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I take it that the subject "Freedom in Legislation" as assigned to me is meant to mean legislative control of colleges or freedom of colleges as affected by legislation. At the outset we might as well admit that except for some occasional instances in which there are constitutional limitations that legislative authority over educational institutions, higher and otherwise, is almost unlimited. It is not that we question the right but rather the wisdom I take it of some types of legislative control which are being exercised.

One of the first types of control which immediately comes to mind is control of the curriculum. Granted that it may be wise or desirable for the people through their representative legislature to require definitely the inclusion of some subjects or observances in schools it seems unlikely that it is necessary to multiply these demands into the thousand or so items which have come to be required. As a matter of fact, as early as 1925 Dr. Flanders in his "Legislative Control of the Elementary Curriculum" found some 2200 legislative prescriptions throughout the country. More disturbing than that he found that as legislatures found the delights of the exercise of such power that they tended to steadily increase the number of such restrictions and to make them more definite and restrictive through increased detail. For instance, where originally they were satisfied with requiring the teaching of certain subjects or the reading of the scripture later they began to set a definite time in the day, a definite minimum time allotment, or in the case of scripture a definite number of verses to be read and began to impose a definite penalty for failure of observance. I have time to give but two examples of this control of curriculum as applied to colleges. I cite the following enactment in Georgia in 1923:

"All schools and colleges in this State that are sustained or in any manner supported by public funds shall give instruction in the essentials of the United States Constitution and the Constitution of Georgia including the study of and devotion to American institutions and ideals. And no student in said schools and colleges shall receive a certificate of graduation without previously passing a satisfactory examination upon the provisions and principles of the United States Constitution and the Constitution of the State of Georgia."

For the second example I cannot resist giving this delightful requirement from the laws of Maine: as an indication as to how great is legislative faith in character formation by edict:

"The president, professors and tutors of colleges, the preceptors and teachers of academies, and all other instructors of youth, in public or private institutions, shall use their best endeavors to impress on
the minds of the children and youth committed to their care and instruction, the principles of morality and justice, and a sacred regard for truth; love of country, humanity, and a universal benevolence; sobriety, industry, and frugality; chastity, moderation and temperance; and all other virtues which ornament human society; and to teach those under their care, as their ages and capacities admit, into a particular understanding of the tendency of such virtues to preserve and perfect a republican constitution, secure the blessings of liberty, and to promote their future happiness; and the tendency of the opposite vices, to slavery, degradation and ruin."

It is easy to see that such curricular requirements on the part of legislative bodies if dogmatically enforced could impose rather serious burdens on institutions of learning. We have all been hounded I am sure by various groups who felt that the college could not go on unless it had a course covering their pet project or pointing out the damnable nature of their favorite antipathy. Sufficient pressure from any one of these groups could bring legislative demands for its inclusion and while perhaps improbable one could ultimately have so many prescriptions that there would be no room left for the subject matter which you and I think important. Then too curriculum making is a continuous and highly professional process which one questions the ability of even a Kentucky Legislature to deal with intelligently and efficiently.

The second matter which I wish to discuss is an increased legislative control of the governing boards of institutions of higher learning which has come about in the main through a reorganization of state governments. Just as in Kentucky so in most other states within comparatively recent years state governments have been rather thoroughly reorganized in the interest of increased efficiency and centralized control. Such reorganization has affected very drastically the freedom of governing boards. In the old days the governing board was left in almost complete freedom as to administrative details including freedom of expenditure. Their income was frequently from fixed taxes such as a mileage tax or a certain percentage of a certain tax such as inheritance and were of course subject to the evils of extreme fluctuation in times of depression but avoided the other evil of being subject to a yearly or biennial decision on the part of the legislature as to what income should be allotted. Under state governments as reorganized almost every phase of internal management has been more or less removed from the control of the governing board in one state or another. For example, the following is a list of items followed by the number of states in which the legislature has set up some centralized control.

