university’s endowment. Therefore, all of the revenues associated with these two acts were ordered to be directed into the university’s permanent endowment fund.

Just as we see in some of the other cases, the court provided a justification for its actions beyond simply the legalities, explaining that, “It [Congress] declared an enforceable trust, realizing that the new state might not be willing patiently to await the growth of its University endowment, but might be tempted by present needs to dissipate its patrimony” (p. 7). What are we to make of this comment? The court was clearly attempting to ensure that federal resources were used appropriately, but it also demonstrated a keen awareness of the importance of long-term resources. Although we can speculate that courts were slightly more trusting of universities to make good decisions about resources than they were of state legislatures, there is nonetheless a skepticism that is apparent in this and other cases. The court articulated that there needed to be legal mechanisms in place to protect universities from focusing on short-term needs and wants rather than their long-term viability.

**State Ex Rel Board of University and School Lands v. McMillan, State Treasurer (120 N.D. 280, 1903)**

This case addressed the question of whether a university's board could make policies that circumvented the intent of federal regulations regarding the use of land grant proceeds. The conflict arose following the refusal by D. H. McMillan, North Dakota's state treasurer, to allow the university to invest \$60,000 of land grant proceeds in bond funds. The bonds were issued by Valley City College, a public university. The university's plan involved purchasing its own bonds with its endowment, which was no doubt a creative attempt to circumvent the requirement that land grant funds be invested in permanent endowment funds.

The case's importance centers on two issues. The first is whether the university's board had the power to invest the permanent endowment fund as it saw fit or if that decision was subject to legislative control. Second, if the board was required to seek legislative approval, would the purchase of bonds meet the requirement that an investment of the permanent endowment fund be safe and prudent?

The North Dakota constitution stipulated that, "the legislative assembly shall pass suitable laws for the safe keeping, transfer and disbursement of the State of North Dakota school funds" (p. 3). The state constitution further defines the investment of funds: "the moneys of the permanent school fund and other educational funds shall be invested only in bonds of school corporations within

the State of North Dakota, bonds of the United States, bonds of the state of North Dakota, or in first mortgages on farm lands in the state” (p. 3). The state treasurer argued that the plan for a university to purchase its own bonds using its endowment fund was unconstitutional: his “refusal to pay is based entirely upon the contention that the board is without legal authority to invest this fund in the kinds of obligations proposed as an investment” (p. 7).

The constitutional limitation on the types of investments that a college may make is interesting and reflects a conservative investment strategy. The court probed the university about the bond’s riskiness, indicating that it was concerned about the bond’s riskiness: “Defendant [the board] alleges that he has no knowledge or information sufficient to form a belief whether the interest and income accumulating from the sale, rental, or lease of the Valley City Normal School lands will continually increase, or as to whether said interest and income would be adequate to the payment of the interest on said bonds at all times, or whether said interest and income will be sufficient to provide a sinking fund for the payment of the principal at maturity” (p. 8). The court expressed concern about Congress’ intentions with the land grant funds, stating that, “By the mere acceptance of the grant the honor of the state was pledged to the observance of the obligation of the trust; that is, to maintain the permanency of the trust fund and to use the interest thereof” (p. 11).

One might assume that the university’s bonds could be considered the bond of a school corporation (an investment permitted by the state constitution),

but the court clarified that normal school bonds are not school corporation bonds. The court considered whether the college's bonds are bonds of the state (and thus eligible for purchase) as the case's "decisive question" (p. 13). Curiously, the court answered that the bonds are bonds of the state. Unfortunately for the university's board, however, classifying the bonds as a state bond violated the constitution in a different way—this time, because the issuance of the bonds would violate the state's debt limit.

The court's ruling acknowledged the difficulties facing higher education and universities' access to funding and the broader implications of the decision: "The members of this court are not unmindful of the embarrassment to this and other state institutions which are looking to moneys derived from these proposed loans for buildings and improvements which will follow our decision. This will be temporary, however, and is of small consequence compared to the permanent injury which would be done to the people of the state if the courts...should fail in the performance of their duty" (p. 20). The court thus echoed a theme that we see in other cases—the court was very hesitant to endorse policies that endangered the long-term viability of universities, and courts consistently viewed having a stable endowment as an indicator of that long-term health.

It may be tempting to describe this case as one that primarily addressed the nuances of constitutional law, bond requirements, and accounting rules. Although the case certainly contains those elements, the implications are broader than that. The court even acknowledged such in their closing comments in the

previous paragraph. This case tells the story of how colleges were engaged in very creative activities—perhaps even desperate ones—to help literally build the institutions that they wanted to create, expand, or improve. There is nothing in the case that demonstrates that the court—or even the treasurer, for that matter—was angered by these efforts. In fact, we see a court struggling to make the correct decision and expressed guilt because its decision was not one that the university’s board wanted.

Another compelling element of this story relates to how conservatively permanent endowment funds were invested. At least in North Dakota, this was not a state that gambled with its institutions’ endowments. Regardless of the motivation, the courts and many state officials were concerned about the permanency of endowment funds. We can assume that this reflects not only the seriousness with which these officials performed their duties but also the appreciation that they had regarding the adequate long-term preservation of funds.

***State ex rel. University of Utah v. Candland et al., State Board of Land Commissioners (36 Utah 406, 1909)***

In this case, the University of Utah and the Utah legislature were aligned with each other. It was the state attorney-general that objected to an agreement regarding how land grant funds should be expended. In the state’s constitution, the court noted the relevant language regarding how land grant funds should be accounted for and expended: “the proceeds of the sale of said lands, or any

portion thereof, should constitute permanent funds to be safely invested and held by said state, and the income thereof to be used exclusively for the purposes of such university” (p. 9). The University of Utah is mentioned in the 1894 constitution, and is referred to as part of “the public school system” and that land grant funds “shall be used exclusively for the support and maintenance of the different institutions...in accordance with the requirements and conditions of said acts of Congress” (p. 9). The requirements outlined in Utah’s constitution are very similar to those found in other states included in this study.

