THE LEGAL BASIS FOR COLLEGE STUDENT PERSONNEL WORK

Clarence J. Bakken

The American College Personnel Association
a division of
The American Personnel and Guidance Association
1607 New Hampshire Avenue, N.W. Washington, D.C. 20009

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FOREWORD

Clarence J. Bakken revised this monograph in order to update the first edition published in 1961. He added to his original work court decisions and writings in the area from 1960 through May 1966.

Dr. Bakken did not include new legislative enactments during the period on the assumption that each personnel worker would be aware of any statute changes in his own state. (Statutes do not apply outside of the state where enacted.)

Clarence Bakken died in 1967, before the editing of his monograph was completed. Therefore, only minimal changes have been made in the revised manuscript.
Preface to Second Edition

During the past six years the college community has been going through changes that were not thought possible by the author when the original monograph of which this is a revised edition was prepared. We have seen some colleges and universities brought almost to a standstill by student riots. Free speech movements, civil rights demonstrations, anti-Vietnam War rallies, draft card burnings and general student unrest have been the order of the day in many of our institutions of higher learning. Activist tactics used by some civil rights organizations and labor unions in the larger community have been used by students in the college community to get their way. These tactics have been used by a very small minority of the students, probably less than five per cent, but their impact has been felt by many.

The author wondered what effect these activities had made on the thinking of other writers and the courts whose decisions determine the legal implications. For this reason hours were spent reading articles and court decisions that were applicable to student personnel workers and their work. This revised edition of the monograph is the result of that reading.

Sometimes there are differences of opinion as to legal interpretations. If there were not, there would be less litigation. The author recognizes that many of those who are legally trained will disagree with his interpretation of the statutes and court decisions. The interpretations used in the revised monograph represent the judgment of the author, however, and are believed by him to be sound.

Legally trained personnel will be influenced by their orientation. Faculty members of law schools will probably be more liberal in their interpretations than one such as the author who has spent the last six years working in a college setting as a student personnel worker and disciplinarian.

Finally, caution should be exercised by those who contemplate applying generalized information of the sort appearing here to their individual problems or situations. The courts of a particular jurisdiction are not bound by the decisions from courts of another jurisdiction, although they may be persuaded by them. The legislation in effect in a given state usually is not even persuasive authority in the courts of other states, although decisions construing it sometimes are. Further, the law is not static, since old statutes may be repealed, new ones added, and court decisions changed. In any specific case, legal counsel should be secured.

Clarence J. Bakken, LL.B., Ed.D.
Member, Minnesota Bar
Chapter 1

Introduction

Institutions of higher learning supported by state tax money are instrumentalities of the political bodies which they represent. These institutions have developed as a result of the efforts of the political subdivisions to provide an education for their youth. The tax-supported colleges and universities have grown as the people in the respective states have been willing to support them. There was no way of predicting how the institutions would develop at the time they were established. One thing was clear, however. They were instrumentalities of the government in the same way that all governmental bodies were. They had to be responsive to the needs of the people as they were the creations of the society which established them. The institutions owed a definite responsibility to those who supported them. Thomas Jefferson's concept of a college was an institution which would serve American society. The Supreme Court of the United States said in Brown vs. Board of Education\textsuperscript{37} that "we must consider public education in the light of its full development and its present place in American life. . . ."\textsuperscript{15}

At the time the Federal Constitution was drafted, colleges and universities were generally operated under private auspices, either by charter or articles of incorporation. No mention is made of education in this document or its amendments.\textsuperscript{61} With this background of privately operated educational institutions of higher learning, a great deal of freedom was allowed in their operation, and the courts generally upheld this freedom. At the outset, tax-supported institutions also were given considerable freedom. Because they were established by popular desire, they had to meet the test of the state constitutions and were subject to control by the people through their elected representatives.

With the passage of time a difference has developed in interpretation of the law as it applies to private institutions and public, tax-supported institutions. This difference was well stated by the Supreme Court of Florida in John B. Stetson University vs. Hunt.\textsuperscript{140} In this case the court said:

The persons who enter a private institution of learning as students impliedly agree to conform to the rules of government of the institution; the only limit of such rule applying to institutions supported in whole or in part by appropriations from the public treasury, is that for them the rule is viewed more critically and is generally subject to legislative regulation.

Over the years the legislatures have passed statutes regulating the colleges and universities supported by them, and constitutional provisions relating to public education have been changed. These changes and revisions in constitutional and statutory law have necessitated new court interpretations based on the changing policy of the state. These have built up a considerable body of law relating to tax-supported institutions of higher learning. Private schools, on the other hand, are still operating under their charters or articles of incorporation and are little affected by state action.

At the present time there is a reasonable body of law covering state tax-supported colleges and universities. This law is contained in the state statutes, the state constitutions, and the decisions of the courts. In some cases there are federal statutes and federal court decisions pertinent to specific personnel services. This monograph attempts to trace the law as it applies to the four-year colleges and universities in the United States. As most of the law is centered around state-supported institutions, this monograph will deal primarily with such institutions.

The statement, "Ignorance of the law is no excuse," a maxim of the law for a long time, is particularly applicable to persons acting as public or quasi-public officials. Although there is no uniformity among states as to who is or is not a public or quasi-public official, there is general agreement that state institutions of higher learning are public agencies. The Supreme Court of West Virginia said in State ex rel. Board of Governors of West Virginia University vs. Sims,\textsuperscript{242} that the Board of Governors of West Virginia University was a public and governmental body and an arm of the state. A federal court, in a case involving the University of Minnesota in Reid vs. University of Minnesota,\textsuperscript{223} said:

The "Regents of the University of Minnesota" is a constitutional corporation created to carry out the state purposes, and acts of the Regents are acts
of the state of Minnesota, and the University of Minnesota Press, being a creature of the Regents, is, therefore, an agency of the state whose acts are the acts of the state.

From these examples it can be seen that state institutions are acting for the state when in pursuit of their created purpose—education. As an institution cannot act except through its employees, it becomes apparent that these employees are acting for the state when engaged in their official duties. They are thus acting as public or quasi-public officials.

This monograph attempts to show the basic principles of the law as it now exists and has developed over the years. Certain guiding principles deduced from the law are presented. The law in our modern society, as it relates to state-supported colleges and universities, is a complicated body of knowledge, contained in the state and federal constitutions, state and federal statutes, and state and federal court decisions. All of these sources have been used to determine the basic principles of law considered useful to student personnel administrators.

Certain student personnel services have more coverage in the law than others and more litigation was noted in some fields than in others. These factors influenced the choice of services included because it was felt that clarification of the law related to those services in which most legal action and litigation were recorded would be most useful.

Student personnel services have developed as a division of college and university administration concerned with students both individually and in groups. These services are maintained by four-year colleges and universities in both state and private institutions. The legal basis for these services in private colleges and universities is in the charter or corporate organization. For inclusion of these services in the administrative program of state-supported colleges and universities a legal basis had to be provided. This legal basis had to be derived from legislative grants of power, constitutional grants of authority, policy of governing boards operating under broad delegated powers, or accepted custom recognized by the courts. This monograph attempts to determine that legal basis.

Some Recent Developments

During the past six years, there has been a great deal of emphasis placed upon civil rights. This emphasis has resulted in a great deal of litigation. Van Alstine stated that “eighty percent of the Supreme Court’s current caseload involves the protection of civil liberties.”

The colleges and universities have not been immune from the civil rights agitation. There has been student unrest and student arrests. Some of this unrest has even questioned the authority of the governing board to regulate the institution. E. G. Williamson summed it up well when he said: “students imitate the methods established by labor unions to get their rights. This involves strife by making demands upon management, often beyond the legalities involved. They neglect the correlation of rights—their responsibilities of maturing citizens in the academic communities.” He further stated: “while in some instances such means may seem to be the only available way to win concessions, surely their employment in colleges degrades the character of higher education and brings limited respect and little support to the cause of student rights. Indeed for some students, the struggle to secure rights seems to be equated with anarchy.”

The student personnel worker has to be aware of the unrest that is occurring and may continue to occur on the campus and understand the forces that cause the unrest. He must also be aware of the small number of students who are involved in the action aspects of this unrest. He must never lose sight of one important factor, namely, that the rights of the majority should not be allowed to be interfered with by this small minority. This was well stated in the case of Baines vs. City of Danville, Va. where the court said:

First Amendment rights of free speech and assembly incorporated into the Fourteenth Amendment are not a license to trample on rights of others and First Amendment rights must be exercised responsibly and without depriving others of their rights.

Again in Clemmons vs. Congress of Racial Equality the court said:

Basic rights of freedom of speech and freedom to peaceably assemble must on occasion be subordinated to other values and considerations.

A New York court stated it this way:

The freedom and liberty of man which is protected by the Constitution should be absolute with the one exception that when exercise of that liberty infringes upon liberty of another, the actor invading another’s liberty commits a wrong, and to protect individuals from that invasion society may class such invasions as a crime and provide punishment.

There are certain rights that students have as citizens of the United States that must be recognized regardless of the feelings of the college or university administration. These rights guaranteed by the first ten amendments to the Constitution and applied to the states by the Fourteenth Amendment will be enforced by the courts. Van Alstine states it this way:

A university rule which threatens a student with dismissal for any activity he is constitutionally entitled to pursue as a citizen carries the burden of establishing precisely how that activity would specifically interfere with the legitimate business of the university.
The Federal Courts have been busy during the past few years deciding cases involving the freedoms that citizens, including students, have under the constitution. In *Griswold vs. State of Connecticut*\(^{112}\) the United States Supreme Court said:

> The state may not consistently with the spirit of the first amendment contract the spectrum of available knowledge. The right of freedom of speech and press included not only the right to utter or to print but the right to distribute, right to receive, right to read and freedom of inquiry, freedom of thought and freedom to teach.

The same court in *Cox vs. State of Louisiana*\(^{62}\) said:

> A function of free speech is to invite dispute and it may best serve its high purpose when it induces condition of unrest, creates dissatisfaction with conditions as they are or even stirs persons to anger. Freedom of speech is protected against censorship or punishment.

In the same decision, the court said: "constitutional command of free speech and assembly is fundamental and encompasses peaceful social protest."

In *Stanford vs. State of Texas*\(^{246}\) the Supreme Court said:

> The first, fourth and fifth amendments to the Constitution are related and safeguard not only privacy and protest against self-incrimination but conscience and human dignity and freedom of expression as well.

The Federal Court in *Heare vs. Smylie*\(^{122}\) stated:

> Where the state legislature in enacting challenged legislation which is constitutionally valid on its face did so with legislative intent to work discrimination in violation of the equal protection clause of the fourteenth amendment or where, regardless of legislative intent, law is applied or enforced with intended result of working discrimination, legislation will be held to result invidious discrimination violating equal protection clause.

The right of peaceful assembly is guaranteed by the Fourteenth Amendment according to a decision in *Edwards vs. South Carolina*.\(^{79}\)

> It would be possible to cite many other court decisions to indicate that rights under the Constitution are protected in the areas of freedom of speech, assembly, privacy, religion, press, petition, and others mentioned in the Bill of Rights. In addition to these rights, there is the right to equal protection of the laws. Some of these rights are applicable to specific areas of student personnel work and will be discussed under the headings to which they are applicable.

> The author wishes to caution the reader not to take these rights as absolute. There are the limitations listed earlier in this chapter and others that will be listed subsequently.

In *State vs. Moity*,\(^{261}\) the Louisiana Supreme Court said:

> It was never the intention of the founding fathers that each and every person be allowed to exercise rights guaranteed by the Constitution or the Bill of Rights without restraint or qualification and in utter disregard of equal rights of fellow men or that one person or class could by exercise of rights violate equally important rights of another with impunity.

A Missouri court said: "the first amendment does not confer the right to persuade others to violate the law."\(^{65}\) Courts have held that the manner of dissemination of material may be objectionable\(^{346}\) and that one cannot talk or distribute where, when, and how one chooses.\(^{352}\) They have also held that these liberties must be yielded when public necessity and the common good have outbalanced abridgement to protect rights.\(^{347}\)

Rights under the First Amendment do not authorize disobedience of state and municipal law, misuse of property of another, or intimidation, threats, or abuse of another.\(^{119}\) No one can utter or publish libelous statements against another,\(^{1,247}\) and obscenity is not protected by the Constitution.\(^{2}\) The guarantees of freedom of religion, speech and assembly are fundamental rights but are not absolute in all their aspects.\(^{127}\) Peaceful picketing, however, is protected as free speech.\(^{238}\)

In the case of *Bookcase, Inc. vs. Broderick*,\(^{31}\) a New York court said that the Federal Constitution and specifically the First Amendment thereof does not secure to children the same absolute right assured to adults to judge and determine for themselves what they may read and what they should reject.

Trespass in public buildings is unauthorized according to a California court.\(^{11}\) Privacy is not invaded by police inquiry.\(^{273}\)

It will be observed that the rights that some students have been asking for and assumed were absolute rights are not absolute at all but are limited. The personnel worker must be able to interpret each act or request on the basis of its effect upon others and upon the institutional purpose for being and make his decision in each individual case. Joseph Katz and Nevitt Sanford\(^{144}\) writing in the *Phi Delta Kappan* made some observations that the author believes should receive the attention of personnel workers. The statement is as follows:

> Defining the relations of students to the college in terms of power does have its drawbacks. It feeds a growing tendency in recent years to define student-college relations in legal, even legalistic terms. We have seen instances recently in which such legalistic procedures were used by students primarily to irritate faculty or administrators. These adult figures, for their part, can fall into the trap of considering these legal issues as the substantive ones and fail to consider the real issues of student discontent, of which the legalistic attack is only a symptom.
They went on to say:

What is educational? Students would not raise the question of their rights so frequently if the process of their education were more meaningful to them and if they felt more respected. . . . We need to widen options both in the academic and non-academic areas to educate a wide variety of different individuals, and this will require a good "advising" system to make these options known and meaningful.

Archibald Cox writing on the subject of civil disobedience states that there is no constitutional right to engage in direct disobedience to a plainly valid and constitutional law. He states that repeated widespread disobedience hazards individual freedom and liberty. It is our function as student personnel workers to ensure that students understand this ever-present danger.

The author has presented a few of the problems which the sixties have brought to the student personnel worker and a review of current court and other opinions on the subject. More detailed evaluations will be made under the areas which follow.

Definition of Personnel Services

It will be easier for the reader to follow the author's findings if the various personnel services are explained and defined as they are used in this monograph. Heavy reliance is placed on the pamphlet, The Administration of Student Personnel Programs in American Colleges and Universities (Daniel D. Feder, Chairman), in preparing the explanations on each personnel service which this monograph attempts to cover.

Admissions, Continuation, and Records.

The college's first service to a student is in the admission procedures. Minimum services involve the acceptance or rejection of the applicant . . . The admission function carries responsibility for the receipt and processing of all contacts with prospective students even though other offices may be involved. [Feder]

Continuation involves an orderly process beginning with the admission of a student and culminating in his graduation from college. In this process, records are kept to insure that the student receives full credit for his work and meets the requirements for graduation. Records also involve the registration process, issuing of transcripts to departing students, and all other necessary record-keeping.

Housing and Food Services. Housing and food services relate primarily to the residence halls constructed and operated by or for the college or university and to the facilities provided within the institution for the feeding of students.

Many colleges have to supplement their residence halls with rooming houses and off-campus housing.

Placing students within such housing is recognized as part of the housing responsibility at colleges and universities. Approval of such facilities could become part of the overall housing and food service responsibility of the college.

Scholarships, Loans, Tuition, and Fees. Financial assistance enabling students to enter college and pursue their courses to a successful conclusion is involved in these four facets of student personnel work. The amount of tuition charged and the extent of the fees collected are an important part of the cost of college. Tuition is the amount of money which a college or university charges for enrollment. Fees are those collections made for activities, student health services, student unions, and other special assessments for university activities.

Scholarships are grants-in-aid to students, either in the form of remission of tuition and fees, or money to pay for tuition and fees, board and room, and other incidental expenses. Scholarships considered in this monograph are limited to those provided by the college or university from funds available to them through grants from legislative appropriation or private sources. Scholarships also include assistance given to students through specific legislative enactments. Scholarships from private sources and the federal government are not included.

Loans are considered as financial assistance to a student from state or university funds that must be paid back by the student.

Health and Counseling Services. Health services, both physical and mental, are those that the university or college provides through an established medical activity within the institution. College health services perform the following functions:

1. Preventive therapy, which includes regular examinations, programs of inoculation, and health problems.
2. Recommendations for appropriate regimens for enrolled students with special health problems.
3. Examinations to screen out the enrolled student or applicant who may be physically or emotionally unfit for college life or a health hazard to himself and others.
4. Medical services in first aid or illness.

Among the cardinal principles of education is the development of students' physical and mental health.

The function of counseling services is today recognized as part of the educational services.

By definition, counseling is concerned with assisting the student (1) in understanding and evaluating his potentialities and limitations, and (2) in discovering and developing ways and means of working out his problems and taking full advantage of his opportunities. In order to provide the greatest assistance to the student, the counselor
may draw upon other functions of student personnel services or of the instructional staff. [Feder] 88

**Student Discipline.** The college or university, like all community organizations, has its rules and regulations. Student discipline consists of ways and means devised for enforcement of the rules and corrective methods used to discipline violators.

The concept of discipline in a college or university today places emphasis on the student's acceptance of his own personal-social responsibility. In this concept, discipline is recognized as an educational function. Responsibility for achieving discipline among students rests with student personnel services. [Feder] 88

**Student Activities.** Student activities is a broad field, including student government, fraternities and sororities, and operation of student newspapers and other publications. In this monograph the term also includes finding work for students, placement, and other related types of activities. Only two of these activities are defined here: student government and placement. The other activities mentioned are more or less self-explanatory.

Student government consists of that form of organization within the college community that gives students an opportunity to participate in their own regulation and control. In a broader sense, it consists of an opportunity for students to be heard in matters of student concern. Student government may include legislative, administrative, or judicial functions.

Placement is a personnel service function that provides facilities for introducing the student to outside employers. This may be for employment after graduation or while a student. If the latter, it is called **student labor** or **student employment** in this monograph. There may be some question about the inclusion of this activity in a personnel services monograph, but it is included for the benefit of those operating this service under the personnel services organization.

**Definition of Terms**

**Legislative Enactments.** As here used, the term "legislative enactments" includes only acts of the state legislatures and does not include rules or regulations placed in effect by governing boards or administrative agencies acting under broad legislative or constitutional authority.

**Housing and Food Services.** These include such auxiliary services as laundry, tailor, barber, or other activities carried on by the organization or organizations charged by the college with housing and feeding students on the campus.

**Student Health Services.** These services include those health activities carried on in college-operated health clinics, dispensaries, or infirmaries.

**Counseling Service.** The counseling service considered in this monograph is that operated by the college as a special service. It does not include faculty or other counseling performed as a part of teaching.

**Admissions and Continuation.** The terms "admissions and continuation" are the acceptance of a person as a student and his re-acceptance from year to year as a student in good standing.

**Student Loans.** Student loans and scholarships, tuition and fees, as they are used in this monograph, are those provided by authority of statute.

**Discipline.** "Discipline" is the exercise of that authority that the law grants to a college to enforce its rules and regulations.

**Student Activities.** In this monograph, student activities are limited to those normally called extracurricular and include only student government, fraternities and sororities, student newspapers and other publications, finding work for students, placement, and other related types of activities.

Other definitions, unless otherwise indicated, were taken from **Black's Law Dictionary.** 25

**Court Decisions.** Where quotations from court decisions are given in this monograph they are not always direct quotes from the court's ruling. In many cases they are abstracts of editors' notes on the case.

Some legal references are defined here so that they will be more meaningful to the reader.

In court decisions, the name of the plaintiff is given first and the defendant second, preceded by v. or vs. Following the name of the litigants comes the location of the case and the court in which it was heard: 21 Minn. 322 means that the case can be found in Volume 21 of the Minnesota Supreme Court Reports on page 322. U. S. and S. Ct. indicate the United States Supreme Court. F. Supp. indicates United States District Courts and P. indicates United States Circuit Court of Appeals. There have been compilations of court decisions by regions in the United States. The entry P. stands for Pacific, A. for Atlantic, N. W. for Northwest, etc. In cases where there have been a great many decisions new editions have been put out and are indicated by 2d.

In some cases only one name appears, with the term **ex parte** in front of it. This means the action was taken on behalf of one party only. Where **ex rel.** appears, it means that the action was started by an official on behalf of the state.
Chapter 2

Authority for Student Personnel Services

Authority for student personnel services cannot be divorced from the general or basic authority vested in the governing bodies and administrative officers of the various colleges and universities operating under state jurisdiction. Basically, authority was derived from two sources—state constitutions and state statutes. The right of a state to establish and maintain a state-controlled institution of higher learning was affirmed by dictum in the Dartmouth College case.67 The United States Supreme Court, in this case, declared that the state could not take over a private college without its consent, but it did say: "The government may establish an educational institution, over the affairs and officers of which it has exclusive control."

Constitutional Authority

Constitutional autonomy of a college or university is the exception rather than the rule. Constitutional authority in the United States can be divided into three categories: complete autonomy, partial autonomy, and a special type of autonomy in the state of Oklahoma.

Complete Autonomy

Complete autonomy means that the governing body was established and its powers enumerated in the state constitution. The governing board has complete control over all internal affairs of the college. The legislature cannot specify how the board will exercise its control, nor can it legislate limitations, restrictions, or controls. While the legislature provides funds for the institutions, it cannot tell the governing boards how to spend the money. The governing boards of these institutions are also free from administrative control by state administrative officers.

Complete autonomy is found in the University of Minnesota,223, 244, 270, 274, 303 the University of Colorado,208, 207 the University of California,205, 229 and the University of Michigan and Michigan State College.302,333

Partial Autonomy

There is another group of institutions that, while not completely autonomous, have their basic authority in the constitution. The University System of Georgia is one of these. The Georgia Constitution provides for the university by name and authorizes the trustees of the university to accept bequests, donations, grants, etc., for the use of the university. The legislature set up the Board of Regents of the University System of Georgia and granted it broad powers to run the colleges and universities operated by the state.391 The Supreme Court of Georgia declared in Villyard vs. Regents of the University System of Georgia that the general powers granted to the board of regents of the university system were constitutional. It would appear that the Board of Regents of the University System of Georgia does not have complete constitutional autonomy but is subject to legislative acts.

The University of Utah and the Utah State Agricultural College are two institutions that have some constitutional autonomy. The Constitution of Utah, in Article X, Section 1,334 states that the legislature shall provide for the establishment and maintenance of a uniform system of public schools. In Section 2, the public school system includes kindergarten through high school, an agricultural college, a university, and such others as the legislature may establish. Section 4 states that:

The location and establishment by existing laws of the University of Utah and the Agricultural College are hereby confirmed, and all the rights, immunities, franchises and endowments heretofore granted or conferred, are hereby perpetuated unto said University and Agricultural College respectively. [Utah Constitution] 324

In the same constitution, therefore, the legislature was given authority over the institutions, and, in addition, certain previous powers were granted to the institution directly. The Supreme Court of Utah, in Spence vs. Utah State Agricultural College,335 stated that it assumed that all rights and franchises that had been granted prior to statehood were perpetuated. In a later decision, however, the court said:

The University of Utah is not an autonomous constitutional corporation free from the control of the legislature, administrative bodies, commissions and agencies and officers of the state.343

6
The legislature apparently felt this way because by statute it said: "The University shall be subject to the laws of this State now existing or hereafter enacted relating to its purposes and government." The state legislature indicated like sentiments as regards the agricultural college, for they have, by legislation, set up the powers of the board of trustees of that institution.\textsuperscript{224}

Based on the latest decision of the Supreme Court of Utah and the expressed enactments of the legislature, the two state institutions referred to do not have complete autonomy and are, in general, subject to legislative enactment insofar as their authority is concerned.

One other university, Idaho, has been presumed to have constitutional autonomy. The Constitution of Idaho makes no direct mention of the university but does provide that the state would establish and support numerous institutions, including educational institutions, in such a manner as may be prescribed by law. The constitution also says that the general supervision of the state educational institutions and the public school system shall be by the state board of education, the powers of this board to be prescribed by law.\textsuperscript{292}

The state legislature set up a board known as the State Board of Education and the Board of Regents of the University of Idaho. The legislature granted this board full control over all of the educational institutions of the state as a legislative and appellate body.\textsuperscript{292}

The wording of the constitution and the acts of the legislature of Idaho would indicate that the University of Idaho is not an autonomous institution based on the constitution. All colleges and universities in Idaho come under the same board, which derives its authority from the legislature.

