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SPECIAL MEETING OF THE
REGENTS OF THE UNIVERSITY OF OKLAHOMA
THURSDAY, JANUARY 29, 1948 - 10:00 a.m.

A special meeting of the Board of Regents was called to meet in the office of the President of the University, at 10:00 a.m. on Thursday, January 29, 1948.

The following were present: Regent Noble, president, presiding; Regents Deacon, Emery, Shepler, Benedum, Dr. White, McBride. Absent: None.

The meeting was called at the request of President Cross for a report on the applications of six negroes who presented applications for admission to the University in the Graduate College, as follows:

Mauderie Hancock Wilson, 726 NE 6, Oklahoma City, who holds a BA degree from Langston University, seeking a master's degree in social work.

Ivor Tatum, 511 N. Kelley, Oklahoma City, who holds a BA degree in sociology from the University of Kansas and has had one year of graduate study at the University of Nebraska, seeking a master's degree in social work.

Mozeal A. Dillon, Langston, who holds a BS degree in industrial education from Langston and has attended one summer term at the University of Nebraska, studying architectural engineering, seeking a master's degree in architectural engineering.

Helen Holmes, 15 S. Klein, Oklahoma City, who holds a BS degree in commercial education from Lincoln University, Jefferson City, Missouri, seeking a master's degree in commercial education.

James Bond, an instructor in biology at Langston, who holds a master's degree from the University of Kansas, seeking a Ph.D. in zoology.

George McLaurin, 524 N. Stonewall, Oklahoma City, who holds a master's degree from the University of Kansas in education and foreign languages, seeking a Ph.D. degree in school administration.

President Cross stated all of the above are bone fide citizens of Oklahoma according to signed statements. President Cross asked for directions as to what action he should take. He presented an opinion from the Attorney General in response to his request under date of January 22, 1948.

Regent McBride moved, and it was voted, that the opinion addressed to G. L. Cross, President of the University, from the Attorney General under date of January 29, 1948, be recorded in the minutes of this meeting. The opinion follows:

GREAT SEAL OF THE STATE OF OKLAHOMA 1907
STATE OF OKLAHOMA
Office of the Attorney General
Oklahoma City

Mac Q. Williamson
Attorney General

January 29, 1948

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January 29, 1948

Dr. G. L. Cross, President
University of Oklahoma
Norman, Oklahoma

My dear Sir:

Under date of January 22, 1948, you inquired of the Attorney General (at the instance of the Regents of the University of Oklahoma) as to the procedure to be followed upon application "by a person of African descent for admission to any department of the University" (of Oklahoma); no doubt in the light of the constitutional and statutory provisions of Oklahoma upon the subject, as well as in the light of the following listed recent court decisions which may affect the general subject of your inquiry, namely:

a) Decision, Jan. 12, 1948 of the United States Supreme Court in the case of Sipuel v. Board of Regents of Oklahoma University (not yet officially reported):

b) Decision, January 17, 1948 of the Oklahoma Supreme Court in the same case (on remand from the U. S. Supreme Court - Vol. 19, No. 3, p. 65, Oklahoma Bar Journal, January 24, 1948 - not yet officially reported):

c) Decision, January 22, 1948 of the District Court of Cleveland County, Oklahoma, in the same case (on remand from the Oklahoma Supreme Court).

At the outset of this reply, it is noted that you (and others) have verbally furnished this office with additional factual information as to events transpiring at the University of Oklahoma since January 22nd, the date of your formal inquiry; to the effect that in the mid-afternoon of this day (Wednesday, Jan. 28th, being the last day of the regular 3-day mid-term enrollment period for all University classes) and with no advance notice whatsoever to either Langston or Oklahoma University as to the identity, qualifications or educational desires of any of the group, six negroes appeared for the first time at your office in the administration building, on the Oklahoma University campus, and for the first time applied for admission to the graduate college, seeking instruction privileges leading to master degrees in social work, commercial education, architectural engineering, and Ph.D. degrees in school administration and zoology. And it is our understanding that the transcript information they furnished indicated that all were likely eligible for graduate study. Also, it is our information that you have received official notice from the office of the Oklahoma State Regents for Higher Education that Langston University, as the state's institution for higher learning for negroes, has no presently existing facilities for teaching the courses sought by members of this group.

