

CONSTITUTIONAL OR STATUTORY AUTHORIZATION FOR THE ESTABLISHMENT AND OPERATION OF THE UNIVERSITY OF ARKANSAS

The legal authorizations for the establishment and operation of the University of Arkansas and its various divisions are found in constitutional provisions, state statutes, its authorization as a public corporation, in its implied trustee powers and in the judicial decisions.

The University of Arkansas has no charter, as such. Act 44 of 1871, Acts of Arkansas (see (100.1), copies of which are attached in Appendix I, confers much discretionary power upon the Board of Trustees. Among other things it provides, "...who shall constitute a board of trustees, with all authority and necessary powers to carry out the provisions of this act, in locating, organizing and maintaining such industrial university..." It was also provided that: "...they may, from time to time, as the finances will allow, and the advancement and necessities of the institution require, fill other chairs, and add to the buildings, furniture, libraries, apparatus and other things proper to the full operation and well-being of a first class university."

The University of Arkansas is the land-grant institution of Arkansas. See Act 28 of 1867 (Ark. Stats. 80-2849); Act 29 of 1889 (Ark. Stats. 80-2852); Act 130 of 1891 (Ark. Stats. 80-2853); Act 289 of 1915 (Ark. Stats. 80-2857). In the original act establishing the University, Act 44 of 1871, it was provided that it was the duty of the Board of Trustees to "...carry on such university according to the true spirit and intent of the acts of Congress in reference thereto..." which is a reference to the land-grant status of the institution. See also Act 183 of 1929; Senate Joint Resolution 2 of 1937.

It should be noted that the Board of Trustees of the University of Arkansas is by law made a body politic and corporate and given all powers of a corporate body, subject to the Constitution and Laws of the State of Arkansas. Ark. Stats. 80-2804. Under Ark. Stats. 80-2812 the Board of Trustees has the power to prescribe all rules and regulations for the government and discipline of the University, subject to the Acts of the General Assembly.

The University of Arkansas has a broad reservoir of powers sufficient to achieve its mission in the assigned area of higher education, as demonstrated by the finding of the Arkansas Supreme Court. In Lindsay v White, 212 Arkansas 541, 206 S.W. 2d 762 (1947), a case involving the University of Arkansas as a party, the Court stated that the trustees have not only all powers specifically delegated, but such additional or implied powers as may be necessary to carry out the trust purpose with which they are charged. Section 186 of the Restatement of Trusts was quoted, as follows:

In addition to the powers conferred in specific words by terms of the trust, the trustee has such powers as are necessary or appropriate to carry out the purposes of the trust and are not forbidden either in specific words or otherwise by terms of the trust. It is to be inferred that the settlor intended to confer upon the trustees such powers as under the circumstances known to or anticipated by the settlor are necessary or appropriate to carry out the purposes of the trust. The trustee can properly exercise such powers

as it appears from the language used in the trust instrument were intended to be conferred upon him, although not conferred in specific words...

The trust obligation of the Board of Trustees of the University of Arkansas is to conduct higher education. According to the Court this includes the implied authority to achieve that end.

The Constitutional authorization for the University of Arkansas is found in Arkansas Constitution, Amendment 33 (See Appendix I). Section 2 of that Amendment provides that the powers vested in the Board shall not be transferred unless the institution is abolished or consolidated with some other State institution. This gives constitutional protection for the powers of the Board of Trustees as of January 15, 1943, when this Amendment was effective. Thus any authorizations and powers of the Board existing prior to 1943 could not be transferred away from it by statute or administrative order unless the institution as a whole was dissolved.

By the provisions of Act 95 of 1887, Section 2 (Ark. Stats. 80-2804) certain residual powers are possessed by the Board of Trustees. This provision "blankets in" the power and authority possessed by the Board as of May 30, 1987. All of these powers would still be exercisable by the Board unless expressly repealed or impliedly repealed by legislative action since that date. There are numerous laws expressly referring to the University and its powers prior to this date and other laws which, by implication, are applicable to the University prior to this date.