Even in those states that have granted them complete constitutional autonomy, colleges and universities are subject to the police power of the state and derive their funds through legislative enactments. However, the internal operation of the university is not subject to legislative act.\textsuperscript{339}

### Special Autonomy

Oklahoma colleges and universities were all granted some constitutional authority and in some respects have constitutional autonomy. The legislature, however, still retains some control.

A board of regents was set up in 1944,\textsuperscript{316} for the agricultural and mechanical arts colleges and for the University of Oklahoma, but the constitution made no mention of the specific duties of the respective boards. In 1948, a Board of Regents of Oklahoma Colleges, for all colleges in Oklahoma except the university and the agricultural and mechanical arts colleges, was established in the constitution and was given authority to make rules and regulations governing each of its institutions.\textsuperscript{316}

Article 13a of the constitution provides for a board for the Oklahoma State System of Higher Education, with specific powers enumerated: "set up standards, functions, and courses of studies, granting of degrees, budget and recommendation to the legislature for fees." No fees may be set up except as the legislature may authorize.\textsuperscript{316}

Thus, in some respects, all institutions of higher education supported by the state are under this superior board for some items. These are constitutionally provided for, and there is constitutional autonomy within the specific powers granted this board.

The Board of Regents of Oklahoma colleges has constitutional authority to make rules and regulations governing each institution; in this respect there is constitutional autonomy. The University of Oklahoma Board of Regents and the Board of Regents of the Oklahoma State University of Agriculture and Applied Science (new name) are granted their authority by legislative enactment which is very broad in character.\textsuperscript{316} The Oklahoma state colleges are only partly autonomous constitutionally and, in the case of fees charged students, are subject directly to legislative action.\textsuperscript{316}

The Missouri Constitution, Article IX, Sections 9a and 9b,\textsuperscript{306} provides that the government of the State University shall be vested in a board of curators consisting of nine members appointed by the governor and confirmed by the State Senate. The constitution further provides that the Assembly shall adequately maintain the state university and such other educational institutions as it shall deem necessary. The Assembly, by legislative action, has spelled out the duties of the board of curators.

This provision of the Missouri Constitution does not constitute autonomy by constitutional mandate. It is more procedural in nature and sets up a name and method of selecting the governing board. It is a function of the legislature to designate the extent or limitations of the government provided for by the constitution. This results in a state university governing body that is subject to the legislature. The Missouri Supreme Court appears to confirm this interpretation in State vs. Missouri University.\textsuperscript{262}

The Board of Curators of the University of Missouri, by the wording of the constitution, undoubtedly has authority to govern the University according to its best judgment in all matters not specifically forbidden or required by statute. The legislative authority granted to the Board is, however, broad enough to allow this government without resort to the constitution.\textsuperscript{306}
Legislative or Statutory Authority

The balance of the state-supported colleges and universities in the United States not previously mentioned apparently derive their authority directly from the state legislatures through statutory enactments. In general, the state legislatures have given broad powers to the governing boards of their state educational institutions of higher learning, and the courts have upheld this grant of broad authority.

It is possible to make some general statements about the types of governing boards found in various states. In a number of states a single board is charged with full authority over all the state colleges and universities. This is true in Florida, North Dakota, and Oregon.

Another kind of board charged with responsibility over all the state institutions but with limited or special authority is found in Oklahoma and New York.

There is some indication that during the last decades legislatures have been considering setting up one governing board for all state-supported colleges and universities. A study of the statutes indicates that more and more states are consolidating their institutions of higher education under one governing agency.

Another kind of consolidation of state-supported educational institutions under fewer boards was noted. The state university and the state agricultural college remain under separate boards, but all other state four-year colleges are placed under one board. This is particularly true of state colleges or state teachers colleges. In many cases, the state board of education is charged with responsibility for all of these schools. A few of the many states using this system are California, West Virginia, and Massachusetts.

There are still a number of states that have separate governing boards for each college and university within the state, with little, if any, coordination between them. Examples of this type of government are found in New Mexico and Virginia.

Liability to Suit

Basically, state-supported colleges and universities are considered as agencies of the state and not as separate, private corporations. As agencies of the state, they are not liable to suit unless the state legislature has so indicated. This was brought out clearly in the case of ex parte New York where the United States Supreme Court said:

The entire judicial power granted by the Constitution does not embrace authority to entertain suit brought by private parties against a state, without consent given, or one brought by citizens of another state or by citizens or subjects of a foreign state because of the 11th Amendment and not even one brought by its own citizens because of the fundamental rule of which the amendment is but an exemplification.

The Supreme Court of Missouri in Todd vs. Curators of University of Missouri said: “The Curators of the University of Missouri are a public corporation not liable in a suit for negligence in the absence of express statutory provision.” There were many court decisions along the same general lines of those listed above.

The colleges and universities that gained their authority by statute were limited in what they could do by their statutory grant. This was brought out clearly by the Supreme Court of Wisconsin when it said:

The Board of Regents of the University of Wisconsin, as a corporate body, has no powers except such as are conferred upon it by statute, either by express language or by fair implication.

Whether or not any particular institution is subject to suit depends upon the nature of the legislation in the particular state. The subject of suits against the state or its agencies may be found in specific legislation or in legislation setting up the governing board and outlining its functions.

Oaths. The question of whether or not an oath can be required of college professors and employees of a college is of interest to the personnel worker or administrator. A number of states have a statutory requirement that provides that oaths shall be taken by all state employees. These oaths have been upheld. In Pockman vs. Leonard, the Supreme Court of California stated that an oath would be required of teachers as they were state employees. The Washington Supreme Court upheld the right of a state to require an oath on whether or not the state employee was a member of the Communist party. The United States Supreme Court reversed a state court that held the Oklahoma oath legal. The federal court thought the Oklahoma oath too broad and thus deprived a person of his rights under the due process clause of the Constitution. In general, it can be said that when a state requires that an oath be taken by state employees, including college employees, the oath must be taken unless it is too broad and deprives a person of due process of law under the Fourteenth Amendment to the Constitution. There are, however, very few states that require oaths of teachers in colleges.

Dismissal and Tenure. Courts have decided that the boards have broad powers and can dismiss an employee either with or without a hearing. The South Dakota Supreme Court stated that the tenure policy at the state college, under which the Board of Regents could not remove a faculty member for any reason or cause without prior action and approval of the president
and tenure committee, was an unlawful encroachment upon the board's constitutional and statutory power. The statutory power of the board to hire and dismiss employees became a part of every contract of employment, even if not written into the contract.\textsuperscript{573}

In Wisconsin there is a state tenure law, and the Supreme Court in \textit{State ex rel. Ball vs. McPhee} \textsuperscript{241} stated that under this law the board could not determine the right of a person to remain on the college faculty; the courts would decide.

The California Supreme Court held, in \textit{Hardy vs. Vial}, \textsuperscript{121} that the State Personnel Board had adjudicatory powers in proceedings before it, relating to discipline or dismissal of professors of state colleges and the Board's findings of fact would not be disturbed if supported by substantial evidence.

In a Missouri case, the federal court stated that refusal on constitutional grounds to answer if he had been a Communist was adequate cause for dismissal of a college professor whose tenure was subject to contractual covenant providing that his services could be terminated only for adequate cause.\textsuperscript{71} The same conclusion was reached in California.\textsuperscript{332}

The Nevada Supreme Court stated that the board of regents of the state university could revoke, as to future employments, the rule permitting removal of staff members under tenure for cause only and could make the rule without cause or at will of the Board.\textsuperscript{269}

It appears from the above cases that, unless there is a tenure law on the statute books, the boards can, at will, change their rules as to new persons hired. However, if the old members had met the requirements for tenure, they would be covered. In this connection, see Montana Supreme Court case, \textit{State ex rel. Keeney vs. Ayers}.\textsuperscript{258}

\textbf{Curricula.} The Supreme Court of South Dakota stated in \textit{State ex rel. Bryant vs. Dolan} \textsuperscript{248} that the regents, in prescribing curricula for schools within the purposes of statutes, had wide discretion, subject to little if any control. This is the general rule and is probably applicable in all states that have not set up specific requirements in curricula. There are several of these specific requirements or limitations in different states.

In Mississippi, it is unlawful to teach that man ascended or descended from a lower order of animals or to use a textbook that so teaches. A number of states require the teaching of the Constitution and government of the United States and/or their own state. The teaching of the evils of alcohol and narcotics is required in many states. In some, a course in safety, citizenship, or the national flag and colors is required. These requirements are specific and must be followed. In general, however, most states leave the matter of curricula up to the governing boards.

New Mexico exempts the board of regents from personal liability for their board acts by state law.\textsuperscript{311}

Private colleges and universities derive their authority from their charter or articles of incorporation. If neither the statute under which the college is incorporated nor the charter reserves the right of the state to change or modify the charter, no such right exists.\textsuperscript{67}

There have been some limitations placed upon board action under the federal constitution during the past six years. This limitation applies only where the board makes rules that violate the constitutional rights of citizens and students or where the rules are interpreted to violate these rights.

In \textit{Egan vs. Moore} \textsuperscript{80} the New York Supreme Court stated: "the state university is an integral part of the government of the State and as such is subject to immediate control of the Board of Trustees."

The court went on to say:

The state is supreme over its creatures, and trustees of state university must conform with state policy against use of publicly owned and supported educational facilities of the state by Communists.

The same court five months earlier in ruling on a regulation that stated that "The use of facilities of a college must be determined to be compatible with the aims of the College" \textsuperscript{41} said that the standard was unconstitutional "because it discriminates against expression of unpopular minority opinion." The court went on to say:

While there may be no duty to open doors of school houses for uses other than academic, once they are opened they must be opened under conditions consistent with constitutional principles. In view of the dangers of our times in that the people have become inert and conformist, and do not often enough hear the vital issues of the day mooted from public platforms, a college should pursue a policy of fostering discussion and exchange of opinion by providing an open forum to all who want to be heard, and colleges should generate intellectual excitement, and should attempt to awaken the public mind from the torpor of accepted and conventional opinion.

In this connection, see also \textit{State vs. Givens}.\textsuperscript{255}

A careful reading of these two cases and others involving civil rights makes it clear that the governing boards cannot restrict the use of college facilities because the opinions expressed may be contrary to the beliefs of even a majority of the citizens of the community. If one may speak, all may speak. The board may set up rules as to time, place and manner of the use, however.
There has been a change in court opinions on oaths. In two cases, Baggett vs. Bullett and Georgia Conference of American Association of University Professors vs. Board of Regents of University System of Georgia, the courts have declared oaths unconstitutional. In the Georgia case, the Federal Court said:

Provision of Georgia statute requiring all teachers in public schools, colleges and universities to refrain from subscribing to or teaching any theory of government or economics or of social relations inconsistent with fundamental principles of patriotism and high ideals of Americanism constitutes denial of due process under Fourteenth Amendment in light of penal provision of statute that violation of oath shall constitute a misdemeanor and subject violator to immediate discharge, and First Amendment right to freedom of speech protected from state invasion by Fourteenth Amendment.

Oaths can no longer be required of college or university personnel when there are restriction or penalty clauses therein.

In a federal case, Guillory vs. Administrators of Tulane University of La., the court stated that: "restrictions in donations are not binding on the college when they are for racial discrimination." This case involved a private university.

South Dakota attempted to regulate private educational institutions by limiting fees. This was declared unconstitutional. The court stated that the state cannot limit the right of contract by this means.

In Jones vs. Board of Control a Florida court held that a rule prohibiting an employee from running for public office was legal and that a violation was grounds for dismissal.

There has always been a question in this author's mind regarding the delegation of authority by the governing boards to student groups. The North Carolina Supreme Court decided this matter in the case In re Carter. The court said:

The University Board of Trustees may make all necessary, proper and reasonable rules and regulations for orderly management and government of university and preservation of discipline of students according to rules and regulations. Delegation of authority by the University Board of Trustees to establish agencies of student government in respect to student conduct and discipline was proper and constitutional.
Chapter 3

Admissions, Continuation, and Records

Admissions

There is a general misconception that the state colleges and universities are open to all citizens of the state who have completed high school. This appears to be far from the truth in the majority of states.

The general rule, as laid down by statute, gives the governing boards authority to set up rules for admission. An example of the authority given to boards is found in a statement in the Oregon statutes: the board should “prescribe the qualifications for admission.”\(^{317}\) Another example, quoted from the laws of Rhode Island, reads:

It shall be the duty of the President and faculty, with the approval of the Board of Regents to . . . prescribe such qualifications for the admission of students and such rules of study . . . as said President and Committee may deem proper.\(^ {319}\)

In a few cases, the legislature gives the board authority to prescribe entrance requirements but places certain minimum requirements on the board. In Washington the statutes provide that entrance requirements shall be not less than graduation from a four-year high school except for “(1) persons over twenty-one, (2) students in elementary science department, and (3) summer school.” The faculties of each institution may, however, specify the requirements for admission to any department, school, or college.\(^ {287}\) Indiana also requires graduation from a high school or its equivalent.\(^ {294}\)

The Colorado statute relating to the state teachers colleges states that:

The said Board of Trustees shall prescribe the qualifications for admission of students. Every applicant for admission shall undergo an examination by the faculty of said school and if it shall appear that such applicant is not a person of good moral character or fails to pass such examinations, such applicant shall be rejected.

The statute also states that a person must be 16 years of age or upward to be admitted.\(^ {287}\) Nevada provides that:

No person shall be admitted to state colleges who has not arrived at the age of fifteen years, is not of good moral character, and has not passed such an examination as shall be prescribed by the Board of Regents.\(^ {305}\)

The courts have generally held that the right to attend public schools is a civil right or privilege.\(^ {232, 375}\) It is not a right that is absolute and unqualified but one to be enjoyed by all under reasonable conditions. The court, in *Bissell vs. Davidson*,\(^ {34}\) said that the privilege is granted and is to be enjoyed under such terms and under such reasonable conditions and restrictions as the lawmaking power, within constitutional limits, might determine. The Texas Supreme Court, in *Foley vs. Benedict*,\(^ {91}\) said that the Board of Regents has power to determine the classes of persons who shall be admitted to the university, provided the board’s rules and regulations are reasonable and not arbitrary.

The courts have generally granted to the college complete power to determine who shall be admitted to private colleges. In *Booker vs. Grand Rapids Medical College*,\(^ {72}\) the Supreme Court of Michigan said:

Private institutions of learning, though incorporated, may select those whom they will receive and may discriminate by sex, age, proficiency in learning, or otherwise.

The United States Supreme Court has acted in two cases, other than the discrimination cases, that are appropriate to include here. In *People ex rel. *Tinkoff vs. Northwestern University*,\(^ {216}\) the court said:

Where there is no power reserved by the legislature of Illinois in the charter granted to Northwestern University with respect to admission of students to the University, the state cannot prescribe standards of admission . . .

No reason for denial of admission is required and the school can deny admission to anyone on its own grounds.

The court said further that the requirement in the case of public schools (applicable because they belong to the public) that regulations for admission be reasonable is not pertinent in the case of a private school or university, and that students stand in a different position as to each class of school.

In *Booker vs. State of Tennessee Board of Education*,\(^ {23}\) the court said:
Because of limited physical facilities of State College, the State Board of Education is authorized to establish a limit to the number of admissions, but the Board is not authorized to establish limitations based upon race or color.

There are a few states in which admission to the state colleges and universities is mandatory by statute and others in which admission to certain colleges is mandatory. Ohio law states:

The holder of a diploma from a first grade high school shall be entitled to admission without examination to any college or university which is supported wholly or in part by the state but for unconditional admission, a student may be required to complete such units, not included in his high school course, as may be prescribed, not less than two years prior to his entrance, by the faculty of the institution.\cite{315}

Tennessee provides for admission to teachers colleges and normal schools as follows:

White persons, who are not under sixteen years of age and who have completed the full four year course of an approved high school shall be admitted to the Teachers College or State Normal School without tuition.\cite{222}

The Illinois law states that:

All admissions to the regular university courses shall be upon examination or certification from some high school or preparatory school where courses of study have been established for the purpose of preparing students for admission into freshman classes of the university.\cite{203}

There is also an age limit of 15 years for admission to the university and a requirement for the passing of satisfactory examinations in each of the branches ordinarily taught in the common schools of the state.\cite{203}

Colorado law provides that:

The School of Mines shall be open for instruction to all bona fide residents of the state without regard to sex or color upon payment of such reasonable tuition fees as may be prescribed by the governmental body of the institution.\cite{207}

The College of Agricultural and Mechanical Arts' qualification law said:

No student shall be admitted to the institution who is not fifteen years of age, and who does not pass a satisfactory examination in arithmetic, geography, grammar, reading, spelling, and penmanship.\cite{207}

California law provides that:

An applicant for admission who applies for the teacher training curriculum or states his intention to so apply shall be given preference in admission if otherwise qualified and no such applicant meeting such conditions shall be denied admission.\cite{285}

The Attorney General has ruled that the state public schools, including junior colleges and state colleges, were required to accept any person residing in California provided they were otherwise eligible.\cite{10} The Legislature of California made changes in the admission laws of that state in 1960 that make the ruling of the Attorney General ineffective.

Some states set up admission limitations based on apportionment equally within the state. Mississippi,\cite{304} Pennsylvania,\cite{318} New Jersey,\cite{319} and Alabama\cite{282} have such requirements. As a practical matter, however, these requirements do not appear to limit the colleges in setting up requirements for admission.

A very interesting case on admissions arose in New York. A mother objected to the denial to her son of admission to Brooklyn College. The college required an 85 per cent average for admission. Her son had 84.3. The mother questioned an admission policy that operated solely on mechanically applied averages. In this case\cite{157} the court said that the policy on admission was the board's to make and the court would not interfere. The court went on to say:

Court should refrain from injecting its views within delicate areas of school administration which relate to eligibility of applicants for admission to college and determination of marking standards, unless clear abuse of statutory authority or practice of discretion or gross error has been shown. The Judicial task ends when it is found that application for admission has received from the college authorities uniform treatment under reasonable regulations fairly administered.

The court did indicate that they would adjust grades upward where there was an administrative failure to properly evaluate.

Rules for admission are set by the college and the rules will be accepted by the courts where there is fair administration of the rules without discrimination. The rule must be reasonable and not arbitrary.

**Discrimination Due to Race or Color**

Prior to 1954, 17 states and the District of Columbia had constitutional or statutory enactments requiring mandatory segregation by race in the public schools. These were Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, and the District of Columbia. In four states (Arizona, Kansas, New Mexico, and Wyoming), segregation was authorized on an optional basis.\cite{305}

In 1896, in the case of *Plessy vs. Ferguson*, the United States Supreme Court enunciated the doctrine of separate but equal facilities as complying with the Fourteenth Amendment insofar as schools were concerned. This doctrine was in effect until 1954 when it was superseded by the Supreme Court of the United States in the so-called segregation cases.\cite{23}
In the segregation cases the Supreme Court of the United States said:

We must consider public education in the light of its full development and its present place in American life throughout the nation. Only in this way can it be determined if segregation in public schools deprives these plaintiffs of the equal protection of the laws.54

The Supreme Court further stated:

Segregation of white and Negro children in the public schools of a state solely on the basis of race, pursuant to state laws permitting or requiring such segregation, denies to Negro children the equal protection of the laws guaranteed by the Fourteenth Amendment even though the physical facilities and other "tangible" factors of white and Negro schools may be equal. Where a state has undertaken to provide an opportunity for an education in its public schools, such an opportunity is a right which must be made available to all on equal terms.55

In State of Florida ex rel. Hawkins vs. Board of Control,57 the United States Supreme Court said that the admission of a Negro to the graduate professional school at State University could not be delayed on the basis of considerations applicable to elementary and secondary schools and the Negro was entitled to prompt admission under rules and regulations applicable to other qualified candidates.

There were a number of southern states that passed laws in an effort to circumvent the Supreme Court decision in segregation cases. One example is given. South Carolina passed a law that provides that if any person is ordered by a court to admit colored students to a white college, the college will be closed as will the state college for colored students.58

Admission to college cannot be restricted because of race, creed, or national origin. In spite of this rule, cases are still being heard by the courts where colleges and universities refuse to accept the rule. Various subterfuges have been used to evade the rule and in every case the court overruled the college.

In the case of Franklin vs. Parker 93 the college denied admission to graduates of non-accredited institutions. The court said that this rule was racial discrimination because state colleges for Negroes were not accredited. In the case of Meredith vs. Fair,174 the requirement that there must be recommendations from alumni or citizens generally was discriminatory. (See also Ward vs. Regents of University System of Georgia 507 and Simkins vs. Moses H. Cone Memorial Hospital 258)

It will be observed that any action in any form by a public college or university that results in discrimination is outside the law and courts will so declare. Private schools do not have this limitation as yet. It is the opinion of the writer that in due time any private school receiving federal money from any source will be held to the same strict rule against discrimination.

The courts have upheld the right of colleges and universities to have selective admission. In Ganty vs. Clemson Agricultural College of South Carolina,99 the court said:

Colleges have legal right to prescribe and enforce reasonable rules and regulations, in which there is no racial discrimination for admission of applicants to the college. State college is not required to admit member of Negro race because he is a Negro nor can he be denied admission because he is a Negro. If he meets requirements for admission he cannot be legally denied admission.

In Hunt vs. Arnold 134 the court said:

Authorities in control of the operation of the Georgia State College of Business Administration have the primary right and responsibility of fixing and passing upon qualifications for admission.

It is not the purpose of this monograph to get into the right or wrong of segregation. Only the law, as it stands, is our concern. The law has been clearly enunciated by the highest court in the land. No person may be denied admission to a publicly supported college or university because of race or color.

Publicly supported colleges and universities may set up rules and regulations for admission based on the ability to pass tests, on moral grounds, or on any other reasonable basis. However, every person, regardless of race or color, if otherwise eligible, must be admitted. This appears to be the legal basis for admission to a state-supported university or college.

After a student is admitted, he must receive all the rights and privileges of other students. This was made clear in McLaurin vs. Oklahoma State Regents.176 In this case, McLaurin, a Negro, was admitted to the University of Oklahoma where he was required to occupy a specific classroom seat, eat at a separate table for Negroes, and use a separate table for Negroes in the library. This was held to violate the equal protection of the laws clause of the Fourteenth Amendment to the United States Constitution.

**Distinction on Ground of Residency**

The right of the state to make distinctions between residents and non-residents was upheld in Landwehr vs. Regents of University of Colorado.153 In Newman vs. Graham,163 the Idaho Supreme Court stated that the Board had power to determine qualifications for admission, providing rules and regulations were reasonable and not arbitrary. The court went on to state, however, that:

A rule stating that a person could not show change of residence status was unreasonable and
arbitrary. The interpretation placed upon the rule by the Board became part of the rule.

Thus, the practice the university followed in requiring students to retain the residence status under which they entered was unlawful.

This appears to the writer as good law. Each state has rules for establishing residence within the state. If a person can meet the requirements of the state law on residency it violates his constitutional rights to deny him the equal protection of those laws.

**Recent Statutes**

Georgia passed a law in 1959 that provides that no person shall be initially admitted to any college or undergraduate school of the University of Georgia or any of its branches after such person has reached the age of 21 and to the graduate or professional schools after the age of 25. The only exceptions to this policy are members of the armed forces who are not able to make applications before the maximum age because of such membership in the armed forces, and teachers or persons qualifying as teachers, regardless of age. This may be an attempted answer to the overcrowding of colleges.

Nevada, by a law passed in 1959, restated the old law providing for the admission of students free of tuition who were residents of the state. The state statute also repealed the requirement of citizenship for teachers at the University of Nevada to allow for exchange teachers.

**Continuation**

After a person is admitted to a university or college, what rights does he have to continue until graduation? This question is covered here on the assumption that the student has not committed some offense for which disciplinary action involving suspension or expulsion was indicated. (Expulsion or suspension for disciplinary reasons is covered in the chapter on discipline.)

In California, the statutes provide that:

The Director of Education may, on recommendation of the faculty and president of a college, exclude students who because of poor scholarship or other evidence of unfitness are judged incapable of completing the college course or who violate in any substantial manner generally accepted standards of conduct.

