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Minutes of the meeting of the Executive Committee of the Board of Regents of the University of Wisconsin: May 6, 1948. 1948

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MEETING OF THE EXECUTIVE COMMITTEE

Madison, Wisconsin

Thursday, May 6, 1948, 2 P.M.

Held in the President's Office

Regent Grady presiding

PRESENT: Regents Grady, Jones, Kleczka, Sensenbrenner, Werner.

Mr. E. C. Hotchkiss of the Office of the Solicitor, United States Department of Agriculture, and Mr. Roy G. Tulane, Assistant Attorney General of Wisconsin, appeared before the Executive Committee to furnish information in connection with the request of the United States Department of Agriculture that the Regents agree to stipulate as to the value of the land that the United States Department of Agriculture intends to acquire from the Regents by condemnation.

The Director of Business and Finance explained that the Regents on January 31, 1948, had agreed to convey approximately .72 acres of land to the Government for the site of the Malting Laboratory, at a consideration of \$6000, with title to revert to the Regents in the event that the property was not used for agricultural research purposes, that the Attorney General of the United States was not satisfied that the Regents had legal authority to sell and convey this land and that, therefore, the United States Department of Agriculture was proposing to institute condemnation proceedings in order to acquire clear title.

The Executive Committee requested Mr. Tulane to obtain and submit later in the meeting an opinion of the Attorney General as to whether the Regents have authority to convey real estate, whether the United States has power to condemn land owned by the Regents, and whether the United States may take land by condemnation subject to reversion to the Regents in the event the United States should cease to use the land for agricultural research purposes. The Executive Committee deferred action on the request of the United States Department of Agriculture pending the receipt of the opinion of the Attorney General. Mr. Hotchkiss and Mr. Tulane withdrew from the meeting. (See subsequent action, page 4 of these minutes.)

The Director of Business and Finance submitted the bids which were received on April 21, 1948, for the construction of the Enzyme Laboratory and the Addition to the Naval Armory Heating Plant, for which the Regents on April 17, 1948, had authorized the Executive Committee to approve the award of contracts. The Director of Business and Finance explained that it was necessary to defer consideration on the contract for the elevator in the Enzyme Laboratory at this time in order to obtain a schedule of costs for this project within the \$300,000 loan which the

Wisconsin Alumni Research Foundation had authorized. He stated that the low bidder for the elevator work would be requested to extend his bid for an additional thirty days to give the University an opportunity to determine whether or not additional funds could be made available. Upon motion of Regent Jones, seconded by Regent Senbrenner, it was

VOTED, That the following schedule of costs for the Enzyme Laboratory Building (exclusive of the elevator work) and the Addition to the Naval Armory Heating Plant (required for the Enzyme Laboratory Building project) be approved:

Construction contracts (low base bids) - excluding contract for elevator	\$263,864
Architect's Fees (6% on contracts)	15,832
Contingencies during construction, including architect's fees	14,104
Supervision	1,500
Bureau of Engineering	700
Interest during construction	<u>4,000</u>
Total	\$300,000;

and that the Wisconsin University Building Corporation be authorized to award the contracts for this work, on the basis of the low bids, as follows:

Enzyme Laboratory

General Construction - Geo. Nelson & Son	\$187,397
Plumbing - Hyland, Hall & Company	14,788
Heating and Ventilating - Hyland, Hall & Company	20,788
Electrical Work - Cirves Electric Company	12,993
Refrigeration - Hyland, Hall & Company	<u>4,321</u>
	(\$240,287)

Addition to Naval Armory Heating Plant (For the Enzyme Laboratory)

General Construction - Geo. Nelson & Son	\$ 5,772
Heating and Ventilating - C. A. Hooper Company	17,675
Electrical Work - Cirves Electric Company	<u>130*</u>
	(\$ 23,577)
Total	\$263,864

* Low bid of Capital Electric Construction Company awarded to Cirves Electric Company per approval by both bidders.

The Director of Business and Finance submitted the bids received on April 26, 1948, for the painting of several campus farm buildings. He stated that because of lack of funds the painting of only three of the five groups of buildings, on which bids had been taken, could be undertaken at this time. Upon motion of Regent Jones, seconded by Regent Werner, it was

VOTED, That the contract for the painting of University Campus farm buildings be awarded to Klein-Dickert Company, Inc., Madison, Wisconsin, in the amount of \$11,374, on the basis of the low bid covering the following groups of buildings:

Bid No. 2, Group No. 1 (Dairy Barn)	\$4,523
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Bid No. 3, Group No. 2 (Horse Barn, Beef Cattle Barn, Swine Barn A, Blacksmith Shop)	3,330
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Bid No. 6, Group No. 5 (Animal Research Building, Genetics Barn, Short Course Dining Hall, Kleinheinz Hall)	3,521
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and that the cost of this work be charged in the estimated amounts of \$9,374 to Fund 1C Maintenance and \$2,000 to Fund 5-AA Short Course.

The Director of Business and Finance explained that an additional allotment of \$6000 had been made to the University by the United States Department of Agriculture for agricultural extension work for the balance of the 1947-48 fiscal year. Upon motion of Regent Kleczka, seconded by Regent Jones, it was

VOTED, That the 16C Agricultural Extension budget for 1947-48 be increased by \$6000 on account of additional appropriations received from the United States Department of Agriculture, and that the increase be budgeted as follows:

Salaries and Wages	\$3,300
Supplies and Expense	1,700
Equipment	<u>1,000</u>
Total	\$6,000.

The Director of Business and Finance explained that the work on the revision of the Regent Laws could not be commenced until September, 1948, because of the unavailability of the personnel to do the work at this time.