General reference may be made to Arkansas Statutes 80-2801 through 144. These are the statutes, whenever enacted, which were still in force, in the opinion of the editors of this digest of statutes, at the time of its publication, and which expressly referred to the University of Arkansas or one of its main divisions. General reference is made to these statutory references to show the legal authorizations under which the University operates, the provisions relating to its programs and its development. These sections have history lines which will indicate changes which may have been made in the legal authorizations. It is to be noted that not all of the laws expressly referring to the University of Arkansas are found at this place. None of the appropriation laws appear here and there are numerous special laws involving the University which were not deemed of general consideration to be included in this publication.

An historical comment may be made. Apparently it is only in recent years that legislation has been enacted specifically directing the Board of Trustees of the University of Arkansas to institute certain programs, divisions, schools, etc. Prior to this time, legal authorizations were general in nature and the discretion of the trustees, as trustees was relied upon to effect a program of higher education under the operation of the University of Arkansas, said Board having general authority, both express and implied, to determine the nature of the University operations. Therefore, it would not be correct to assume that there is no legal authority for the University to operate a particular program now operated merely because of the absence of a specific legislative direction to operate that program.

Among the expressly provided general authorizations to the Board of Trustees, attention is directed to the following:

- (a) Power to establish rules and regulations for the government and discipline of the University generally, subject only to provisions in the statutes: Act 95 of 1887, Ark. Stats. 80-2812.
- (b) Power to sell donated land: Act 164 of 1901, Ark. Stats. 80-2811.
- (c) Power to fix salaries of employees: Section 16 of Act 44 of 1871: Ark. Stats. 80-2813.
- (d) Authority to elect financial officer: Section 10 of Act 224 of 1913, Ark. Stats. 80-2821.
- (e) Authority to hire purchasing agent and registrar: Section 8 of Act 289 of 1915, Ark. Stats. 80-2822
- (f) Authority to hire faculty and set compensation: Section 8 of Act 95 of 1887; as amended by Section 5 of Act 83 of 1891, Ark. Stats. 80-2823.
- (g) Authority to grant leaves of absence: Section 2 of Act 283 of 1909, Ark. Stats. 80-2824.
- (h) Authority to set course of study: Section 6 of Act 95 of 1887, as amended by Section 3 of Act 83 of 1891, Ark. Stats. 80-2826.
- (i) Authority to establish course of study in connection with Arkansas Experimental Station: Act 231 of 1905, Ark. Stats. 80-2827.
- (j) Authority to execute bond in connection with ROTC program: Act 126 of 1901, Ark. Stats. 80-2828 ff.
- (k) Authority to establish revolving loan fund for students: Act 115 of 1925, Ark. Stats. 80-2830 ff.
- (l) Authority to establish Agricultural Experiment Stations with federal funds: Act 29 of 1889, Ark. Stats. 80-2852.
- (m) Authority to accept federal funds for Agricultural Extension Service: Section 7 of Act 289 of 1915, Ark. Stats. 80-2857.

Apart from the general authorizations which would include the Fayetteville Campus among other divisions of the University, comment may be made specifically concerning certain divisions and programs of the University:

- (1) Agricultural Experimental Station. See Ark. Stats. 80-3001-80-3028. The original authorization was apparently Act 231 of 1905, Ark. Stats. 80-3001 ff. Additional general authorizations are found in Section 2 of Act 542 of 1921, Ark. Stats. 80-3005; Act 83 of 1945, Ark. Stats. 80-3007; Act 127 of 1935, Ark. Stats. 80-30022 and Act 96 of 1953, Ark. Stats. 80-3028. Specific legislation authorizing the Rice Branch Station is found in Act 753 of 1923, Ark. Stats. 80-3009 ff. The Fruit and Truck Branch Experiment Station is authorized by Act 754 of 1923, Ark. Stats. 80-3013 ff. The Cotton Branch Station is authorized by Act 755 of 1923, Ark. Stats. 80-3017 ff. The Livestock and Forestry Branch Station is authorized by Act 361 of 1927, Ark. Stats. 80-3021. The Southeast Branch Station at Kelso and the Branch Station (Northeast) at Kaiser were authorized as the result of specific appropriations made with the understanding that these stations would be established. This legislative history probably unrecorded in any official documents, is an example of legal authorizations for University activities which cannot be found by resort to the statutes. If the committee reports of the General Assembly were printed, together with the hearings of those committees and the budget requests of the University through the years showing new programs which would be operated if certain appropriations levels were reached, there would be revealed many like examples of authorizations for programs which were clearly understood by all persons in interest at the time those programs were instituted.
- (2) Industrial Research and Extension Center (IREC). The Center started receiving State appropriations with Act 303 of 1955. Pursuant to the appropriation made, the Center was established by administrative action of the Board of Trustees. Some insight into the position of the Board concerning the scope and function of the Center may be seen in the position list titles furnished by Board action for inclusion in the appropriation acts. These titles include Research Assistant, Director, etc., none of which are instructional position titles, thus indicating that this is a service agency. A Central Arkansas Center for the University was enacted by the legislature in 1965. See Act 443 of 1965, Ark. Stats. 80-2866 ff. Under that legislation the Center, to be located in Central Arkansas, would include as divisions the Graduate Institute of Technology, Industrial Research and Extension Center, Little Rock Graduate Center, and, as the Board of Trustees effects the reorganization and expansion of its programs of instruction, research and educational services, it may include other functions deemed to be related to the purposes of the Center. The Center and its faculty and staff may offer advanced instruction and engage in research and educational services in the field of physical and natural sciences, engineering, business, economics and social sciences and related fields all for the purpose of enhancing education in, research and development about, and application of the learning had, and to be had, from the academic disciplines named above, in order to meet the educational needs of Arkansas and its people, and bring about thereby the close cooperation required

- between education and the scientific, business and economic growth and development which is our goal in Arkansas. The Board was authorized to include within the Center personnel, computer facilities and technical library facilities to support its work. The Center is to offer research, guidance and assistance to government, education and business interests in the State in order to achieve guidelines for Arkansas development, minimizing duplication of efforts. The Board was authorized to negotiate leases and/or enter into contracts with private and public agencies or organizations for the establishment of research and development facilities. The Center has not been activated by the Board of Trustees due to lack of funds.
- (3) The Graduate Institute of Technology (G.I.T.). This division was established by Act 203 of 1957; Ark. Stats. 80-2861 ff. The Board of Trustees was authorized to establish and operate it at Little Rock, as an extension of the graduate program of instruction and research. It may offer graduate resident instruction and opportunities for creative basic and applied research in the fields of physical, technical and other sciences, including but not limited to, engineering, including electronics, advanced theoretical and applied chemistry, advanced theoretical and applied physics and the Institute may engage in research projects. The Board of Trustees is authorized to establish and maintain the Institute only to the extent that moneys are especially appropriated from State funds for this purpose or donated to it or received as grants-in-aid from contract research.
 - (4) The Graduate Center at Little Rock. This division is operated by the Graduate School of the University, Fayetteville, and the General Extension Service of the University. It was established administratively since the Board of Trustees has been given express authority to include within the course of study in the University such branches of study as the Board may prescribe. See Ark. Stats. 80-2826.
 - (5) Evening Division of the School of Law. Act 525 of 1965, Section 10 provides: "It is hereby directed and authorized that the Board of Trustees of the University of Arkansas establish and operate, at Little Rock, Arkansas, an Evening Division of its School of Law as an expansion of its program of legal instruction, research and extension. Such Evening Division shall be established in order that students may be enrolled for the fall semester of 1965." Act 262 of 1969 changes the name of the "Evening Division of the School of Law", at Little Rock, to be hereafter known as "The Little Rock Division of the University of Arkansas School of Law". (Transferred to UALR by Act 19 of 1975.)
 - (6) School of Pharmacy. The legislative authorization is found in Act 323 of 1951, Ark. Stats. 80-2858: "The Board of Trustees of the University of Arkansas is hereby authorized to establish an accredited School of Pharmacy at the University or the Medical School of the University. The Board is further authorized and empowered to receive any grant, aid, gift, donation or endowment for the use of said school and to do all things necessary for the establishment of an accredited School of Pharmacy."