In 1909, the state legislature passed a law that allowed the State Board of Land Commissioners—which oversaw the sales of land for university land grant purposes—to lend \$250,000 from the land grant fund to the University of Utah for the construction of a building. The law outlined that the university would then pay back the fund using revenues from additional land grant sales. The attorney general sued, arguing that the law was unconstitutional and that it did not meet the guidelines that Congress and the state agreed upon. The court considered three key issues: whether the law authorizing the use of land grant funds for the building construction was appropriate, the definition of an “investment” (which is closely related to the first issue), and whether the university is equipped to act as a public entity or as a separate corporation. A further complication is that the state’s constitution only permitted the state to go into debt a maximum of \$200,000 for general obligation bonds. If the court decided that the loan from the land grant fund to the university was unconstitutional and thus was an obligation

of the state—rather than of the university—then the act would be unconstitutional because of the state’s aggregate debt limit requirement.

Given the clear language in the state’s constitution prohibiting the proposed use of land grant funds, how did the legislature and the university justify their plan to use land grant funds for construction? First, the university contended that it was a “corporation existing as such under the laws of the state...[and] legally competent to enter into contracts and to incur debts” (p. 9). As an independent corporation, the university could not only retain the power to incur debts, but also would not have the state’s debt limit requirement as a potential burden. Second, the university argued that loan of \$250,000 from the land grant fund constituted an investment not unlike how endowment funds would be deposited into any other type of investment instrument. If the land grant act was, as described, “created for its [the university’s] use and benefit,” then it stands to reason that such a loan satisfies the investment requirement (p. 9). Third, the university argued that, “in order to declare a legislative act void upon the ground that it is in conflict with the Constitution, such conflict must be very clear” (p. 10). In other words, the university argued that the court must satisfy a very high standard before voiding the act that gave it the power to receive the loan.

The first two arguments are particularly important to higher education. The notion that a state university could act as an independent corporation in Utah may have drastically changed the relationship between the state and the public

university system. In responding to this argument, the court dismissed the idea: “The university is a state institution...since the members constituting its governing board are all appointed by the governor with the consent of the senate, and the board regularly reports to the governor. Moreover, the corporation holds all the property in trust merely. In fact the property belongs to the State of Utah. We think no one will seriously contend that the corporation styled the ‘University of Utah’ has the power or authority, without the consent of the State of Utah, to dispose of any property” (p. 11). The court was also concerned by what would happen if the university failed or if its property were wiped out: “The real ownership is thus the state, and if the university property is destroyed from any cause it is the loss of the state, and the burden of restoring it must, as it should, fall upon the state at large” (p. 11).

Regarding the second argument, the court argued that university’s plan to use land grant funds as a loan was a clear constitutional violation. Although the university contended that the loan for a building constituted an investment just as one might invest endowment funds in stocks, bonds, or similar instruments, the court was unconvinced, holding that land grant funds “shall constitute a permanent school fund, the interest of which only shall be expended for the support of said schools” (p. 9). In other words, the constitution’s language and purpose were both clear.

We see again a court that is encouraging a great deal of restraint in the use of these land grant funds, and it did not accept the creative ways in which the



university wished to circumvent legal requirements. The court's ruling effectively declared that land grant funds were conservatively restricted only to investments as outlined by the state constitution, which meant that Utah's plans to expedite the construction of buildings were quashed.

***The State of Washington on the Relation of Arthur W. Davis, et al., Plaintiff, v. C. W. Clausen, as State Auditor, Respondent (160 Wash. 618, 1931)***

This case is unusual in that it concurrently addresses how a college may access both state and federal funds. The conflict began when the state auditor refused to pay expenses to the State College of Washington because the funds had not been appropriated by the legislature. The funds involved two state funds and three federal funds—Morrill, Hatch, and Smith-Lever.

The court considered the two types of funds separately. The state funds involved the college's collection of fees from students that are outside of the typical collection of tuition, "including class room fees, dormitory rental, summer school tuition, and money derived from the sale of live stock dairy products, etc." (p. 3). One might assume that these funds would have attracted low levels of controversy, as they were designed to cover specific expenses that the university incurred. The treasurer saw the issue differently. Regarding these revenues—which were deposited with the state treasurer—the treasurer "bases his refusal...upon the ground that there are no legislative appropriations covering the same, and that, for this reason, no lawful authority exists which justifies him in issuing the warrants" (p. 3). The treasurer pointed to language in the state

constitution that stated, “No moneys shall ever be paid out of the treasury of this state, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law” (p. 4). Therefore, he argued that the college indeed possessed the power to collect the revenues and to deposit them with his office, but that the college lacked the power to follow through and then spend the money.

The court considered several earlier cases that related to the expenditures of funds held by the treasurer, and found that, “Money which the law directs shall be paid to the state treasurer, is received by him as such, and must be accounted for by him in that capacity...money paid thereunder to the state treasurer...cannot be disbursed, save pursuant to some lawful appropriation by the state legislature, and within the period limited by law” (p. 5). The court interpreted the constitution and statutes very strictly. By viewing the fee charges as revenues to the state and not distinguishable from any other revenues, whether property taxes or income taxes, the court significantly curtailed the power that a college had to exercise discretion regarding how it expended those revenues.

One might assume that the court would necessarily view the handling of federal funds for the Morrill, Hatch, and Smith-Lever funds differently from state funds. After all, these were external funds that other state courts cited in this study found should be expended at the primary or sole discretion of the recipient college. The Washington Supreme Court disagreed. The court noted that, when

the legislature initially approved the receipt of federal funds from Congress, it set up special accounts into which the land grant proceeds would flow. Furthermore, the court noted that “it is interesting to observe that the legislature, after establishing these funds, has always made specific biennial appropriations therefrom...thereby indicating that, as to these funds, the legislature deemed regular appropriations necessary to withdraw moneys therefrom” (p. 6). Indeed, the court relied on legislature’s consistent appropriation of federal funds to the college as a precedent that the legislature intended for the funds to be treated as such.

The college countered that the funds were clearly accepted from the federal government in order to establish a college, and that the college must by necessity be granted the power to manage the funds within its purview. One of the court’s key sources of logic is that the power to manage funds should rest with the legislature because the legislature had been a trusted source of management in the past. The court said it might have felt differently “if the legislature was endeavoring to divert from the use of the college any of the funds with which we are here concerned,” but it found no evidence of such activity (p. 8).

Curiously, the court admitted with federal Hatch Act funds that the funds “may be...handled without the intervention of any state officer, other than the board of regents. Money to be paid by the government under this act, need not be paid to the state treasurer, but, if paid to him, should be appropriated by the

legislature as other funds so paid to that officer” (p. 8). With this logic, the court ruled that the legislature, not the college, had the power to appropriate funds and that the college was subject to legislative discretion with such appropriations.

