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GRAPEVINE

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A newsletter on state tax legislation; state appropriations for uni-
versities, colleges, and junior colleges; legislation affecting edu-
cation at any level. There is no charge for GRAPEVINE, but recipients
are asked to send timely newsnotes regarding pertinent events in their
respective states.

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FLASHES OF FISCAL 1967

Table 67. APPROPRIATIONS OF STATE TAX FUNDS FOR OPERATING EXPENSES OF HIGHER EDUCATION FOR FISCAL YEARS 1960-61 THROUGH 1966-67, WITH DOLLAR GAINS AND PERCENTAGE GAINS OVER 6 YEARS AND LATEST 2 YEARS, IN 16 STATES WHICH HAVE SPECIFIED SEPARATE SUMS FOR THE SECOND FISCAL YEAR OF BIENNIUM 1965-1967.

States	Fiscal years ending with odd numbers				1965-1967		1961-1967	
	Year 1960-61	Year 1962-63	Year 1964-65	Year 1966-67	2-year gain	% gain	6-year gain	% gain
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
Ala	\$22,397	\$22,659	\$30,421	\$41,409	\$10,988	36	\$19,012	89
Conn	13,080	15,948	19,706	34,104	14,398	73	21,024	161
Ind	50,163	62,709	80,134	104,312	24,178	30	54,149	108
Me	5,599	7,429	9,709	13,457	3,748	38½	7,858	140¼
Minn	38,920	45,117	55,059	72,463	17,404	31½	33,543	88
Mont	11,231	10,661	13,367	16,784	3,417	25½	5,553	49½
Nev	4,107	5,325	6,518	7,695	1,177	18	3,588	87¼
N H	4,106	4,733	5,104	6,435*	1,331	26	2,329	57
N C	30,574	36,815	51,431	79,462	28,031	54½	48,888	160
Ohio	45,326	55,620	67,670	93,269	25,599	38	47,943	106
Ore	28,719	34,263	39,998	54,811	14,813	37	26,092	91
S D	8,128	8,702	12,338	13,183**	845	7	5,055	62¼
Tenn	17,023	22,359	31,892	47,939	16,047	50¼	30,916	181½
Texas	72,133	90,282	114,156	165,707	51,551	45	93,574	130
Vt	3,399	3,750	5,445	6,885	1,440	26½	3,486	102¼
Wis	37,417	44,670	60,410	95,160	34,750	57½	57,743	154¼
Totals	392,322	-	603,358	853,075	249,717	-	460,753	-
Weighted average percentages of gain	-	-	-	-	-	41½	-	117½

* The Governor and Council are authorized to add a sum not in excess of \$750,000 if the condition of the state's finances at the close of fiscal year 1965-66 makes this possible.

** It is anticipated that the 1966 legislature will augment this total by supplementary appropriations, chiefly for new positions and salary adjustments not provided for by the 1965 legislature.

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KENTUCKY. At the general election in November 1965 the electors approved by an overwhelming majority a state bond issue for capital construction in the amount of \$176 million.

The proceeds are to be allotted chiefly to highways, but approximately \$17 million go to the public colleges and universities for academic buildings.

This is an encouraging break from Kentucky's practice of financing academic buildings by allowing each institution to issue its own "revenue bonds" (which require a higher rate of interest than state bonds), and pledge and use student fees for their retirement.

It is notable, too, that in the summer of 1965 the Kentucky Court of Appeals (court of last resort) handed down a decision that taxable property in the state must be assessed at 100% of true market value. This is a drastic change from former practice, varying considerably among the local subdivisions; and at first caused much local apprehension that local school boards and other local authorities would be free to double the tax take, under the existing limitations on the rate.

Governor Edward T. Breathitt called a special session of the legislature and recommended that local subdivisions be authorized to increase their tax take by no more than 10% per year for the ensuing two years. This measure was enacted, and allayed the fright, but was naturally not greeted ecstatically by public school teachers, superintendents, and many school boards.

Up to the present Kentucky's total of state and local property tax payments has been markedly low in relation to the total of all tax payments in the state, and to the total of personal income in the state. Adjustment to the new 100% assessment rate will require some time and effort, but it is one step forward

in the development of an orderly and equitable revenue system.

Although the state is a heavy producer of coal, oil and gas, limestone, timber, and other natural resources, under present statutes its severance tax collections are negligible. The Kentucky Teachers' Association advocates reasonable severance taxes on the extraction of these resources; but there is little likelihood that any such measure will be enacted during the 1966 session of the legislature.