The Director of Business and Finance suggested that a meeting of the Finance Committee be scheduled before the meeting of the Regents on May 15, 1948, in order to consider the faculty salary analyses and preliminary schedules for the 1948-49 budget. Members of the Executive Committee suggested that the Regents be given additional time to examine the preliminary budget material before the next meeting. Upon motion of Regent Werner, seconded by Regent Kleczka, it was

VOTED, That the regular meeting of the Regents scheduled for May 15, 1948,

be postponed to Friday, May 28, 1948, at 1:30 P.M.; that the Finance Committee of the Regents meet on Thursday, May 27, 1948, at 10 A.M., and that all Regents be invited to attend the Finance Committee meeting to consider the preliminary material for the 1948-49 budget; and that such other committee meetings as might be necessary be scheduled for Friday, May 28, 1948, beginning at 9:30 A.M.

At the request of President Fred, Dean Ingraham and Professor Kaplan appeared before the Executive Committee to furnish information regarding the recommendation of the University Library Committee, the University Librarian and the Dean of the College of Letters and Science for additional funds for the current year, including \$7200 for the purchase of a collection of Russian books and pamphlets. Upon motion of Regent Sensenbrenner, seconded by Regent Werner, it was

VOTED, That \$13,200 be added to the budget of the General Library for the current year, as follows:

For books	\$12,200
For supplies	1,000.

Mr. Tulane, Assistant Attorney General, reported that the opinion of the Attorney General requested by the Executive Committee had been signed affirming that

- (1) The Regents of the University of Wisconsin have authority to convey land for a proper University purpose;
- (2) The United States Government has authority to condemn state or publicly owned land for a proper purpose;
- (3) In condemnation proceedings by the United States the entire fee or any lesser portion may be condemned. (Copy of Attorney General's opinion attached.)

Upon motion of Regent Jones, seconded by Regent Sensenbrenner, it was VOTED, That, on the basis of the opinion of the Attorney General of Wisconsin, the Executive Committee recommends to the Regents of the University of Wisconsin that the action taken by the Regents on January 31, 1948, approving the consideration of \$6000 and provision for reversion of the land to the Regents in the event the United States should fail, or cease, to use the land for agricultural research purposes, be re-affirmed as a fair and sufficient consideration for the site of the Malting Laboratory Building to be constructed by the United States Department of Agriculture.

At 4:20 P.M. the meeting adjourned.

A. W. Peterson,

Secretary.

THE STATE OF WISCONSIN
Office of Attorney General
Madison

May 6, 1948

Board of Regents,
University of Wisconsin
Madison, Wisconsin

Gentlemen:

You state that you have under consideration an arrangement for cooperative investigations between the College of Agriculture of the University of Wisconsin and the Division of Cereal Crops and Diseases, Bureau of Plant Industry, Soils and Agricultural Engineering, United States Department of Agriculture, in pursuance of which you propose to convey a parcel of land approximately three-fourths (3/4) of an acre to the United States for a consideration of \$6,000.

You ask: (1) Do the Regents of the University of Wisconsin have authority to convey real estate for a proper University purpose? (2) If the Secretary of Agriculture prefers to acquire title by condemnation on behalf of the United States does the United States government have power to condemn land owned by the Regents of the University of Wisconsin? (3) May the United States include in the condemnation proceedings a declaration that the land is taken subject to a right of reverter in the Regents in the event that the United States shall cease to use the land for agricultural research purposes?

In our opinion the authority of the Regents of the University of Wisconsin to convey any of its real estate in pursuance of a proper University purpose is clearly established by sec. 36.03, Stats., which reads:

"The board of regents and their successors in office shall constitute a body corporate by the name of 'Regents of the University of Wisconsin', and shall possess all the powers necessary or convenient to accomplish the objects and perform the duties prescribed by law, . . ."

A primary characteristic of any corporation is the power to acquire, hold and convey real estate within the scope of the purposes of the corporation. The phrase "all powers necessary and convenient" is as broad a grant of power as the legislature could properly make in consideration of the purposes for which the University is established. This conclusion is reinforced by the opinion in State ex rel. Priest v. The Regents of the University of Wisconsin, 54 Wis. 159, 170:

". . . it is for the board of regents to choose the means which in their judgment are necessary or convenient, provided only they are calculated to accomplish the objects sought by the charter and

within the scope of the general power granted and not in conflict with the statute . . ."

This case held that the Board of Regents had power to charge students their share of the expense of heating and lighting public halls.

The power of the United States to condemn state or publicly owned property is established by 40 U.S.C.A. sec.257 which reads in part:

" . . . any . . . officer of the Government has been or shall be, authorized to procure real estate for the erection of a public building or for other public uses he shall be authorized to acquire the same for the United States by condemnation, . . ."

Under this statute many condemnation proceedings have been entertained against state or publicly owned property. See United States v. Bouchard, 64 F. 2d 482, C. M. Patten & Co. v. United States, 61 F. 2d 970, United States v. .8677 Acre of Land, 42 F. Supp. 91.

Answering question (3), it is further established that the United States in its taking may acquire the entire fee simple or any portion thereof. United States v. 6,000 Square Feet of Land, 53 F. Supp. 767, 770:

"It is well settled that the government may acquire for public purposes such property as it may select; it may take such interest in or use of property as it may determine; it may fix the term of use; it may use the property for any purpose. These powers are executive. Monongahela Navigation Co. v. United States, 148 U. S. 312, United States v. New River Collieries Co., 262 U. S. 341, United States v. Meyer, 113 F. 2d 387."

Very truly yours,

JOHN E. MARTIN,
Attorney General

RGT:mlr

CAPTION: (1) The Regents of the University of Wisconsin have authority to convey land for a proper University purpose.

(2) The United States government has authority to condemn state or publicly owned land for a proper purpose.

(3) In condemnation proceedings by the United States the entire fee or any lesser portion may be condemned.