Although the case’s facts differ from other court cases, the Washington Supreme Court arrived at a much different conclusion than other courts in this study. The court viewed the legislature as an ally that could assist the university and could be trusted rather than an adversary. This was unusual. The court’s deference of power to the legislature and appropriations was also highly unusual given the outcomes of other court cases in this study.

**Wyoming ex rel. Wyoming Agricultural College v. Irvine, Treasurer of the State of Wyoming (206 U.S. 278, 1907)**

*Wyoming* is a case that the U.S. Supreme Court heard following an appeal after the Wyoming State Supreme Court ruled. This case’s central issue—and is one that was not only important to the state of Wyoming but also to all land grant colleges and states in which they were located—is whether Congress’ land grant funds were allocated to the states or to individual colleges. Put differently, was it the state legislature or the individual college that determined the expenditure of the funds? These are important questions and are ones that other courts in other states heard. However, this case possessed an unusual twist. Wyoming Agricultural College viewed itself as the sole beneficiary of land grant funds that were being funneled from Congress to the states. Presumably, it made this argument—that it controlled its funds, not the state—in order to help promote its

survival, as the state legislature had voted to revoke the institution's charter and reallocate the land grant funds (as well as other funds, no doubt) to the University of Wyoming. Wyoming Agricultural College objected, arguing that only their institution was entitled to the funds.

Whether the college's argument regarding this matter was a desperate effort to save itself is unclear, although we can surmise that they made the most compelling political and legal arguments possible. That the case made it to the U.S. Supreme Court suggests that the court viewed this as a compelling and unanswered question. The court reflected upon Congress' language in the land grant legislation, and found that "It is so obvious that these appropriations are made to the State and not to any institutions within the State, and that the States, acting through their legislatures, are to expend the appropriations in accordance with the trust imposed upon them" (p. 5).

The U.S. Supreme Court's ruling had important implications for the balance of power between the states and colleges, but the state supreme court's case considered other important matters that, although were confined to Wyoming, were critical to the development of higher education in the state.

### **Section 3: The Power to Control the University**

***The State of Florida, by W. H. Ellis, Attorney-General of Said State Upon the Relation of F. B. Moodie, Fred L. Stringer, A Trustee of the University of Florida, and the City of Lake City, a Municipal Corporation, Relator, v. N.P. Bryan, A.L. Brown, Nathaniel Adams, P.K. Yonge, and T.B. King as the State Board of Control, Respondents (50 Fla. 293, 1905)***

Out of all cases selected for this study, this case from the Florida Supreme Court highlighted a conflict that had the most dramatic of consequences—the closure of several public universities. In 1905, the state legislature enacted a law that began with “An act to abolish” and went on to list several institutions: the University of Florida, West Florida Seminary, White Normal School, East Florida Seminary, South Florida College, and Florida Agricultural Institute. The act included orders that colleges’ properties “are hereby declared forfeit and revert to the State of Florida” and that “all continuing appropriations heretofore made to said institutions...are hereby revoked” (p. 4). It also specified that “all Boards of Trustees, managers and officers of the several institutions...are hereby abolished” (p. 5). In essence, the legislature ordered these institutions to cease to exist entirely.

In their places, the legislature directed new institutions to be established. The act established a Colored Normal School, the University of the State of Florida for men, and Florida Female College. The legislation specified the terms of the new boards and directed how new sites would be selected for the respective campuses. It also created a new “Board of Control” which “shall have

jurisdiction over and complete management and control of all the said institutions” (p. 7). The act also mandated academic and entrance exam standards for the University of the State of Florida, requiring that, “No student shall be admitted to the University of the State of Florida who has not passed a satisfactory examination at some High School and through the twelfth grade as now established, or some other institution of learning having an equivalent of instruction to the twelfth grade” (p. 9).

The universities, led by the state’s attorney general, filed suit to void the legislation. The attorney general presented several reasons why the act should be declared unconstitutional: that the legislature was constitutionally prohibited from relocating campuses, that it could not impose academic requirements (completion of twelfth grade and standardized exams), that the Board of Control’s make-up was not supported by the state constitution, and other various technical legal objections. The precise nature of the legalistic arguments is not relevant to this discussion. The crux of the conflict is that the legislature, obviously believing that drastic changes needed to occur within Florida higher education, sought to exercise its power and, in many senses, begin with a blank slate.

To summarize the court’s finding, it ruled in favor of the legislature in all respects. The court was clear and decisive in its language, stating, “The trustees are made by this legislation the agents of the State to collect and disburse property appropriated by the General Government to the State for a public purpose. There is not and never was any private property in the trustees in the

funds. They were derived from government...The only right they have to it is by the legislation of the State” (p. 20). In other words, the trustees did not act as independent agents—their powers were given to them by the state legislature and could just as easily be (and would be) taken away. The court carried this theme throughout its decision. It articulated that higher education’s power in Florida emanated from the legislature. The court saw that the ultimate power to determine university policy rested with the legislature, and that the trustees were merely acting as agents of the legislature and were subject to legislative directives.

The court also responded at length regarding one of the attorney general’s contentions, which was that the imposition of academic standards violated students’ constitutional rights. The court strongly disagreed, writing, “It surely cannot be seriously contended that the Legislature has not the right to provide proper educational qualifications for admission to the college so created by the Legislature... Undoubtedly some judgment and discretion were to be used by the Legislature in prescribing these qualifications, otherwise how could the institution in question be a college?” (p. 21). Regarding the attorney general’s statement that the legislature was not authorized to relocate institutions, the court responded that the decision was up to the legislature such that it was “in their [the legislature’s] judgment, would be best for the interest of the State” (p. 23).

The court recognized the importance of its decision, ending its ruling by saying, “We have realized the gravity of the questions involved and of their far-



reaching consequences to the public, and have reached the conclusions announced herein only after the most thorough investigation and mature consideration” (p. 35). There were the very immediate implications—the closure of established institutions and the creation of new ones. But, there were also long-term implications about what entity controlled the plight of higher education. In this case, it was clearly the legislature. In addition, it should not be lost on us that the governing board for the new higher education system in Florida was named the “Board of Control.” As a new governing body, the Board of Control exercised new power over new institutions.