January 29, 1948

Your attention is directed to the law and the long-established policy of the State as exemplified in the Constitution and various statutes upon and prescribing segregation of the white and negro races, and providing penalties for violations thereof.

Constitution, Article XIII, Section 3, provides:

> "Separate schools for white and colored children with like accommodation shall be provided by the Legislature and impartially maintained. The term 'colored children,' as used in this section, can be construed to mean children of African descent. The term 'white children' shall include all other children."

And Section 11 of Article XXIII (Okla. Const.), under the heading "Definition of Races," reads as follows:

> "Wherever in this Constitution and laws of this State, the word or words, 'colored' or 'colored race,' 'negro' or 'negro race,' are used, the same shall be construed to mean or apply to all persons of African descent. The term 'white race' shall include all other persons."

See Blake et al. v. Sessions et al., 220 Pac. 876, 94 Okla. 59.

In this connection it is noted that our Supreme Court, in the recently decided Sipuel case, supra, held that

> "It is the State's policy, established by constitution and statutes, to segregate white and negro races for the purpose of education at institutions of higher learning."

Our statutory policy, in pursuance of Constitutional pronouncement, is likewise clear. 70 O. S. 1941, §§ 451-457. Section 452 provides that the term "colored" shall be construed to mean "all persons of African descent who possess any quantum of negro blood..."; and Section 454 provides that "any teacher in this state who shall wilfully or knowingly allow any child of the colored race to attend the school maintained for the white race...shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than ten dollars nor more than fifty dollars, and his certificate shall be cancelled..."

Section 455 reads as follows:

> "It shall be unlawful for any person, corporation or association of persons, to maintain or operate any college, school or institution of this state where persons of both white and colored races are received as pupils for instruction, and any person or corporation who shall operate or maintain any such college, school or institution in violation hereof, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars, and each day such school, college or institution shall be open and and maintained shall be deemed a separate offense.

Section 456 provides:

> "Any instructor who shall teach in any school, college or institution where members of the white race and colored race are received and enrolled as pupils for instruction, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than ten dollars nor more than fifty dollars for each offense, and each day any instructor shall continue toteach in any such college, school or institution, shall be considered a separate offense."

And Section 457 prohibits and penalizes white persons attending "any school, college or institution where colored persons are received as pupils for instruction...."

Thus it is evidenced a clear and unmistakable policy, both Constitutional and legislative, against scholastic intermixing of the named races.

However, the state and every public official in it has another and equally important duty, namely, that of supporting and defending the Constitution of the United States; the 14th Amendment of which (insofar as is here pertinent) reads as follows:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

In its January 12, 1948 decision in the Sipuel case, supra, the United States Supreme Court pointed out that in January 1946, the petitioner (Sipuel) concededly qualified, applied for admission to the School of Law of the University of Oklahoma; that there was then no other state-supported law school; that she was denied admission solely because of her color; that she is entitled to secure a legal education afforded by a state institution (not necessarily Oklahoma University); that "to this time" (incidentally 2 years later) it has been denied her, although many white applicants were afforded legal instruction during the same period. Then holding that "The State must provide it for her * * * in conformity with the equal protection clause of the Fourteenth Amendment and provide it as soon as it does for applicants of any other group."