<table>
<thead>
<tr>
<th>Item</th>
<th>States</th>
</tr>
</thead>
<tbody>
<tr>
<td>Budget and financial affairs</td>
<td>47</td>
</tr>
<tr>
<td>Educational program</td>
<td>1</td>
</tr>
<tr>
<td>Staff and Faculty personnel matters</td>
<td>13</td>
</tr>
<tr>
<td>Travel of staff members</td>
<td>13</td>
</tr>
<tr>
<td>Printing and binding</td>
<td>30</td>
</tr>
<tr>
<td>Publication of bulletins, reports, etc.</td>
<td>21</td>
</tr>
<tr>
<td>Purchase of supplies and equipment</td>
<td>30</td>
</tr>
<tr>
<td>Construction and alteration of buildings</td>
<td>20</td>
</tr>
</tbody>
</table>
**Acquisition and disposing of property**

**Prescription of accounting system**

**Investment of permanent funds**

**Management, administration, operation**

Number 2, educational program, one state, refers to Virginia in which in 1937 the governor had the right of approval before new courses of study could be set up.

Under our reorganization act in Kentucky in addition to the requirement for submission and approval of a budget to be submitted to a legislature, the Department of Finance is empowered to (1) require submission in advance of requirements for allotments of state funds with the right to approve or disapprove (2) to approve or disapprove transfer of items in such allotments (3) to maintain continuous check on expenditures (4) to purchase supplies, materials, and equipment (5) to approve or disapprove purchases of real estate (6) to handle printing and to approve or disapprove printing requisitions and to edit and reduce size before printing if desired (7) to maintain perpetual inventory of property (8) to transfer surplus supplies and equipment between institutions (9) to investigate management, administration, and operation (10) to prescribe accounting system (11) approve or disapprove out-of-state travel of state employees and (12) to approve or disapprove construction of buildings costing in excess of $10,000.

It is not my purpose to argue as to whether these regulations may or may not result in economy and more efficient management. Certainly no one can doubt after the two enumerations given that both in Kentucky and throughout the country in the main the former almost complete freedom of governing boards has been very drastically and materially reduced.

Since Dr. Donovan has been assigned the subject of "Freedom as Affected by Finances", I shall not say much about that, but it is so much a part of the subject of legislative control that I feel that I would be negligent did I not include a few statements. As I have stated before most states now make direct appropriation for annual or biennial periods. The alarming tendency which has begun to be manifest in this connection is to be found where legislatures have divided such appropriations into detailed items with the requirement that the sums for each item be expended only for a specific purpose except upon permission of the legislature or some executive agency to transfer. In Texas, for example, the legislature has gone so far as to itemize the positions and the salary for each position which would mean that there could be no promotions during the biennium except
in case of a vacancy and that the institution would have no power to increase the salary of any member of the staff to meet the competitive bid of another institution. For another example, Massachusetts provided in a rider to the appropriation bill that one school should not pay its director of physical education in excess of $2500. In several states, notably Arkansas, Texas, New York, and Florida lump sums are appropriated but salaries must follow lists submitted and approved by the state budget commission. Tennessee appropriates lump sums but in the case of all institutions except the state university the salary of each employee must receive the approval of the governor. It is easy to see that through such attention to detail the legislature largely directs the administration of finances and leaves only limited discretion to the board. It is interesting to note that frequently teachers colleges are hemmed in with much greater restrictions than is the university within the same state.