***The State ex rel. Harry T. Heimberger, Appellant, v. Board of Curators of the University of Missouri, a Corporation; D. R. Francis, J. C. Parrish, C. B. Rollins, Samuel Sparrow, John H. Bradley and G. L. Zwick, Constituting a Majority of Members (268 Mo. 598, 1916)***

Whereas many cases address important issues such as financial resources, this Missouri case is one of the few during this time period that addressed conflict and power that touched so directly an institution’s academic program. Although the nature of the case is different from others, it nonetheless provides a compelling example of how state legislatures and public colleges often had different agendas.

In 1915, the legislature amended the state’s statutes to add language that affected the University of Missouri as follows (italics are the additions): “The leading objects of said colleges shall be to teach such branches as are related to agriculture and *mechanic arts* and mining, including military tactics, *and without*

*excluding other scientific and classical studies, in order to promote liberal and practical education of the industrial classes in the several pursuits and professions of life*" (p. 6). Furthermore, the legislature added bachelor of science degrees in several areas of engineering. In effect, the legislature's actions demonstrated that it—not the university faculty, administrative personnel, or board—had the power to add and remove programs and degrees.

The college responded in a way that is unsurprising. The university and its board "simply deny the power of the General Assembly to exert over them any authority of the kind implied by the enactment of this amendment. Their position is that they are independent of the General Assembly and not subject to its direction or control in any manner or degree" (p. 7). This is a compelling conflict—the legislature desired to add degree programs and perhaps even change the nature of the educational experience by adding a version of a liberal arts curriculum, while the college steadfastly denied that the legislature had any power to do so. The court recognized the level of the conflict by pointing out that, "Counsel [for the university] does not mince words. In plain language they state their contention to be that...the board of curators [represent] a separate and distinct department of the State Government, over which the General Assembly has no power and with which it has practically nothing to do except make such appropriations as it deems proper" (p. 9).

The college did not simply argue that this conflict was about the power to control the curriculum, but also that the legislature's actions could cause

irreparable harm to the college. For example, it argued that the “establishment in the School of Mines and Metallurgy...would be and is equivalent [sic] to the disestablishment of the College of Agriculture to the extent to which students who might pursue those studies in the last named school might or would be attracted to the School of Mines and Metallurgy” (p. 8). In other words, the college worried that the new programs in mining could overshadow the traditional programs in agriculture and could diminish the College of Agriculture’s mission. On this point, the court noted that there was no constitutional prohibition against establishing new programs at colleges, and furthermore argued that the college’s contention was untenable because adopting the college’s “interpretation would be to preclude the General Assembly from providing in high schools and normal schools courses of study overlapping that freshman students in the University” (p. 8).

The college also observed that the establishment of the new programs was not needed. The court also rejected this claim and dismissed the relevance of whether the programs were needed or unneeded, stating that the constitution “*forbids* nothing in the way of aid and maintenance. It simply *commands* that aid *shall be given* under stated conditions. The argument falls with the incorrect interpretation upon which it is based” (p. 9). Put differently, because the state constitution did not specifically forbid the General Assembly from establishing new programs at the university, it necessarily retained the power to do so. The court later states this clearly: “The legislative power, subject to the limitations

contained in the Constitution, is vested in the General Assembly of the State of Missouri. The General Assembly retains all legislative power not expressly or by necessary implication forbidden it by the Constitution” (p. 10).

*Heimberger’s* outcome is compelling because it addressed significant issues related to governance. Whereas other courts in this study often deferred to colleges when constitutional language was unclear, the Missouri Supreme Court ruled quite the opposite—that the lack of specificity in the state constitution meant that the power to govern rested with the General Assembly, not the university or its board. Had other courts made similar rulings, the landscape of higher education could be much different today.

***State ex rel Prchal, Appellants, v. Dailey, et al, Respondents (57 S.D. 554, 1931)***

Although *Prchal* is a case that was initiated by a taxpayer, the South Dakota Supreme Court considered important issues and ruled such that it greatly diminished the power of the system’s regents. In 1881, the state legislature authorized the creation of normal schools for the purpose of instructing teachers. The colleges were also authorized to “give instruction in the mechanical arts and in husbandry and in agricultural chemistry” (p. 3). Given the growth in higher education and changing demands/needs for college education, the regents responded with the addition of programs: “the regents have prescribed additional curricula for these schools leading to advanced degrees, have changed the names of the schools designating them as colleges, and have established them

as teachers' colleges authorized to teach a college course and to train teachers qualified to teach in the high schools and other institutions of higher learning" (p. 3). The taxpayer claimed that the regents assumed that they had more power than they actually had been granted by the state constitution and by the legislature. As a result, he sued, stating that their actions were unconstitutional and that their power to make these changes should be rescinded.

The court considered three arguments that the regents made in support of their continuing to award degrees and teach courses beyond those originally prescribed in the legislation. First, the regents argued "that under the Constitution...the 'control' of the institutions necessarily includes the power to prescribe their curricula" (p. 4). The court reasoned that, even if the regents have the power to control the curriculum, they must do so within the confines of legislative authority. By so drastically changing the curriculum (albeit with noble intentions), the regents essentially changed the character of the institution: the colleges have been "created by the regents. There is no direct specific legislation to effect that change, and since the regents have no power to establish schools or colleges, their action cannot be sustained" (p. 4). The court acknowledged that although the regents had "very broad powers in respect to the curricula under their control, it is self-evident that they cannot by the exercise of that power change their character" (p. 5).

Second, the regents argued that they should not be prohibited from their curricular activities because they "have acted honestly and in good faith in an

honest exercise of a discretion legally vested in them” (p. 5). The court recognized that the regents had indeed acted nobly but, “If the acts are unauthorized, the good faith in which they are performed cannot authorize them” (p. 5). This ruling echoes sentiments other courts expressed about whether an act can continue as accepted because it has become standard practice, even if it is unconstitutional.

