

a county does not have sufficient funds for extraordinary repairs as provided for in *R.S. 27:14-47*, it may issue bonds in a certain sum to defray the costs of such repairs. The commissioner may permit up to 50% of the motor vehicle fund allotment made by the State to the counties each year to be used for the payment of interest on such bonds or for the retirement of such obligations. The commissioner is further limited by the statute as to the amount he may allow for debt service because he must at all times leave in the allotment an amount sufficient for proper repair and maintenance of the other existing county roads, i.e., for *ordinary* repairs.

Thus, where the fund is to be used to pay interest and principal on bonds issued to finance extraordinary repairs or construction, the clear legislative intent is to limit the amount of the fund that may be allocated thereto to not more than 50% as prescribed by *R.S. 27:14-48*.

Very truly yours,

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Acting Attorney General

By: HAROLD J. ASHBY
Deputy Attorney General

FEBRUARY 19, 1958

BOARD OF GOVERNORS
Rutgers, The State University
New Brunswick, New Jersey

MEMORANDUM OPINION—P-10

GENTLEMEN:

You have requested our opinion as to whether Rutgers, The State University, can legally make a contract with a single contractor for the construction of certain projected university buildings or whether multiple contracts should be let.

R.S. 52:32-2 provides:

“When the entire cost of the erection, construction, alteration or repair by the State of any public buildings in this State will exceed one thousand dollars, the person preparing the plans and specifications for such work shall prepare separate plans and specifications for the plumbing and gas fitting and all work kindred thereto, the steam and hot water heating and ventilating apparatus, steam power plants and all work kindred thereto, and electrical work, structural steel and ornamental iron work.

“The board, body or person authorized by law to award contracts for such work shall advertise for, in the manner provided by law, and receive separate bids for each of said branches of the work and shall award contracts for the same to the lowest responsible bidder for each of the branches respectively.”

Under the provisions of this statute, contracts for the “construction * * * by the State of any public buildings,” no matter how or by whom the construction is financed, are not to be let to a single bidder for the entire job, but are to be awarded

separately to the lowest bidder on each of certain enumerated branches of the work. The issue raised by your inquiry, therefore, is whether the construction of buildings by Rutgers, The State University, is "construction * * * by the State of any public buildings."

The policy of requiring separate bidding for different categories of work upon a State building was first established by Chapter 95 of the Laws of 1915. The original date of enactment of R.S. 52:32-2 thus antedates the establishment of Rutgers University as presently constituted, L. 1956, c. 61.

Prior to its reorganization in 1956, Rutgers had been treated in certain respects as an agent of the State. An opinion by Attorney General Wilentz filed on October 8, 1935, informed the Works Progress Administration that certain schools within the University were, for the purpose of Federal grants, agents of the State. In a Memorandum Opinion filed March 31, 1955, we advised that Rutgers was a State instrumentality for the purpose of determining eligibility of its employees for benefits under the Federal Social Security Act.

Chapter 61 of the Laws of 1956 provided for the first time for public control over the administration of Rutgers University. The 13-member Board of Governors has 11 voting members, 6 of whom are appointees of the Governor with the advice and consent of the Senate, and 5 of whom are subject to appointment by the Board of Trustees from among the Alumni Trustees, Alumnae Trustees and Charter Trustees. The Board of Governors has general supervision over the conduct of the University, with authority and responsibility to determine policies, direct and plan expenditures, borrow money for the needs of the University, enter into purchases, determine salaries, approve expenses, and generally to manage The State University. Theretofore, except as to the State Agricultural College and to a limited extent other branches or departments, the State had not had direct control over the management and administration of Rutgers University.

By L. 1956, c. 61, the name of the corporation "The Trustees of Rutgers College in New Jersey" was changed to "Rutgers, The State University." The corporation continues as an instrumentality of the State for the purpose of maintaining the State University, with all of its property and educational facilities impressed with a public trust for higher education of the people of the State. Similar provisions designating Rutgers as an instrumentality of the State for providing public higher education and impressing the property of the Trustees of Rutgers College in New Jersey with a public trust for higher education were set out in L. 1945, c. 49, but without the vesting of voting control in a Board of Governors dominated by public appointees.

The existing Board of Trustees of the corporation formerly known as the Trustees of Rutgers College in New Jersey was continued, although no longer bearing the identical name as the corporation and superseded as to its essential management responsibilities and functions by the Board of Governors. The limited powers of the Board of Trustees within the corporation are set forth in section 19 of the 1956 Act:

"I. The Board of Trustees

"(1) Shall act in an over-all advisory capacity;

