



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

October 11, 1977

ATTORNEY GENERAL OPINION NO. 77- 335

Mr. John J. Conard
Executive Officer
Kansas Board of Regents
Suite 1416 - Merchants National
Bank Tower
Topeka, Kansas 66612

Re: Colleges and Universities--Real Property--Title

Synopsis: Title to real property which has been acquired with the proceeds of the student union satellite acquisition fund at the Emporia State University is properly vested in either the Board of Regents or the University itself, and not in the Memorial Union Corporation, a nonprofit private corporation.

* * *

Dear Mr. Conard:

With your letter of October 5, 1977, you enclose an inquiry from President Visser of Emporia State University, concerning the acquisition of certain real property.

In 1977, the Kansas legislature appropriated the sum of \$80,000 to Emporia State College, now Emporia State University, from the student satellite acquisition fund. This sum has been used to purchase certain real estate in the City of Emporia, which has been titled in the name of the Memorial Union Corporation of Emporia State University. The property is being renovated by the Memorial Union Corporation to be utilized as an off-campus Conference Center, a use which will further serve the educational and institutional needs of the University.

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The question is raised, first, whether the real estate which has been so acquired may lawfully remain titled in the Memorial Union Corporation of Emporia State University. The corporation is a private nonprofit corporation, organized initially to collect, receive and disburse funds for the erection and equipment of a Memorial Union Building on the grounds of the institution now known as Emporia State University, and to operate these facilities. The corporation remains, nonetheless, a distinct legal entity, separate and apart from the University itself or the State Board of Regents. It is not the legal representative of the University or of the Board. Title to property which is purchased with public funds, appropriated for that purpose by the Kansas legislature, is properly vested in either the Board of Regents or, with its approval, in the University itself, and not in any third party, such as the Memorial Union Corporation. Questions concerning the vesting of title to this property may have arisen because of some misapprehension concerning the status of student activity fees, the proceeds from which may have been used in whole or in part for the purchase of this property. K.S.A. 1976 Supp. 76-719 provides thus:

"The board of regents shall fix tuition, fees and charges to be collected by each university and college. If a university or college collects a student-activity fee, the funds so collected shall be set apart and used for the purpose of supporting appropriate student activities."

Student activity fees are expressly authorized by state law, they are dedicated by state law to "appropriate student activities" which in turn are determined by the Board of Regents and the administrative heads of the respective institutions under the control of the Board, and those fees are appropriated annually for that purpose by the Kansas Legislature. They are public funds, and this property, which has been acquired with those funds, is properly vested only in the Board of Regents or the appropriate university involved.

You ask, secondly, whether, if the property remains titled in the Memorial Union Corporation, and is used for educational purposes, the property will be exempt from taxation as if it were titled in the University itself. Under K.S.A. 1976 Supp. 79-201, second, all real and tangible personal property which is "actually and regularly used exclusively for literary, educational, scientific,

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religious, benevolent or charitable purposes" is exempt from taxation. [Emphasis supplied.] Claims for exemption must be made and determined, however, pursuant to K.S.A. 1976 Supp. 79-210. Assuming that the property is actually and regularly used for educational purposes, however, it appears to be entitled to exemption from taxation. We suggest, however, that steps be taken to title the property in question in the University, with the approval of the State Board of Regents, for the property was purchased with state funds for the use of the University itself, and I find no authority for vesting fee simple or any other title to the property in any third party.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj