

August 26, 1957

VICE PRESIDENT JAMES H. CORLEY

Attention: James M. Miller  
Assistant Vice-President

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Re: Problems Relating to Possible Acquisition  
of Campuses of California School for the  
Blind and California School for the Deaf  
by Regents

In a letter to me dated August 22, 1957, you requested an opinion concerning the above-captioned matter. Pursuant to said letter and pursuant to an informal request for an opinion concerning the same matter made to me by Chancellor Kerr, I have reviewed problems relating to the legality of the contemplated acquisitions.

Said problems relating to acquisition of the Berkeley facilities of either the California School for the Deaf, the California School for the Blind, or both, by The Regents of the University of California involve three general considerations:

1. Is there any constitutional prohibition against the acquisition of the Schools in question for University purposes?
  2. Is there any constitutional prohibition against the acquisition of the facilities of the Schools in question, assuming they were relocated prior to such acquisition?
  3. What would be the method of such acquisition?
1. Is There Any Constitutional Prohibition Against the Acquisition of the Schools in Question for University Purposes?

Article IX, Section 6 of the California Constitution provides, in part, as follows:

"No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System or placed under the jurisdiction of any authority other than one included within the Public School System."

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Are the Schools in question "part of the Public School System" within the meaning of Article IX, Section 6?

Section 20752 of the Education Code provides as follows:

"School part of system: Exception: Object.  
The California School for the Deaf is a part of the school system of the State except that it derives no revenue from the Public School Fund, and has for its object the education of the deaf who, by reason of their infirmity, can not be taught in the public schools."

Section 20902 of the Education Code makes a declaration, identical to the foregoing, with respect to the School for the Blind.

It would appear, therefore, that the Schools in question are part of the Public School System within the meaning of Article IX, Section 6 of the Constitution and that, consequently, the Regents could not acquire and operate them as schools providing an ordinary academic program on a college level.

2. Is There Any Constitutional Prohibition Against the Acquisition of the Facilities of the Schools in Question, Assuming They Were Relocated Prior to Such Acquisition?

If the Legislature were to relocate the Schools in question and continue their operation at a new location it would appear that there would be no constitutional objection to a transfer of the then vacant Berkeley facilities of the Schools to the Regents for University purposes. This problem arose in connection with the transfer of the old, unused, San Francisco State College campus to the University. The Attorney General (28 Ops. Cal. Atty. Gen. 334), did not specifically refer to the constitutional problem in recognizing the authority of the Director of Finance to transfer such facilities to the University, but dealt mainly with a question of consideration. It would seem, however, that if specific physical facilities are no longer used for school purposes such facilities, in themselves, would no longer be part of the "Public School System" within the meaning of Article IX, Section 6 and, therefore, a transfer of such facilities would not be considered either a direct or indirect

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transfer of the Public School System. To hold otherwise would be, in effect, to require the State to retain all property, once acquired and used for school purposes, regardless of the fact that such property may have long since ceased to have been used for such purposes.

### 3. What Would be the Method of Such Acquisition?

Apart from the constitutional questions hereinabove discussed, a question arises as to the practical problems relating to transfer of the Berkeley facilities of the re-located Schools to the Regents.

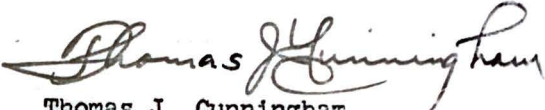
Referring once again to the transfer of the San Francisco State College facilities to the University, the Attorney General (28 Ops. Cal. Atty. Gen. 334) was of the opinion that such property could be transferred or conveyed under the provisions of Government Code Section 13110. Since Section 13110 refers only to the transfer of control or possession of State lands from one agency to another and does not speak in terms of actual conveyance of title I felt it advisable to suggest an amendment of Government Code Section 13104 to provide specifically for the execution of a grant of State property to the Regents. This amendment, however (Stats. 1957, Ch. 10), will be of no effect subsequent to July 1, 1958, because of a later enactment providing a return to the original language of Section 13104 (Stats. 1957, Ch. 968).

In view of the fact that the Legislature initially would have to relocate the Schools in question to eliminate any constitutional objections, it would seem desirable to have the Legislature specifically authorize conveyance of the School properties to the Regents either by said relocating enactment or by a re-amendment of Section 13104 unless, of course, such relocation and acquisition could be concluded prior to July 1, 1958.

Since the State Department of Education is vested with control of the California School for the Deaf and California School for the Blind (Education Code, Sections 177, 178, 181), it would appear that any proposed relocations and conveyances would be facilitated by cooperating with said Department and any other State agencies concerned.

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I have assumed that the property proposed for acquisition is that property actually in use for school purposes rather than unimproved property adjacent to the Schools for the Deaf and Blind.

  
Thomas J. Cunningham  
General Counsel

TJC/am

cc: President Robert Gordon Sproul  
Chancellor Clark Kerr ✓  
Secretary Robert M. Underhill

