

1929

## Constitutional Law: Creation of State Debt in Excess of Constitutional Provision; Delegation of Legislative Power

Morgan Maloney

Follow this and additional works at: <https://scholarship.law.marquette.edu/mulr>



Part of the [Law Commons](#)

---

### Repository Citation

Morgan Maloney, *Constitutional Law: Creation of State Debt in Excess of Constitutional Provision; Delegation of Legislative Power*, 13 Marq. L. Rev. 112 (1929).

Available at: <https://scholarship.law.marquette.edu/mulr/vol13/iss2/5>

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized editor of Marquette Law Scholarly Commons. For more information, please contact [elana.olson@marquette.edu](mailto:elana.olson@marquette.edu).

## NOTES AND COMMENT

### Constitutional Law: Creation of State Debt in Excess of Constitutional Provision: Delegation of Legislative Power.

*Loomis v. Callahan*, 220 N.W. 816, is an action to enjoin the annuity board of the state retirement system from paying out trust funds of the state retirement system to the University Building Corporation for the purpose of equipping the Memorial Union Building and constructing a field house upon the lands belonging to the State University. A demurrer to the complaint is sustained and the action dismissed.

Action pursuant to state statutes 36.06, subsections 6 and 7, the board of regents of the State University entered into a lease with the University Building Corporation relating to certain university lands, upon which there was under construction the Memorial Union Building, for a term of 50 years at a rental of \$1.00 for the full term of said lease, and on the same day the University Building Corporation leased the same property to the regents for an indefinite period at the annual rental of \$37,245.52.

The board of regents also adopted a resolution authorizing the Wisconsin University Building Corporation to contract for decorating furniture, fixtures and equipment for the Memorial Building for an amount not to exceed \$400,000. The board also provided for the collection of a fee from each student to be known as the memorial union fee, "to be used for the operation and maintenance of University Buildings devoted to the men's and women's all-university social activities, chiefly the memorial union."

The regents also leased to the above building corporation such university lands belonging to the university campus for a term of fifty years and for the same amount of rent as set out in the above lease upon condition that the building corporation erect a field house thereon and equip the same for the use of the regents of the university. The building corporation then leased the proposed lands and field house back to the regents upon terms similar to those contained in the lease of the Memorial Union Building.

Upon application made by the annuity board of the state retirement system (Chapt. 42, sec. 20 to 54 inclusive of Wis. Statutes.) resolved to loan to the building corporation the sum of \$400,000 at 4½ per cent, amortized over a period of 15 years upon the lease hold security which the building corporation had in the memorial union building and likewise the annuity board resolved to extend to the building corporation a loan of \$326,000 at 4½ per cent on a thirty

year amortized plan upon the lease-hold interests of the building corporation in the field house.

The Wisconsin University Building Corporation is organized for the declared purpose of buying, selling, leasing, and otherwise disposing and acquiring real estate and constructing, equipping and furnishing buildings or other permanent improvements thereon or other exclusive uses, purposes and benefits of the University of Wisconsin and generally to carry out the purposes of sub. sections 6 and 7 of sec. 36.06 of the Wis. Statutes. "The corporation shall be non-stock and no dividends or pecuniary profits shall be declared to the members thereof."

This action is brought by the plaintiff, who is a real estate owner, taxpayer, and teacher in the public schools of the state, and who is, and for some time has been a contributing member of the state retirement system to enjoin the annuity board from completing such loans as set out above.

His cause of action is based upon the grounds that Statute 36.06 is unconstitutional under the following:

1. The leasing of the campus lands to the Building Corporation is invalid in that it gives state property to private corporations for private purposes without just compensation.

2. The credit of the state is being loaned in the aid of individual association or corporation.

3. The transaction results in the indebtedness on the State in excess of \$100,000.

4. The legislation constitutes a delegation of legislative powers to the board of regents of the University.

In sustaining the demurrer the court has the following to say to the contentions set out by the plaintiff:

1. The leasing of the campus lands to the building corporation did not constitute the giving of the state property to a private corporation for private purposes without compensation. "The University owned the lands and needed the buildings. The money with which to erect the buildings is not available in any other manner than by the leasing of the buildings to third persons such third persons to finance the erection and make it available for the University upon terms which will enable the university in time to pay for the building out of the earnings from operation and management. This certainly furnishes a consideration which supports the lease and renders the transaction immune from the charge that public property is being given for private use without compensation."

2. The above consideration also demonstrates that by the trans-

action, the credit of the state is not being loaned in the aid of any individual corporation or association."

3. "The transaction does not result in an indebtedness on the part of the state. Under the plan the only obligation entered into by anyone representing the State or with power to bind the State is the obligation to pay the designated rent stipulated by the terms of the lease running from the building corporation to the board of regents. But for this purpose only, the proceeds arising from the operation of the leased premises are to be applied upon the payment of the rent. The regents are free at their election to abandon the plan of acquiring or holding that which prior to the contract they did not own. (The land was owned by the university.) The board of regents acquired an interest in the property which it did not have. In purchasing that property it does not pledge the general credit of the state. It pledges to the payment for the property moneys acquired from the operation of the property thus acquired."

4. As to the delegation of legislative powers to the board, the court merely said, "that this was merely a duty imposed by the legislature upon the board in order that the purpose of the statute might be carried out."

MORGAN MALONEY

#### Constitutional Law: Due Process: Price-Fixing Legislation.

When supported and accelerated by a general public interest in the matter which it seeks to control or regulate, police power knows nor recognizes no law. But when that necessary element of "public interest" is lacking, police power is a cart *sans* wheels.

The instant case<sup>1</sup> presents a discussion of what constitutes a public interest of quality sufficient to warrant price fixing legislation. Here a statute required all persons who sought to establish employment agencies to procure licenses from the commissioner of labor of that state, providing a penalty for failure to do so. Applicants were required to submit to the commissioner a schedule of fees which they proposed to charge for services in the conduct of such agencies. The commissioner of labor was empowered by the same statute to reject applicants "for any good cause shown within the meaning of this act."

The case at hand was precipitated by the refusal of the commissioner of labor to issue a license to the appellant on the sole ground that, *in his opinion*, the proposed fees were exorbitant and unreasonable. In reply to the appellant's contention that the attempt to confer upon the commissioner of labor the power to fix prices in the manner described above contravenes the due process clause of the Constitution,

<sup>1</sup> *Ribnik v. McBride*, 48 S. Ct. Rep. 545.