In that case, the two-year long struggle had seen the time go by without admission to the Oklahoma University Law School, and without any apparent state action or movement in the direction of affording separate but substantially equal legal instruction at Langston University. Even the regular 1947 session of the State Legislature came, and passed, without any official action concerning the demand. But with the clear pronouncement of January 12, 1948

by the highest federal court official non-action was supplanted by instant and earnest official activity, with the result that a separate (Langston University) state law school was created, and staffed with a Dean and two law professors, all of outstanding legal training and ability, and commodious State Capitol quarters secured, along with free and convenient access to the best law library in the State. Thus acted and re-acted the Board of Regents of Higher Education, the Regents of A. & M. Colleges, and other state officials, under a sense of high responsibility, and duty. Concededly, if the situation which you present was on "all fours", or even vaguely similar to the early demand, the litigation, and the two-year delay in the Sipuel case, then the answer would needs be the same, namely; requirement for the admission and instruction of the six applicants in a proper state school as soon as granted to other applicants or groups.

But here we have six people, evidently far above the average intelligence of their race, who could have made their educational wishes known in the spirit of reasonable advance notice, but who chose to wait until the closing hours of the last day of the regular 3-day registration period, apparently with the concerted thought of securing "instanter" action, because of the patent impossibility of the State's providing instant higher facilities in a separate school.

A State, like an individual, cannot suddenly achieve the impossible. Nor is there any apparent language in the Sipuel opinion of the United States Supreme Court which would seem to require it. Rather, it is an unusually succinct statement commanding the establishment without further delay of rights long sought for - a situation vastly different from "eleventh hour" applications, without any previous notice.

Upon this precise point the said high court has not directly spoken. However, in Bluford v. Canada, 32 Fed. Supp. 707, the federal district Court for the Western District of Missouri did take occasion (in 1940) to officially review and pass upon the status of a negro demanding, instanter, and without prior notice, entrance into Missouri State University, although said state was making a continuing effort to provide as needed separate but substantially equal higher education for its negro citizens. Bluford, the applicant, was suing Canada, the University registrar, in damages, for refusing, in January, and again, in August 1939, to admit her to Missouri University School of Journalism. The Court in part, said:

> "The petition does not allege any demand by plaintiff or any other negro for instruction in journalism at Lincoln (the separate) University, nor does the petition allege that the governing body of Lincoln University had ample time to furnish those facilities after plaintiff first sought admission to the University of Missouri. The omission was not inadvertent. On oral argument counsel, with complete frankness, stated plaintiff's position to be that although plaintiff should be the first to request the desired instruction she is entitled to it at the University of Missouri instanter, if it be now furnished there to white students and is not immediately available at Lincoln University. If her position is well taken no allegation of advance notice to the authorities of Lincoln University of her desire for the instruction demanded is necessary. On the other hand, if the

State be entitled to an opportunity to furnish the instruction at Lincoln University before it or its administrative officers (such as the defendant), be convicted of violation of the equal protection clause, then the petitioneshould be amended or defendant's motion (-to dismiss, on account of insufficient facts stated, necessary to the relief sought) sustained.

"...Furthermore, if plaintiff may maintain this action without alleging previous notice of her desires and opportunity for compliance, will on tomorrow the individual members of the Board of Curators of Lincoln University or the University of Missouri be liable in damages to another negro, if, perchance, late today he or she demands instruction at Lincoln University for which facilities are lacking, and then in the morning demands admittance to the University of Missouri? Yet such would seem to be the result contended for by plaintiff unless the curators should maintain at Lincoln University at all times departments of instruction, whether used or not, which are available at the University of Missouri. It does not appear that 'a clear and unmistakable disregard of rights secured by the supreme law of the land' would result from a failure on the part of those curators to keep and maintain in idleness and non-use facilities at Lincoln University which no one had requested or indicated a desire to use.' (Emphasis and parenthesis are ours).

"The defendant's motion to dismiss was sustained, the plaintiff evidently not caring to avail herself of the opportunity granted by the Court to take up to 10 days to amend her petition to comply with the above views; in any event the case was appealed to the U. S. Circuit court for the 8th District, where, on April 3, 1941, said appeal was dismissed '...at costs of appellant, but without taxation of attorneys' docket fee in favor of appellee,'" 111 Fed. Rep. 2d, 779.