This law applied to the state colleges and came under the heading "Exclusion of Students Incapable of Becoming Successful Teachers." 285

In *Anthony vs. Syracuse University*, the Supreme Court of New York said: "Generally matriculation creates a contractual relationship, entitling a student to successfully complete the course to a degree." However, the court further added that a rule reserving to the university the right to dismiss students at any time for any reason, without stating the reason, is held binding on the student. Courts have been slow in disturbing a university's dismissal of a student to safeguard the university's ideals of scholarship and moral atmosphere. In *McClintock vs. Lake Forest University*, the court said:

By the acceptance of an application for admission of plaintiff's son to an academy, which stated that the applicant understood the rules and regulations for the government of the academy as published in its catalogue, a contract was concluded between plaintiff and such academy.

The case of *People ex rel. Tinkoff vs. Northwestern University* went to the United States Supreme Court. The decision in this case was that, where the wording of the bulletin regarding admissions, issued by the university, required further action by the university before admitting the applicant, there was no contract between them and there was no admission until the further action took place. The rules and regulations contained in the bulletin could not be construed as an offer to enter a contract giving rise to a binding contract only on the applicant's compliance therewith and acceptance.

The Supreme Court of Maryland held in *Woods vs. Simpson* that the refusal of the university to enroll a student for another term because of friction with the authorities was not an abuse of discretion. The Michigan Supreme Court held that the action of the president and the dean of women of State Normal College in refusing readmission to a female student who was discreet and defiant of disciplinary measures was not an abuse of discretion.

In general, it appears that a person is entitled to continue in college after enrollment until completion of courses for which enrolled as long as he or she complies with the rules and regulations set up by the institution. This presupposes adequate scholarship and compliance with all disciplinary rules and regulations and other prerequisites set up by the faculty and the governing board. A person is considered as admitted only upon completion of all the requirements for admission set up in the catalogue of the institution.

In *Robinson vs. University of Miami*, the Supreme Court of Florida states that the university had the right to withdraw a student from the teaching course because he had professed atheism.

A federal court, in a Massachusetts case, stated that where a private university has, by regulation in its general catalogue, reserved the right to "sever connection of any student with the university for appropriate reason," the university authorities may decide for themselves what constitutes appropriate reason and the court will not question it.
In *Heaton vs. Bristol*, the Texas Supreme Court stated that the Board of the Agriculture and Mechanical College of Texas could refuse admission to women.

A 1959 decision of the Colorado Supreme Court stated that the power of the State Board of Agriculture to do everything necessary or appropriate for the education of the students at the university includes mental, physical, and social development of students. In a civil rights case in Georgia the court said that any attempt to restrict Negroes or suspending them when they had previously been ordered admitted would not be allowed. The general rule that a student once admitted must be allowed to continue as long as he abides by the rules of the college and does passing work is still in effect.

One other case, which is of interest here, was *Connelly vs. University of Vermont and State Agricultural College*. Here the court stated that the school authorities have absolute discretion in determining whether a college student has been delinquent in his studies. Dismissal of a college student motivated by bad faith, arbitrariness or capriciousness may be actionable, but the burden of proof is on the student. The court stated that if this were proved the court could order the university to give the student a fair and impartial hearing.

It is the opinion of this writer that where a claim is made by a student against a professor that his grade was unfair because it was motivated by arbitrariness or capriciousness, the student should be given a hearing before a faculty committee. The AAUP statement on student academic freedom indicates that this would be proper procedure.

Cases involving dismissal for other than academic reasons appear in the chapter on student discipline.

**Records**

There is very little in the way of law covering records of an institution. The maintenance of records is left largely to the governing boards and administration.

A California statute provides that the state board of education, at the joint meeting of the board and the representatives of the state colleges, may set up rules for transfer of students from one state college to another. A Florida statute provides that all academic credits, including grades and quality points, earned by students at the University of Florida shall be accepted at full value at Florida State University and vice versa.

Massachusetts provides that any person operating or maintaining any educational institution within the commonwealth shall, upon request of any student or former student, furnish to him a written transcript of his record as a student. The law provides that the first transcript should be free and others shall be one dollar a page but not in excess of a five dollar total.

New York, Iowa, Nebraska, and Maine provide for the records of extinct institutions. The state university is the repository of the records in Iowa and Nebraska and the state department of education in Maine and New York. These statutes would apply to private institutions as well as public institutions.

One court case in which an expelled student requested to have a transcript of completed credits furnished to her was decided by the Pennsylvania Appeals Court. The court said that the action, based partly on contract and partly on duty from long recognized and established customs and usage, was within the province of equity. Some states distinguish between cases at law and cases in equity in pleading. Equity cases are in general those that require other than money damages to give justice.

**Summary**

Admission to state-supported colleges and universities is generally dependent on rules and regulations made by the governing boards of the various institutions. There is no right to admission unless the student can meet the requirements for admission, which, however, must be reasonable and not arbitrary.

Discrimination because of race or color is not legal in publicly supported institutions since the segregation cases in 1954. Prior to that date, 21 states and the District of Columbia had laws allowing segregation in the schools.

A person once admitted to an institution is entitled to continue through graduation providing all the rules and regulations of the college or university are followed and satisfactory work, as determined by the institution, is accomplished.

The maintenance of records is left up to the institution in every case. Four states provide for the care and preservation of records of extinct institutions.

**Student Records**

During the past few years, and especially the last two, there has been considerable agitation by some students and some faculty members about the right of the college or university to release student records. There are arguments on the one side that records should never be released and on the other that they are public records and, therefore, subject to release. The right answer is probably somewhere in between.

George K. Brown, in writing on this subject, stated that in the not long past all records were released without question. At present, there are questions being
raised about the release of the records. He goes on to say that the interpretation of the records is of great concern to the college and the student. He states:

Student records, both academic and personal, are confidential records to be released only to appropriate faculty, administrative officers and parents or guardians. Release of these records to other persons such as other colleges, employers, prospective employers, governmental and legal agencies shall occur only upon approval of the student or graduate or upon subpoena.

Charles R. Gambs, Jr., in writing on the same subject, states that if a student's actions are such that it appears on his permanent record, it should remain. If the sanction is less severe its release should be left to the discretion of the Dean on an individual basis. He states further:

Equity and justice to the entire student community suggests that there is an obligation to make available the complete picture of the achievements, both good and bad, of the student under consideration for employment.

Gambs goes on to state that the Dean has a qualified privilege which allows him to share such information with appropriate persons. The writer will cover this subject more fully under privileged communications in Chapter 6.

The appeal court of California stated in People vs. Russell that there is reasonable basis for college authorities to restrict circulation of school records.

California Education Code, Section 10751, reads as follows:

No teacher, principal, employee, or governing board member of any public, private or parochial school, including colleges and universities, shall give any personal information concerning any particular pupil enrolled in the school in any class to any person except under judicial process unless the person is one of the following:

a. A parent or guardian of such pupil.

b. A person designated, in writing, by such pupil if he is an adult, or by the parent or guardian of such pupil if he is a minor.

c. An officer or employee of a public, private or parochial school where the pupil attends, has attended, or intends to enroll.

d. An officer or employee of the United States, the State of California, or a city, city and county, or county seeking information in the course of his duties.

e. An officer or employee of a public or private guidance or welfare agency of which the pupil is a client.

Restrictions imposed by this act are not intended to interfere with the giving of information by school personnel concerning participation in athletics and other school activities, the winning of scholastic or other honors and awards, and other like information. Notwithstanding the restrictions imposed by this section, an employer or potential employer of the pupil may be furnished the age and scholastic record of the pupil and employment recommendations prepared by members of the school staff, and rosters or lists containing the names and addresses of seniors in public, private or parochial high schools or junior colleges may be furnished to private business or professional schools and colleges.

Suggested Procedures on Release of Records

The author is of the opinion that student records should be considered confidential and not given to persons who have no right to know. It is in determining who has a right to know that differences of opinion arise.

Any confidentiality that the records may have lies with the student. He may authorize their release at any time. This is recognized by the California law and by authorities on privileged communication.

When has a student released the records? Obviously, if he writes a special request and signs it he has made the request. There are other cases that are not as clear. What about a student who applies for a job, a student who asks draft deferment, uses a member of staff or faculty as a reference, and many other like cases?

It is the opinion of the writer that if a student gives the name of a student personnel worker as a reference he has authorized release of all information within the knowledge of the person referred to. If a student fills out a draft deferment form which the college must complete and mail, he has asked the college to release the information in his records. If a student applies for a government job that requires security clearance, he has asked the college or university authorities to give information requested.

It will be noted from these opinions that the author does not believe that a special written form by the student asking release of information about him is necessary. However, if a college or university wishes to restrict the dissemination of information it may require the filing of such a form.

The writer is also of the opinion that the judicial interpretation of records, especially disciplinary and counseling, to governmental agencies is justified. The records themselves should not be shown to these agencies, however.

Only one case will be cited here. More cases may be found under privileged communication in Chapter 6.

In Gaines vs. Wrenn the Federal Court said:

Where statements are made by a governmental official in connection with his official duties and in
reply to an inquiry, and reply thereto is not malicious and does not go beyond the inquiry, such statements are considered to be made in performance of his official duties and are absolutely privileged.

Student personnel workers are perfectly safe in passing on information about a student if the student asks either directly or indirectly and the rules laid down in *Gaines vs. Wrenn* are followed.

The statement of AAUP on academic freedom probably belongs in this section. The statement says:

Academic and disciplinary records should be separate. Transcripts of academic records should contain only information about academic status. Disciplinary and counseling records should not be available to unauthorized persons on campus or to any off campus except for the most compelling reason. No records should be kept which reflect the political activities or beliefs of students. Provision should also be made for periodic routine destruction of non-current disciplinary records . . . administrative staff and student personnel officers should respect confidential information about students which they acquire in the course of their work.

As a procedural policy, the writer agrees in full with this statement. The only questions that arise are those of interpretation. Each person will have to decide when there are “compelling reasons” for releasing information. The author has indicated some that may arise and a possible interpretation for them.

**Suggested Operating Procedures**

Public colleges and universities are liable to suit if admission is dependent upon color or race. Criteria of this type, therefore, should not be published in the bulletin or other material put out by the college. It would appear that the question of race should not be raised even by having a place on the application to indicate race or color.

The bulletin or catalogue of an institution should clearly indicate that admission is dependent upon the final registration of the student and the payment of tuition and fees or some other determinant, and nothing in the bulletin or catalogue, in itself, should be construed as acceptance of any student by the institution. This would apply equally to both public and private institutions. It should be made clear, in the publications, that some further act by the institution is necessary for acceptance and that the publishing of a bulletin or catalogue is not an offer of acceptance or admission that might be considered by the prospective student to make a binding contract. Even in states that require acceptance of all residents desiring admission, this kind of qualification in the bulletin or catalogue would still be advisable, especially as it relates to non-residents.

It appears advisable for an institution to specify in the admission process that continuation in the institution is dependent upon the maintenance of satisfactory grades and conformity to the rules of the institution. A statement of this nature instituted in the admission papers would become part of the contract and could forestall suit or readmission by court mandate. It might be advisable to go even further and specify that continuation is dependent upon conduct that would not injure the good name of the institution or affect the morals and health of the student body. The exact wording of such a statement would depend upon the institution’s policy.

These are only a few suggested possibilities. The relationship between students and institutions is contractual, and if continuation limitations are put in the contract, both student and institution will be protected.

The granting of transcripts, even to those who are dismissed from the institution for cause, should never be refused if the necessary fees are paid and obligations to the institution are met.

It is advisable to print a statement in the school catalogue to the effect that requirements for graduation, fees, and other regulations are subject to change without notice and will be effective upon all students as changed. In the absence of some such entry, there is a possibility that a court may consider the regulations in effect at the time of enrollment as binding upon both the student and the institution until graduation or separation from the institution.

Student records should not be sent to others unless there is a request made by the student. This request may be specific or implied.
Chapter 4

Housing and Food Services

There is more legislation on the subject of housing than on any other single personnel service. Most of this legislation consists of authorization for the building of dormitories and other revenue-producing buildings, to be paid for out of the revenues of the buildings themselves. The legislation provides for issuing bonds for the buildings and borrowing from the Federal Government.

Legislation covering food services and other activities will be taken up separately.

Housing

The statutes on housing may be listed under four general categories. One provides for the building of housing units by the college or university board of control. Another provides for separate housing authorities to construct and operate the buildings. A third provides for construction out of state funds or state bonds. A fourth consists of that authority which was given the board of control under the broad powers granted by the constitution or the statutes. Each is considered separately.

Specific Authorization to Board of Control. The most common form of statute, used in the majority of states, gives the board of control specific authority to construct dormitories and other revenue-producing buildings and to issue bonds or borrow money from federal agencies or others, pledging the revenues from the buildings as payment of the borrowed money. These statutes provide that the state is not liable for the debts contracted in construction of the buildings. These laws are fairly uniform throughout the states and comply with federal lending regulations. A few of the statutes are quoted as examples.

The code of Alabama granted authority to the State Board of Education and the trustees of all state institutions to borrow money from the Federal Government or other agencies for the erection of buildings, beautification of grounds, and building of swimming pools. It also authorized the boards to comply with the requirements of federal agencies and to issue bonds to repay the amounts borrowed and to pledge fees from students and other monies not appropriated by the state. The state is not obligated for the money borrowed or the bonds issued. 582

The Illinois law reads as follows:

The Board of Trustees of the University of Illinois is hereby authorized to (A) Acquire by purchase or otherwise construct, equip, complete, operate, control and manage student residence halls, staff housing facilities, dormitories, health and physical education buildings and other revenue-producing buildings of such type and character as the board of trustees shall from time to time find a necessity therefor exists and as may be required for the good and benefit of the university and for that purpose may acquire property of any and every kind and description whether real, personal or mixed by gift or otherwise. (B) Maintain and operate such buildings and to charge for the use thereof and carry on such activities as are commonly conducted in such types of buildings as will produce a reasonable excess of income over maintenance and operation expenses.

Whenever bonds are issued by the board of trustees, as provided in this act, it shall be the duty of such board to establish charges or fees for the use of such building or buildings sufficient at all times to pay maintenance and operation costs and principal of and interest on such bonds or sufficient when added to university income authorized or allotted for such purpose to pay the cost. 593

The Colorado law states:

For the purpose of obtaining funds for constructing and equipping housing facilities, dining facilities, recreational facilities for the use of students and employees at any state educational institution or any branch thereof, and for the acquisition of land for such purposes, the governing board of any state educational institution is hereby authorized to enter into contracts with any one or more persons or corporations or state or federal government agencies for the advancement of money for such purposes and providing for the repayment of such advancements with interest at the rate of not to exceed six per cent per annum.

The statute also authorizes the pledging of net income derived from other housing facilities, dining facilities, or recreational facilities belonging to the institution that
are not built from funds appropriated to the institution by the state of Colorado. There is no obligation on the part of the state for this money.\textsuperscript{287}

These statutes are rather broad and allow the building of any kind of revenue-producing buildings. Some states have more narrow limitations on what can be built. An example of this can be found in the Iowa code for 1954:

The state board of education is authorized to:

1. Erect from time to time at any of the institutions under its control such dormitories as may be required for the good of the institution.
2. Rent the rooms in such dormitories to the students, officers, guests, and employees of said institutions at such rates as will insure a reasonable return upon the investment.
3. Exercise full control and complete management over such dormitories.\textsuperscript{285}

The law provides authority to borrow money and pledge rents and profits to repay the loans without any obligation against the state. The law states that all obligations are payable solely from net rents, profits, and income from property so pledged, from net rents, profits, and income that has not been pledged for other improvements under the control of the board, and from gifts or bequests for dormitory purposes.

In general, these laws are good examples of the statutes authorizing the building of housing and other revenue-producing buildings. Under the Iowa law quoted, only dormitories are provided for, while the other quoted laws are more general. They all provide, however, for the erection of the buildings by the board of control and for repayment of the loans from receipts from the use of the buildings. As mentioned before, these are the most common types of statutes.

\textit{Housing Built by State Bonds.} A few states have preferred to pay for housing through state bonds. North Carolina provided for the floating of state bonds for this purpose.\textsuperscript{213} Rhode Island authorized a vote for a bond issue to construct dormitories for the University of Rhode Island.\textsuperscript{319} Vermont authorized the trustees to build dormitories and issue bonds pledging revenues for their repayment. The bonds in this case were guaranteed by the state.\textsuperscript{325}

\textit{Special Housing Authorities.} A few states have established special holding companies or dormitory authorities to supervise the construction and renting of the dormitories. Oklahoma set up a housing authority whose board of directors is identical with the board of regents of the university. The statute says:

The housing authority can purchase or lease real estate for the erection of dormitories and dining facilities convenient to the University of Oklahoma and for the use of students thereof; to erect, operate and manage such dormitories and dining facilities for students of the University on a basis that will enable the housing authority to meet its obligations and finance its building, housing and boarding program.\textsuperscript{216}

Pennsylvania,\textsuperscript{318} New York,\textsuperscript{319} Ohio,\textsuperscript{315} and North Dakota\textsuperscript{314} all have similar laws.

In this type of law the housing authority has the control of the property, but the control of students within the dormitories rests with the faculty and the administration of the college, subject to the rules and regulations of the board of control of the college or university.

\textit{Constitutional or Broad Statutory Authority.} In the case of \textit{State ex rel. Curators of the University of Missouri vs. McReynolds},\textsuperscript{247} the Missouri Supreme Court said that the curators of the state university had implied power to issue revenue bonds for money borrowed to build dormitories and dining room facilities for the university to take care of increased enrollment.

The Supreme Court of South Dakota said in \textit{State College Development Association vs. Nissen} that, under a statute that appropriated certain monies, including all local collections of fees of any kind, to the Board of Regents for the maintenance of the institutions under its control, the board had sufficient authority for the pledging of revenues from dormitories to be erected at the state college of agriculture and for their use for repayment of the loan. The court said that, under statutes fixing powers of the Board of Regents, the Board had authority to construct dormitories at the state colleges of agriculture without express authorization for construction by the legislature.

\textit{Court Decisions on Authority of Legislature to Authorize Dormitories.} There have been several court decisions on the right of the state legislature, by statute, to provide for dormitories and other revenue-producing facilities at state colleges and universities.

In the case of \textit{Pyatte vs. Board of Regents of the University of Oklahoma},\textsuperscript{199} which went to the Supreme Court of the United States, the court said:

The state, by virtue of its interest in education, well-being, morals, health, safety and convenience of its youth, has the power, acting through an administrative agency, to provide facilities for housing of students at State University, and when necessary, to promulgate rules ancillary to over-all policy of furnishing and paying for needed facilities.

The Supreme Court of Kansas said in \textit{State ex rel. Fatzc vs. Board of Regents of State of Kansas}.\textsuperscript{252}

The legislature has authority under the Constitution to determine what student dormitories are necessary or desirable at state universities. The wisdom of legislation designed to promote education rests solely with the legislature and is a subject over which the courts have no concern.
The Supreme Court of Idaho upheld the right of the legislature to provide for dormitories and other revenue-producing buildings. The supreme courts of Alabama and Utah did the same. The Supreme Court of Utah went so far as to authorize the use of land-grant funds for dormitory construction. The Alabama court said that the colleges and universities had no authority to build dormitories without legislative consent, but the legislature had the authority to allow such construction.

The actions of the legislatures and the decisions of the courts have made it clear that the establishment of housing for students is an educational function of the state-supported colleges and universities in America. It appears to be the consensus of these legislatures that the housing projects should be paid for by the students who use them and not by the taxpayers of the state. This is generally true of all buildings used for extracurricular or non-classroom types of activities. The statutes mention such items as infirmaries, gymnasiums, student unions, field houses, and cafeterias as well as housing. Items other than housing are considered in other parts of this chapter or in other chapters.

**General Authority of the College in Housing.** The legislatures have authorized the colleges and universities under their jurisdiction to build and equip dormitories and pay for them through rental charges on the buildings. To pay for such buildings, it is necessary to keep them in use. Colleges have made requirements, in many cases, that students reside in their buildings. These cases have come up in court and have been decided, generally, in favor of the colleges. In some instances, the legislatures themselves have given the institutions direct authority to make such decisions.

In Virginia, the legislature specified that the Board of the College of William and Mary could "fix rates for board, washing, lights, and full charged students." The statute for Virginia Polytechnic Institute stated that men must "live in campus living quarters if they live at the Institute." Mississippi law provides that the privilege of rooming in the dormitories belongs to the free students and "to the quota of students from each county" in preference to all others. This is determined by the dormitory capacity in the college at the time. Connecticut law states that the number of students who are to reside in university dormitories shall be determined by the board of trustees. A group of Colorado rooming house owners brought suit challenging the right of the state university to require students to live in the college buildings. The Supreme Court in Hoyt vs. Trustees stated that the university had the right to build dormitories as long as the state, the institutions, or the board of trustees were not obligated. The court further stated that it was within the controlling powers delegated to the Board of Trustees to promulgate and enforce reasonable rules for the conduct and discipline of the institution, and upheld the university.

The Supreme Court of Georgia held that the rule requiring students to occupy new buildings at institutions in the university system in order that fees charged for such use might create income to retire bonds issued for purposes of raising funds with which to construct such new buildings was not an abuse of discretion by the regents of the university system.

In a Texas case, the court held that where a private business college reserved the right to require its students to board in homes approved by the college, the word "board" meant lodging and the college might require a student to change her lodging.

The right of a college or university to require students to live in dormitories or residence halls set up by the college or university appears to be within the discretion of the board of control. If the board desires to make such a requirement, it may do so. The courts will not interfere so long as the action is reasonable and not arbitrary.

The right of a university to require residence in university owned or approved dwellings is not dependent upon age or marital status of the students. The right to attend an educational institution of a state is not a natural right, but is a gift of civilization and a benefaction of the law. If a person seeks to become a beneficiary of this gift, he must submit to such conditions as the law imposes as a condition precedent to this right. So said the Supreme Court of Mississippi and concurred with by the Supreme Court of the United States. The relationship between the student and the university is contractual; the university, as part of that contract, can require students to live in quarters provided by them. Married students could not be required to live apart from their spouses, however, as that requirement would run counter to public policy. Courts have universally held that the preservation of the marriage relationship is a matter of public welfare. Married couples should be encouraged to live together and not be separated, as a matter of social welfare.

**Food Services**

It is almost impossible to separate food services from housing. The statutes referred to in the preceding paragraphs indicate that the legislatures have connected the two.

There are a few cases that bear directly upon food services. A California law provides that the director of education may provide for the establishment and maintenance of cafeterias in state colleges whenever, in his judgment, it is desirable to do so. The statute states that "the food served shall be sold to patrons of the
cafeterias at such price as will pay the cost of operating and maintaining cafeterias." The law also provides that the director of education can authorize an organization to maintain a cooperative store on the campus of a state college and can establish and maintain a cafeteria in connection with the store.265 Idaho, by statute, declares dining halls in operation at colleges a public purpose and necessary incident to the proper government of such educational institutions.292 North Carolina law reads: "For the benefit of those who may desire to avail themselves of it, dining halls shall be established at which meals shall be furnished at actual cost." 813 The West Virginia legislature set up a study to find out whether dining halls or cafeterias were best for colleges from a cost standpoint.838

As a general rule of law, it appears that state-supported colleges and universities may maintain food services at their institutions if the boards of control so desire. The courts will not, as a rule, interfere with such a decision of the board. As the Texas Court of Appeals stated:

The rules of the Board of Regents of the University in exercise of delegated powers are of the same force as statutes and the Board's official interpretation of their rules becomes part thereof.91

The court will not interfere with the rule of a Board of Regents of the university in the absence of a clear showing of arbitrary action or abuse of authority.

Miscellaneous Revenue Activities

There are numerous miscellaneous revenue-producing activities that are related to the housing and food service activities of a college or university. One of these is student unions, discussed more fully in the chapter on student activities; infirmary and student health activities are also covered in a separate chapter.

In the case of Long vs. Board of Trustees,161 the Ohio Court of Appeals held that the state university had authority to operate a store on the campus to sell books and supplies to students and professors at cost. The Georgia Supreme Court held that the regents of the university system had authority to establish and operate a laundry and dry cleaning service at Georgia State College for Women at reduced prices for the benefit of students and persons connected with the school.595 The Tennessee Supreme Court held that the Southern Junior College was not authorized under its charter to conduct a commercial printing shop in competition with commercial printers.272

In Iowa Hotel Association vs. State Board of Regents 137 the court said:

Building of new food service unit, guest house section, conference rooms, ballroom and banquet rooms as additions to the union was in interest of efficiency in rendering incidental but necessary service properly part of university's functions and was not unconstitutional invasion of private enterprise by an agency of the state.