Third, the regents argued that the nature of teacher preparation education had evolved with time, and so too must it be allowed to evolve in South Dakota. They rejected the notion that they had constructed their own curricula outside of legislative directive. The court methodically considered the history of what had transpired during the three decades that had passed since the original legislation authorizing the creation of normal schools in the state. It also consulted similar events in other states. The court found that, in other states, “We have found no case in which the raise in rank without legislation has been effected and sustained by the court” (p. 5). Furthermore, the court argued that it viewed its decision as ultimately protecting the graded school system. If a college that had been established in support of grade school teacher education was usurped by another college offering a similar teacher preparation program (whether the intentions were noble or not), then the plight of grade school education in the state may suffer. Ultimately, the court found that, “It is for the Legislature to determine the educational policy of the state, not for this court or the regents” (p. 6). The use of the term “policy” is an important one here. The court did not seek

to undermine the regents' ability to conduct normal business, nor did the legislature or a state official raise such a challenge. Instead, this case focused on who has the power to create policy, and the court clearly sided with the legislature: "These provisions [in the legislation] plainly fix the limits of the powers granted the regents. We do not find anything in the legislation that can fairly be said to delegate power to the regents to change the purpose, character, or scope of any school under their control" (p. 7).

### **Chapter Three:** **Study Outcomes, Limitations, and Further Research**

#### **Study Outcomes**

This study's thesis is that courts helped regulate the balance of power, and that this was necessary given the "wild experiment" that Blackmar suggests characterized models for funding and governance for higher education. In supporting this thesis, there are six themes outlined below that discuss the relevance of this study to how we understand the history of higher education. This discussion is not designed to repeat the observations made about each of the preceding cases, but rather synthesizes the major points about them as a group.

The power of evaluating a large group of cases is that we can more easily identify themes or patterns. Within this collection of cases, we see patterns emerge that enhance our understanding regarding how and why public institutions developed as they did, particularly regarding how their relationships with their respective states developed and changed. In fact, when considered alone, one may draw conclusions about a case that are quite the opposite of the conclusions that become evident when evaluating the group of cases as a whole.

Each of the themes below echoes a unifying point about the relationships between public colleges and their states: state officials, including many courts, were not content to allow higher education to chart its own course or with minimal



supervision without at least raising significant questions. Regardless of whether the court ruled in favor of the college or not, the fact that the questions were even being raised indicates a pattern of concern with how higher education was growing and developing.

**Outcome 1: Cases were important; they carried significant implications for higher education and impacted its development. Courts helped shape the future of higher education.**

These cases are full of rich details and fascinating information. With court cases, we can come to understand both sides of an argument. Many U.S. Supreme Court cases receive deserved attention, but state cases often do not, particularly among higher education scholars. As this study shows, state cases carried important implications for colleges. Had courts ruled differently in most of the cases selected, issues such as power, autonomy, and control would have evolved much differently in those states.

As we consider this outcome—that cases carried important implications—let us first consider the cases that involved the management of federal land grant funds. Land grant cases generally fall into two categories. The first category involves cases such as Montana’s *Koch v. Barret* in which a state official attempted (with varying levels of success) to influence how land grant funds were spent, while the second category of cases such as *New Mexico v. Graham* involved colleges’ attempts to utilize land grant proceeds for expenses other than

investments in permanent endowments. Both of these issues merit further discussion.

As we consider the first category of cases in which state officials attempted to exercise control over federal funds, there is a common theme—that state officials argued that legislatures should officially appropriate land grant funds just as they appropriated non-federal (state) funds. If we reflect upon the information presented in Chapter 1 about governments and their quest for efficiencies, it is unsurprising that state officials challenged how colleges spent money. After all, at the same time that colleges sought more money and greater autonomy, states were eager with other state agencies to achieve greater efficiencies and more oversight. The gap between what colleges wanted and what states sought from other agencies was destined to create the kind of conflict that we see in several cases.

In nearly all cases in this study, courts ruled that colleges—not their respective states—had the ability to control how federal grant funds could be spent. Although it is impossible to know how the higher education landscape would have changed if courts had allowed state legislatures to assume a greater role in appropriating those funds, we can assume that colleges would have had fewer freedoms. There would likely have been practical considerations—that a state legislature would have different spending priorities than the college—but there was also a philosophical outcome of these cases. With these rulings, many courts distinguished higher education as a special entity. Several courts used

this issue as an opportunity to describe public colleges as dissimilar from other state agencies and, as such, clarified that public colleges had special privileges.

The second category regarding federal grant funds evident from this study—whether colleges could use land grant proceeds for current operations or building construction rather than investing those funds into a permanent endowment—also bears further discussion. Colleges, boards, and even legislatures at times sought to circumvent this requirement with creative maneuvers such as offering bond sales, with bonds being repaid using land grant revenues. Courts unanimously rejected these efforts. Why was this important? As a result of these rulings, public colleges no doubt had to defer expansion and construction plans. Such financial requirements likely meant that plans to expand numbers of students they could serve, the faculties they could hire, and so on, prevented public colleges from growing as quickly as if they had gained quicker access to the land grant funds. However, by deferring short-term projects, the colleges' balance sheets benefitted by being invested into permanent endowment funds, which has certainly led to long-term benefits that those institutions enjoy even today. Let us take the example the 1909 case of *University of Utah v. Candland*. In that case, the university proposed to use \$250,000 in funds designated to be deposited into the permanent endowment and instead construct a building. We do not know how the fund would have been invested, but certainly the \$250,000 would be worth several million dollars now, more than a century later. Furthermore, it is possible that the building

constructed in 1909 would no longer be useful (or in existence) today, whereas a permanent endowment would have generated investment returns and revenues for the past century.

Outside of land grant fund management, we also see many cases that involve legislatures' or state officials' attempts to exercise other financial and governance controls. An early assumption as this study began is that courts would be generally consistent with how they treated colleges—that is, that they would either have been deferential to colleges or deferential to state officials or legislatures. Although there are critical cases that demonstrate courts' deference to colleges, others were clear victories for state officials. On one extreme, cases in Michigan and Minnesota clearly delineated the powers between colleges and states, with great and enduring deference to public colleges. At the opposite extreme, Missouri's *Heimberger* established that colleges lacked the power to establish their own curriculum, while Florida's *Ellis* clarified that trustees were primarily designated to execute the will of the legislature. What can we make of these extremes? One lesson is that it is difficult to discuss "public higher education" and conflicts and power during this time period in general terms. Court rulings were based on many factors, including constitutional provisions (discussed in Outcome 3 later in this chapter), but also on individual states' circumstances that are difficult to generalize. These cases reveal that the way that states and public institutions would interact during the decades that followed

were unique to each state thanks to how differently courts interpreted matters of power.