NEW YORK CITY. Late in December 1965 the city budget director held a hearing on the budget request of the City University of New York for fiscal year 1966-67. The hearing was attended by a fiscal representative of the incoming Mayor Lindsay, whose administration will make the later decisions.

The total request is reported to be for just under \$112 million of public funds, of which the city would provide \$57½ million (47¼%), and the state \$54½ million (44½%). An additional \$10 million (8½%) would come from student fees. (The City University is tuition-free for regular full-time undergraduate students, but not for part-time and graduate students).

The total request includes a little more than \$5½ million for salary increases, and more than \$10½ million for new positions, including 794 new teaching positions to serve more students. It also includes a sum for the initial organization of Richmond College, the new four-year institution on Staten Island to be opened to students in 1967.

NEW YORK. During 1965 there were two court decisions regarding college fraternities, touching: (1) the application of the Trustees' prohibition of national fraternities on the campuses of the State University of New York, to such fraternities at the former University of Buffalo, which was acquired by the state and renamed the State University of New York at Buffalo in 1962; and (2) the taxability of fraternity house premises at Cornell University.

The Trustees banned national fraternities at SUNY campuses as early as 1953, after receiving a report on the subject from the then President of SUNY, in which the reasoning on which the ban is based were set forth substantially as follows:

(1) The university must be in a position to control the discipline and tone of the campus, and the presence of student organizations answerable to, or under the dominance of, outside national headquarters is anomalous, and endangers or destroys the university's position;

(2) The university is obligated to abstain from discrimination on grounds race, color, sex, religion, or national origin; and "The academic and extra-curricular programs of a university intertwine to such a degree in educating and molding a student that they cannot be severed and each judged by contradictory standards;" and

(3) The university has an obligation to make its services available to qualified students at the lowest practicable expense to the student and his parents, and the sums included in fraternity fees and dues for the purpose of supporting a national headquarters and field staff add unduly and unnecessarily to the cost of education to the student.

Buffalo local chapters of certain national fraternities asked the local trial court for a declaratory judgment to hold the 12-year-old ban invalid. This was refused. Justice Matthew J. Jasen held that the Trustees did not act

arbitrarily in requiring Buffalo local chapters to comply with the existing state-university-wide ban of national fraternities when the University of Buffalo became a part of the State University.

-- Beta Sigma Rho, Inc. v. Moore, 46, Misc. 2d 1030, 261 N.Y.S. 2d 658 (1965).

Cornell University has had for several years a "Group Housing Plan" under which the university constructs or rehabilitates a house on its own land and leases it to a fraternity chapter or other similar student organization.

Alumni members of the organization finance the construction, and the rent paid by the active chapter covers utilities, repairs and maintenance, insurance, and taxes.

The university, as owner, sought to have these premises held exempt from taxation, as "property held and used for educational purposes." The unanimous decision of the 5-judge Appellate Division was adverse.

A New York statute exempts "real property of a corporation... organized exclusively for...education...purposes... and used exclusively for one or more of said purposes by the owning corporation or by another such corporation."

The judgment holds that the university, as owner of the premises, qualifies for tax exemption; but the fraternity chapter, as occupant and user of the property, is not "another such corporation", and its use of the property is not exclusively for educational purposes, because fraternities are devoted in substantial part to social and other personal objectives of privately organized, self-perpetuating clubs controlled by graduate as well as student members.

"It is true, of course", said the court, "that the fraternities perform the essential function of housing and feeding students, but it is clear that

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NEW YORK (Continued from preceding page) in each case the use of the premises is also devoted in substantial part to social and other personal objectives."

-- Cornell University v. Board of Assessors, 24 A.D. 2d 526, 250 N.Y.S. 2d 697 (1965).

A third New York court decision of 1965 was concerned with a claim for damages against the state for alleged negligence of the State University College at Albany in allowing a male freshman student to participate in a "pushball" contest between freshmen and sophomores, unsupervised except by four upper-class students, where he received a serious injury.

It seems that the "pushball" game was one among many types of physical contests making up the activities of "Rivalry week", a traditional period at the beginning of the academic year. All able freshmen and sophomores were not only permitted, but urged, to choose one or more of these activities and take part. It appeared that "pushball" contests had been one of these activities for 38 consecutive years, without any record of serious injury to any participant.