In 1936 twenty-four states made conditional appropriations not to be spent until estimates for proposed expenditure should be made to the governor or executive agency, estimates in many cases to be modified, decreased, or approved depending upon available revenue, which meant that appropriations were made but could later be reduced. It is interesting to notice in this connection that while it was the intention of the original reorganization act in Kentucky to demand a balanced budget, which of course would require in the final analysis if necessary the reduction of appropriations such authorization was not included in the appropriation act; and therefore there was a general doubt as to whether the appropriation for a specific institution could legally be reduced if one were willing to argue the point since the appropriation bill came after the reorganization act. Fortunately revenues held out and such reduction was never made necessary. If you will however read the appropriation bill for this year you will find in it the express declaration that appropriations shall not be available for expenditure until allotted as now provided by law and that the "governor is authorized, empowered, and directed by the legislature to prevent an over-draft or deficit in any fiscal year for which appropriations are herein made, by equitably reducing without discrimination the appropriations herein made to any officer or institution, etc." There is the following protective statement, "provided that the power hereby invested and granted to the governor shall not permit any reduction of the appropriation . . . that will actually impair the necessary governmental functions of any agency whose operations and functions are determined to be a necessary governmental function."

Finally there has been a steadily increasing tendency to give the governor the veto power over items and portions of items in appropriation bills after they have been passed by the legislature. In 1936 the governor had this power in all states but nine which it is easily seen gave him a very powerful influence over educational policies and academic programs.

In the years 1934-37, inclusive, governors in eight states vetoed 404 separate items in appropriations for the support of state universities and colleges aggregating $5,067,489.
The last phase of legislative control which I shall be able to discuss is the control of the institution through the method provided by the legislature for the selection and removal of the members of its governing board. While in a few states election of the members of the governing boards by the people is provided for in the constitution; and while it is true that in some twelve states the practice of electing certain governing boards rather than having them appointed has been adopted, still by far the greater majority of the governing boards are appointed by the governor with or without the consent of the senate. Such appointment of the members of one or more governing boards is the case in forty-five states. In eight states, among which is Kentucky, the governor alone appoints. In thirty-two states the governor appoints with the consent of the senate. In five states the governor appoints the members of boards governing a certain type of institution while those governing another type within the same state are appointed by the governor with the consent of the senate. The power rests with the legislature not only to determine the method of appointment but also the method of filling vacancies, the number of vacancies which shall occur during the administration of any one governor, and the method of removal but also except in case of constitutional prohibition, as has been mentioned, the legislature really has the power to do away completely with the existing governing board and to create a new and different agency. Such procedure has been upheld in the states of Florida, Kansas, Mississippi, and Georgia. It is easy to see therefore that the control of the governing board by the legislature is almost absolute.

As to removal, in thirty-four states the governor can remove the governing boards of one or more institutions conditionally or unconditionally. Since where removal is for cause the governor is frequently the sole judge of the existence of cause, there would not seem to be a great deal of difference oftentimes between unconditional and conditional removal; however, the courts have in the main been disposed to uphold the rights of the board member against unreasonable and unjust removal of the member by the governor under such conditions.* In seven of the thirty-four states, and among these is Kentucky, the governor is empowered to remove the members of certain boards at his discretion. In only eight of the thirty-four states in which the governor has the power of removal is such authority derived from constitutional provisions. In fourteen states the governor has no authority whatever to remove members of any of the boards. These states are Alabama, Arizona, California, Delaware, Georgia, Kansas, Minnesota, Mississippi, Montana, Nevada, New Jersey, New York, Pennsylvania, and Tennessee.

*Note: The other states along with Kentucky on unconditional power of removal, Missouri, Rhode Island, New Mexico, North Carolina, Vermont, Oklahoma, (Indiana ?).
In the main it has been true that the governors of the several states have rarely taken advantage of their power to remove members of governing boards of state universities and colleges. Nevertheless he does legally possess the removal power did he desire to use it. It would seem reasonable to assume that the terms of boards should be overlapping, that the appointment of an entire board should not fall to one governor under proper legislative provision, and that removal should be for cause.

This paper of course is suggestive rather than exhaustive but has been sufficient to suggest the almost complete control which legislative bodies have over educational institutions. I think after one looks at the picture he probably is disposed not to complain so bitterly about exercise of this power but rather to give thanks that it has been exercised to such slight extent.