Beyond that observation, we must take note that courts settled matters that were critical to how higher education developed. The courts' aforementioned rulings in Michigan and Minnesota assured that public colleges would enjoy autonomy to set their own agendas for years to come. There are also compelling stories about how power was settled between the extremes. In Kentucky, although the *Barker* ruling did not assure public colleges that they would enjoy complete autonomy, it weakened the legislature's power to meddle in public institutions' budgets. In Ohio, we saw the court certify that the University of Cincinnati was indeed—for the lack of a better term—a “real” college that should be allowed to function like one with a presidential home and the permission for faculty and staff to engage in professional development. In Florida, the court permitted the immediate closure of several public institutions, no doubt changing the higher education landscape in that state. These cases carried compelling short-term and long-term implications for each of the public institutions in each state.

**Outcome 2: Decisions were often about short-term growth vs. long-term investments. At the heart of many cases was a strong ambition on the part of public colleges to grow. Courts were more concerned about long-term viability.**

The theme of growth is most prevalent in the cases related to land grant disputes. In most of the selected cases with this theme, we see colleges (often

with the endorsement of the state legislature) attempt to use land grant funds for either current budget expenses or for construction projects. In response, state officials (typically treasurers or auditors) challenged their ability to do so, usually due to state constitutional requirements that stipulated that land grant proceeds must be deposited into institutions' permanent endowment funds. As public colleges grew, they obviously needed larger budgets and additional space for student housing and for academic needs. Land grant funds were regarded an easy source for them to receive revenues to suit their needs.

As colleges were fixated on short-term needs, state officials—and courts—were noticeably focused not only on following appropriate laws but also on colleges' long-term needs. For example, in North Dakota, the court conveyed its concern about using land grant funds to buy bonds because it wondered what would happen if the university defaulted on the bonds. Some courts even expressed regret that their decisions would disappoint colleges, but they were more concerned with the long-term benefits of having healthy endowments.

These cases highlight important points about the history of higher education. Colleges were eager to grow and to gain additional resources. Based on the creative ways that some of their funding programs were designed, it is safe to say that colleges were aware of the regulations but sought loopholes. The evidence shows that legislatures were often complicit in these plans. So, as this study discusses issues of power, the power struggle was often not between a legislature and a college, but rather between other state officials (auditors,

treasurers, and attorneys general) and a given college. Legislatures were eager to see their public colleges thrive. In addition, if a college had more immediate access to land grant funds, it would have taken pressure off legislatures to appropriate state revenues.

**Outcome 3: The importance of state constitutions cannot be overstated. State constitutions, often written in the 1800s when public higher education was in its infancy, were incredibly important.**

The notion that state constitutional provisions are important to higher education is not a new idea. Hutchens (2009) observed that, “In seeking to strike a balance between acceptable state oversight versus the need to safeguard the authority of public colleges and universities to manage their own affairs, some states rely on constitutional provisions to limit excessive state governmental intrusion” (p. 271). What this study demonstrates is that constitutional provisions were so important this early in higher education’s development. In the selected cases, most of the constitutions being referred to originated in the mid to late 1800s; Hutchens (2009) notes that Michigan in 1850 was the first state with a constitution that addressed higher education (p. 282). Blackmar (1890) finds that states began seeking official support for public colleges even earlier than that point. “After the Declaration of Independence the provisions relating to education assumed a more decidedly political tone. Sentiments began to be expressed in favor of universities, created, controlled, and supported by the State. The colonies had received a new political baptism, and the ideas of sovereign States began to grow and the national consciousness to awaken...there was added a

new zeal for educated citizenship” (p. 24). The fact that state constitutions—written before some states even gained statehood—would have such important implications for higher education years later is remarkable.

In several cases, we see the importance of constitutional provisions, whether they were strong, weak, or seemingly nonexistent. For example, in Montana, the state supreme court relied on the state’s constitutional language in *Haire v. Rice* to reject any use of land grant proceeds for purposes other than endowment investments. In Kentucky’s *Barker v. Crum*, the court referred to the state constitution to determine that the state legislature had overstepped its authority by imposing requirements regarding how a public college could spend its appropriated funds. Missouri’s *Heimberger v. University of Missouri* cited constitutional language that, in the court’s view, gave the legislature greater control of the academic program. These were important rulings but also indicate that public colleges and states were exploring and arguing about issues related to constitutional autonomy long before modern times and that these constitutional provisions were critical in providing guidance to courts during this time period.

**Outcome 4: Federal funds led to conflict. The introduction of federal money into the system of higher education is a primary driver of conflict.**

This was the most surprising observation in this study. The flow of new federal funds into higher education beginning in the mid to late 1800s is well-documented. However, the case law that followed implementation has not been adequately explored by researchers. That the introduction of federal funds would



represent such a common source of conflict is striking. This study reveals that the source of the federal funds—whether from the Morrill Land Grant Act, the Enabling Act, or other acts that primarily supported agricultural research—did not really matter. Conflicts primarily arose in two ways—the disagreement over whether legislatures must appropriate land grant funds and whether colleges could utilize land grant income for current operations or construction rather than endowment investing. This again is a benefit to studying several cases together, as we are able to see common themes that developed in states that had much different histories and institutions.

Whether land grant programs such as the Morrill Land Grant Act were as transformational as some historians have argued is a matter of debate (Key, 1996 and Thelin, 2004). That being said, the introduction of federal monies into a system that had previously not enjoyed such generosity generated a series of conflicts across the system of public higher education. Whether the issue was the legislative appropriation requirement or how to spend the money, these conflicts were serious. They led courts in several cases to make clearer distinctions between the power that a college possesses versus power that was relegated to the legislature or to the state as a whole via its constitution. In other words, even if we accept that land grants did not result in the grandiose, literal building of colleges and universities, the introduction of the federal money into higher education led to debates between colleges and states that would not have materialized in that money's absence.

**Outcome 5: State officials served critical roles. Their roles are understated in the history of higher education; they pushed back when they saw colleges expanding their power too far.**

Out of the twenty-four cases in this study, nineteen placed colleges in conflict with government officials such as state auditors, treasurers, or attorneys general. Obviously, with these cases being so focused on financial matters, it is not necessarily surprising that auditors and treasurers would be at the center of the litigation. However, it nonetheless speaks to the advocacy roles that these state officials viewed themselves as having.

