

# MAINE STATE LEGISLATURE

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August 14, 1951

To Morris P. Cates, Deputy Commissioner, Vocational Education

PORTLAND UNIVERSITY.

The question relative to the right of Portland University to grant degrees of B. C. S. and B. S. S. has been submitted to this office. Before discussing this problem it will be helpful if we list chronologically the pertinent events in the life of Portland University and laws relating to it.

1. Portland University was organized as a business corporation July 29, 1921, one of its recited purposes being to grant diplomas and degrees of B. C. S. after three full years of study, and B. S. S. after two full years of study, with Master and Doctor degrees after additional study.

2. Chapter 99, Public Laws 1923, provides that no person, partnership, or institution and no corporation shall be empowered to confer educational, literary or academic degrees unless thereunto expressly authorized by an act of the legislature.

3. Charter of Portland University suspended for non-payment of taxes for years 1925 and 1926.

4. Chapter 102, Private & Special, 1925, reads as follows:

"Portland University, a corporation organized under the general laws of the state of Maine, is hereby authorized until July first, nineteen hundred and twenty-six, to confer the degrees of bachelor of commercial science (B.C.S.) after three full years of study; and the degree of bachelor of secretarial science (B.S.S.) after three full years of study."

5. August, 1945, corporation reorganized under the laws of Maine from a business corporation to a charitable, benevolent and educational corporation, stating as one of its purposes, to conduct an educational institution,

"rewarding its graduates of this department with degrees of Bachelor of Commercial Science and Bachelor of Secretarial Science for full courses as provided for by an act of legislature 1925 ch. 102."

Paragraph (9) of the purposes reads as follows:

"Degrees shall be granted only after the legislature has by special act authorized it, in accordance with Revised Statutes."

6. Chapter 40 of the Private & Special Laws of 1949 provided that the trustees of Portland University were constituted a body politic and corporate with powers to confer diplomas and LL.B. degrees.

7. Chapter 136, Private & Special Laws, 1951, reads as follows:

"Additional degrees. Portland University is hereby authorized to confer appropriate diplomas and educational degrees, in addition to degrees in commercial science and law now within the authority of said university, based upon sound academic and professional instruction with such equipment and faculties as will safeguard the integrity of the degrees conferred. Courses, curricula, faculty and standards of instruction prescribed by said university leading to such educational degrees shall be approved by the state board of education."

The question presented to this office is:

"Is Portland University presently authorized to confer degrees in commercial science (B.C.S.) and/or Bachelor of Secretarial Science (B.S.S.) either by virtue of its original charter or by later legislation?"

Section 10 of Article I of the United States Constitution provides:

"No state . . . shall pass any . . . law impairing the obligation of contracts."

This language, "No state shall pass a law" refers, not to a change of judicial decisions but rather to an act of the state legislature or to an ordinance or by-law passed by a municipal corporation under the authority of the legislature.

In 1819, in the famous Dartmouth College case, 4 Wheat. 518, 4 L. Ed. 629, it was decided that the charter of a private corporation was a contract within the meaning of Section 10 of Article I of the United States Constitution, and to date this decision has never been overruled. As a result of the decision in the Dartmouth College case, most of the States provide, either by legislative enactment or by constitution, that all corporation charters thereafter granted shall be subject to amendment, alteration or repeal by the legislature. See 12 Am. Jur., Constitutional Law, §§403-416.

The State of Maine, by constitutional amendment approved February 24, 1875, also adopted that method of overcoming the decision in the Dartmouth College Case. Our constitutional provision reads:

"Corporations shall be formed under general laws, and shall not be created by special acts of the legislature, except for municipal purposes, and in cases where the objects of the corporation cannot otherwise be attained; and, however formed, they shall forever be subject to the general laws of the state."

Section 14, Article IV, Part Third,  
Constitution of Maine (Murchie Const.)

The effect of this constitutional provision is to permit the legislature to alter, amend, or repeal by general law the charter of any corporation organized under the general laws of the State of Maine after the effective date of that constitutional amendment.

Relative, then, to Portland University, we find it to be, originally, a business organization, organized July 29, 1921, and as such amenable to whatever general laws of the State of Maine might affect its charter. We further find that in 1923, Chapter 99, Public Laws, 1923, a general law was enacted, prohibiting any corporation from conferring degrees unless expressly authorized by an act of the legislature. At this point, Portland University would require authorization of the legislature before degrees could be granted in the future.

In 1925, Portland University obtained such authorization to confer degrees of bachelor of commercial science (B.C.S.) and bachelor of secretarial science (B.S.S.), but this authority was granted only until July 1, 1926.

From July 1, 1926, to date, no authority was granted by the legislature to Portland University to confer any degree except the LL.B. degree.

We are of the opinion, then, that presently, Portland University has no authority to confer degrees in commercial science (B.C.S.) and/or bachelor of secretarial science (B.S.S.), there having been no such authorization granted to the University by the legislature since 1923, when by general law such corporations as Portland University were prohibited from conferring any degrees without express legislative authorization.

While, by its construction, Chapter 136, Private and Special, 1951, assumes that the University has authorization to confer degrees in commercial science, that chapter cannot be construed as granting such authorization. Nor can authorization "to confer appropriate diplomas and educational degrees," be interpreted to include degrees in commercial science, which latter science is generally known to deal with accountancy and kindred subjects as distinguished from the educational courses.

In conclusion, we would like to draw to your attention the awareness of the incorporators of the reorganized Portland University of the view we have taken of the problem as evidenced by paragraph (9) of the purposes of the organization, quoted above, which we again quote:

"Degrees shall be granted only after the legislature has by special act authorized it, in accordance with Revised Statutes."

Alexander A. LaFleur  
Attorney General