The plaintiff in this case, a 6-foot, 200-pound freshman aged 17 at the time, after observing the game and having opportunity to see that it was an activity involving rough physical contact and some hazard of injury, chose to participate in it. During the game he was "clipped" from behind (struck at or below the knees from behind) and fell forward violently, sustaining a severe injury to one arm, including bone dislocation and fracture.

New York has a Court of Claims in which suits of this kind may be brought against the state, and in many cases indemnity has been awarded to claimants alleging negligence against several of the state colleges. But of course

damages will not be awarded if negligence is not proved.

In this case the Court of Claims held that the state should not be adjudged liable. The plaintiff assumed the risk of injury when he entered the game. There was no allegation that the playing field was in defective condition. There was no proof that the four student referees did not perform adequately, or that the injury would not have occurred if the college had provided professional referees.

Moreover, in view of the 38-year history of the activity, the college authorities were not upon notice that serious injury might result from the game, and hence had no duty to provide special supervision for it.

Judge Henry W. Lengel concluded that "We do not believe the State should be made the insurer of the safety of those who participate in this type of sport."

-- Rubchitsky v. State University College at Albany, (N.Y. Ct. Cl.), 46 Misc. 2d 679, 260 N.Y.S. 2d 256 (1965).

OKLAHOMA. At a special statewide election December 14, 1965, the voters of Oklahoma approved a state bond issue of \$54,700,000 for capital construction, of which \$38½ million is for the state institutions of higher education. An additional \$15 to \$20 million will be forthcoming from matching federal funds, thus financing a total higher educational building program of \$55 to \$60 million over the ensuing four years.

A simple majority of those voting was sufficient to adopt the measure, but the vote was actually about 3 to 1 in favor.

The bonds will be paid off from uncommitted revenues of the cigarette and tobacco tax, and are not expected

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OKLAHOMA (Continued from page 541)
to necessitate any additional revenue measures.

Ten million dollars of the proceeds are expected to become available almost immediately, and another \$10 million about July 1, 1966. The remainder will come in installments of over \$6 million a year for each of the years 1967, 1968, and 1969.

The construction program can begin almost immediately, due to the foresight of the legislature in enacting provisions making it unnecessary to wait for action by the next regular session in 1967.

OREGON. An endless variety of cases come into the courts of the various states involving colleges and universities, public and private.

One of the categories in which new actions arise with considerable frequency is that of the tort responsibility of institutions of higher education.

In earlier years the courts usually found ways to exonerate the college in negligence cases-- on the various theories of "charitable immunity" for private colleges, and on "state immunity" for public institutions-- but the modern tendency is to hold both types of institutions responsible for negligence, in order that an innocent injured party will not go without a remedy.

The problem of determining whether there actually was actionable negligence in a given case continues to appear, of course. This is a question of fact for a jury. Oregon furnishes a recent case of interest, involving Reed College, the well-known private institution at Portland.

A mother who resided in California visited her daughter, a student at Reed College living in a dormitory, during an Easter vacation. This was an ordinary unofficial visit, with no invitation from the college and no special arrangements.

Just prior to her departure for the return trip the mother and her daughter

went to the Student Union Building to witness a folk-dancing session which was being conducted on a raised floor some three to four feet above the floor of the auditorium, and surrounded by benches of about the suitable height for seats, some of which were used for climbing on and off the dance-floor.

The daughter went up onto the floor to participate, while her mother sat on one of the benches nearby. A 200-pound male student stood very near to the edge of the platform, while the daughter and her partner conversed briefly with him. Suddenly the girl's partner poked the big boy in the stomach with his finger, causing him to fall off the platform and land with great force on the girl's mother seated on the bench below, injuring her severely.

When she sued the college for indemnity for negligent injury, the trial court jury awarded her a judgment for damages against the college; but this was reversed by the Oregon supreme court, holding that "An owner of premises is not an insurer of the safety of an invitee against injuries inflicted by other persons on the premises."

Deeming it unnecessary to decide whether the injured woman actually was an invitee, or merely in the lower category of "licensee" on the premises, the court said neither classification would entitle her to expect from the college the degree of care for her safety which would, if absent, support an allegation of negligence in this case.

The folk-dancing sessions were on a schedule, but they were no part of the curriculum of the college, and they were unsupervised. There was no evidence, thought the court, that the students attending these dances were ever rowdy or rough, either in the past or at the time of the injury; and there was nothing that "would put a reasonable person on notice that supervision was necessary." Hence the college was not negligent in failing to provide supervision.

-- Baum v. Reed College Student Body, Inc., and Reed Institute, (Ore.), 401 P. 2d 294 (1965).