One benefit to studying several cases is that doing so allows us to identify patterns that are not obvious when reading one or two cases. After all, if one reads a singular case, it may be tempting to discount the influence of an individual state official and assume that they were motivated by personality conflicts or by politics. Personality and politics were no doubt factors in some cases. But, the fact that so many cases were instigated by state auditors, treasurers, and attorneys general from different states leads us to conclude that there were other factors. One's motivation, particularly if they are an elected politician, is difficult to ascertain. However, reading through the court cases reveals that these officials expressed genuine concerns about colleges' efficiency and autonomy. No doubt, they were trying their best to navigate a greatly changed landscape of governmental funding and influence.

Were these state officials interested in shifting power from the universities to themselves or their offices? That was likely not the case. After all, in most

cases that involved such officials, they were not seeking to retain direct oversight of certain expenditures. Rather, they were working to ensure that colleges were following regulations, so in that sense they were advocating that power be redirected to other entities—often the legislature.

**Outcome 6: The “Wild Experiment” lived up to its name. Many of the conflicts we see are rooted in experimentation that had allowed colleges to be established and/or grow by 1900.**

Among the selected cases, virtually all of them dealt with a funding component of one type or another. In 1890, Blackmar expressed discouragement regarding the state of affairs related to higher education’s funding model. He noted that “the facts before us show a vast amount of weak and misdirected legislation in the management of the funds granted by the Federal Government and the several States for carrying on institutions of learning...There is one redeeming feature; the great majority of legislators in States, seeing the profligate waste of school funds hitherto, are now rallying to the support of State institutions, and are seemingly determined to redeem the errors of the past by careful legislation in the present and future” (p. 38). He proceeded to note that “the lawgivers of new States hastened to plant universities, which had to pass through long periods of inactivity and meager support...during which the handling of the funds, in many instances, was a wild experiment” (pp. 38-39).

As we reflect upon Blackmar's comments and the cases in this study, the pieces fit together quite well. As Blackmar stated, the environment in which regulations were formed and colleges were built was highly experimental. It was no doubt an exciting time when states wanted colleges to succeed and colleges wanted the same. Nonetheless, following experimentation of this magnitude, recalibrations and revisions were bound to be needed. The courts served as the entities that determined how those recalibrations and revisions would be implemented.

This study brings to light not only the experimental nature of higher education funding mechanisms, but also illuminates how those experiments led to power struggles. The most significant experiment included federal grants, and we see numerous conflicts erupting due to how states and colleges had differing interpretations of federal grant regulations. We also see in nearly every case that conflict erupted and power was questioned because of experimental—or perhaps youthful—financial arrangements between states and colleges.

Blackmar's work highlights two concepts that we see prevalent in these cases. The first is his point that there was weak legislation. Blackmar does not explain in detail what he is referring to, but we certainly do see legislation leading to a number of problems, and it often reflected what we may assume is a misunderstanding of what the law permitted, particularly in cases that feature conflicts about federal funds. It was often left to state treasurers and auditors—and ultimately to the courts—to try to address such legislation. The second is

that state legislatures were becoming more active. Blackmar frames this activity as “rallying to the support” of public institutions (p. 39). Indeed, we do see some legislatures that rallied to support colleges, often using methods that state officials and later courts found questionable or unconstitutional.

In summary, states were eager to expand higher education. There were no examples in this study’s research that indicated that states were trying to suppress higher education’s growth. Colleges and their leaders, one might imagine, were even more eager to grow. In an industry where most public colleges were fairly new—and even some states were quite new—there was a healthy amount of experimentation. Was it wild experimentation, as Blackmar suggests? Indeed it was. When we think of wild experimentation, we may assume that it was careless, which would be inaccurate in this case. Instead, it was experimentation that was wild in the sense that it was creative and innovative. Experiments, by nature, involve successes, failures, recalibrations, questions, and conflicts. We see many of those elements of experimentation in the cases reviewed in this study.

Finally, Blackmar’s work combined with studying these cases supplies us with very early insights into what issues were important for policymakers. Blackmar surely was not the only person who recognized that these funding models were experimental. Studying these cases confirms his observations, though—that there were well-intentioned policymakers at both the federal and state levels who genuinely wanted to strengthen higher education, but because

they were conducting experiments, they often missed details or failed to be as specific as they should have been. Likewise, colleges—also well-intentioned and genuinely wanting to become stronger, larger, or more influential—became overly ambitious in their quests to find new resources.

### **Study Limitations and Future Research**

I once mentioned to Neal Hutchens, who kindly served as my independent study professor two years ago, that condensing research on legal issues from this time period into one semester's independent study was unrealistic—that it could honestly be one's life-long project. Even with a dissertation that took much longer than one semester to complete, I still believe that there is a substantial amount of research to be done in this area. Many of these cases deserve their own dissertations, or at least articles, as they individually were so important. Although this study's purpose was to evaluate the importance of these cases in an aggregate form, it was nonetheless tempting to dig even more deeply into several of the case's stories.

One important study limitation is that many of us know from personal and professional experiences that legal cases are not always the result of professional conflicts, but also are personal in nature. Although court proceedings provide a rich level of detail that I argue has not been adequately explored in the past, they are limited, as there are human elements that are generally not evident in these cases. For example, from some earlier research

not related to this study, I learned that in Kentucky's *Barker v. Crum*, while there were certainly legal reasons that led to court proceedings, there were personality conflicts between the university's president and the legislature that certainly are not explained in the court opinions. No doubt, there are other examples of this in other cases. Although this study demonstrates that there are patterns of conflict that may have little to do with personality, we cannot discount the importance of human elements that influence these cases.

As discussed in the Introduction, this study intentionally is limited to a time period of approximately thirty years. If we looked either thirty years prior to the beginning point of this study (1870 to 1900) or thirty years later (1930 to 1960), what would we see? Would we see similar conflicts, or would those conflicts have been replaced by other issues? These are compelling questions. This study's importance could be contextualized by answering those questions, but as they are outside of this study's scope, this is a limitation.

The role of state constitutions is another source of curiosity. Given how critical state constitutions were in helping courts to craft their rulings, there are great opportunities for additional research that can investigate how and why state constitutions' language regarding higher education evolved. For example, who was involved and how did the players even know what to write about higher education given it was so new to many states? Many state constitutions' framers demonstrated a genius that benefits higher education even today.