In the Sipuel case the United States Supreme Court cited Missouri ex rel. Gaines v. Canada, 305 U. S. 337 (1938) on the point of mandatory duty of school authorities to furnish within the state substantially equal facilities, where the State has a segregation policy; the court in effect holding that while the arrangement of sending students into other states might be regarded as a "temporary" discrimination, yet because of the wide statutory discretion of the curators as to when to stop "exporting" students and when to provide in-the-state instruction facilities, such arrangement was too indefinite--thus in effect inferring that termporary delay, if and when coupled with a mandatory (and not a discretionary) duty on the Regents to provide separate but substantially equal courses, would not be subject to criticisms which were justified by the facts in the Gaines case.

The Oklahoma Supreme Court in its January 17th, 1948, opinion (supra) among other things provided that

"Said Board of Regents is hereby directed, under the authority conferred upon it by the provisions of article 13-A, Constitution

of the State of Oklahoma, and Title 70 O. S. 1941, secs. 1976, 1979, to afford to plaintiff, and all others similarly situated, an opportunity to commence the study of law at a state institution as soon as citizens of other groups are afforded such opportunity, in conformity with the equal protection clause of the Fourteenth Amendment of the Federal Constitution and statutes of this state requiring segregation of the races in the schools of this state. Art. 13, sec. 3, Constitution of Oklahoma; 70 O. S. 1941 secs. 451-457."

Thus, the indefiniteness of the discretion reposed in the Curators to act (as found by the United States Supreme Court in the Gaines case to be obnoxious to the 14th Amendment) is not at all found in the present situation. On the other hand, there is here a positive State Supreme Court direction and command to our State Regents to act in relation to applications such as are involved here, without delay. And, absent good faith prompt effort on the part of said Regents culminating in a separate but substantially equal school, then the Sipuel case doctrine would apply.

In consideration of the above citations and of all relevant facts, it is believed that because of the factual dissimilarity, and the above rule of compulsion as laid on the Regents for Higher Education, the immediate compulsion doctrine of the Sipuel case is not presently applicable to the situation which you present; and that the Board of Regents of the Oklahoma University are and would be justified in declining the admission, at this time, of the six applicants, at the same time promptly calling to the official attention of the Regents for Higher Educatbn the fact and the details of said applications, for their consideration and action. They have broad powers, as evidenced by their prompt establishment of a State School of Law as a function of Langston University; and the Governor has the constitutional authority (should he so decide) to summon a special session of the State Legislature, if same should be found to be expedient, or necessary.

Yours very truly,

/s/ Mac Q. Williamson

Attorney General

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APPROVED IN CONFERENCE
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After a discussion the following motion was made:

Regent Emery moved that the President of the University be authorized and instructed to request from the Attorney General of the State Of Oklahoma a supplemental opinion upon the following question:

"Under the constitution of the United States and the constitution and laws of the State of Oklahoma, may the Board of Regents of the University of Oklahoma lawfully admit, at this time, to the University of Oklahoma a Negro applicant qualified

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> to receive the education for which he (or she) is applying if there is no institution for Negroes supported and maintained by the taxpayers of the State of Oklahoma that affords the education for which application is made?"

That the President of the University be further authorized and directed to request a certificate answering the following question from the State Regents for Higher Education inrespect of the education applied for at the University of Oklahoma by each Negro applicant:

> Is the education applied for afforded in an institution for Negroes supported and maintained by the taxpayers of Oklahoma?

That the President of the University be authorized and directed to admit each such applicant qualified to receive the education for which application is made, provided the Attorney General answers the question submitted under the authority of this motion in the affirmative, and provided the State Regents for Higher Education answer the question submitted under the authority of this motion in the negative in respect of each such applicant;

That the President be directed to deny each such applicant qualified to receive the education for which application is made provided the Attorney General answers such question in the negative, and that until such opinion is received, the President be directed to defer action upon all applications made by Negroes for admissions to the University of Oklahoma.

The question was called for, and the motion was passed.

There being no further business the meeting was adjourned at 5:00 p.m.

Secretary

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January 29, 1948