In State ex rel, Curators of University of Missouri vs. Neill 244 the Missouri court authorized the university to build parking lots. It called them structures or improvements that were a part of the authority to build dormitory and dining facilities.

In general, it appears that a college or university may conduct activities of a commercial nature where the service is for students or employees of the institution and especially if the activity contributes to the welfare, education, control, and discipline of the students or faculty. Where the activity is operated for a profit in competition with private industry and does not have any direct bearing on student or faculty welfare or control, it becomes a questionable activity.

Liability of College for Injuries in Dormitories

There have been two decisions relating to liability of the college for injury in dormitories. The first case involved the firing of a gun injuring a resident. In this case, the court stated:

The university was not responsible for tort of a minor student who, contrary to university regulations, toyed with a loaded pistol in a dormitory room and negligently caused pistol to fire and fatally wounded another student.597

In the second case, Miller vs. Concordia Teachers College of Seward, Nebraska,176 the court said:

College had no duty to make individual investigation to be informed that student residing in dormitory misused guns or carried loaded guns, left them around his room, shot blank ammunition or previously pointed a gun at a young girl.

The court further stated, however, that:

The college, a non-profit educational corporation, has non-delegable duty to provide student who is required to stay in dormitory with safe place for lodging.

These two cases indicate that the college is not required to "snoop" around looking for violations of its regulations or unsafe practices of the students, but if it is called to their attention or they get word of it in some way, college authorities would be required to act to protect the safety of its students. Courts have indicated that failure to properly diagnose and treat patients' illness is actionable.113

Special Funds for Revenue Activities

Many states have set up special funds for handling the revenue from these student activities. Connecticut provides by law for a self-supporting activity fund to
consist of revenues from dormitories, rental property, and other auxiliary activities of the university. California does the same. In Massachusetts a statute provides that:

All receipts from student activities, including the operation of the college store, student operation of the musical clubs, band, athletics, and like activities, shall be expended as the trustees shall direct in furthering the activities from which the receipts were derived.

The Missouri Supreme Court stated that the Curators of the University of Missouri had sole control and custody of fees received from dormitories and dining rooms which were expressly excepted from funds required to be placed in the state treasury.

States have different rules in relation to the use of funds derived from the various activities. It is impractical to attempt, in this monograph, to cover all of the different methods used. The rule applied in any particular state can be readily determined by the institutions in that state. In this connection see Smith vs. Doehler Metal Furniture Company, Gypson vs. Ingram, and State vs. Davis.

Summary

Housing and food services appear to be accepted by all states as a necessary adjunct to educational institutions of higher learning supported by the state. These activities are, in general, operated by the institution itself or, in some cases, by a special state housing agency set up to operate them. The boards of control, administrators, and faculty are, however, responsible for student conduct in the activities in every case.

There are a number of miscellaneous revenue-producing activities such as book stores, student unions, etc., which may be operated, providing they are for the general welfare and control of the students of the institution.

Various methods have been set up to handle the funds derived from the revenue-producing activities. As states differed widely, no general rule can be cited. However, the rule appears to be that students may be compelled to patronize the various revenue-producing activities through a student fee or through a requirement that they live in housing set up by the institution. The institution has the authority to regulate the students' activities in this respect.

Suggested Operating Procedures

It appears that colleges and universities may require students to reside in institutionally operated residence halls if they are not living at home and commuting to school. This applies to single students of any age. In the case of married students, the college or university should not make a rule that keeps husband and wife apart.

Colleges and universities may specify which off-campus housing is acceptable to the institution and insist that students live in only those places listed as acceptable. This would not apply to students living with relatives or at home. The institution that uses this method should, to be safe, set up inspection procedures and standards for off-campus housing.

If there are not sufficient residence halls on campus to house all students desiring such facilities, some uniform system of choosing those who may receive the privilege should be established and adhered to. Provision should be made, in these rules, for specific emergency cases.

Rules for conduct in residence halls should be established and adhered to. It is considered advisable to give the student residents some say in these rules and their enforcement. This is not required by any existing law so far as is known, but is presented as a suggestion for more democratic operation of the halls.

Food services, conforming to state health laws, may be operated for the use of students and faculty. Where these are operated, charges should be sufficient to pay operating expenses with a minimum of profit.

Students may be required to patronize institutionally operated facilities either through a fee system or an operational rule of the institution when those facilities are provided. The requirement for patronization must, however, be based on student welfare, education, control, or discipline.

Activities such as laundry and dry cleaning plants, book stores, and other business enterprises may, it appears, be operated if they are not in direct competition with private industry. When these are operated, a clear showing of student benefit will have to appear. The activity must contribute to the welfare, education, control, and discipline of the students and faculty to be safely within the law.

When there is a question about the authority of the college or university to issue bonds, the college or university may cause a law suit to be filed contesting the institution's authority to issue bonds. A favorable court decision can then be used to assure a prospective purchaser of the bonds that the institution has, in fact, the authority to issue them. This was done in Missouri in connection with the university's proposal to issue bonds to build dormitories.
Scholarships, Loans, Tuition, and Fees

Legally, it is practically impossible to separate scholarships, loans, tuition, and fees in any consideration of aid to students in institutions of higher learning. In some states tuition is free to all domiciled students, while in others, tuition is mandatory. Some states authorize scholarships which consist of only tuition and fees. In others, scholarships include board and room. Some scholarships have to be repaid if the student does not perform certain duties, such as teaching in the state; thus, the scholarships become, in effect, loans.

In view of the variety of financial aids to students, this chapter covers each form of aid separately and concludes with an evaluation of the laws and their implications.

Free Tuition

In Arkansas, the statute provides for free tuition to residents of the state at the agricultural college and teachers colleges. In Idaho provides that no resident of the state for one year will be required to pay any fees or tuition in the university except in a professional department. Nevada provides that tuition will be free to students whose families are bona fide residents of the state or students whose families reside outside the state providing such students have been bona fide residents of the state for at least six months prior to matriculation. The board is authorized to issue 40 tuition-free grants to non-residents per semester.

Montana provides for free tuition to all students who are residents of the state for one year prior to admission except for law and medicine. The board is authorized to waive non-residence tuition for up to two per cent of the student body. Mississippi also provides for free tuition. A statute in Michigan states:

Michigan College of Mining and Technology shall be open without charge to all student residents of the state but a matriculation fee of not less than ten dollars shall be charged.

The board has the power to remit all or part of this fee to needy students. Free tuition is also provided at the agricultural college.

In Ohio, citizens of municipal corporations in which municipal universities, colleges, or other educational institutions are located cannot be charged for instruction in the academic department. The governing body may extend this to all citizens in the county in which the institution is located. New York provides for free tuition to residents of New York City for the colleges or universities under the Board of Higher Education in the city of New York and provides that the board may grant free tuition to others. Free tuition is also provided for residents who attend the State College of Forestry at Syracuse University and the New York College of Ceramics.

Oklahoma statutes provide for a $2.50 per term fee for breakage, etc. No other fees are required in the State College of Agricultural and Mechanical Arts for students who are citizens of Oklahoma. Kansas provides for free tuition to all inhabitants of the state in the schools of arts, engineering, pharmacy, law, and medicine. All students, however, are required to pay a laboratory fee and a graduation fee. Indiana also provides for free tuition at Indiana University and Purdue University. Missouri law stated, in Section 9657, Laws of Missouri, that "all youths, residents of the state over sixteen years of age, shall be admitted without payment of tuition."

These statutes give an idea of the extent to which free tuition is granted at institutions of higher learning supported by the states. It is obvious that free tuition at a school is a definite aid to students and has to be considered in any study of scholarships.

Scholarships Involving Free Tuition or Fees

There are various types of scholarships issued under this heading. Some are limited to needy persons and some are open to all residents regardless of need. There are also differences in method of selection.

The variety of these statutes precludes giving all of them here; a few examples will indicate the type of scholarship and the restrictions attached.
A Florida law provides that each county shall have the right to send one student annually to each institution, such students to be selected by the boards of public instruction of the several counties, without any charge for instruction. Colorado also provides for one student from each county, tuition free. Indiana provides the same type of scholarship for the state teachers colleges but authorizes two per county; promise of success as teachers is the criterion for choice. In Illinois, one person nominated annually by each member of the General Assembly receives free tuition and fees. One per county is authorized free tuition as are others from high schools in the state, the number dependent upon the size of the school. The board of trustees is authorized to issue others.

Maryland has free tuition scholarships based on legislative and senatorial districts, with appointments being made by the members thereof. California, Oregon, and Ohio, among others, are states that provide scholarships on the basis of legislative membership. California provides that one of the requirements for scholarships must be financial need. Some of the other states, including Wisconsin, have like statutes.

It thus appears that the basis for providing free tuition at state colleges is need in many instances, and in other instances it is determined on a county, legislative district, or high school basis. In some cases, the selection is on a state-wide basis.

In this section, only those types of scholarships involving free tuition with no strings attached have been mentioned. Those that have limitations imposed are considered below.

Scholarships Requiring Special Agreements

Many states have established scholarships to encourage students to pursue a specific course of study and to work within the state for a period thereafter in the line of work for which the scholarship was granted. These, in the main, involve teaching and medical services.

In Maryland, many scholarships involving free tuition and in some cases room and board are provided for those who agree to teach in Maryland for two years. Utah, Vermont, Pennsylvania, Maryland, Texas, Rhode Island, Delaware, Indiana, Arkansas, and North Dakota all have scholarships for those who agree to teach for a period of one, two, or more years. Some require a year of teaching for a year of aid.

A North Dakota law provides that five persons from each county, maximum of 265 per year, can get $100 each per college quarter by taking a one-year course leading to a first-grade elementary certificate. They have to agree to teach in North Dakota rural schools for the length of time the scholarship is held to receive the grant. After the student has taught one year, he or she can get a scholarship for a second year of college training. The number of such scholarships was increased to a maximum of 318 at the 1955 session of the legislature.

Connecticut provides 100 scholarships for state teachers colleges with preference to those who intend to teach in the elementary schools of the state. Rhode Island authorizes scholarships for postgraduate work in education for those who desire to be teachers and administrators in the state. Rhode Island, Tennessee, Utah, and Indiana also have scholarships for teachers without strings attached.

Oklahoma provides scholarships at both the colored and the white agricultural and mechanical arts universities with a requirement that the recipients must agree to farm for a period equal to the length of the scholarship.

Another type of scholarship with strings attached can be found in the Vermont law that authorizes $20 for each student of medicine who needs financial assistance and agrees to work in the state one year for one year of assistance. This is also provided for students in agriculture and home economics. If these students fail to perform the work agreed upon, they will be required to refund the grant. Virginia provides scholarships in nursing and medicine for those who agree to practice in the state one year for each year the scholarship is paid. Florida provides scholarships in nursing under the same provisions. In this case a promissory note is to be given, and it may be paid off at the rate of one year for six months' work.

The foregoing are typical examples of the restricted scholarship. The person who receives such aid has to fulfill the requirements of his agreement or repay the scholarship. If the student does not desire to live up to the agreement, the scholarship becomes a loan insofar as he is concerned. The purpose of this type of scholarship is to encourage the student to work in a shortage area within the state.

A type of grant or scholarship found in many of the southern states is one which provides scholarships for Negroes who are pursuing courses not taught at the Negro colleges in the state but which are taught at white schools. An example is the Kentucky law which reads:

Any bona fide resident for five years will have tuition and fees paid by the state at schools outside the state when there are no facilities in the state they can go to to get the material or study desired.

This type of scholarship was provided for in the southern states at a time when the United States Supreme Court authorized separate but equal facilities for white
and colored students. It was the duty of the state, under this ruling, to provide Negroes with just as good an education as whites received. If colored schools did not have specific courses available in white schools, the state either had to provide them at the colored school or pay for them at another institution.

Scholarships by Governing Boards

South Dakota and North and South Carolina have specific statutes in which the governing boards are forbidden to grant scholarships to avoid payment of tuition and fees unless expressly provided for by statute. North and South Carolina do not mention scholarships but do require that tuition and fees shall be charged.

A large number of states specifically granted authority for the governing boards to provide scholarships of tuition and/or fees and other types of scholarships. Wisconsin, for instance, authorizes the board of regents of the state university to:

...grant scholarships equivalent in value to the payment of all incidental fees to freshmen who, during their high school course, ranked first in scholarship in Wisconsin public and private secondary schools enrolling less than 250 students, first and second in schools of 250-750 and first, second, and third in schools over 750 students; also to others in financial need.

A Virginia statute authorizes all colleges to issue scholarships provided they are applied to the remission of instructional charges. Not more than 20 per cent of the enrollment of the previous year may come in free, and these must need financial help. The scholarship cannot be less than one-half of the tuition or over $200 in value.

Oregon authorizes the governing board of the university to issue free tuition and fees not to exceed two per cent of the enrollment. Necessity for financial support and intellectual standing are determinants for the awards. Colleges of education may give free tuition and fees to 10 per cent of the enrollment for those taking elementary teacher training. New Jersey authorizes 10 per cent of the number of beginning students in teachers colleges to get scholarships that exempt the student from paying tuition and laboratory fees.

General Scholarships

In addition to the kinds of scholarships referred to in preceding paragraphs, many cash scholarships are given. These scholarships allow the recipient to attend any college of his choice in the state, including private colleges. Texas, Massachusetts, Maryland, California, Maine, Washington, and New York are examples of states having this type of scholarship. In New York, financial need is a determining factor in receiving these scholarships with a maximum and minimum depending on need. The board of regents is authorized to set up the rules for granting these scholarships. In most cases, financial need is a consideration for scholarships of this type. Washington provides for ten $1,000 scholarships in graduate engineering.

Scholarships for Special Groups

A large number of states have made provision for scholarships for children of deceased veterans of World Wars I and II. These range from tuition and fees to board and room as well as tuition and fees. There is usually a maximum amount per year on these scholarships, ranging from $150 to $250 per year. Examples of this type of scholarship are cited as follows: Minnesota provides free tuition and board for children whose fathers were killed in World War I, with a limit of $250 per year. Washington authorizes free tuition, board, room rent, books, supplies, and fees, to a maximum of $250 per year. Other states have similar statutes.

Indiana provides for free assistance to the blind. The assistance offered includes an assistant for at least three hours per day for the purpose of reading to such students. Both South Dakota and Montana have special scholarships for persons of Indian blood. Montana provides 12 such scholarships without payment of fees, and South Dakota provides 50 each year with free tuition and fees.

State-supported colleges administer many types of private scholarships donated by private individuals, corporations, and bequests. These scholarships are not considered in this monograph as it is limited to those provided by operation of law. Consideration has been given to these under separate headings when the legal implications of court decisions require it.

Loans

Many states have set up loan funds for college students and made provisions for their use and repayment. Arkansas provides for loans of up to $300 in any one year with interest rates of from two to four per cent. The law authorizes minors to sign valid notes. Medical students can borrow up to $1,625 yearly. Florida authorizes loans of up to $400 per year for students "who take teacher's training." One year's loan is cancelled for each year of teaching. The student may go to private institutions on these loans.

North Dakota law provides for loans with a three per cent interest rate up to $300 for all students at state normal schools, and up to $2,000 per year for the two last years in medical school or a $500 loan based on need. The law states: "There is no defense on the note." This means that any and all defense, such as being a
minor, mentally incapacitated, etc., cannot be used to avoid paying the note.

North Carolina set up a loan fund for junior and senior dental students, medical students, and nurses specializing in psychiatry, with a maximum of $2,000 authorized per person per year. One year’s loan is cancelled for one year of work in the state after graduation. The law provides that anyone under 21 who signs the note is obligated to pay it. Prospective teachers can get loans, usable in private or public schools, good for four years. Credit of $350 per year and interest is given for each year taught in North Carolina.313

Wisconsin offers loans of not more than $400 for seniors in education, but to get it they have to agree to serve in the state for two years as a teacher if requested.329 New Jersey authorizes loans using up to 20 per cent of all tuition money in any one year for the purpose. The loans call for four per cent interest and no maximum amount is specified.310 Louisiana provides for loan funds under rules set up by the college boards.298

This does not exhaust the list of loans made available by the states. With the rapid increase in financial help for college attendance, the amounts available in cited states may be changed by the time this is read. Federal loans available through state or private colleges are mentioned in a following section on federal programs.

Obligations of Minors

A survey of loans would not be complete without some comment on the liability of minors for their debts. The general rule is that the legislature of the state can determine at what age an infant is competent to perform any act or duty.358

The New York Supreme Court stated that an infant, living with his father who was able and willing to furnish him with everything suitable and necessary for his position in life, could not make a binding contract for necessaries.218

Two decisions indicated that good teaching or instruction are included in the category of necessaries for which a minor is fully responsible were decided in Pennsylvania and Maine.192, 222

Whether or not a student who is an infant is responsible for debts contracted in the furtherance of his schooling depends upon the legislature and the age limit established. It also appears to depend upon the ability and willingness of the parent to supply these necessary funds and the need of the student for the materials or funds contracted for.

It should be noted that the states that set up loan funds specifically provide for the obligation’s legality. In those states there is no question of responsibility. The status of the student enters into his liability. In other words, is a college education necessary for his position in life? If it can be so considered, there appears to be no question as to his responsibility.

A loan made to a student under 21 should be made with caution. If the father has furnished the student with what he considers necessary and the student squanders the money and then applies for a loan, there is a good chance that he may be able to repudiate payment on the grounds of infancy. Consideration must also be given to what is his actual need or necessity.

The legislature of Wyoming passed a law in 1959 that sets up a state guaranty to banks making student loans. The same statute also provides that students who are minors cannot use their minority as a defense against such loans.300 New York also passed a law in 1959 providing that a contract made by an infant over 16 years of age to obtain a loan from any institution of the University of the State of New York in connection with the attendance of the infant at the institution could not be disaffirmed by him on the grounds of infancy.212

Legal Basis for Tuition and Fees

The payment of tuition and fees for the privilege of attending institutions of higher learning has been established by the legislatures and approved by the courts as a reasonable requirement. This has been partially covered in previous paragraphs of this chapter and in other chapters. In some institutions, the amount of tuition and fees is left up to the governing boards. In a few cases, the students are given a say in the amount charged as fees. This latter type is discussed in Chapter 8.

Utah has set up an annual registration fee of not less than $10 and a tuition fee of not less than $17 per quarter for residents of the state.324 Thus the legislature set up a minimum fee below which the board could not go. The board can, however, set higher fees if it desires. Vermont has set up a maximum fee of $345 per academic year in the university.325 Pennsylvania law states that the cost of boarding and tuition shall be fixed by the trustees of the several state teachers colleges with the approval of the superintendent of public instruction.318 These are examples of the three types of authority for setting up of tuition charges. In general, one of these three methods can be found in all states where the legislature has taken a stand.

There are some states where the legislature has not set up any rules for charging fees and tuition but has not expressly forbidden it. In these cases, the authority is found in the broad powers given governing boards. The Supreme Court of Wisconsin said in State vs. Regents of the University of Wisconsin: 248
All acts of the legislature of Wisconsin relating to the State University, construed together, conclusively establish a legislative intent that the Board of Regents should have the power to exact fees from students for admission, instruction and the incidental expenses of the University, except as such power is from time to time expressly limited.

The Supreme Court of Kansas in *State vs. Regents of University* took a different view when it said:

The Board of Regents has no power to collect a fee from students of the State University for the use of the library, or to exclude students from the use of the library for the nonpayment of such fee.

In *Householder vs. State Department of Finance*, the court upheld the right of a state college to impose parking fees.

Many state legislatures have authorized fees for buildings, health services, student unions, and other special kinds of services. The courts have held that fees so set up are legal. A Texas court said that the legislature had the power to authorize collection of a student union fee for the support of a student union providing facilities for extracurricular activities of students. The Arizona Supreme Court held valid the Educational Act of 1934 authorizing educational institutions to fix fees and charges although the Constitution stated that instruction should be furnished as nearly free as possible. The fees were not considered excessive. The West Virginia court said that the board of governors of West Virginia University was a public and governmental body and an arm of the state, vested with wide discretion as to expenditures of monies derived from admission fees and contracts in relation to athletic contests. The Supreme Court of Montana said that the State Board of Education could exact from students the fees necessary to conduct the business of the state educational institutions unless expressly prohibited. The Oklahoma Supreme Court said that the Board of Regents of the University of Oklahoma had general authority to exact student fees for proper purposes.

In general it appears that fees and tuition may be charged to students either by act of the state legislatures or by the governing boards if there is no forbidding legislation. The fees must be reasonable and for purposes within the authorized framework of the general powers granted to the governing boards. A determination of reasonableness, by the boards, is subject to review by the courts.

**Scholarships and Fellowships as Related to Federal Income Tax**

The general rule set forth in Section 117 of the Internal Revenue Code of 1954 provides that all amounts received as scholarships and as fellowship grants are excluded from the recipient's gross income. On the other hand, a student who is a candidate for a degree must include in gross income any amounts representing payment for teaching, research or other services, required as a condition of the grant, unless such services are required of all who seek the degree. If the recipient is not a candidate for a degree, the grant is excluded only if it comes from a tax-exempt organization described in Section 501(C)(3) of the Code, or from the United States, a state, or some governmental subdivision, and even then the amount excluded is limited to $300 a month for a maximum of 36 months.

**Comments on the Legal Status of Scholarships**

Zallman, in his book, *American Law of Charities*, states that education as a charitable purpose was recognized in early English law by the statute of Elizabeth and has been entrenched by numerous court decisions. A gift may be made for the purpose of founding a scholarship to encourage students to greater efforts, or it may be the granting of a loan to be paid back after the recipient gets through college and goes to work. A grant or bequest cannot be made for scholarships or other charitable purposes if the object of the gift or bequest is contrary to public policy, no matter how humane the motive may be.

In Missouri, the legislature passed a law in 1895 and again in 1897 imposing a tax to create a fund for maintaining free scholarships to the university, distributed throughout the state on competitive examinations, to applicants without means. The supreme court held in *State ex rel. Garth vs. Switzler* that the tax so levied was for purely private purposes, and the acts were void. Taxes must be levied and collected for a public purpose only. The Supreme Court of Oregon stated that a college for the dissemination of universal knowledge not only advanced the happiness and welfare of students but benefited society generally.

**Restricted Scholarship**

The question of restricted scholarships was raised in the Girard case. In 1831, Stephen Girard left a fund to the city of Philadelphia in trust for the erection, maintenance, and operation of a “college” providing that it was to admit as many poor white male orphans, between the ages of six and ten, as the income would be adequate to maintain. The college was established and was operated by a board appointed under Pennsylvania statute. The Supreme Court of the United States held that the board was an agency of the state and its refusal to admit Negro boys to the college solely because of their race violated the Fourteenth Amendment. “The state, or its agency, must not perform the discriminatory act regardless of who initiated it.”
The equal protection clause of the Fourteenth Amendment of the Constitution of the United States prevents discrimination among residents of a state, but it does not prevent preferential treatment for all residents. States can discriminate for their own against citizens of another state.\textsuperscript{198}

In the case of Landwehr\textsuperscript{153} the court approved different fees for resident and non-resident students of a state university. The court said this higher tuition did not violate due process, commerce, and privileges and immunities clauses of federal or state constitutions.

In \textit{Miller vs. Wilson}\textsuperscript{177} the United States Supreme Court said:

The legislature is not debarred from classifying according to general considerations and with regard to prevailing conditions; otherwise there could be no legislative power to classify ... The legislature is not bound, in order to support the Constitutional validity of its regulations, to extend it to all cases which it might possibly reach. Dealing with practical exigencies the legislature may be guided by experience ... It is free to recognize degrees of harm and it may confine its restrictions to those classes or cases where the need is deemed to be clearest ... If the law ... hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied.

From the decision listed above and others that have been mentioned previously, it appears to be clear that the state cannot set up or operate through its agencies in state-supported institutions any scholarship that is restrictive because of race or color. Any other type of scholarship, if restricted by reasonable geographical areas, need, or residence, is authorized.

An excellent article on the subject of restricted scholarships was written in the \textit{New York University Law Review} for April, 1958, by Shad. In this article, the author stated:

The conclusion follows that a state institution cannot administer a scholarship program which is racially discriminatory, restricted as to religion, or restricted on an unreasonable geographical basis. A state university would be under a duty to refuse such a discriminatory grant, to refuse to perform the restrictive provision if it accepts the gift, or where the gift is in the form of a trust, to petition a court to change the objectionable clause.\textsuperscript{231}

One case on donations declared that restrictions on donations are not binding on a college (private) when they are for racial discrimination.\textsuperscript{114}

Scholarships that have restrictions of religion, race, or color are definitely not authorized in publicly supported institutions. Other types of restrictions, such as reasonable geographical locations, need, merit, or ability, minority groups such as Indians, and other classifications of persons that may be set up by the legislature, are acceptable under present legal interpretations.

\textbf{Summary}

Some states provide for free tuition for all students, some for all students in certain schools, and others require tuition to be charged to all.

States varied in their approach to tuition charges. In some states, the charges for tuition are left to the governing boards. In others, the legislature spelled out the minimum or maximum to be charged. On the whole, a majority of states provide for the payment of tuition of some sort for attendance at state-supported colleges and universities.

Fees are charged for a great number of items at most state institutions. There are fees for breakage, for student health services, for student activities, and student unions. In many cases, these fees are used to pay off indebtedness for buildings constructed for student services.

State-sponsored scholarships range from the granting of free tuition to the granting of money that can be used at either state or private schools. In numerous cases, the scholarship grants are made in fields where there is a shortage of personnel in the particular state, and the person receiving the scholarship is required to serve within the state in certain specified fields. The fields where work is most usually required for scholarships are found in teaching, nursing, and rural medicine. In this type of scholarship, the recipient pays off the scholarship grant by working as required for a period equal to the years for which the scholarship was received.

Scholarships also vary as to availability. Many states apportioned their scholarships according to county or legislative district, and appointments are made by a legislator or by personnel within the prescribed area. In most cases, scholarships are tied to need and are not available to those who can afford to pay their own way or, if available, carry a reduced remuneration.

Some scholarships are restricted to children of veterans who died in service, to Indians, or to other minority groups.

Scholarships based on restrictions of race or color are definitely unconstitutional and cannot be enforced. Other types of restrictions are not illegal but can be declared null and void if unreasonable.

Loan funds are provided by many states. The legislatures have set limits in most cases upon loan funds provided by state institutions from state or institutional funds. States have also validated the notes of minors who received these loans.

Persons under 21 years of age are not held accountable for their debts, except for necessaries, in
practically any state. The states have the authority to set up age limits above which minors are responsible for their obligations. In the absence of a specific statute making the minor liable for educational loans, the minor is not liable unless his station in life would reasonably be construed to include a college education. Where the parent is willing and able to provide all educational necessities, the minor is not responsible for additional debts.

When loans are granted to minors, the considerations listed above have to be taken into account. The safest way is to secure the cosignature of a parent on any minor's note unless there is a specific statute legalizing minors' responsibility for educational loans.

**Federal Programs**

During the past six years there has been a great increase in scholarships and loans available to students. The National Defense Education Act, started in 1958, has been continued and expanded over the years. This is a loan fund supplied by the Federal Government through the Department of Health, Education, and Welfare. Under this Act, students in need of help can receive up to $1,000 per year, with a maximum of $5,000. The interest rate is nominal, namely, three per cent on the unpaid balance.

In 1964, the Work-Study Program under the Economic Opportunity Act was inaugurated and later transferred to the Department of Health, Education, and Welfare. Under this law, students in need can work up to 15 hours per week when school is in session and 40 hours per week when school is not in session or in summer.

Starting in 1966 the Federal Government offered a system of scholarships or grants. These may be given to students whose parents are in the poverty class and earn $3,000 or less per year.

Another federal program provides for federally guaranteed bank loans. The Federal Government will pay the interest in excess of three per cent on this type of loan.

These federal programs have made it possible for any student capable of going to college who needs financial help to get the funds necessary for a college education. Need is a factor in all these programs.

Many states have increased their scholarships during the past few years and state money is used to match the federal programs. Tuition and fees have been increased in many colleges and universities during these years.

**Suggested Operating Procedures**

Scholarships, regardless of who provides them, cannot have restrictions based on color or race. Any scholarship now in existence that has such a basis is subject to overthrow by court action. The safest thing for any institution supported by public funds is to refuse to accept scholarships that have a restricted basis of any type except ability and need. Courts have not thrown out restricted scholarships based on criteria other than color or race, but there is always a possibility that this might be done.

Where institutions operate loan funds, it is advisable to have an adult cosign any loan note. The law on responsibilities of minors for debts works against the institution. Unless there is a clear-cut law in the statute books making students liable for their debts to educational institutions, it is advisable to play safe and get a cosigner. Where amounts loaned are small and the terms are of short duration, the institution may be willing to take a chance on the student's honesty and ability to pay the loan. Where this is the case, the principle of having loans guaranteed by an adult is not of prime importance. The policy of the institution will dictate the procedures that will be followed.

It is believed that all scholarships, loans, and work-study activities should operate under one central office and that students who are eligible should be considered for any combination of benefits that are available. As the author reads federal laws and regulations, it appears that this is the intent of those laws.
Health and Counseling Services

Health Services

Health services and counseling services are considered in this chapter under separate subtitles.

Health Services

There is very little direct legislative authorization for student health services. In most states the authority has to be inferred from the general authority granted to the governing boards. There are, however, a few instances of direct legislative authorization.

The legislature of Oregon, in setting up the State Board of Higher Education, listed as one of the powers of the Board the authority to provide student health services. In Michigan, the powers of the faculty for the State College of Agriculture and Applied Sciences (now called Michigan State University) are set forth as including the preservation of morals, decorum, and health. North Dakota has practically the same type of law, reading the same way, for the faculty of the agricultural college.

Washington gives the board of regents of the state college specific authority to provide medical, health, and hospital service for students of the state college and people of the surrounding community. Many state legislatures indirectly provide for health services through authorization of fees for health services or infirmaries. This is true, for example, in Texas, Oklahoma, Utah, Idaho, West Virginia, and North Carolina.

The colleges and universities with constitutional autonomy, of course, have authority by virtue of their general constitutional powers. In Davie vs. Board of Regents of University of California, the court held:

The maintenance of an infirmary by State University as an educational activity is a governmental function, and it is not liable for tortious acts of employees, though fees are charged.

The court in this case said that the state university had power to establish and maintain an infirmary. In Williams vs. Wheeler, the California Appeals Court held that the university could make a rule requiring all entering students to be vaccinated.

In Holcomb vs. Armstrong, the Supreme Court of Washington stated that:

The Board of Regents is charged with the responsibility of providing both for the mental training and development of students and for the protection and improvement of their health and physical condition and should take every precaution to prevent injury to a student's health.

This included a requirement for a chest X-ray.

The authority for health services in those institutions where the legislature does not grant specific powers to the governing boards is found in the general broad powers granted. A few examples suffice to illustrate the type of power that is granted boards and under which they can operate almost without question, except by the legislature and the courts.

The State of Colorado statute for the board of the state college and farm reads as follows:

The State Board of Agriculture shall have the general control and supervision of the State Agricultural College, the farm pertaining thereto, and lands which may be vested in the college by state or national legislation; of all appropriations made by the state for the support of the same. The Board shall have plenary power to adapt such ordinances, by laws and regulations, not in conflict with the law, as they may deem necessary to secure the successful operation of the college and promote the designed objects.

The State of Pennsylvania, in setting up the powers of the board for state teachers colleges, said: "The colleges shall provide other necessary facilities approved by the State Superintendent of Public Instruction." The courts have given their sanction to these powers. In Meredith vs. Johnson, the Supreme Court of Kentucky said:

The authority vested in the Board of Trustees to operate the University of Kentucky and its properties necessarily carries with it authority in the exercise of reasonable discretion to determine the needs and requirements of the university and make the necessary expenditures.

In Batcheller vs. Commonwealth, the Virginia court said that the university had authority to conduct services that similar institutions could conduct, such as
a hospital, farm, dining hall, and many other incidental enterprises.

The University of Maryland was consolidated with the Maryland State College of Agriculture with general broad powers vested in the board. In a decision in the circuit court of Talbot County, the court said: "The Board of Regents of the University of Maryland was made autonomous with reference to every department of the University." 365

In *Pyeatte vs. Board of Regents of University of Oklahoma*, 195 the Supreme Court of the United States said:

As used in Oklahoma constitutional provisions that Board of Regents shall make rules, regulations, and bylaws for the good government and management of State University and each department thereof. The term "government" is very broad and necessarily includes power to pass all rules and regulations which the board considers to be for the benefit of the health, welfare, morals, and education of students so long as such rules are not expressly or impliedly prohibited.

In general, it appears safe to assume that where legislation gives power to make all laws, rules, and regulations for the government of the college, this authority includes anything not specifically or impliedly prohibited. This is particularly true when other colleges and universities in the United States commonly provide the service.

It appears clear that the colleges and universities can provide medical facilities. Can these institutions require medical examinations, vaccinations, and other medical checks prior to enrollment? There is no question at all as to the right of a private college to require all its students to take medical examinations, be vaccinated, or submit to any other form of medical check. The Supreme Court of Florida stated that private institutions of learning may select whom they will receive and can determine by sex, age, proficiency, or otherwise. 140

In the case of state-supported schools it appears equally clear that medical checks can be required in the absence of a statute to the contrary. The Supreme Courts of Texas and Arkansas, among others, have stated that the denial of the right to attend school unless vaccinated for smallpox does not interfere with any rights of conscience in matters of religion. 52 It is within the police power of the state to provide for compulsory vaccination. 826

School officials are expected to protect their students in matters of health as well as morals. If the officials believe that physical examinations and vaccination are necessary for this purpose, they may be required. By the same token, a student may be required to undergo treatment for a communicable disease while enrolled in the institution and be dismissed if he refuses. Religious convictions will not be a bar to this requirement. Incidentally, the University of Maryland was upheld in suspending a student who refused to undergo military training for religious reasons. 356

Students can be required to submit to a physical examination and vaccination prior to admission and can be refused admission providing their health is such that they may become a hazard to others or to themselves. After the student has been enrolled, he may be suspended or dismissed if his physical condition is such that he will become a health hazard to the balance of the school. The claim of religious convictions will not be justification for violating the health rules of the college or university.

**Liability**

In *Morris vs. Rousos*, 139 a former student alleged that a university psychiatrist had improperly diagnosed the student's condition in a letter which had been retained in the university files. The court said:

This was insufficient to adequately allege that the psychiatrist had intentionally committed any unlawful act injurious to student and that psychiatrist had willfully or maliciously placed false information in student's record which acted as a detriment to his employability.

In this case, the defendant won the verdict.

This case has implications for counselors and other medical personnel as well as psychiatrists. It indicates that entries in the record are privileged as long as they are not willfully or maliciously placed in the record or known to be false.

In *Grueninger vs. President and Fellows of Harvard College*, 113 the court said that actions for injuries sustained by reason of employees' failure to properly diagnose and treat patients' illness were actionable. This is not a new concept of the law and is the reason for carrying malpractice insurance.

**Counseling Service**

Only two states make reference in legislation to what might be considered as coming under the heading of a counseling and guidance service. In Florida, a statute provides that:

The Board of Control of the State shall establish and maintain a bureau of vocational guidance and mental hygiene under the Department of Psychology at the University of Florida for the purpose of conducting such suitable tests in vocational guidance as will be necessary to aid the individual students of the University of Florida to select vocations and professions for which they are best fitted, and guide and direct students and graduates of the University of Florida in regard thereto.
The statute also says:

The Board of Control shall seek out, among all the schools of Florida, every student who may, by nature, have a special aptitude and genius for some one branch of learning and encourage him in the prosecution of the study of that branch to the end that he may become an expert and a leader in that subject.290

Idaho provides for occupational guidance in the public schools, with particular emphasis on high schools.292

The conclusion is, in the case of counseling services, that the authority for them has to rest upon the general powers granted to the governing boards to make rules and regulations for the government of their institutions. The court decisions referred to under health services will also apply in this area.

There has been only one case that is directly related to the counseling service. This case, Bogart vs. lerson,30 was based upon the complaint of parents for the wrongful death of their daughter who committed suicide. The action was brought against the college director of student personnel, alleging as negligence the failure to secure psychiatric treatment for the daughter, failure to advise parents of daughter's emotional disturbances, and suggesting termination of further interviews with the daughter regarding her problem. The Wisconsin Court stated that this was insufficient to state a cause of action.

There have been a number of cases involving privileged communication that are of interest to counselors and they will appear under the heading of Privileged Communication.

The Right of Privacy

The right of privacy is a rule of law that was not known in ancient common law.178 It is an outgrowth of more modern times and is provided by statute or is inferred by the courts. It may be called a product of modern common law, as the Arizona Supreme Court said in Reed vs. Real Detective Publishing Co.221 The right to privacy is a property right and is so treated by the courts, according to the Missouri Supreme Court in the case of Munden vs. Harris.199

The right of privacy is an individual one and can be enforced only by the person whose rights have been infringed.35 Three court decisions are of interest to college professional workers. In Brens vs. Morgan,35 the Kentucky Supreme Court said that the right of privacy does not prohibit communications of any matter even though in its nature private, when the publication is made under circumstances that would make it a privileged communication. This decision, in effect, gives the right of privileged communication precedence over the right of privacy. If a communication is privileged, the right of privacy can be disregarded. In the case of Vassar College vs. Loose-Wiles Biscuit Co.,349 the federal court said that an educational institution that is not only a corporation but a public institution has no right of privacy that the court will conserve by an injunction. The federal court in Garner vs. Triangle Publications 101 said that the right of privacy does not exist with respect to educational information.

In State vs. Terry,273 the court held that a police inquiry into suspicious behavior did not unreasonably invade an individual's right to privacy. This case would indicate that the inquiry into a student's activities for disciplinary or educational reasons would not invade privacy.

The case of Walker vs. Courier-Journal & Louisville Times Co.356 revolves around the right of public officials to privacy. In this case, the court stated that the broad constitutional protection requiring showing of actual malice in action brought by public officials extends to persons involved in public debate or who have become involved in matters of public concern.

This case may raise a good question about the rights of professors to sue the student evaluation publications unless they can prove malice.

In this connection, the case of Dawson vs. Hofman 73 is of interest. An Illinois court stated in relation to responsibility for torts by minors that:

Minors are entitled under law to be judged by standards commensurate with their age, experience and wisdom when engaged in activities appropriate to their age, experience and wisdom.

See also Bagley vs. Lee.13

The case of Stanford vs. State of Texas249 is of interest here. In this case the U.S. Supreme Court said that the First, Fourth, and Fifth Amendments are related to safeguard not only privacy and protection against self-incrimination, but conscience and human dignity and freedom of expression as well.

The college personnel worker does not have to be too concerned about the law relating to the right of privacy as long as he is covered by the privileged communication rule, which is taken up in more detail in subsequent paragraphs. It appears that the college itself has no right of privacy as such and would have no case of action unless some property right was involved.

In the course of time, a college receives a great deal of information about a student. Much of this information is private, the revelation of which may cause the individual definite damage. This is true in the case of the counselor as well as other college personnel. These matters should not be communicated to a third person unless the communication is made to a person who has an interest in the information communicated, or permission has been granted by the person about whom the information is communicated.
The courts have made many decisions on the matter of privileged communications. In *Fedderwitz* vs. *Lamb*, the Georgia Supreme Court said that, to be privileged, a communication must be made in good faith, without malice, and with reasonable grounds for believing the information to be true, on a subject matter in which the writer of the communication has an interest or in respect to which he has a duty, public or private, either legal, judicial, moral, or social, to a person having a corresponding interest. The same general conclusion was reached in the case of *Friedell* vs. *Blakely Printing Co.* decided by the Minnesota Supreme Court. The federal court in *Wise* vs. *Brotherhood of Locomotive Firemen and Engineers* stated that a communication is privileged if made bona fide by one having an interest in it or standing in such a relation that it is a reasonable duty or is proper for the writer to give the information.

When one considers the matter of privileged communication for college personnel workers and college administrators, he must remember that the communications are not absolutely privileged but only qualifiedly privileged. Only the legislature can give an absolute privilege.

Parents, brothers and sisters, and brothers-in-law have been considered as persons with an interest in court decisions. In this connection see *Long* vs. *Peters* and *Conners* vs. *Taylor*.

Proceedings before college or school boards and like organizations are within the class having qualified privilege, according to the North Carolina Supreme Court in the case of *Gattis* vs. *Kilgo* and the Ohio Appeals Court in the case of *Patterson* vs. *Kincade*. By implication, this would also include hearings involving student disciplinary proceedings and investigations incident thereto.

Inquiries made about a person are generally considered as privileged provided the communication is made confidentially and in good faith in answer to inquiries from one having an interest in the information sought. Care must be taken in these cases to answer the inquiry and not add any extra information not specifically asked for. In this connection see *Cochran* vs. *Sears Roebuck & Co.* decided by the Georgia Appeals Court, and *Doane* vs. *Grew*, decided by the Massachusetts Supreme Court.

The question of absolute privilege is not of much concern to college personnel workers. Only those officials granted this privilege by the legislature can have it. Wigmore's statement concerning the four requirements for this privilege in general are as follows:

1. The communications must originate in confidence that they will not be disclosed. (2) This element of confidentiality must be essential to the full and satisfactory maintenance of the relations between the parties. (3) The relation must be one in which the option of the community must be sedulously fostered. (4) The injury that would inure to the relation by disclosure of the communications must be greater than the benefit thereby gained for the correct disposal of litigation [Wigmore].

When the four classifications for an absolute privilege are considered, it can be seen that the average activity of the college personnel worker would not fit the four criteria listed. The states that have authorized this type of privilege to counselors are listed below.

**Privileged Communications in General**

Louisell, writing in the *Minnesota Law Review*, stated that in states granting privileged communication to psychologists, there were four that licensed psychologists, including counselors, and two that provided for certification. The states that licensed were Arkansas, Georgia, Kentucky, and Tennessee, and those that certified were New York and Washington. All of these states passed their laws in 1955. These six states gave the psychologists or counselors privileged communication status, such as has been given to client-attorney. California and Indiana have since been added to this list of licensed states granting privileged communication. The statute of New York is a good example. This law reads:

> The confidential relations and communications between a psychologist registered under provisions of this act and his client are placed on the same basis as those provided by law between attorney and client, and nothing in this article shall be construed to require any such privileged communication to be disclosed.

Montana forbids teachers of psychology, acting in the study and observation of a child's mentality, to testify in civil actions without the consent of parents or guardian.

There are four other states that have certification for psychologists, Connecticut, Maine, Minnesota, and Virginia, but these states do not provide privileged communication.

A note in the *Iowa Law Review* on the nature of professional relationships states that there are three conditions to be fulfilled under privileged communication. These are:

1. There must be one who is legally a lawyer, doctor, or minister; (2) The party must have been acting in an official capacity at the time the communication was made; and (3) The person making the communication must have regarded the professional man as his doctor, lawyer, or minister.

Psychologists can be added to the list of professionals referred to above in those states that grant them privileged communication status.
The author of the article in the *Iowa Law Review* noted that some courts and most writers doubted the wisdom of the statutes on privileged communications and, consequently, would apply them very strictly. There is no doctor-patient privilege in England nor is there in approximately half of the states in this country.\(^{168, 267}\)

Another kind of privileged communication of interest to counselors and administrators relates to communications made to parents of students about their children or to students about pitfalls in the community.

The Michigan Supreme Court held in *Everest vs. McKenny*\(^ {83}\) that the president of a normal school's statement to persons conducting a rooming house in which a student lived regarding the plaintiff's character was a privileged communication in the absence of malice. In *Faber vs. Bryle*,\(^ {65}\) the court held: "A communication to relatives of party defamed when made on request or in discharge of a duty is qualifiedly privileged and requires malice for a cause of action."

Michigan has a statute, Section 617.85 Compiled Laws 1948,\(^ {362}\) that provides that no school official, including guidance workers, can be required to testify in a court of law about anything that he received from a student in confidence or from any records so received. This is a statute to protect juveniles and is listed as a rule of evidence. The student or his legal guardian can authorize such testimony, however.

The federal court, in *Hager vs. Hanover Fire Insurance Company of New York*,\(^ {116}\) held that:

> A communication made in good faith on any subject matter in which person communicating has an interest or in which he has a duty is "privileged" if made to person having corresponding interest or duty notwithstanding it contains matter which, without such privilege, would be actionable and notwithstanding the duty is only a moral or social duty of imperfect obligation.

Based on the court decision referred to, it appears that a counselor may communicate with parents about their children's condition without being liable for damages. Likewise, one may argue that a counselor or administrator could advise his students on matters relating to the community or individuals in the community when asked for advice.

Whether an utterance is privileged under the constitutional guarantee of freedom of speech must be determined only after considering the nature of the utterance in connection with the time, place, and manner of its making.\(^ {53}\)

A state cannot, under the First and Fourteenth Amendments, award damages to a public official for defamatory falsehood relating to his official conduct unless he proves actual malice.\(^ {155}\)

These two cases relate to the constitutional principle of free speech as it involves the publications of statements that are false. They are listed here as an example of free speech versus libelous statements. The constitutional principle does not apply where the statement is ruled to be libelous on its face.\(^ {237}\)

A federal officer is protected when acting in line of duty. The court said in *Preble vs. Johnson*\(^ {213}\) that, under federal law, allegedly libelous statements of federal officers or employees are absolutely privileged if made within the outer perimeter of line of duty.

The principle enunciated in the case of *Preble vs. Johnson*\(^ {213}\) was followed in *Long vs. Mertz*,\(^ {162}\) where an Arizona court extended the same rule to state public officers. The court said in this case that absolute privilege is extended to a public officer for making statements while performing official duties that he is directed or authorized specifically by law to do.

*Gaines vs. Wrenn*\(^ {96}\) held that when statements are made by a governmental official in connection with his official duties and in reply to an inquiry, and reply thereto is not malicious and does not go beyond the inquiry, such statements are considered to be made in the performance of his official duties and are absolutely privileged.

All of these cases indicate that a public official has absolute privilege when acting within the scope of his employment and when not malicious in his actions. A college administrator has been considered a public official in many jurisdictions, so his statements would have the same privilege referred to in cited cases above. (See also *Carter vs. Jackson*\(^ {49}\))

A few recent cases on privileged communication not already referred to will be mentioned to illustrate some specific cases where the privilege has been ruled to exist.

In *Sokolay vs. Edlin*,\(^ {238}\) the court stated:

> Communication made bona fide on any subject matter in which party communicating has interest or in reference to which he has a duty is "privileged communication" if made to person having corresponding interest or duty.

A New York court in *Aacon Contracting Co. vs. Herrmann*, said that a qualified privilege protects one who has a legal, social, or moral obligation to others who are interested in having that obligation discharged.

In *Fairbanks Publishing Co. vs. Francisco*,\(^ {98}\) an Alaska court stated:

> Conditional and qualified privileges are accorded under public policy, which recognizes that it is essential that true information should be given whenever it is reasonably necessary for protection of one's own interest, interests of third parties or interests of the public.
In *Gaillot vs. Sauvageau*, the court said:

Words, even though ordinarily slanderous, are not so considered when spoken by party in performance of public or official duty, upon first occasion and without malice.

Reports made by former employers or employee made in response to inquiry from other actual or potential employers or employee were within statutory privilege, so said a California court in 1963. A Wisconsin case stated that:

An alleged defamatory letter from school superintendent where applicant was applying was privileged where plaintiff had given defendant's name as a reference.

The court went on to say:

Public policy requires that malice not be imputed in libel action against former employer who answers request for appraisal of prospective employer's qualifications, for otherwise one may be reluctant to give a sincere, yet critical response.

These cases indicate that personnel workers may feel free to give a fair and impartial report on a student where there is a request for information from a prospective employer.

*Morris vs. Nowotny* presented an interesting case. Here the dean of the university ordered plaintiff off campus and when he refused had him arrested by the university police and barred him from re-admittance. The university deans and doctors gave out information concerning plaintiff. The court in this case said that doctors and deans were not liable for false imprisonment, false arrest, libel, violation of civil rights or for falsely barring plaintiff from re-admission. The court stated that public officers are not liable to individuals for acts done within the scope of their public duties.

There is one case that should be mentioned here. In *Vigil vs. Rice*, a record had been made in a medical report that a 13-year-old girl was pregnant. The official having custody of the girl's record was informed that this was in error but no effort was made to correct the error. In this case, the court said:

Defendant, once his attention had been brought to the error in the medical report, had a duty to correct the report. His failure to do so was evidence of malice sufficient to destroy the qualified privilege.

