

SCHOOLS: Board of Curators has authority to continue to pay tuition for resident negro students when Lincoln University does not teach certain courses or subjects taught at University of Missouri.

July 31, 1950



Lincoln University
State of Missouri
Jefferson City, Missouri

Attention: Sherman D. Scruggs,
President

Gentlemen:

This will acknowledge receipt of your request for an official opinion of this department which reads:

"Since Negro students are being admitted to courses of study at the University of Missouri, at Columbia, which are not available at Lincoln University, a problem arises for the Curators of Lincoln University as to what action it should take on requests for tuition costs by those Negro resident students of Missouri enrolled in out of State universities in courses that are offered at the University of Missouri and not available at Lincoln University.

"In view of the above mentioned action by the University of Missouri pursuant to a recent Declaratory Judgment of the Circuit Court of Cole County, the Board of Curators of Lincoln University wishes to be advised as to the effect of the said Declaratory Judgment upon the out-of-state tuition program of the State of Missouri. A copy of the Declaratory Judgment is enclosed herewith."

The particular statute herein to be construed is 10779, Mo. R.S.A., which reads:

"Pending the full development of the Lincoln University, the Board of Curators shall have

the authority, if and when any qualified negro resident so requests, to arrange for his attendance at a college or university in some other state to take any course or to study any subjects provided for at the State University of Missouri, and which are not taught at the Lincoln University, and to pay the reasonable tuition fees for such attendance."

The primary rule of construction of statutes is to ascertain and give effect to the lawmakers' intent, and this should be done, from words used, if possible, considering the language honestly and faithfully. See *City of St. Louis vs. Senter Commission Company*, 85 S. W. (2d), 337 Mo. 238. Also see *Donnelly Garment Company vs. Keitel*, 193 S.W. (2d) 577, 354 Mo. 1138.

The foregoing statute merely vests in the foregoing Curators authority for arranging for attendance of qualified negro students, residents of this state, to a college or university of another state to take any course or study any subject provided for at the University of Missouri and which is not taught at Lincoln University and also to pay a reasonable tuition fee for such attendance. Said provision does not make any attempt to make it mandatory upon a Board to do this in every instance but provides that said Board shall have such authority when said requirements are met. The foregoing Act of the Legislature has not been repealed by the Legislature, neither has it been declared unconstitutional by any court and until this happens it remains the law in this state and in full force and effect.

Judge Sam C. Blair's decree referred to in your request merely found that Lincoln University did not offer the courses at said University as requested by said defendants therein and neither did Lincoln University have an appropriation sufficient to establish any of said courses of study and further found that there was no reasonable probability that said Board would establish or be able to offer any of said courses at any time in the future. The Court held in that opinion that under the equal protection clause of the 14th Amendment to the Constitution of the United States and Section 2, Article I, of the Constitution of Missouri, that plaintiff and other state supported institutions of higher learning in this state are legally obligated to admit scholastically qualified resident negro students to their divisions and curricula in which instruction is not immediately available at Lincoln University.

While in all probability the foregoing opinion of the Circuit Court of Cole County, Missouri, properly construes the law, it cannot be cited as decisive, for in this state only appellate court decisions carry that weight. However, notwithstanding this fact even if it should be controlling it would not hereinafter prevent the General Assembly of this state from appropriating funds to send colored resident students to other universities and colleges

in other states that teach courses taught at the University of Missouri, but not at Lincoln University and to pay reasonable tuition for same. So at least until such time as the General Assembly of this state shall convene and either amend or repeal Section 10779, supra, said statute is still the law in this state. However, we are further of the opinion that Section 10779, supra, leaves it within the discretion of said Board to arrange for and pay said tuition, by the Legislature merely providing that said Board shall have authority to arrange for attendance at said college or university and pay said tuition. The act does not provide that said Board shall make such arrangements and pay the tuition but gives said Board the authority to do so.

Therefore, this becomes a matter of policy with said Board, if it is the policy of said Board at Lincoln University to continue to pay such tuition it may do so when such resident students comply with all the requirements and when Lincoln University does not teach such courses as does the University of Missouri, however said Board may also refuse to pay such tuition if it so desires.

We further notice that Section 10779, supra, only allows payment of tuition at some other university or college in some other state while the appropriation Act for said tuition, now Section 7.083, H. B. #28, passed by the 65th General Assembly provides for the payment of such tuition at some institution of higher education in this state or some other state. This cannot be done; such students can only have the tuition paid by the state by attending some university or college outside of the State of Missouri as provided in Section 10779, supra. The law is well settled that to hold that such an appropriation gives said Board authority to arrange for attendance of such students at some other college or university in this state, which is contrary to the general law namely Section 10779, supra, would be legislating by an appropriation act, which the courts have repeatedly held invalid. (See State ex rel. Gaines vs. Canada, 133 S. W. (2d) 783, 342 Mo. 721.)

CONCLUSION

Therefore, it is the opinion of this department that until such time as Section 10779, Mo. R.S.A., is amended or repealed by the General Assembly of this state that the Curators of Lincoln University may make arrangements with some institution of higher education in another state for attendance of resident negro qualified students desiring to take a course or subject taught at the University of Missouri but not at Lincoln University and paid said tuition, however this is discretionary with said Board and not mandatory.

APPROVED:

Respectfully submitted,

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