Finally, this study admittedly focuses on the pertinent issues that each case addresses and the ensuing court rulings. There are many more angles that one may explore with this type of research, such as how colleges reacted to rulings, or how newspapers characterized the reactions to those rulings. This study focuses on the cases themselves, but how colleges, state officials, and others reacted is an interesting line of research. Having said that, one must figure out how and where to draw the line with research. Charles Russo (1996), once a University of Kentucky professor, noted that students can get “lost at the talk of reporters, digests, and *Shephard’s Citations*” but that in such instances he “sought to allay their concerns by pointing out that the legal method and other forms of research serve essentially the same purpose: they are all interested in arriving at a better understanding of the question at hand” (p. 34). It is likewise the hope that this research—although it was not designed to cover every angle of every case—has led to that better understanding that Russo discusses.

### **Final Thoughts**

I note the importance of storytelling to historians. We often look to primary source documents for perspectives on what occurred regarding a certain event at a certain time. Often, we rely on newspaper articles, diaries, trustee meeting minutes, and so on. These are excellent primary sources. But, case law is really quite special. With many types of primary resources, it is more difficult to understand the details of sometimes very complex issues. We may learn only



one side of an argument from a diary entry, or we may know only the final outcome of a decision when reading a newspaper article. Court cases are a rich source of not only great levels of details, but also they tend to be very objectively written and they lead us understand both sides of an argument. In that sense, case law is an extremely valuable tool for research that I believe has been underutilized. I should also note that court cases from this time period are actually quite readable for a non-legal scholar. It seems that courts were intentionally clear with how different arguments and logic informed their decisions. They are fascinating and enjoyable reads.

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## Appendix A

Cases are organized in the table below are ordered first by category, then by state, and then by year in situations where there are multiple cases within one state.

### The Power to Control Public Institution Finances

<u>Case Name</u>	<u>State</u>	<u>Year</u>	<u>Case Citation</u>	<u>Entity in Conflict with College</u>
<i>The Indiana State Board of Finance et al. v. State of Indiana, ex rel. Trustees of Purdue University.</i>	Indiana	1919	188 Ind. 36	State Board of Finance
<i>Bosworth, Auditor v. State University, et al.</i>	Kentucky	1913	154 Ky. 370	State Auditor
<i>Barker, President, et al. v. Crum, et al.</i>	Kentucky	1917	177 Ky. 637	Student
<i>Board of Regents of the University of Michigan v. Auditor General</i>	Michigan	1911	167 Mich. 444	State Auditor
<i>State Board of Agriculture v. Auditor General</i>	Michigan	1914	180 Mich. 349	State Auditor
<i>State ex rel. University of Minnesota and Others v. Ray P. Chase</i>	Minnesota	1928	175 Minn. 259	State Auditor
<i>Lincoln University v. George E. Hackmann, State Auditor.</i>	Missouri	1922	295 Mo. 118	State Auditor
<i>Agricultural and Mechanical College v. B.R. Lacy, State Treasurer</i>	North Carolina	1902	130 N.C. 364	State Treasurer
<i>Cincinnati (City) v. Frank J. Jones et al,</i>	Ohio	1905	16 Ohio Dec. 343	City Solicitor
<i>Regents of the State University v. Trapp, Auditor (28 Okla. 83, 1911)</i>	Oklahoma	1911	28 Okla. 83	State Auditor
<i>Peebly v. Childers, State Auditor (Regents of University of Oklahoma, Interveners)</i>	Oklahoma	1923	95 Okla. 40	State Auditor

## The Power to Manage Land Grant Funds

<u>Case Name</u>	<u>State</u>	<u>Year</u>	<u>Case Citation</u>	<u>Entity in Conflict with College</u>
<i>H. Melgard, Treasurer of the Board of Regents of the University of Idaho, Plaintiff, v. John W. Eagleson, Treasurer of the State of Idaho, and Clarence Van Deusen, Auditor of the State of Idaho, Defendants.</i>	Idaho	1918	31 Idaho 411	State Treasurer
<i>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.</i>	Idaho	1918	31 Idaho 614	State Treasurer
<i>State ex rel. Koch, Relator v. Barret, State Treasurer, Respondent</i>	Montana	1901	26 Mont. 62	State Auditor and Attorney General
<i>Montana ex rel. Haire v. Rice, as State Treasurer, Respondent</i>	Montana	1906	33 Mont. 365	State Treasurer
		1907	204 U.S. 291	
<i>State, ex rel. Spencer Lens Company, Relator, v. Edwin M. Searle, Jr. Auditor, Respondent</i>	Nebraska	1906	77 Neb. 155	State Auditor
<i>Regents of University of New Mexico v. Graham, State Treasurer, et al.</i>	New Mexico	1928	33 N.M. 214	State Treasurer
<i>State ex rel. Board of University and School Lands v. McMillan, State Treasurer</i>	North Dakota	1903	12 N.D. 280	State Treasurer
<i>State ex rel. University of Utah v. Candland et al., State Board of Land Commissioners</i>	Utah	1909	36 Utah 406	Attorney General

<u>Case Name</u>	<u>State</u>	<u>Year</u>	<u>Case Citation</u>	<u>Entity in Conflict with College</u>
<i>The State of Washington, on the Relation of Arthur W. Davis et al., Plaintiff, v. C. W. Clausen, as State Auditor, Respondent</i>	Washington	1931 (filed in 1930)	160 Wash. 618	State Auditor
<i>Wyoming ex rel. Wyoming Agricultural College v. Irvine, Treasurer of the State of Wyoming</i>	Wyoming	1907	206 U.S. 278	State Treasurer

### The Power to Control the University

<u>Case Name</u>	<u>State</u>	<u>Year</u>	<u>Case Citation</u>	<u>Entity in Conflict with College</u>
<i>The State of Florida, by W. H. Ellis, Attorney-General of Said State Upon the Relation of F. B. Moodie, Fred L. Stringer, a Trustee of the University of Florida, and the City of Lake City, a Municipal Corporation, Relator, v N.P. Bryan, A.L. Brown, Nathaniel Adams, P.K. Yonge, and T.B. King, as the State Board of Control, Respondents</i>	Florida	1905	50 Fla. 293	State Board of Control
<i>State ex rel. Harry T. Heimberger, Appellant v. Board of Curators of the University of Missouri, a Corporation</i>	Missouri	1916	268 Mo. 598	Student
<i>State ex rel Prchal, Appellants, v. Dailey, et al, Respondents</i>	South Dakota	1931	57 S.D. 554	Taxpayer

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