- (7) School of Nursing. Established by administrative action of the Board of Trustees after legal authorization the Medical Center was to include nurse's training at a professional level. See Section 1 of Act 492 of 1949, Ark. Stats. 80-2921.
- (8) School of Medicine. Established by Act 360 of 1911, Ark. Stats. 80-2901 ff. It is provided that this shall be a department for the instruction of students in medical science, and a part of the University of Arkansas, but may be located in the City of Little Rock. The management and control of it is in the Board of Trustees which shall cause it to be operated in a first-class manner, and with a course of study, methods of instruction and equipments of a standard equal to that required of medical colleges by the American Association of Medical Colleges; and they shall, as finances will allow and the advancement and necessity of said department require, add courses, fill professorships and add buildings, furniture, libraries, apparatus and other things so as to keep the department up to the standards required by that Association. See "Medical Center" below. (It is pertinent to mention here Act 139 of 1957; Ark. Stats. 89-2906 ff. which specifically distributes a freshman enrollment of 90 to the School of Medicine by congressional district within the State and the remainder from the State-at-large.)
- (9) Medical Center. Section 1 of Act 492 of 1949, Ark. Stats 80-2921 provides: "The terms 'State Medical Center', as it is used in this Act (providing for the construction of the Center), shall mean a place consisting of a number of functional units housed in buildings where the sick of the State may be treated and where a program of training involving undergraduate, graduate and post-graduate training in medical subjects may be secured; a place where nurse's training at a professional level can be given; and by the Medical School's affiliation with the State Hospital, a place where an integrated program of medical education through service to the mentally ill may be instituted." By Act 259 of 1959, as amended by Act 183 of 1963, Ark. Stats. 80-2922 ff., the Medical Center is authorized to establish a quota system for care of indigent patients for the use of its medical services, including hospitalization, clinic services and emergency services. This legislation contemplates that provision will be made to render such services. The Medical Center has also been authorized, by statute, to admit full pay patients. See Act 192 of 1959, Ark. Stats. 80-2926. This is both for hospital and medical care. The X-ray Technicians School and the program of graduate instruction in the School of Medicine were established pursuant to Section 1 of Act 492 of 1949, Ark. Stats. 80-2921, which authorizes undergraduate, graduate, and post-graduate training in medical subjects.
- (10) Child Guidance Unit, Medical Center. Apparently originated with Act 337 of 1961, which was an appropriation act. It provided for funds to be transferred from the Public School Fund to the Medical Center Fund "...to be used for the support of the Child Guidance Clinic in connection with the diagnosis of minimal brain damage." The "Child Guidance Study Unit" has, in 1965, moved into the general appropriation act for the Medical Center. There is no statement as to its functions, although insight might be gained from the position list for it which

contains the following: Child Psychologist; Pediatrician; Social Worker; Psychometrist; Educational Diagnostician; Technician; Secretary.

- (11) Office of the State Medical Examiner. This division was established by Act 398 of 1951, Ark. Stats. 42-601 ff. It operates under a Commission consisting of the Dean of the University of Arkansas School of Medicine, the Director of the Arkansas State Board of Health, and the Director of the Arkansas State Police. The Director is a qualified person nominated by the head of the Department of Pathology of the School of Medicine subject to the approval of the Commission. The central office and laboratory shall have adequate facilities for conducting autopsies and pathological, bacteriological and toxicological examinations and shall be provided by the University of Arkansas School of Medicine. Act 321 of 1969 re-establishes the "State Medical Examiner Commission" and the "Office of the State Medical Examiner" which are located at, and operate in conjunction with, the State Medical Center, University of Arkansas.
- (12) Graduate School of Social Work. Act 574 of 1965 authorizes the establishment of this School. It does not describe the functions it shall perform, merely referring instead, to the fact that the University has made a study of the problem and developed a plan for meeting the need. Act 569 of 1975 transferred Graduate School of Social Work to UALR.
- (13) Hygienic Laboratory in connection with State Board of Health. Act 96 of 1913, at Section 21, Ark. Stats. 82-118, provides that the State Board of Health shall establish and maintain a hygienic laboratory at the medical department of the University of Arkansas, in connection with the regular department of chemistry and the department of bacteriology.
- (14) City Planning Division. Under Act 241 of 1955, Ark. Stats. 80-2859, the University of Arkansas was authorized to provide local planning assistance to municipalities, counties or joint planning agencies. This program operates in connection with Section 701 of the Housing Act of 1954, as amended which authorizes federal grants for this purpose.
- (15) Agent for Southern Regional Education Board programs. By the provisions of Act 243 of 1957, and the initial appropriation act which was Act 538 of 1957, the University was authorized to enter into and administer programs of out-of-state training and education in cooperation with SREB. See Ark. Stats. 80-3704 ff.
- (16) Medical Center Cancer Clinics. By Act 277 of 1945, Ark. Stats. 82-601 ff., the Medical Center conducts a cooperative program in connection with the State Cancer Commission.
- (17) Medical Center Welfare Patient Program. By Act 149 of 1957, Ark. Stats. 83-209 ff., the University is authorized to enter into a cooperative program for the treating of welfare patients in connection with the State Welfare Department.

