

073-296—August 17, 1973

UNIVERSITIES

AUTHORITY OF BOARD OF REGENTS TO SET TUITION

To: *Mallory E. Home, Senate President, Tallahassee*

Prepared by: *Rebecca Bowles Hawkins, Assistant Attorney General*

QUESTION:

Does the board of regents have the authority to collect student registration and tuition fees for the 1973-1974 academic year in accordance with the schedule approved by the legislature for the 1972-1973 academic year, in the absence of affirmative action by the 1973 Legislature approving such a schedule?

SUMMARY:

In the absence of affirmative action by the 1973 Legislature altering, amending or changing the schedule of university registration and tuition fees approved by the 1972 Legislature for the 1972-1973 academic year, the board of regents has the authority to collect such fees for the 1973-1974 academic year in accordance with that schedule.

The history of the legislative act applicable to a determination of your question requires an affirmative answer.

Prior to 1959, there were no statutory limitations upon the power of the board of regents to fix the student registration and tuition fees. In that year, the legislature adopted Ch. 59-470, Laws of Florida (carried forward as §239.022, F. S., 1959, now §240.062, F. S.), to provide that

(1) The board of control shall *each biennium* recommend to the legislature the types and amounts of registration fees, tuition fees, and course fees which shall be charged and collected from all students as provided in section 239.02, Florida Statutes, in the respective state universities, and the board of control shall recommend to the legislature the disposition and use of said fees. The legislature shall consider the recommendations and shall approve, alter, amend or change in any manner it determines to the best interests of the state the types and amounts of said fees and the disposition and use of said fees *for the ensuing biennial period or periods.* (Emphasis supplied.)

This statute, in effect, imposed upon the board of regents the duty to fix, for each biennium, a suggested or "recommended" schedule of registration and tuition fees and required the legislature to "approve, alter, amend or change" such fees "in any manner it determines to the best interests of the state . . . for the ensuing biennial period or periods." (Emphasis supplied.) Pursuant to this statutory authority, the board recommended and the legislature adopted schedules of fees for the 1959-1961 and 1961-1963 bienniums. However, the schedule proposed by the board for the 1963-1965 biennium was not approved by the legislature nor was any other action taken by the legislature on this matter; and—apparently pursuant to an informal opinion by an assistant attorney general—the fee schedule approved by the legislature for the 1961-1963 biennium was followed for the 1963-1965 biennium.

It was in this context that the legislature adopted Ch. 65-123, Laws of Florida, expressly declaring in §1 (§240.052, F. S.) that the board of regents is invested with "full power and authority" to make all rules and regulations governing admissions of students into the state university system, including the "amount of registration fees, tuition fees, activity fees, board, etc., as the said board may from time to time

deem necessary." In §2 of the 1965 act, the board amended §239.022, *supra* (and transferred it to §240.062, F. S.), to read as follows:

The board shall submit the types and amounts of registration fees and tuition fees to the legislature *before said fees may become effective*. The legislature shall consider such fees and shall approve, alter, amend or change them in any manner it deems to be in the best interest of the state. (Emphasis supplied.)

It is a well-settled rule of statutory construction that it should never be presumed that the legislature intended to enact purposeless and therefore useless legislation. *Sharer v. Hotel Corporation of America*, 144 So.2d 813 (Fla. 1962). This rule is equally applicable to statutory amendments. *See Arnold v. Shumpert*, 217 So.2d 116 (Fla. 1968). And, when considered in the light of the circumstances recounted above, it is reasonable to infer that the legislative intent in adopting Ch. 65-123, *supra* was to avoid any possibility that the statute might be interpreted as creating a hiatus with respect to registration and tuition fees in a particular biennium when the House and the Senate could not agree upon the fee schedule submitted by the board of regents for approval, or any alternative schedule. This it did by expressly confirming in the board of regents its power to fix registration and tuition fees—subject to legislative approval before the fee schedule should become effective—and by eliminating the requirement that a proposed fee schedule should be submitted and approved by the legislature *for each biennium*. The clear import of the statute, as amended, is that a fee schedule submitted by the board does become effective when approved by the legislature and remains effective until altered, amended, or changed by the legislature in such manner as it "deems to be in the best interest of the state."

This interpretation of the statute is not only in accord with logic and reason but is also confirmed by the expression of legislative intent appended to the appropriations for the Division of Universities, Department of Education, in the 1973 General Appropriations Act (Items 247-250A) as follows:

Calculation of the amount of matriculation fees, out-of-state tuition fees and Continuing Education Course fees included in incidental Trust Fund appropriations is based on SCR 1230, *which was approved by the 1972 Legislature*. (Emphasis supplied.)

Accordingly, you are advised that the university registration and tuition fee schedule which was approved by the 1972 Legislature for the 1972-1973 academic year and which was not altered, amended, or changed by the 1973 Legislature remains in effect and is applicable to the 1973-1974 academic year.

073-297—August 21, 1973

STATE PROPERTY

TITLE TO PROPERTY OF TURNPIKE AUTHORITY VESTED IN STATE

To: *Vernon C. Holloway, Chairman, House Committee on Transportation, Tallahassee*

Prepared by: *Sharyn Smith, Assistant Attorney General*

QUESTIONS:

1. Is title to all tangible property of Florida's Turnpike vested in the state (*i.e.*, Department of Transportation)?
2. If the answer to question 1 is in the affirmative, is the Department of Transportation required to comply with Ch. 273, F. S.,