If a custodian of student records finds out that he has made an error in putting some statement in the record, it is his duty to see that corrections are made. This would also apply to the person who made the record in the first place. The whole idea of privileged communication is based on the presumption that statements are made in good faith and under the belief that they are true. In this connection see *Curtis Publishing Co. vs. Vaughan*, *Fabian vs. Amerikai Magyar Szö*, and *Stationers Corp. vs. Dun & Bradstreet, Inc.*

**College Records and Evidence**

College records are not in themselves privileged. In the section on privacy it was noted that a college does not have the right of privacy. This would imply that the records of the college do not have this right. They can be observed by those who have a direct interest in them, such as governing boards, boards of visitors where provided for, members of the faculty, and public officials while engaged in their official duties. They may be subpoenaed and must be produced in court. There may be some individual records that will become privileged, such as the confidential files of the counselor, but only when they have been granted this privilege by legislative action.

The records of an educational institution are not open to the public in general but only to those with an interest. The college administrator may be justified in withholding records from other governmental agencies in the absence of a court order but there should be no difficulty in securing a court order when the records are necessary in the performance of a public service.

Of course, the person involved may authorize the college or university to show any of its records as they apply to himself. He may also authorize the disclosure of otherwise confidential information. This is true even in privileged communications. In this connection see *State vs. Flynn*, decided by the Missouri Supreme Court.

The college personnel worker may have occasion to give testimony in court. Ordinarily he is not required to repeat what he has been told by someone else. Courts generally will not accept testimony of witnesses as to what someone else told them as evidence of the fact asserted. In this connection, see *McVeigh vs. McGuiren*, where there is no other way to arrive at a fair decision of the case at issue, oral admissions may be accepted in evidence when testified to by persons who heard it. A New Jersey court ruled on this case in *Horton vs. Horton*.

It appears that the personnel worker would not generally be required to repeat in court what he was told by another. If there is no objection by either side in the case he may be expected to make the disclosure in court.

A brief word on the laws of slander and libel may be helpful to the reader. The college personnel worker is responsible for any statement or written communication that he may make that is injurious to another. His position is the same as any citizen's in this respect. If his statement or communication comes under the privileged communication rule previously mentioned, he is protected; if not, the liability exists. There is always a possibility that law suits may be brought against a person in college personnel work, so it is advisable to carry
insurance for protection against the cost involved if nothing else. If care is exercised and insurance is in force, the personnel worker can carry on his duties without fear of financial loss.

**Suggested Operating Procedures**

The personnel operating a college health service are subject to the same laws as are other medical personnel within a state.

While action might be on a counselor-client or patient status, counseling services are not given privileged communication status except in the seven states referred to previously. In all other states, counselors' relationships, while professionally confidential, are not legally confidential.

If material is put into a student's file it loses its confidential nature in law, as courts can subpoena the file. If the counselor does not place his information in the student's file, he can be subpoenaed and asked questions about the client and what he said, provided it is not privileged and is not hearsay. The counselor-counselee relationship of confidentiality can, however, be maintained with all except the courts.

Counselors and other administrative personnel charged with responsibility to advise or assist students with problems can carry out these functions without being held liable for what is said as long as the action taken is not arbitrary and is considered best for the student.

The counselor or other administrative officers can express honest opinions about the community or individuals within the community in this process of advising. Truth generally is a defense against any alleged slander or libel. There are many times, however, when one may know something of his own knowledge that he is in no position to prove in a court of law. There are other times when a person has a good reason to believe that something is true but does not have the time or the means to prove or disprove its truth. In these two cases, a counselor who gives advice, if acting for the best interests of the student and according to his own best judgment may be protected by the privileged communication rulings. The counselor or other administrative officer is responsible for looking after and protecting the student as much as possible. He can carry out this function if requested to do so by the student either through a question or otherwise.

The counselor can communicate with parents about their children when such communication is within the scope of his duties and is, in his opinion, for the best interests of the child. It is never advisable for the counselor to make a direct accusation against a person. If possible, some form of qualified statement should be used. It is better to say "I have heard that" or "It is my belief that" or "It has been alleged that" or some other such qualifying statement than it is to say directly that a person did something.

It is advisable for counselors to carry insurance to protect them against possible suit.

All errors in records should be corrected and the personnel worker must be sure that he communicates with others only when they have a right to know.
Chapter 7

Student Discipline

There is a great deal of law on student discipline. Legislatures have enacted statutes on the subject and courts have been called upon to clarify the legislation.

Legislation on disciplinary matters comes under four general headings. The first is a direct grant of disciplinary authority to the faculty; the second is the granting of authority to boards, with authorization for them to delegate the power to the faculty; the third is a grant of power to the board without mention of the faculty; and the fourth is a general grant of power to the board without specifically mentioning discipline. In a few cases, specific disciplinary legislation has been passed. These cases are considered under separate subheadings.

Direct Grant of Disciplinary Authority to Faculty

The Idaho law states that in all matters that involve a new policy and new methods of procedure, the administration and the faculty should report back to the board for instructions. "The execution of policy shall be left to the experts." The word "experts" as here used refers to the administration and the faculty.

The board shall be the appellate—legislative body—it shall constitute a final court of appeal in all educational controversies, shall perform legislative functions not inconsistent with law, and shall delegate to its executive officers the execution of all policies decided upon. The immediate government of the university shall be entrusted to the faculty, but the regents shall have the power to... confer upon the faculty by-laws, the power to suspend or expel students for misconduct or other causes prescribed or provided in such by-laws.292

The Wyoming statute states that:

The presidents and professors of the university shall be styled "the faculty" and shall have power as such body to enforce the rules and regulations adopted by the trustees for the government of students, to reward and censure students as they deserve, and generally to exercise such discipline in harmony with said regulations, as shall be necessary for the good order of the institutions.330

The Oregon statute prescribes that:

The president and professors constitute the faculty of the University of Oregon and, as such, have the immediate government and discipline of it and the students therein.517

Delaware law states that:

The faculty, consisting of the professors, instructors, and others employed by the Board of Trustees, one of whom shall be president of the university, shall have the care, control, government, and instructions of students, subject, however, to the by-laws.289

The Ohio Court of Appeals in West vs. Board of Trustees of Miami University 502 stated that:

The rules and regulations, promulgated by the university faculty under statutory authority, are binding on all concerned, unless unreasonable, arbitrarily applied, or unlawful.

Another Ohio court ruled in Koblitz vs. Western Reserve University 151 that:

The faculty of a university, under the custom of the land, is justified in disciplining students in the institution, and the student who enters such institution agrees to conform to that rule of law and to be tried for his misdemeanors by the rule that has been applied by such institutions for so long a time that it has become the rule of law.

The Missouri Supreme Court ruled that the president of a state teachers college had authority to make rules of conduct for the students where the regents had not done so. This was a case where students were exploding firecrackers in a dormitory and the president of the college asked the students to sign a pledge for orderly conduct. One refused and was expelled. The court said that every student was morally responsible for what took place in the dormitory in this case.81

The Supreme Court of South Carolina ruled that in cases where power was granted to the faculty, the president, acting alone, could not bind the school.14

Authority to Delegate Discipline to Faculty or Students

A few examples illustrate this kind of authority. The North Dakota law says that the board has power
to confer on the faculty, through by-laws, the power to suspend or expel students for misconduct or for other causes prescribed in such by-laws. Ohio, Kentucky, and Wisconsin are examples of other states with laws with the same general wording. The Missouri law states that:

The curators shall have power to delegate so much of their authority as they may deem necessary to such officers and employees or to committees appointed by the board, including power to suspend or expel any student for disobedience of the rules or any dishonesty, immorality, act, insubordination, etc.

South Dakota law provides that “the board may delegate provisionally to the president, dean, principal, or faculty of any school so much of its authority as it desires according to usual customs.” The Kentucky law states that the state board of education can invest the faculty or a committee of the faculty with power to suspend or expel any pupil for insubordination, immoral conduct, or disobedience of the rules and regulations of the school. This law applied to the Negro vocational and higher education institutions. The student can appeal from the decision of the faculty to the board of education, but the board’s decision will be final.

In Frank vs. Marquette University the Supreme Court of Wisconsin stated that there was broad discretion given to schools, colleges, and universities in disciplinary matters. The court went on to say that the faculty could adopt different disciplinary measures against different students, guilty of substantially similar infractions of rules, without warranting interference by the court on the ground of arbitrary discrimination. The Louisiana Supreme Court held that the administration of the affairs of the normal school, including discipline, was in the hands of the board of education and the presidente. A student complaining of the president’s action in discipline had to exhaust his recourse before the school authorities as a condition precedent to resorting to the courts.

The Ohio Court of Appeals said in McGinnis vs. Walker that:

University and college authorities may make all necessary and proper regulations for the orderly conduct of their institutions and preservation of discipline therein but the courts may and should intervene if the rules and regulations are found to be unauthorized, against common right, or palpably unreasonable.

The New York Supreme Court, Appeal Division, acting on a case in mandamus by an expelled student seeking reinstatement, stated that:

The faculty acted within the scope of its jurisdiction and exercised its discretion in a matter involving discretion to such purpose that no review may be had by court.

In this case, the student was expelled for unpatriotic, revolutionary, and anarchistic talk.

Disciplinary Authority Granted Boards

The governing boards have been granted disciplinary authority in many states without mention of the faculty. Examples of this law are listed below.

A Virginia law stated that the board might employ as many agents and servants, regulate the government of the students, and make such regulations as they might deem expedient and not contrary to law. A New York law states that “the councils for each institution shall have power to make regulations governing the conduct and behavior of students.” An Arkansas law states that:

The trustees of the university shall have power to prescribe all rules and regulations of the government and discipline of the university subject to the provisions of this act and such other acts of the general assembly as may hereafter be prescribed.

This type of legislation does not preclude the right of the governing boards to delegate authority over discipline to the faculty or administration. The authority may be delegated if the board so desires.

The Supreme Court of Florida stated in John B. Stetson University vs. Hunt: As to mental training, moral and physical discipline and welfare of the public, college authorities stand in loco parentis and in their discretion may make any regulations for their government which a parent could make for the same purpose, and so long as such regulations do not violate divine or human law, courts have no authority to interfere.

This decision was made in the case of a private college, but it appears that the same reasoning will apply to public colleges. The court continued by saying:

In the school there exists, on the part of the pupils, the obligation of obedience to lawful commands, subordination, civil deportment, respect for the rights of other pupils, and fidelity to duty.

Such obligations are considered inherent in any school and thus constitute the common law of the school. Trustees may vest in the superintendent authority to enforce discipline.

The right of university or college boards to “make all necessary, proper and reasonable rules for the management and government of the university and preservation of discipline of students according to the rules and regulations” has been affirmed by the courts. In In re Carter the court approved delegation of disciplinary authority to student government.
General Authority Vested in the Board

In many cases, the legislation does not mention discipline as such but confers authority to make rules and regulations for the institution. One law in Arkansas is cited as an example. This law confers upon the state teachers college board the power to make such rules and orders, not inconsistent with the laws of the land, as to them seemed necessary for the regulation, government, and control of themselves as trustees and all officers and teachers and other persons by them employed in and about the same and all persons in said institutions. Under this type of statute the board appears to have full control over discipline and can delegate its authority on discipline to the administrators or faculty of the school. In a Nevada case, the State Supreme Court said that only the legislature can question the authority of the board of regents. 148

In Rozowski vs. City of Detroit, 226 the court said that the police power of the state embraces such reasonable regulations established directly by legislative enactment as will protect public health and public safety. The state may invest local bodies with authority in some appropriate way to safeguard public health and public safety.

In the case of People on Complaint of Bailey vs. Dennis, 201 the court stated that protection of children in school and maintenance of proper atmosphere for education places restrictions that are reasonable and proper upon the right of freedom of speech or assemblage on school grounds while school is in session. Laws forbidding loitering are legitimate.

The boards or their delegated representatives are justified in making rules that will keep the school functioning properly and the right of free speech cannot be used as a justification for violating the rules. The courts have set up some limitations on enforcement of such rules known as the Clear and Present Danger doctrine. Under this doctrine, there must be some reasonable probability that the presence of the persons on school grounds would reasonably lead to ascertainable interference with proper and normal conduct of the school.

Special Disciplinary Legislation

A Louisiana statute provides specific authority for the university through its board to make rules and regulations for the conduct and activities in fraternity and sorority houses erected on leased grounds. The law also forbids hazing in any form or the use of any methods of initiation into fraternal organizations in any college supported by public funds in which bodily damage or physical punishment might occur to any student. 238 North Carolina also had a law against hazing. The North Carolina law defined hazing as "annoying any student by playing abusive or ridiculous tricks upon him to frighten, scold, beat or harass him or to subject him to personal indignity." A North Carolina law also empowers the board of trustees to decline to admit young men into the rooms of the dormitories not occupied by them. 313

Many schools prescribe requirements for taking military training. In the case of Pearson vs. Coole, 196 the Supreme Court of Maryland upheld the university in suspending a student for failure to take military training even though the refusal was based on conscientious religious convictions. In another case in California the court ruled that the college must offer military training, as a land-grant college. 119 A Minnesota statute prohibits students under 18 in any school, college, or university from playing pool or billiards in a public place of business unless accompanied by their parents. 363

Special Disciplinary Legislation

California law 44 provides as follows: Section 41301—Probation, suspension or expulsion of students. Any student of a state college may be placed on probation, suspended or expelled for one or more of the following causes:

a. Disorderly, unethical, vicious or immoral conduct.

b. Misuse, abuse, theft or destruction of state property.

Section 41302 places the authority for taking this action upon the president of the state college and directs that parents be notified when the student is a minor.

Section 41303—Expulsion of students provides that the president of the state college may expel a student in accordance with procedures for hearings established by law.

This law requires hearings only in cases where expulsion is the penalty for wrongdoing.

Protection of Administrative Personnel

A decision of the Georgia Supreme Court, stated in Davison-Nicholson Company vs. Pound, 32 that the discretion necessarily vested in governing boards of state educational institutions to protect the institution and its student body, if exercised in good faith, would not render that body liable in any action in favor of creditors with whom students had been forbidden to deal.

A decision of the Alabama Supreme Court in Kenny vs. Gurley 147 stated that a communication by personal authoritative letter, addressed and sent to the parent or guardian of a dismissed student, of the reason for the student's dismissal or for the denial of readmission to the institution was a privileged occasion. This arose on a libel action against the dean and the doctor in charge of students for a letter advising the
parents why their daughter could not be permitted to return to college. A Kentucky court decision took the same position in a case where the president wrote a father about his son's misbehavior. ¹⁰ The court, in the John B. Stetson University vs. Hunt case cited previously, stated that a mere mistake in judgment by a school officer in governing his school, either to his duties under law or as to facts submitted to him in connection with suspension or expulsion of a student, did not render him liable in the absence of a showing that he acted wantonly, willfully, or maliciously.¹⁴⁶

In these cases the university wrote the parents telling them why their child was sent home from school. Each letter alleged personal misconduct that the school officials considered sufficient to send the student home. In the Kentucky case the court stated that as the school was in loco parentis to the student, a minor, it was the duty of the institution to give the parents the reason for suspending or dismissing the student.

In the case of Morris vs. Nowotny,¹¹⁰ a Texas court said:

There is a presumption that public officials perform their duties in a fair and efficient manner and when the contrary of such presumption is averred it should be specific and detailed. Public officers are not liable to individuals for acts done within the scope of their public duties.

Type and Extent of Hearing Required for Disciplinary Action

There has been a great deal written about discipline by college professors, student personnel workers, and others. Most of this writing has been in the area of due process and the type and extent of hearing required. Byse,¹³ Van Alstyne,¹⁴⁸ and Levine¹⁵⁸ are three law professors who have made great contributions in this area. Brady and Snoxell,³⁴ authors of the monograph on student discipline, and Robert Callis ⁴⁵ have enlightened their readers on the subject of discipline as education.

School authority has been held to arise from the following sources: express delegation of the authority of the parental status; delegation of the parental status implied from similar roles; functional needs of schools; customary powers of schools, legislation or charter; implied contract between student and school. This is Levine's¹⁵⁸ list of competing analogies. These can be reduced in general terms to the In Loco Parentis Rule, the Contractual Rule, Educational Purpose Rule, and Custom or Legislation Rule. In any case, it must be recognized that these are analogies that have been used by courts in the past to justify upholding the college in its disciplinary functions.

Levine¹⁵⁸ states that the needs and capacities of school, student and court must play the primary role in deciding the legal relationships to exist among them. Analogy may then be used as an instructive but incidental mode of weaving results into the fabric of law.

Callis ⁴⁵ and others maintain that there is no need for analogies at all, that the school has a function to perform and all legal interpretations should be based on this educational function. He states that if we find that a given practice cannot be justified as contributing to the education of students, we will be forced to abandon such practices.

Van Alstyne ³⁴ states:

A university rule which threatens a student with dismissal for any activity he is constitutionally entitled to pursue as a citizen, carries the burden of establishing precisely how that activity would especially interfere with the legitimate business of the university.

Brady and Snoxell ³⁴ said:

We must not forget that our primary interest and concern is for the welfare of the student; hence, if we must, for his own good and the good of others separate a student from membership in our community, we should be prepared to consult and advise with the natural parent concerning the need of the student involved. Dismissal or expulsion is not given as a punishment for what has been done but on the ground that, in view of his present conduct, the student is not amenable to education or is a bad influence upon others and upon the community.

We have noted that it is generally agreed that students should not be punished for their actions but given sanctions that will be for their own good or for the good of their fellow students. The question that troubles the courts is the means used to determine that the student did the act he is accused of and that the act deserves suspension or expulsion. Court decisions are divided into two groups—those before and after 1960 to show changes in thinking before and after that date.

In general, courts agree that a trial, conducted in the same manner as a trial at law is conducted, is not necessary in the case of students who are expelled or suspended from college for disciplinary reasons.

Decisions Prior to 1960

In a Tennessee case, State ex rel. Sherman vs. Hyman,⁵⁷¹ students were charged with the sale of examination papers and expelled. The court said a “fair hearing” did not infer a trial as in a chancery court of law. In determining whether a student was guilty of improper conduct that would tend to demoralize the school sufficiently to justify his expulsion, it was not necessary that the professors go through the formality of a trial. When the student whose conduct is being investigated is given every fair opportunity of showing his innocence and the professors have weighed the evidence
with calmness, consideration, and fair-mindedness, the professors have done all that the law requires them to do. They do not have to follow technical rules of procedure. The student should be informed of the nature of the charges, as well as the names of at least the principal witnesses against him when requested, given a fair opportunity to make his defense, and should not be compelled to incriminate himself, but he cannot claim the privileges of cross-examination as a matter of right. A student cannot be dismissed or suspended or deprived of any rights without notice and a fair hearing.

A Montana decision states that where a young lady was called before the dean's council, informed of charges against her, and given an opportunity to deny or explain, she was given sufficient hearing. A federal court decision arising from a New York case (DeHaan vs. Brandeis University) states that where a private university, by regulation set forth in its general catalogue, reserved the right to sever connection of any student for appropriate reason, the problem of what constituted appropriate reason had to be left up to the authorities charged with the duty of maintaining standards and discipline. A private university was not required to hold a hearing before disciplinary action was taken.

In a Michigan case, Tanton vs. McKenney, the court assumed the existence of a right to a hearing, and in an Illinois case a woman student was given a hearing prior to dismissal but was not told of the evidence against her or the identity of her accusers. The appellate court of Illinois refused to intervene. In Illinois, all the court requires is that the authorities have heard some evidence.

Seavey, writing in the Harvard Law Review on this subject, gave the following conclusions:

Although the formalities of a trial in a law court are not necessary and although the exigencies of school or college life may require suspension of one reasonably thought to have violated disciplinary rules, it seems fairly clear that a student should not have the burden of proving himself innocent. The fiduciary obligation of a school to its students should prevent it from seeking to hide the source of its information, but demands that it afford the student every means of rehabilitation. If it has not done so, this opportunity should be given by the courts.

This statement by Seavey is given, not because it is the generally accepted requirement of our courts, but because it gives the opposite view. The courts have generally held that only some evidence need be heard and that the student shall be given a chance to have his say before the disciplinary authorities. If these disciplinary authorities are satisfied that the best interests of the school require the dismissal of a student, because the evidence available to them so indicates, they may dismiss or suspend the student. The student, it appears, is always entitled to hear the charges and have a chance to answer them before suspension or dismissal.

In administering disciplinary action, the college or university is not bound by the general principles of justice found in our courts. The college is in a position where it is responsible for the welfare of a large number of students, most of them legally infants. The college, therefore, cannot afford to take a chance on a questionable character, as he may corrupt the balance of the students. The college stands in loco parentis to the infant students. In this capacity the college needs discretion in the establishment of rules and regulations for the protection of the students. Consideration must be given to the person who is accused of conduct prejudicial to the college or university. It is sufficient, however, if he is given an opportunity to hear the testimony against him, to question witnesses and rebut the evidence. In this connection see Anthony vs. Syracuse University.

The student is not given the right of counsel. He does not have to testify against himself but there is nothing in the law that would forbid the examining officials from taking that into consideration. The presumption of innocence is present but not to the same extent found in courts.

The college or university should afford an accused student every right to prove himself innocent. Disciplinary proceedings are not court trials and there is no reason why the accused should be allowed counsel. The college can be depended upon to look after the rights of all of its students. Punishment should be given in a way that will teach a lesson to the student body. If all of the formalities of a court were required in disciplinary cases the delay would, in many instances, nullify the lesson to be taught.

The college-student relationship is contractual and part of the contract for admission is an implied promise to conform to the rules and regulations of the college. Any failure to do so on the part of the student is sufficient grounds for the college to terminate the contract. The college must make sufficient investigation to assure itself that there is a breach of the rules and regulations on the part of the student. When the college officials are satisfied that there is a violation of the rules, they are free to act. When the college-student relationship is looked at in this way, there is no trial in the legal sense and the principles of justice in civil life do not apply.

As a practical matter, a student should not be suspended or dismissed without being given a hearing. The more completely the evidence is presented at this hearing, the better. The extent of the hearing will depend upon circumstances and the general good of the institution. Discretion should be allowed disciplinary officers and committees in these cases.
After 1960

The rules raised by the courts prior to 1960 were based upon the assumption that the faculty and administrators of a college or university were fair and were doing what they as educators thought was best, and thus their methods were not questioned.

With the advent of the civil rights movement changes occurred. Students were dismissed from college because they participated in civil rights activities which federal courts decided were legitimate constitutional activities. To support this right of the federal courts to intervene, the analogy of education as property was established. This brought dismissal from college under the due process clause and the Fourteenth Amendment to the U.S. Constitution.

As an example of this change we will examine the case of Steier vs. New York State Education Commission. This case involved dismissal from a public college in New York. The court stated that the student had charges served upon him and he had the chance to file documents in his own behalf and argue his appeal orally. Thus, he was not denied due process. The court went on to say:

The privilege of attending the college as a student comes not from federal sources but is given by the state. Protection to citizens of the United States by privilege and immunities clause includes those rights and privileges which under the laws and constitution are incident to citizenship of the United States but does not include rights pertaining to state citizenship and derived solely from relationship of the citizens and his state established by state law.

The next case to review came in 1960–61, where a student was expelled without any hearing for engaging in civil rights activities. The court in this case, Dixon vs. Alabama State Board of Education, said:

The precise nature of the private interests involved in this case is the right to remain at a public institution of higher learning in which plaintiffs were students in good standing. It requires no argument to demonstrate that education is vital and indeed basic to civilized society. Without sufficient education the plaintiffs would not be able to earn an adequate livelihood, to enjoy life to the fullest, or to fulfill as completely as possible the duties and responsibilities of good citizens.

It must be conceded, as held by the district court, that their power is not unlimited and cannot be arbitrarily exercised. Admittedly, there must be some reasonable and constitutional ground for expulsion or the courts would have a duty to require reinstatement. The possibility of arbitrary action is not excluded by the existence of reasonable regulations. There may be arbitrary application of the rule to the facts of a particular case. Indeed, that result is well nigh inevitable when the board hears only one side of the issue.

The court went on to say:

In the disciplining of college students there are no considerations of immediate danger to the public, or of peril to the national security, which should prevent the board from exercising at least the fundamental principles of fairness by giving the accused students notice of the charges and an opportunity to be heard in their own defense. Due process requires notice and some opportunity for hearing before a student at a tax-supported college is expelled for misconduct. In the case of private colleges the established rule is a matter of contract.

The case of Carr vs. St. John's University involved a private university. Here the New York court stated:

With respect to rules and regulations for breach of which students of university may be expelled, courts will not consider whether they are wise or expedient but whether they are reasonable exercise of power and discretion of college authorities.

In the Dixon case involving public colleges, the court set forth rules for what it considered a fair hearing. The court set up the following standards:

1. The notice shall contain a statement of the specific charges and grounds which, if proven, would justify expulsion under the regulations of the Board of Education.
2. The nature of the hearing should vary depending upon the circumstances of the particular case. The case before us requires something more than an informal interview with an administrative authority of the college.
3. By its nature, a charge of misconduct, as opposed to a failure to meet the scholastic standards of the college, depends upon a collection of the facts concerning the charged misconduct, easily colored by the point of view of the witness. In such circumstances, a hearing which gives the board or the administrative authorities of the college an opportunity to hear both sides in considerable detail is best suited to protect the rights of all involved.
4. This is not to imply that a full-dress judicial hearing, with the right of cross-examining witnesses, is required. Such a hearing, with the attending publicity and disturbance of college activities, might be detrimental to the college's educational atmosphere and impractical to carry out. Nevertheless, the rudiments of an adversary proceeding may be preserved without encroaching upon the interests of the college.
5. In the instant case, the student should be given the names of the witnesses against him, and an oral or written report on the facts to which each witness testified.
6. He should also be given the opportunity to present to the Board, or at least an administrative official of the college, his own defense against the charges and to produce either oral testimony or written affidavits of witnesses in his behalf.
7. If the hearing is not before the Board directly, the results and findings of the hearing should be presented in a report open to the student's inspection.

If these rudimentary elements of fair play are followed in a case of misconduct of this particular type, we feel the requirements of due process of law will have been fulfilled.

The Dixon case was followed by the case of Knight vs. State Board of Education. In this case, students were dismissed for engaging in "freedom rides." The rules of the board required dismissal for arrest and conviction on charges of personal misconduct. The court made the following comments in this case:

It was pointed out in the Dixon case that with respect to private colleges and universities the procedures had established the rule that dismissal of students could be effected at any time and for any reason without notice to the student concerned, and without opportunity for a hearing, but that the authorities involving suspension or expulsion from a public college or university all dealt with the question of whether the hearing given the student was adequate. "Due Process," unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances. It is compounded of history, reason, the past course of decisions. In the light of these principles, the rudiments of fair play and requirements of due process vested in the plaintiffs the right to be forewarned or advised of the charges to be made against them and to be afforded an opportunity to present their side of the case before such drastic disciplinary action was invoked by the university authorities. The plaintiffs, in being suspended, although they were given conditional right to reinstatement, were deprived of a valuable right or interest, i.e., the right or interest to continue their training at a university of their choice. Disciplinary rules must not only be fair and reasonable but they must be applied in a fair and reasonable manner.

The court stated further that it was of the opinion that the due process clause of the Fourteenth Amendment, as construed by the Supreme Court, required in the case of a state college or university a notice to the student and an opportunity to be heard before the penalty of dismissal was inflicted.

The court used the same argument as in Dixon, that it was of incalculable value for students to be able to pursue their college training.

The case of Due vs. Florida A & M University came next. Here the students were convicted of contempt of court. The court held that this constituted misconduct under the rules of the university. In this case, students were telephoned and asked to come to the campus and contact the chairman of the university disciplinary committee at normal hours in an easily accessible room. They were read the text of a letter, which they denied receiving, which advised them of the charge and they were given a chance to respond to the charge until they had no more to say.

The court in this case held that "It is not necessary for due process requirements that a full-scale judicial trial be conducted by a university disciplinary committee with qualified attorneys either present or formally waived as in a felonious charge under the criminal law. There need be no stenographic or mechanical recording of the proceedings.

Procedures are subject to refinement and improvement in never-ending effort to assure not only fairness, but every semblance of fairness. . . . The touchstones in this area are fairness and reasonableness."

The court, in this case, held that there had been due process in the hearing.

The last case that will be presented here is Woods vs. Wright. In this case students were expelled for participating in demonstrations in Birmingham for which they had been arrested. The court overruled the expulsion, stating that children cannot be disciplined for parading without a permit.

These cases, except Carr, were cases involving public schools. All cases except Carr and Steier were decisions made because schools dismissed students for engaging in civil rights activities. Discipline in these civil rights cases had departed from the concept of education and resorted to discipline as a punitive measure.

Due Process

What is "due process"? There have been many court cases, in many areas of human endeavor, where it has been defined or at least considered. A check of some court statements on due process, outside the college setting, will therefore give us a better understanding of the subject. In McBride vs. Roland the Federal Court said: "Due Process requires that the accused be given notice of charges made against him." The Supreme Court said in Cohen vs. Hurley.

Whatever procedures are fair, what state process is constitutionally due, what distinctions are consistent with equal protection, all depend on particular situations presented, and history is relevant to such inquiries.

The case of In re Coates was heard in the New York courts. The court said:

The exact meaning and scope of the phrase "due process of law" cannot be defined with precision but it requires an orderly proceeding adapted to the nature of the case in which a citizen has an opportunity to be heard and to defend and protect his rights, and a hearing or an opportunity to be heard is absolutely essential, but due process does not guarantee a citizen any particular form or method of state procedure. . . .

Fair play in legal procedures, traditional concepts of fair play, essentially fundamental fairness,
constitutional requirements are met when having due regard for practicalities of case there has been basic fairness. All of these cases put the emphasis upon fair play. We might add that the due process clause of the Fourteenth Amendment protects persons under 18 as well as adults.

All cases on due process indicate that there is no detailed definition that can be applied. They all agree that fair play and fairness are essential and there is general agreement that it is necessary to have a hearing where both sides of the case can be heard and adjudicated fairly and objectively.

There are two sides to due process that must be considered. Due process is both procedural and substantive. Certain procedures must be followed and those procedures must insure justice, fairness, objectivity. The persons who hear the case and make adjudication must be competent to act with judgment and be free from bias or prejudice.

Summary

Legislative grants of authority in disciplinary matters are of four types: direct power to faculty, direct power to the board with authority to delegate it to the faculty, authority to the board with no mention of faculty, and general authority to manage the school given to the board with disciplinary authority implied. In every type of legislation, the faculty, the administration, or both, may exercise discipline over the students under by-laws passed by governing boards. In a few cases, legislatures have passed special legislation such as that forbidding hazing.

Administrative officers apparently may notify parents about their students and of delinquency on the part of the students without being sued for libel. Students are expected to obey all rules and regulations of the school. If they fail to so obey, they can expect disciplinary action, including suspension or expulsion.

A hearing of some type is required in all cases of expulsion or suspension. This hearing does not have to follow court procedures. It is sufficient if the accused is advised of the charges against him or her and is given a chance to answer the charges. When this is done, it appears that an adequate hearing has been held. It appears to be advisable to let the accused hear the chief witnesses against him or her or at least find out what they will testify to and to give the accused a chance to present witnesses in his or her own favor. The student should also be advised of the results of the hearing.

The same penalty does not have to be levied against all persons committing the same offense. Discretion in this respect, as well as the extent of the hearing, appears to be left to the disciplinary authorities of the college or university. Efforts at rehabilitation are always favorably looked upon.

Suggested Operating Procedures

Discipline, especially where it involves suspension or dismissal, involves the future of a human being. This future welfare of a human being is one which courts will protect when called upon to do so. The college or university officials should be equally anxious to protect these rights. The safest and most just method of procedure in any case involving suspension or dismissal is to provide the accused with a full hearing. This hearing should allow for the testimony of witnesses for and against the accused. If all witnesses are required to testify in the presence of the accused, so much the better. The accused, himself, should be given the opportunity to explain the accusation, but his failure to testify for himself should not be held as evidence against him. No person should be required to testify against himself or incriminate himself. If this procedure is followed, courts will be less likely to overrule the decision of the disciplinary authorities of the college.

In disciplinary matters involving less than dismissal, a less detailed form of hearing is acceptable from a legal standpoint. A college has a dual responsibility to its students. One responsibility is to furnish them with academic knowledge. The other is to help the students grow and develop into mature, worthy citizens of the community. Discipline is one of the means whereby this second responsibility of the college is carried out. No discipline in college should be administered as punishment to the individual. It should be administered to teach the individual and the student body that the rules and regulations of society must be obeyed. The minimum that will accomplish this educational purpose is advisable. Counseling an individual will many times secure the needed results without further action.

This writer concedes that discipline should be educational. Colleges and universities are established to teach. The art of community living is one fundamental aspect of a college education, and disciplinary action only arises when a student has failed to prove his proficiency in this subject. It may be possible that a student fails this subject so completely that his presence at the university or college is no longer profitable to himself, or is detrimental to his fellow students.

Because discipline is educational and not punitive, it should be administered by professional educators who have made this their specialty. In over 90 per cent of the cases appearing before disciplinary officers or committees, the students admit their guilt, so the only thing involved is what sanction will best educate the student. This decision really requires a professional specialist.
The writer has evolved a set of procedures that will provide due process as required by the courts and educational training for the student. It will also save a great deal of faculty and staff time now devoted to disciplinary hearings. What is proposed is the appointment of a hearing officer to act in all cases where the regulations of the colleges do not require suspension or expulsion.

A hearing officer represents the institution and the student. His purpose is to determine the facts in the case and make recommendations to the dean of students or person charged with discipline in the college or university. The hearing officer should advise the student of the charges against him and give the accused a chance to defend himself. Even if the accused states that he is guilty, it is necessary to get all evidence in order to make an adequate and fair evaluation for remedial educational sanctions.

If all proceedings and testimony can be taken down by a stenographer it is extremely helpful because the dean of students or other officer charged with discipline can read the whole case and make a more intelligent and expert educational judgment.

If the sanction recommended is suspension or expulsion and the disciplinary officer concurs, the case should always go to a committee where the procedures of due process should be followed and the case heard in its entirety. If the sanction is conduct probation or less, the disciplinary officer or dean will direct the execution of the sanction. Counseling should be included as a part of all probationary sanctions.

If these procedures are followed there will be due process, fairness, educational benefit to the student, confidentiality for the records and action, and a great deal of time saved by staff, faculty, and in some cases students, all of whom now spend hours hearing trivial violations or cases where the student admits his guilt. This procedure will also ensure continuity, equity, and trained evaluation.

The requirements for due process in cases involving suspension or expulsion would, in the opinion of the writer, be those laid down in the Dixon case. The writer is also of the opinion that a faculty-staff committee should act in hearing all cases where suspension or expulsion is the penalty.

The requirements in Dixon, in brief, are as follows:

1. The accused shall be given a notice giving the specific charges made against him.
2. A hearing should be held where both sides of the case are heard.
3. The hearing should elicit information for both sides and if possible the accused should be able to face his accusers.
4. If the accused does not face his accusers he should be furnished a list of the names of witnesses and a statement of the facts they testified to.
5. The student should be allowed to present oral or written testimony in his behalf.
6. The student should be advised of the results of the hearing.

The writer believes that it is best whenever possible to have the witnesses testify in front of the accused student. Even though the student admits his guilt the committee should hear testimony to help them in arriving at an educationally sound decision.

Sanctions that involve cash fines or student work are questionable because these involve taking property, and due process is always involved where property is taken. This writer believes that sanctions involving fines or work would not stand up if questioned in a court of law.

Administrative officials charged with discipline are required from time to time to write parents about their children. When it becomes necessary for them to do so, they may write about the children's faults without excessive concern over liability for their words. Here it is advisable to word any accusations in a qualified way unless there is uncontestable and provable truth to the statement. The disciplinary administrator who has a duty to inform parents about their children should qualify his statement by saying "I have been informed that" or "It has come to my knowledge that" or "has been accused of" or some other such qualifying words, depending upon the circumstances in any case.
Chapter 8

Student Activities

This chapter attempts to cover miscellaneous student personnel services called student activities or extracurricular activities. Since it is not feasible to attempt a study of all activities in which students engage outside of the classroom, the chapter has been limited to student organizations such as fraternities and sororities, student unions and related activities, work opportunities for students, and student publications. One paragraph has been devoted to placement.

The operation of fraternities and sororities is authorized, either directly or indirectly, by legislative acts in a few states. The Mississippi statutes on this subject read as follows:

For the purpose of promoting higher standards of scholarship, a greater degree of culture, closer social fellowships and a stronger college spirit among the students of the State University and colleges, any group of students of such institutions shall be permitted to organize themselves into such societies as academic, professional, honorary, Masonic, or so-called Greek letter fraternities and sororities or similar organizations, whether of a local or connectional character as hereinafter provided . . . .

The courts have rendered decisions on the authority for such societies. The Supreme Court of Georgia in State vs. Davidson stated that the board of regents is authorized to lease land for 99 years for one dollar to erect fraternity chapter houses. The courts have also upheld the right of a state institution to forbid fraternity, sorority, or other associations from operating in an institution. The Illinois Supreme Court said that an incorporated college had authority to forbid its students from joining secret societies, although such societies were incorporated by the legislature.

In a New York case that went to the United States Supreme Court, Webb vs. State University of New York, it was held that a state could adopt such measures, including outlawing of certain social organizations, as it deemed necessary to its duty of supervision and control of its educational institutions. The court said further that social organizations, other than strictly autonomous ones subject without question to local control by the university, could be declared detrimental to the educational environment by the board of trustees of the state university and thus outlawed. In Waugh vs. Board of Trustees of the University of Mississippi, the court said that laws forbidding secret orders and fraternities in educational institutions supported in whole or in part by the state were constitutional.

The Indiana Supreme Court, in State vs. White stated that the trustees and faculty of a public university existing mainly by state appropriations could not forbid admission to a student because of his refusal to sign a pledge to disconnect himself during his college matriculation from a Greek letter fraternity or secret college society.

The operation of fraternities and sororities and the authority to regulate them has been the subject of considerable agitation in the past few years. In the case of Beta Sigma Rho, Inc. vs. Moore the New York court said that trustees of the state university could adopt such rules, including outlawing national fraternities and social organizations, as it deems necessary to its duty of supervision and control of its educational institutions. Blackwell reviews this case under the
title "Court Upholds Right of University to Ban National Fraternities."

Norman L. Epstein,62 Chief Counsel for California State Colleges, states:

While a question still persists in the minds of some, I believe the decided cases of the last several years as well as the earlier authority make it abundantly clear that public universities may take such action if they choose, to eliminate discrimination in student organizations. A policy of non-discrimination in student organizations where adopted is really a part of the educational policy of the institution and in the absence of some local or peculiar legal inhibition, it may as surely be effectuated as the plethora of other rules and regulations governing students.

Mr. Epstein continues by saying:

There seems to be little doubt that a state college or university may choose to deny recognition to the social fraternities having discriminatory clauses or policies where the fraternity is integrated into a comprehensive student activity program, involving the efforts of university personnel and facilities, and use of the university name. The more recent cases point to the probability that such denial of recognition is constitutionally required.

Fraternities, sororities, and other societies exist at colleges and universities at the will of the faculty and governing boards and have no constitutional right to such existence. When established, they have to conform to the rules and regulations for their existence set up by such boards. This appears to be the general rule and is applicable in almost every case.

Student Government

"A college is a building or group of buildings in which students are housed, fed, instructed, and governed." With reference to its educational work, a "college" consists of its trustees, teachers, and students. Students who are residents of the state do not become residents of the college community merely by occupying a room or apartment and attending college.

These two statements by supreme courts indicate different views of what residence and enrollment in a college means insofar as being members of a college community are concerned. There is very little in the way of legislation on the subject of student government in colleges.

California is the only state that specifically provides for a student governmental organization. The California law reads as follows:

A student body organization may be established at any state college under the supervision of the college officials for the purpose of providing essential activities closely related to, but not normally included as a part of the regular instructional program of the colleges. The activities conducted by such an organization shall be designed to contribute to the development of skill and facility in human relations, the development of leadership ability, and the recreational and social needs of students. The activities may include but shall not be limited to the operation of campus publications, musical organizations, speech and dramatic activities, student government activities, intramural and inter-collegiate sports, and the sponsorship of clubs and organizations which are designed for students specializing in various major subject matter areas offered by the college. Such an organization may also operate a campus store, a cafeteria and other projects not inconsistent with the purposes of the college.

The California statute provides that this student organization can be established by a vote of two-thirds of the student body. If passed, the state director of education will set up a mandatory membership fee of not exceeding 20 dollars per year. The money so collected will be available for the use of the student organization, subject to approval of expenditures by the state director of education. The students can work off this fee if they so elect. The amount of the fee is subject to a referendum from time to time.

Texas set up a student union fee that may exceed five dollars per student per semester, but any increase over one dollar per student per semester shall be approved by a vote of the student body.

Missouri law provides that no rule or regulation should ever be established that shall in any way limit the right of the students of the university or any of its departments to present grievances and to ask for their redress by respectful petitions presented to the board.

Any authority for student government in state-supported colleges and universities, other than those mentioned above, must depend upon the governing boards. These boards apparently have authority to grant some form of student government under their general powers.

The state of South Dakota general powers statute states:

Except as otherwise provided in this code, the Board of Regents shall have power to govern and regulate each institution under its control in such manner as it shall deem best calculated to promote the purposes for which the same is maintained.

Michigan law reads:

The board shall have power to make all such laws and regulations concerning the admission, control, and discipline of students and other matters, as it may be deemed necessary for the good government of the institution and the convenience and transaction of its business.
North Dakota law states that:

The faculty shall adopt, subject to such rules and regulations as the State Board of Higher Education may establish, all necessary rules and regulations for the government of the school. 334

The examples listed can be duplicated in other states in essence if not in exact wording.

The courts in Ohio have held in West vs. Miami University Trustees 364 that:

The term government in the act vesting government of university in trustees includes administrative rules and regulations affecting scholastic procedure, as well as disciplinary measures.

The Kentucky Supreme Court said in Gott vs. Berea College, 102 that the college authorities might make any regulation for their government which a parent could make for the same purpose without interference from the courts unless the regulations were unlawful or against public policy.

The Supreme Court of Illinois said that the University of Illinois was a public corporation, created for the specific purpose of operation and administration of the university, and, as such, might exercise all corporate powers necessary to perform the functions for which created 199. The Illinois court, in another case, said that without express grant in its charter an academy had the power to adopt and enforce rules as its governing body deemed expedient for government of the institution. 167

It appears that the governing boards of colleges and universities may establish student government in their institutions if they believe that it will aid and facilitate good government and discipline within the schools. The student government, thus instituted, must always be subject to the control of the faculty, the administration, or the board and operate strictly within the framework of the charter or grant of authority given.

Overall Comments on Student Government

There have been a few cases on the liability of student organizations and the college or university where they occur. In Rubitchinsky vs. State University of New York, 227 the court said:

Although state college had control over student association activities, it was not required to provide supervision for organized extra-curricular activities of students on or off school grounds, unless such activities were so inherently dangerous that the college authorities were under actual or constructive notice that injuries could result to students.

In the case of Baum vs. Reed College Student Body, Inc. 21 the court said that the student body was not liable for injuries to a student's mother when a student fell off the stage after being pushed so he fell onto the mother. There was no supervision at this dance.

One case is on record where the court stated that the university board of trustees could establish agencies of student government in respect to student conduct and discipline. 47

There have been two cases that define the responsibilities of minors in negligence cases which should be included here. In the cases of Dawson vs. Hoffman 73 and Bagley vs. Lee 13 the courts said that the standard of care required of a minor is the measure of care other minors of like age, experience, capacity, and development would ordinarily exercise under similar circumstances.

These decisions are of importance here because they indicate that a minor student should not be considered as an adult in holding him responsible for his acts. The courts recognize that minors do not have the judgment, experience, training, or capacity to act as adults are expected to act.

Students should be allowed to adjudicate the affairs that they support. Dormitory courts, women's standards boards, inter-fraternity councils, and student government courts should be encouraged but their jurisdiction should be limited. It is not customary for undergraduate students to teach. If discipline is educational, it is not reasonable to allow inexperienced people to deal with matters, involving other students, that involve teaching.

Student courts with limited jurisdiction and free appeal to the hearing officer advocated in Chapter 7 on discipline would provide adequate experience for the students involved without placing fellow students in jeopardy and bringing them unnecessary publicity.

What part should student government have in faculty committees? There are obviously some where student interests are so paramount that they should be represented. There are others where the value is questionable due to the students' short period at the college, inexperience, and lack of judgment.

James Kreuger 152 had this to say in talking about students on committees:

They [the students] must join those who bring to policy formulation in higher education, years of academic experience, years of living, insights into the process of higher education and an understanding of the nature of the academic community so seldom reached even by the full professors among us. What kind of place can we honestly and realistically provide for students on our crew?

He goes on to say:

Student committees should meet and submit suggestions, objectives, revisions, complaints, etc., to the faculty committee and exercise their influence in that way.
The writer is of the opinion that the students would be far more effective if they had parallel committees in student government to study college policy areas and make recommendations to faculty committees than they would with one or two members on the faculty committees.

Student Unions and Related Activities

The establishment of a student union and other related activities has been generally approved by legislation. The creation of a student union may be by lease, by direct operation of the college, or by a student association as is provided by California law.

Oklahoma law authorizes a lease of land to the board of governors of the Oklahoma student union for the erection of a student union building. The board of regents of the university is authorized to regulate the operation of the building after erection. Kansas authorizes a lease for the same purpose as does South Dakota. Maryland statutes authorize the university to build student union buildings, including a student supply store, post offices, and facilities, and pay for the buildings from the proceeds. Indiana and Michigan both provide for operation of the student union buildings by the colleges.

Some states provide for bookstores and other such activities. West Virginia statutes provide that the governing board shall fix prices of books, stationery, and other school supplies offered for sale at any bookstore established and operated by the board at colleges. Sale of products is limited to students and faculty, and prices to be commensurate with the complete cost to the state in offering products for sale.

Minnesota law provides authority for the board to allocate space for a person or corporation to conduct a bookstore at teachers colleges, without rent, subject to the board's conditions. Nebraska law provides for books to be sold by the university at a fair price, and Massachusetts provides that all receipts from student activities, including the operation of the college store, student operation of the home economics house, musical clubs, band, and other activities, shall be expended "as the trustees shall direct in furthering the activities from which the receipts were derived."

In general, student unions, college stores, and other activities are operated by state-supported colleges and universities under special grants of authority or under the general powers of governing boards. This is in essence the decision of the Ohio appeals court in Long vs. Board of Trustees, when it said that the state university was authorized to operate a store on the campus to sell books and supplies to students and professors at cost.

It appears that the board of governors of a state institution can charge a fee for a student union building or other student activities. The consent of students is not necessary for such a charge.

Student Publications

There is very little in the law regarding student publications. The California law cited earlier in this chapter provides for such an activity. The operation of student publications is basically dependent upon the governing boards and exists at their will.

Whether or not an institution is liable for what is published in a college paper will depend to a great extent upon the policy of the state in respect to suit against the state for its torts. In Reid vs. University of Minnesota, the court held that acts of the University of Minnesota regents were acts of the state. The same rule was true in Michigan and in Kentucky.

The general rule on liability for improperly published articles in papers is that a newspaper has no more right than a private individual to injure any person's reputation or business through carelessness or recklessness without answering in damages.

Student publications come under the same general authority as do other personnel services listed in this chapter. There is little to add to this statement. Those who are guiding the publications should prevent, if possible, anything that injures a person or a business and may be classed as slander or libel.

Work Opportunities for Students in Colleges

A few colleges, especially those which operated a farm in connection thereto, had a problem of providing labor in the working of the farms. In South Dakota, the legislature stated that:

The president of the college [State College of Agriculture] and President of the Board of Regents shall constitute a committee to fix the rate of wages to be allowed to students for labor on the farm or in the shops or kitchen of the college.

Massachusetts statutes provide that the trustees shall make just and reasonable provision for manual labor on the experimental farm by students of the college. The statutes on Lamar State College of Technology of Texas have somewhat similar provisions, as does the statute for the government of the Agricultural and Mechanical Arts College in Texas.

Alabama law provides that:

As far as may be practicable, students in the college shall be employed in giving assistance in any department of work of the college to enable them to obtain instruction therein but students shall be employed only in cases and to the extent that they may be able to render efficient service without injury to themselves or the college.
Areas of work opportunities for students have been increased by the establishment of the work-study program of the Federal Government. This was discussed in Chapter 5.

Placement

Only one state, California, provides by statute for placement offices in colleges and universities. This statute states that a placement service may be maintained at any state college for the placement of students and former students of the college. A placement service fee in the amount fixed by the director of education may be charged former students using such services. Placement services maintained elsewhere are maintained by virtue of the broad powers given governing boards.