"(2) Shall (a) control (i) properties, funds and trusts vested as of August 31, 1956, in the Corporation in possession, or remainder, or expectancy (other than and expressly excluding properties and funds owned by or titled to which is the State of New Jersey or which are held upon an express trust for the use of the State, or which have been acquired by the use of moneys

appropriated by the State or by the Federal Government to the use of the Corporation or the Land Grant College of New Jersey, including but not limited to real estate, buildings, improvements, fixtures, and appurtenances thereto, and tangible personal property); and (ii) properties, funds and trusts received by the Corporation on or after September 1, 1956, by private gift, donation, bequest or transfer, in any manner, under the terms of any applicable trust, gift, bequest or donation dated or delivered (aa) prior to September 1, 1956, unless otherwise designated, or (bb) on or after September 1, 1956, if so designated; provided, however, that all property, educational facilities, rights and privileges which are impressed with a public trust for higher education of the people of the State of New Jersey shall continue to be so impressed; and (b) make available (after meeting all expenses of its administration) to the Board of Governors the income from such funds and the use of or income from such properties, subject to the provisions stated hereinafter in Section 20;

"(3) Shall have sole authority over the investment of funds under its control;

"(4) Shall have power to maintain such administrative staff and incur and pay such expenses as it deems reasonably necessary to the effective exercise of its functions and responsibilities under this Act or by reason of any other fiduciary responsibilities to which it is subject; and

"(5) Shall be represented on the membership of the committees of the several colleges."

In addition, the Board of Trustees was vested with a power over the Board of Governors in two administrative functions: (1) the borrowing of money (L. 1956, c. 61, section 18(5)), and (2) the election of president (L. 1956, c. 61, section 27(c)).

In resolving whether Rutgers is the *alter ego* of the State for the purposes of R.S. 52:32-2, no particular significance is attached to the remaining private control over the appointment of 5 of the 11 voting members of the Board of Governors by the Board of Trustees. Such arrangements are by no means unique in State government. For example, by R.S. 4:1-5 the annual Farmer's Convention makes nominations to the State Board of Agriculture which apparently must be ratified by the Governor; similar provision for the nomination of the Fish and Game Council is found in N.J.S.A. 13:1B-24. Direct appointment by private groups of members of State boards of managers or trustees are commonplace, e.g., R.S. 30:7-1 and N.J.S.A. 43:16-6.1.

We note the strong statement of "public policy" that the University shall continue to be given a high degree of self-government, L. 1956, c. 61, section 20, and that nothing in the act "shall be deemed or constituted to create * * * a debt, liability, or a loan or pledge of the credit, of the State of New Jersey." L. 56, c. 61, section 34. Nevertheless, it is evident that since the majority of the Board of Governors is appointed by the Governor, the public is granted major control over the policies and administration of the University.

We also note the language of section 21 of chapter 61 which provides:

"The Boards shall have and exercise the powers, rights and privileges that are incident to their respective responsibilities for the government, conduct and management of the Corporation, and the control of its properties and funds, and of the University, and the powers granted to the Corporation

or the Boards or reasonably implied may be exercised without recourse or reference to any department or agency of the State, except as otherwise expressly provided by this Act or other applicable statutes."

We have indicated, in Formal Opinion 1956—No. 9, dated July 2, 1956, that the functions exercised in the past by the Division of Purchase and Property with respect to purchases and construction for Rutgers have now been expressly reserved as functions of the new Board of Governors under Chapter 61 of the Laws of 1956. This relocation of the power to contract has no application to the question at hand since R.S. 52:32-2 is directed to "The board, body or person authorized by law to award contracts. . ."

In *Trustees of Rutgers College of New Jersey v. Richman*, 41 N.J. Super 259 (Ch. 1956), Rutgers University, as constituted after the reorganization of 1956, was found to be "an *alter ego* of the State, to which donations of land and appropriation of money might be made without offending the constitutional prohibition against gifts or appropriations to private corporations or associations," p. 298. In that case the court, at page 296, pointed out that:

"State appropriations pursuant to L. 1956, c. 61, will be made not to the Board of Trustees, which continues in existence after September 1, 1956 with limited powers, but to 'Rutgers, The State University,' a State instrumentality for public higher education whose property and assets are impressed with a public trust for that purpose. The disbursement of State funds will henceforth be to a public instrumentality under the control of the State and for the fulfillment of the important objective of providing higher education for the people of the State."

While it is true that Rutgers University is a corporation, and thus constitutes a legal entity with a limited capacity, yet when all the provisions of its reorganization in 1956 are examined, it is made very clear that the corporation designated "Rutgers, The State University" was created and exists for the sole purpose of more conveniently governing the educational institution called the "University." The language appearing in *University of Utah v. Bd. of Examiners of State*, 4 Utah, 2d 408, 295 P. 2d 348 (S. Ct., 1956) is here particularly applicable:

"The university is clearly a State institution, and is so treated, since the members constituting its governing board are appointed by the Governor. * * * Moreover, the corporation holds all the property in trust merely. * * * While the naked legal title to the buildings and paraphernalia may be vested in the corporation, it is nevertheless held in trust * * *." 295 P. 2d 364.

It is our opinion, and you are so advised that, for the purposes of R.S. 52:32-2, construction of buildings by "Rutgers, The State University," is "construction * * * by the State of any public buildings," and that therefore, to effectuate such construction, multiple contracts must be let.

Very truly yours,

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