- (18) Airport Authorization. The University, together with the Civil Aeronautics Administration in the development of the college-owned airports and their facilities, under Act 277 of 1947, as amended by Act 286 of 1947, Act 87 of 1947, Act 291 of 1947, Act 311 of 1947, Act 314 of 1947, Act 315 of 1947, Act 317 of 1947, and Act 377 of 1947, Ark. Stats. 74-208. (The University of Arkansas does not have an airport which it owns.)
- (19) Soil Conservation Program. Under Act 175 of 1937 and Act 348 of 1937, Ark. Stats. 77-1501 through 77-1507, the University of Arkansas is the agency of the State of Arkansas to formulate and submit plans to carry out the policy of the federal soil conservation legislation.
- (20) Soils Testing Program. By the provisions of Act 106 of 1951, as amended by Act 301 of 1953 and Act 356 of 1957, Ark. Stats. 77-707, the University of Arkansas operates soil testing research laboratories.
- (21) Official State Depository of Public Documents. The General Library of the University of Arkansas is authorized to act as the official state depository of all public documents pursuant to Act 170 of 1947, Ark. Stats. 14-428 ff. This legislation was amended by Act 379 of 1955. The General Library also acts as a depository of federal publications under the provisions of Act 80 of 1905, Ark. Stats. 14-433.
- (22) Program of Archeological Research. By the provisions of Act 82 of 1959, Ark. Stats. 9-1001 ff., the University is authorized to conduct a program of archeological research as agent for the State. Act 39 amends Act 82 of 1959 and expands the University of Arkansas program in archeological research into an "Arkansas Archeological Survey", designating the University of Arkansas as agent, and setting a basis for other institutions of higher learning to participate therein by way of contracts with the University. See also Act 58 of 1967 which is legislation protecting, through the Survey, the antiquities of the State.
- (23) Agricultural Extension Service. This division of the University operates pursuant to the acceptance of the federal grant for this program under Section 7 of Act 289 of 1915, Ark. Stats. 80-2857, and the laws having to do with the land-grant status of the University (see above). Act 45 of 1911, as amended by Act 347 of 1927, and Act 124 of 1931, Ark. Stats. 17-517 through 17-519, authorize a cooperative program of this division with the counties of Arkansas. This division also cooperates with the State Penitentiary by reason of Section 23 of Act 30 of 1933, Ark. Stats. 46-216.
- (24) School of Dental Hygiene. Act 331 of 1967 establishes, by Section 1, a School of Dental Hygiene, University of Arkansas, and prescribes standards therefor.

- (25) University of Arkansas at Little Rock. Act 35 of 1969 authorizes the merger of Little Rock University into the University of Arkansas, to be a campus known as "University of Arkansas at Little Rock". (See Act 35 of 1969 in Appendix I.)
- (26) University of Arkansas at Monticello. Act 9 of 1971 authorizes merger of Arkansas A. & M. College into University of Arkansas, to be known as "University of Arkansas at Monticello". (See Act 9 of 1971 in Appendix I.)
- (27) University of Arkansas at Pine Bluff. Act 512 of 1971 authorizes merger of Arkansas A. M. & N. College into University of Arkansas on and after July 1, 1972 upon certain conditions being fulfilled. (See Act 512 of 1971 in Appendix I.)

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