Academic Freedom for Students

It is appropriate to include this subject under a chapter on student activities in a student personnel worker publication. Practically all of the areas of the AAUP statement on academic freedom for students fall within the jurisdiction of the student personnel worker. It is not the author’s intent here to quarrel with the AAUP. By and large, they have come up with a reasonable, workable statement. Most college personnel services already conform in principle to this statement.

Legally, students as such have no rights or freedom apart from those granted by the governing boards, administrators, or faculty. Any rights they have are rights granted to all citizens by the Constitution. It would appear that academic freedom as applied to the student and faculty have one thing in common, the right to freedom outside the classroom.

Basically, academic freedom is based on the right of due process, which has been covered under Chapter 7 on discipline, and upon the right of the student to freedom of speech, press, and other freedoms granted under the Constitution. Unfortunately, for some students the struggle to secure rights seems to be equated with anarchy. “Some students are committed to a concept or philosophy of rights as extreme permissiveness, as freedom to do as they please, as license by any means to gain whatever they desire. Such a thoughtless and superficial employment of the tyranny of force is scarcely evidence of maturity.” These remarks by Williamson are very appropriate. The courts in dealing with the problems of constitutional rights have made some observations that should be given serious thought by personnel workers and others who deal with students.

In the case of U.S. vs. Aarons the court said: “Freedom of speech does not comprehend the right to speak on any subject at any time or place.” In Clemmons vs. Congress of Racial Equality the court said:

“Basic rights of freedom of speech and freedom to peaceably assemble must on occasion be subordinated to other values and considerations.” The court in Baines vs. City of Danville, Va. said:

The First Amendment rights of free speech and assembly incorporated into the Fourteenth Amendment are not a license to trample on rights of others, and First Amendment rights must be exercised responsibly and without depriving others of their rights.

These cases, and others which could be mentioned, all indicate that one person’s rights stop where another’s begin. There can be no absolute right because every person has an equal right and when the various rights (ideas) come in conflict, who is to prevail? Society has set up courts to adjudicate these cases. Colleges and universities have administrators and faculty who must adjudicate the case when these rights come in conflict. There have been a number of cases where picketing has been declared a form of free expression or free speech. This freedom is no more absolute than the others. An Illinois court said:

Picketing cannot be dogmatically equated with constitutionally protected freedom of speech and aspects of picketing going beyond free speech may be subject of restrictive regulations.

Courts on the other hand have generally approved the right of students to hear speakers of their choice and to speak providing it is done in a proper place and under proper auspices. In the area of freedom to guest speakers, Johnson said:

Learning in the extra-curriculum should not be just assimilation of facts. Real attention must be given to their evaluation and application. The process of advocacy may be a highly suitable method of settling disputes in a court of law. It is not an equally valid teaching device if, through unbridled and one sided exercise, students learn only how to relieve their emotional tensions at the expense of others or how to indoctrinate and become skilled in manipulative propaganda techniques. A university, devoted to the search for truth, would be untrue to itself and shirking its responsibility were its out-of-class activities promoting this kind of learning.

Van Alstyne stated:

Reasonable time, place and manner of exercising private rights compatible with the university business is not objectionable when the necessity is clear and enforcement is neutral.

He went on to say:

Students must not be deprived of their academic freedom so long as they pursue their studies well and so long as they respect the rights of others equally to enjoy this and all other opportunities provided by the university.

In the strict sense, none of these rights are academic freedoms. They are freedoms granted by the
Constitution to citizens which are recognized by the college or university. With this recognition comes regulation to fit these freedoms within the framework of the institution, considering its purposes and obligations.

This section will be closed by some quotations from Gallagher. He said:

The eristic action is the ultimately destructive force in academe. It leaves no heuristic possibility. It destroys academic freedom in the same manner as license always betrays liberty . . .

The scholars’ dispassionate detachment has been replaced by the flaming sword of passion . . . right in the heart of academe.

Can administrators, faculty and students alike, all three, together win the battles of academic freedom within the campus or will the eristic pressures of the time reduce the campus to a brutal struggle for power?

Summary

Fraternities, sororities, and other associations are allowed to operate at a state-supported college or university at the option of the governing boards and the faculty of the colleges. In only one state (Mississippi) are they specifically provided for by statute.

Student government may be allowed to operate within state institutions of higher learning under the broad general powers given to governing boards to make rules and regulations for the government of their institutions. California specifically authorizes student government in state colleges by statute.

Student unions and other activities of a like nature are provided for by statute in several of the states. In others, they may be authorized by the governing boards under broad powers.

Student publications are in operation in state colleges and universities by virtue of the general powers granted governing boards.

In some states, provisions are made by statute for student work at the colleges. In other states, governing boards may make rules for student work.

Placement offices are provided for by statute only in California. In other states, placement offices are operated by authority of governing boards.

Academic freedom of students remains an issue in most colleges and universities. Student rights in this area are those granted by the governing boards, faculty, or administrators, and those that have been granted to all citizens of the United States by the Constitution.

Suggested Operating Procedures

In student publications, precaution should be taken to insure that the libel laws are not violated. This appears to be the only possible source of legal action against individuals conducting such publications.

Student government within a college is dependent for its authority upon the governing boards, the faculty, and the administration. In setting up student government in a college or university, the rights, privileges, duties, and responsibilities desired should be spelled out in a charter or other enabling document. When this is done, student government is operating within legal bounds.

Each and every campus should provide a place for students to speak, hear speakers, and generally pass out literature, post signs and otherwise have free speech. The use of this place must be regulated as to time, place and manner but by no other criterion. The invitation of outside speakers should be allowed by organizations providing there have been arrangements made in advance. All speeches, posters, and handouts must conform to good taste and not be libelous or salacious.

The writer is of the opinion that what a student does off campus, except in a very few instances, should not be of concern to the college or university. Only when there is a direct threat to other students should the college take action against a student. The college or university, as an educational institution, may feel that the student needs some extra instruction as a result of his outside activities and may counsel with him, however.

An editorial in the Press Telegram of Long Beach, California, is submitted here:

There are four elements to consider in operating colleges and universities.

1. The public (including students) who picks up the check.
2. Administrators who have a direct responsibility for operation of the institution.
3. Faculty who have the right and responsibility to teach according to their best wisdom. This includes academic freedom to examine and discuss all ideas.
4. The students themselves; schools were created for students.

Colleges are complex institutions. They cannot be operated by the public at large, by administrators alone, by teachers alone or by students. There should be much exchange of ideas between the four elements even to the point of ardent debate. But, in the end the administrators must have the ultimate power to administrate, just as the faculty must have the power to teach. Students should expect their voices to be heard, their ideas to be considered. They should not expect to run the institutions. Each of the four groups should remember its special functions.

There are many groups of the so-called far left who are not interested in dialogue or reason but are against the status quo or are anti-authority. Personnel workers should not let this vociferous minority influence them to the detriment of the majority. They should be treated with fairness and firmness.
Chapter 9

Summary and Conclusions

The legislatures of the 50 states are the basic authority for student personnel services in the state-supported four-year colleges and universities in the United States. A few state universities and colleges secure their basic authority from state constitutions, but even these are subject to the legislatures in some respects. Private colleges derive their authority from their charter or corporate authorization.

Legislatures have delegated responsibility and authority to governing boards, which are charged with the immediate control, management, and operation of the institution. The legislatures have the right, however, to change this basic delegation of responsibility and authority at will.

In some cases the legislatures, by statute, have granted authority to faculties and administrative officers of the institutions. Whenever this was done, the faculty or administrative officers function under governing boards which have authority to legislate on institutional management and act as an appeal agency, with the faculty and the administrative officers executing the rules and regulations set forth.

There are numerous circumstances where legislatures have legislated directly on matters of school policy. This is true more in states where the governing boards are more limited in their authority than in others. In these states the legislatures, by statute, act on many detailed matters that are left to the boards in other states.

Considerable legislation during the past several years has involved many facets of college administration, particularly consolidation of governing boards, housing development, scholarships, construction of student unions, infirmaries, and other buildings, and other activities. This recent legislation has also set up regional agreements for higher education.

There were many court cases involving constitutional interpretations of the First Amendment as applied to the states by the Fourteenth Amendment to the United States Constitution. With most of the Supreme Court's time taken up with civil rights cases this is only natural. The period from 1960 to the present has resulted in a re-evaluation of citizens' rights under the Constitution of the United States. With this re-evaluation and the active participation of students in the movement, there was bound to be a re-evaluation of students' rights under the Constitution.

Trends Indicated by 1957 Legislation

This monograph has a 1959 cut-off date on legislation because the legislative acts after 1959 were not studied for this second edition. The Office of Education has published Circular No. 511 giving a survey of legislation relating to higher education for the period July 1, 1956 to June 30, 1957. In this circular the statement is made that the amount of legislation relating to higher education is rapidly increasing.

A review of this circular indicates that there is a continuing trend toward providing more dormitories and housing facilities, with 14 states passing legislation on the subject in 1957. There was also a continuing trend toward additional state legislation in the field of scholarships, loans, tuition, and fees, with 14 states passing laws on these subjects. In some other states, student financial aid legislation was introduced but not passed. The trend appeared to favor increasing the number and amount of the scholarships and increasing facilities and funds for loans. Tuition charges have been increased in numerous instances.

The trend toward some form of state system for all institutions of higher education instead of individual boards for each appeared to be continuing. Legislation was introduced in six states for this purpose although none was enacted.

Regional Agreements

Regional agreements, as of 1956, covered three areas—New England, the southern states, and the western states. The agreements had been established primarily to make studies of higher education needs in the areas covered and arrangements for students from one state to be educated in the facilities of another state within the region. The impact of these regional agreements on student personnel services cannot yet be
determined. It appears that admission policies regarding non-residents will be influenced by them as will scholarship grants. Activity has already started in these two areas.

Other student personnel services that may be affected are counseling, housing, loans, and tuition and fees. There will probably be, in time, an impact upon all of the services as the regional committees propose legislation of a uniform nature.

Admissions, Continuation, and Records

A few years ago it was believed that state educational institutions of higher learning were required to accept any citizen of the state who graduated from an accredited high school in the state. Laws enacted to date appear to dispel that belief.

Most of the states have authorized the governing boards or administrative officers and faculty to set up rules and regulations for the admission of students. Only a few states still have the requirement that all high school graduates must be admitted to the colleges of the state. Admissions offices have the responsibility for selection based on the criteria set up by the governing boards. These criteria, however, may not be based on race or color, according to the latest decisions of the United States Supreme Court, but on ability, age, availability of space, or other general categories.

The legislatures have, in some cases, set up specific limitations on college enrollment, such as specified age requirements, apportionment according to county population, and other geographical designations. Some legislatures, especially in the South, have also set up race conditions, while in some of the northern states the legislators have forbidden discrimination. Certain schools will accept only students of the same sex.

No person who is qualified may be denied admission to any public institution because of race, color, national origin or religion. The courts will not allow any college or university to refuse admission under a subterfuge, as they look at the intent and actual practice rather than at the law itself.

Admissions may be denied on any other grounds if they are reasonable and apply to all alike. This denial may be made on the basis of grades, residence, college quota being filled, failure to complete records or any number of other reasons of like character.

It appears that a person who is admitted to a college or university is entitled to complete work leading to a degree providing all the rules and regulations of the school are adhered to. Failure to comply with either scholastic or disciplinary rules may subject the student to exclusion from the institutions. The faculty and governing boards are granted discretionary power to determine who may continue in college, subject, of course, to the limitations imposed by the rules. Due process is required for separation for disciplinary reasons.

Records and record-keeping are left to the determination of the boards. In the case of institutions that have gone out of business, a few states have provided for the disposition of the records. This appears to be a matter requiring legislation in most states.

There has been some agitation over who may see records. This agitation has resulted in legislation in California and maybe in other states. The general rule is that records may be shown upon the request of the student to anyone. Without the student's request, the records may not be shown to persons outside the institution. They may be interpreted to government agencies or prospective employers, however. This interpretation should be made by some one person in the institution who is qualified to make such interpretations.

It is not necessary to have a direct request for interpretation of records. It is reasonable to assume consent when the student has applied for a job, used the college or university as a reference, asks for deferment from the draft or like cases.

The personnel worker should give out information only upon request from one entitled to know, and then give only the information requested.

Housing and Food Services

There has been a great deal of legislation on housing and food services during the past 15 years. This activity centers around authorization for building housing and food service facilities. The legislation is enacted to take advantage of federal funds for these activities.

The legislation has provided authorization to borrow money, issue bonds, and accept gifts. The buildings are supposed to be, in general, self-liquidating and not obligations of the university or the state. The receipts from the buildings and fees charged students are pledged as security and are used to repay the money secured for building.

The policy of legislatures in this area has been not to use tax money but to let the students who use the facilities pay for them. The same is generally true of all other revenue-producing buildings.

There is very little legislation on the operation of the housing and food services. The operation and control as well as construction have been left to governing boards. In a few instances, where states have set up special housing authorities to construct and liquidate the indebtedness, the governing boards, faculty, or administrative officers are charged with the supervision of the buildings and the activities using them.

The courts have declared legislation on housing as constitutional. In some cases, they have declared that
the governing boards have power to build housing without specific legislative authority. It is generally conceded that colleges and universities can provide for the housing and feeding of their students and compel students to patronize college-operated housing in lieu of other types of housing.

Legislation and court decisions on housing and food services appear to provide adequately for housing and food services for students at state institutions. They authorize institutional control over the students and the facilities used for housing and food services.

**Student Loans, Scholarships, Tuition, and Fees**

The trend since World War II has been to increase tuition and fees at state colleges and universities. The courts, when asked to intervene, have held that the tuition and fees charged are authorized. This is true even when the constitution states that attendance shall be as nearly free as possible.

The states have set up scholarships and loan funds in greater numbers and amounts in the past few years. In most cases the scholarships include free tuition and fees. A tendency has been to establish cash scholarships without specification as to the type of college, public or private, that must be attended. New York, Illinois, and California may be specifically singled out as states offering such scholarships.

Scholarships, in the most part, are limited to those who need assistance in order to attend college. They have also been given generally for study in fields in which there is shortage of personnel in the state, such as teaching, medical and dental work, and nursing. In many cases, a person is required to teach or practice medicine, dentistry, or nursing in the state for a specified time; failure to do so requires the student to refund the amount of aid received.

More extensive provisions for student loans have been set up in a large number of states. The scholarships that require a work commitment become loans, in fact, if the work is not performed. As the cost of schooling goes up, there is every reason to suppose that the provisions for scholarships and loans will increase, especially for the needy.

Although scholarships may not be restricted as to race or color, they may be restricted as to geography (many are), ability, and need. On the whole, scholarships best serve the needs of the citizens when they are based on ability and need only, rather than on other grounds. Some scholarships are limited to minority groups, such as those set up for Indians in three states. Courts have upheld scholarships and loans without race or color restrictions.

**Health and Counseling Services**

It appears to be a duty of colleges and universities to look after the health, morals, and welfare of the students who attend them. Institutions of higher learning are justified, therefore, in providing health services and counseling services. The legislatures have recognized this need, especially for health services, by providing authorization for infirmary buildings and the right of the colleges to collect fees for such services. The courts have generally approved health services when called upon to decide cases where they are involved.

Only two states have provided any legislation on counseling and guidance, and this has been for vocational guidance. State institutions, under the health and welfare provisions, are, however, authorized to set up and operate counseling services if they are considered advisable by governing boards. A few states have provided for privileged communications for counselors, with the same rights as those granted the medical and legal professions.

**Student Discipline**

All states authorize the governing boards to exercise disciplinary control over their students. Some delegate this authority to the faculty and the administration by statute; others authorize the boards to delegate; and still others make no mention of it, but the authority to delegate is implied from broad board powers.

In general it appears that it is necessary to give the student some form of hearing before dismissal or suspension. This hearing does not have to be a formal one such as required by a court of law. The hearing requirement appears to be satisfied if the student is called in, informed of the charges, and given a chance to answer them. A great deal of discretion is allowed the disciplinary authorities in the administration of discipline, and the courts will not interfere unless the actions are arbitrary, unreasonable, prejudiced, or fail to give the student due process.

The best policy to follow in disciplinary cases appears to be to give the student a chance to hear the evidence against him or her from the witnesses themselves and to present evidence in his or her defense before the disciplinary authority.

**Student Activities**

Only a few of the many extracurricular or non-classroom activities engaged in by students are covered in this monograph.

The law is that fraternities, sororities, and other student associations exist at a college subject to the
will of the governing boards, the faculty, or the administration. The institutions set up the rules under which they operate and continue to exist.

Student government exists at a college or university subject to the expressed will of the governing boards and with their power or authority limited to that granted by the boards. Only California authorizes student government by statute. In all other states, their authorization is based on general powers of boards to legislate for their institution. There appears to be no question as to the authority of the boards to institute student government if they so desire.

Student unions and other revenue-producing student buildings and activities are authorized by statute in most states. The legislative authority is contained in statutes authorizing construction of such buildings and their control by the college or university. Courts have interpreted the statutes as constitutional and within the power of the legislature to legislate for the health, morals, and welfare of the students.

Publications are not mentioned in the statutes. The operation of student papers and other publications appears to be subject to board control and authorization.

There has been a great deal of agitation over student activities during the past few years. Students have been demanding the right to bring speakers on the campus, engage in civil rights and other activities, and participate in the policy-making committees of the college or university.

There is no question that under the Federal Constitution students have the same rights to freedom of speech and assembly as do other citizens of the country but under rules and regulations which protect the rights of all citizens.

The college or university cannot be discriminatory in who may or may not speak on campus. If one ideology is allowed to be presented, all should be represented. A place should be set up for speakers and rules established as to time and manner so that students can hear all varieties of opinion and ideas.

The college or university should allow its students to participate in organizations regardless of the type of ideology that the organization may express, but students have no right to engage in illegal actions or violate city, state, or college laws and regulations. Responsibility must go hand in hand with rights.

The question of participation in policy-making will find support and opposition from members of the faculty and administration. Student personnel workers are often in the middle. Personnel services at colleges and universities are part of the educational processes of the institution. If one asks himself “What educational purpose is served?” before taking sides, there will be less participation or advocacy of participation. Student activities should not be made the basis for a power struggle within the institution.

Student academic freedom is a question much in the forefront these days. Most of the problems involved fall within the student personnel worker’s responsibility. These problems should be faced from an objective point of view and not through the emotionally charged biases that have prevailed in many colleges and universities. Fair play and constitutional values are the keys.

Liability of Institutions

Colleges and universities supported by the state are agencies of the state and, as such, not subject to suit for torts. This is the general rule. In the states that authorize suit by statute, the colleges and universities are subject to suit for torts. The board, faculty, and administration are required to act without malice and in a reasonable manner at all times if they are to be free from personal liability.

There are certain acts of the administration that are privileged. Letters to parents of students informing them of any infraction of the rules or any misconduct may be written without excessive fear of personal suit for libel. The administrative personnel responsible for housing can inform students about undesirable housing without fear of being required to pay damages. Students can be required to patronize school facilities to the exclusion of outside facilities and refused permission to patronize any outside activity that the school authorities consider unsafe or dangerous to health, morals, or welfare.

It appears that as long as the school authorities act for what they consider the best interests of the students and the institution, they may do so without being held liable in damages for their actions. Absence of malice or prejudice is sufficient defense.

Conclusions

There is adequate authority, either through legislation or court decisions, for the operation of all included student personnel services at state-supported colleges and universities. This authority is granted directly through statutes or implied from the powers granted to governing boards by statute.

The state legislature is the basic authority for all activities of the colleges and universities supported by the state except in the few institutions that derive their basic authority from state constitutions.
The state legislatures, as a general rule, delegate to governing boards the power to act for their institutions in all matters not specifically forbidden by law or taken cognizance of by them.

The courts generally have been liberal in their interpretation of statutes and actions taken by institutions, granting wide discretionary power to boards, faculty, and administrators. Discrimination because of race or color in admissions, scholarships, or any other matter has been held by the Supreme Court of the United States to be unconstitutional under the Fourteenth Amendment to the United States Constitution.

The civil rights movement and the appearance of activists on the campus have brought new problems to the campus during the six years since the original monograph was written. These problems were not always solved in an equitable manner so the solutions were challenged in the courts.

The court cases clarified the status of students in relation to their constitutional rights as citizens of the nation. With these rights, however, go responsibilities, and the courts have held students to the same degree of responsibility in exercising their rights as is required of non-students. Institutions of higher learning must give the student a fair and impartial hearing before suspending or expelling him. They must allow all types of speakers on campus as long as there is no threat to the health and safety of the students or public. They must allow students freedom of speech and assembly as long as there is no violation of the rights of others. And they must make rules and regulations that are clear and do not discriminate.

The normal operation of institutions of higher learning have not been changed nor have their purposes. The education of the youth of the state is still their primary purpose and in this purpose the law has made no change. Actions that are clearly within this purpose will not be questioned by the courts.

If student personnel workers consider the purposes of the institution and the educational value of their actions they will be doing a service to both the student and the institution. Students are in a college or university to learn, not teach. What they learn will not depend upon what power they can exercise or how much they participate in running the institution, but how well they are able to fit into the greater society once they graduate. This means learning to live in the academic community under the rule of law as preparation for the same type of living in the greater community after graduation.

A college or university acts in loco parentis to its students. It can do anything that the parent can do as long as it is done without malice and for what is thought to be for the best interest of the student and the institution.

In brief, it may be said that a state-supported college or university is an instrument of the state set up to furnish education to those citizens of the state who can profit from such education. Students are admitted and continued on that basis. They are furnished needed financial assistance and facilities to further this education. The state has given the job of internal administration of the institutions to a governing board, administrators, and faculty who are charged with the responsibility of seeing that the colleges and universities under their charge perform this function in an efficient manner. Those boards, administrators, and faculties, acting within the scope of their respective authorities, have wide discretionary power in accomplishing their mission. Whatever they believe to be for the best interest of the students and the institutions can be performed by them if not contrary to law or common usage or acted upon directly by the legislature. This includes any and all personnel services as well as academic work.

It appears that the boards, administrative officers, and faculty will be protected by the courts in what they do as long as they act without malice or prejudice and within the framework of their respective authorities. They have wide discretion in matters affecting their institutions and students.

Differences in State Laws

There is a great deal of similarity in the laws of the several states, but there are also some marked differences considered worthy of special mention.

In the matter of admission, considerable difference is noted. Some states set up special colleges for colored students and forbid the mixing of the races in their institutions, while others specifically forbid segregation because of race or color. In some state colleges, admission of all graduates of accredited schools is required, while in others the institutions are allowed to set up rules for admission.

Some states have made private institutions the university of the state and have given financial support to these private institutions. Other states have set up state-supported institutions wholly separate from private institutions.

Some states have, by law, established one university system in the state to govern all state-supported educational institutions. These institutions are all under one board of regents. In many states, each individual college or university is independent of all others in the state, and each is operated under a separate board. Still other states have a combination of these two systems; a higher education board has been set up with authority.
over finances and other specified activities. In this type of organization, the individual colleges retain all power not specifically delegated to the higher board. Another form of organization leaves some institutions separate and independent but combines other institutions under one board.

In the field of scholarships there is a wide difference. Some states provide no scholarships, while others have an extensive scholarship program. Some states authorize their universities or colleges to provide for scholarships. Others forbid the issuance of scholarships unless authorized by the legislature. In some states, state scholarship grants are limited to those attending state institutions, while in others the grants are usable in both private and public institutions.

There are also variations in tuition and fees, ranging from no tuition to mandatory tuition. Some states leave the amount of tuition and fees to the governing boards, while others set up minimum tuition and fees below which the institution may not go.

In the housing field there is general agreement. Some states, however, provide for housing by legislative act, and others grant the boards broad general powers from which authority is gained. Housing authorities built the dormitories in some states; in others the boards were authorized to do the building. A few states provide for housing out of state funds exclusively.

These differences are not the only ones found in state laws but are mentioned here because of their importance.
1. Abernathy vs. Patterson, 295 F. 2d 452 (CA Ala 1961)
2. Aday vs. Superior Court of Alameda County, 13 Cal Rptr. 415 (1961)
3. Adler vs. City Council of City of Culver City, 7 Cal Rptr. 805 (1960)
4. Alabama College vs. Harmon, 234 Ala. 446 (1938)
5. Ali vs. Heinze, 41 Cal Rptr. 108 (1964)
7. Anthony vs. Syracuse University, 231 N.Y.S. 435, 224, App. Div. 487 (1928)
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