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September 17, 1942

John S. S. Fessenden, Deputy Attorney General

Harry V. Gilson, Commissioner of Education

Reference is made to your letter of January 16, 1942, relative to the phrases "incomes of over $2,500 (3,500) from invested funds" and "annual income from invested funds".

In each case of "invested funds", it is necessary to know the contents of the instrument creating the fund before an answer can be given as to the meaning of the word "income". For example, some instruments may provide that gains in capital investment shall constitute income while others may not. So far as the legislative intent in the use of the word "income" in the statute is concerned, it would appear that the word "income" was used in its commonly accepted sense.

In common practice income is money which the recipient may use for his own general purpose and advantage. In this sense, income to an educational institution would be money available to it for the maintenance of its buildings, overhead expense, and educational program.

"Income" not available to the institution for the foregoing purposes but so "earmarked" as to be disposed of by the institution for particular purposes such as prizes, scholarships, etc., is not income to the institution. Such so-called income is merely funds, the disposal of which is at the direction of the institution for the naming of the beneficiary.

The difficulty then is not in interpreting the word "income" but in determining the use to which the "income" is put. For such determination, in each case, the instrument creating the fund must be construed.

                                        Deputy Attorney General

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