

220 N.W. 951
175 Minn. 259
STATE ex rel. UNIVERSITY OF MINNESOTA et al.
v.
CHASE, State Auditor.
No. 26800.
Supreme Court of Minnesota.
July 27, 1928.
[220 N.W. 952]
[175 Minn. 260]

of the state government." Neither the University nor the board of regents is among those thereby established. But the article concludes with this sweeping sentence:

"All of said departments and all officials and agencies of the state government shall be subject to * * * this act."

The Railroad and Warehouse Commission, although not one of the departments created by this act, is expressly subject thereto as an agency of state government. *State ex rel. Yapp v. Chase*, 165 Minn. 268, 206 N. W. 396. If the University is such an agency, the power claimed by the commission is plainly within the law. Section 3 of article 3 confers power "to supervise and control" expenditures by all "departments, and agencies of the state government and of the institutions under their control; the making of all contracts and the creation or incurrence of all financial or contractual obligations; * * * by or for the state or any such department, agency, or institution." By section 5 of the same article, no appropriation to any "official, department, or agency of the state government or to any institution under its control" can become "available for expenditure" without the submission to the commission of an "estimate" and its approval of the same. The obvious intention is to include everything in the way of department or institution used as a means to any end of state government. Education being one of those ends and the University the premier of the state's educational system, it is, in the ordinary and functional sense, plainly an agency of the state. Beyond that, we find stated exceptions from the law's operation, neither the University nor the board of regents being among them. Article 17 declares that the act shall not apply to the State Agricultural Society, and section 6 of article 3, that it shall not reach certain functions of the board of control. Certainly, while these exceptions were being created and stated, the University would also have been expressly excepted, if such had been the intention.

intention to omit the University without saying so. Their plan did not lack ambition. It did not suggest the express exceptions already referred to. They seem to have come from the Legislature itself. And the thought recurs that members of that body would not have mentioned the exceptions they did without explicitly excluding the University also if that had been their purpose. That the University is a body corporate, with a degree of independence to be discussed later, in no way obstructs the conclusion that it is an agency of government to accomplish a state purpose, just as a municipal corporation, however independent it may be under its charter, is an agency of government for the accomplishment of local purposes. See annotation, 29 L. R. A. 378.

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government that all its officers, "from the highest to the lowest, are equally subjected to legal restraint." *Ex parte Gilchrist v. Collector*, 5 Hughes, 1, 4, Fed. Cas. No. 5420. And notwithstanding the tendency of power

of examiners functioning independently of the board of regents.

The University of Michigan is the beneficiary of a similar grant of independent power. For a long time the regents resisted the will of the Legislature that instruction in homeopathic medicine be given in the medical department of the institution. *People ex rel. Regents v. Auditor General*, 17 Mich. 161; *People v. Regents*, 18 Mich. 469; *People ex rel. Attorney General v. Regents*, 30 Mich. 473. *Weinberg v. Regents*, 97 Mich. 246, 56 N. W. 605, holds that the control of the University is in the regents to the exclusion of other state departments, under a constitutional provision that "the board of regents shall have the general supervision of the University, and the direction and control of all expenditures from the University interest fund." In *Sterling v. Regents*, 110 Mich. 369, 68 N. W. 253, 34 L. R. A. 150,

