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Committee on Militarism in Education (national and Ohio),  
regarding compulsory military training in colleges, 1930.



# COMMITTEE ON MILITARISM IN EDUCATION

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NEW YORK CITY

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Friends:

## ATTORNEY-GENERAL OF THE U.S.A. RULES MILITARY TRAINING IS OPTIONAL UNDER MORRILL ACT OF 1862

Attorney General William D. Mitchell has just rendered an interpretation of the Morrill Act which removes every vestige of ground for arguing that said Act makes military training compulsory in land-grant colleges. This opinion, rendered at the request of the Secretary of the Interior, completely supports the ruling of that Department, made in 1923, when they held that the University of Wisconsin was acting within legal right by making drill optional, and should lose no funds thereby.

This interpretation of the law is one of the biggest blows to compulsory drill yet delivered. The way is completely clear for local authorities to abolish compulsion. We enclose an exact copy of the opinion as it was supplied us by the Department of Justice.

We urge our friends:

- To bring this to the attention of the authorities of their local land-grant colleges;
- To write to their local editor, and to any farm, labor, or religious papers they know, explaining what it means.
- To bring the matter before parents and prospective college students that they may understand the legal facts about local responsibility for compulsion.
- Wherever necessary, inform your state legislators.
- See that your college catalog is accurate on this point in the future.

Use this opportunity to press the timeliness of offering college courses in up-to-date, pacific means of settling international disputes as substitutes for the out-of-date compulsory military courses.

Sincerely yours,

Executive Secretary.

TPS.MA

P.S. We have a limited number of extra copies of the opinion which may be had for the asking.



(Copy of Ruling on Military Training by United States Department of Justice. C.M.E.)

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(COPY-m)

Respectfully referred to the  
DEPARTMENT OF THE INTERIOR  
for information and guidance.

Chief Clerk

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DEPARTMENT OF JUSTICE

Washington

June 20, 1930

Sir:

I have the honor to acknowledge receipt of your letter of May 23, 1930, requesting my opinion as to whether agricultural colleges having grants under the Act of July 2, 1862, c. 130, 12 Stat. 503, and amendatory Acts, are required to include military tactics among the compulsory courses of study or whether they may simply offer this subject as an elective course.

The pertinent provision of the statute is contained in Section 4, which reads as follows:

And be it further enacted, That all moneys derived from the sale of the lands aforesaid by the States to which the lands are apportioned, and from the sales of land scrip hereinbefore provided for, shall be invested in stocks of the United States, or of the States, or some other safe stocks, yielding not less than five per centum upon the par value of said stocks; and that the moneys so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished, (except so far as may be provided in section fifth of this act,) and the interest of which shall be inviolably appropriated, by each State which may take and claim the benefit of this act, to the endowment, support, and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.  
(Italics supplied.)

(Over)



Amendments of this section by the Act of March 2, 1883, c. 102, 22 Stat. 484 (U.S.C., Title 7, Sec. 304) and by the act of April 13, 1926, c. 130, 44 Stat. 247 (U.S.C. Supp. III, Title 7, Sec. 304), reenacted the language printed in italics above, without change.

By the act of August 30, 1890, c. 841, 26 Stat. 417, annual appropriation is made "for the more complete endowment and maintenance of colleges for the benefit of agriculture and the mechanic arts now established, or which may be hereafter established, in accordance with an act of Congress approved July second, eighteen hundred and sixty-two, \* \* \*." By Section 4 of this Act the Secretary of the Interior is charged with its administration, and he is directed to ascertain and certify to the Secretary of the Treasury annually as to each State and Territory whether it is entitled to receive its share of the annual appropriation. There is no requirement that the moneys appropriated under this Act shall be devoted by the State to an institution then teaching military tactics, but only to an institution which had been or should be established under the Act of July 2, 1862. The Act of August 30, 1890 provides that the money shall "be applied only to instruction in agriculture, the mechanic arts, the English language and the various branches of mathematical, physical, natural and economic science, with special reference to their applications in the industries of life, and to the facilities for such instruction: \* \* \*."

But by the Act of March 4, 1907, c. 2907, 34 Stat. 1256, 1281, which appropriated additional money "for the more complete endowment and maintenance of agricultural colleges now established, or which may hereafter be established, in accordance with the Act of Congress approved July second, eighteen hundred and sixty-two, and the Act of Congress approved August thirtieth, eighteen hundred and ninety, \* \* \*" it is provided that the money so appropriated is "to be applied only for the purposes of the agricultural colleges as defined and limited in the Act of Congress approved July second, eighteen hundred and sixty-two, and the Act of Congress approved August thirtieth, eighteen hundred and ninety." Another paragraph of this statute provides that the payment of the money appropriated shall be governed by the provisions of the Act of 1890.

Under these statutes you and your predecessors have recognized the duty, so far as the appropriations made by the Act of March 4, 1907, are concerned, to withhold a certificate as to any State which has not one or more colleges which are conducted in compliance with the provisions of the Act of July 2, 1862. In determining whether such a certificate should be issued, you are consequently confronted with the problem whether an institution, in order that it may comply with the Act of July 2, 1862, must include military tactics as a compulsory course of study.

The statutes nowhere specifically require that the offered course in military tactics must be compulsory. My attention has been called to the fact that at the time when the original statute was passed in 1862, it appears that all or almost all courses offered in universities were compulsory, but, of course, this is not conclusive of the intention of Congress. The association of the words "military tactics" in the statute with the words "such branches of learning as are related to agriculture and



the mechanic arts" shows that there was no intention to require instruction in military tactics to be compulsory upon the students any more than those branches of learning related to agriculture and mechanic arts. If one branch is compulsory, all must be, and when we consider the great variety of branches which are related to agriculture and mechanic arts under the modern educational system, it is apparent that it would be impracticable to require any student to take all of such courses. It is generally recognized that there is no obligation on agricultural colleges having land grants under the Act of July 2, 1862, to compel their students to take any course related to agriculture or mechanic arts.

The use of the words "leading object" in the statute indicates that Congress must have intended to repose some discretion on the State or in the college to determine to what extent agriculture and mechanic arts, scientific and classical studies, and military tactics should be taught or required. The additional provision of the statute that these branches of learning should be taught "in such manner as the legislatures of the States may respectively prescribe," also suggests that it was the purpose of Congress to leave to the States a wide measure of control in the administration of the statute.

I have given consideration to the legislative history of the Act of 1862. The manner in which the language in question came to be inserted in the bill does not convince me that Congress intended the course in military tactics to be compulsory. If it had had such an intention, it seems fair to assume that it would have expressed that intention in clear language. An examination of the report of the speech of Mr. Morrill of Vermont (Cong. Globe, 37th Cong., 2d Sess., Part 4, Appendix, p. 256), who had charge of this bill in the House, reveals no clear statement to the effect that it was contemplated that military training would be compulsory on all students.

I have also considered what was done after the passage of the Act of 1862. From a memorandum submitted to me it appears that in several of the States, at least, courses in military tactics were compulsory in the years immediately following the passage of the Act. But in a letter to the Secretary of War, under date of July 19, 1923, the Acting Secretary of the Interior informed the Secretary of War that

the policy of the Department of the Interior has been that a State fulfills its obligation under the law when it offers instruction and provides facilities for instruction in the branches of learning specified in the land-grant college legislation.

This ruling was published in 1925 by the Bureau of Education of your Department in a bulletin entitled "Federal Laws and Rulings Affecting Land-Grant Colleges." I understand that this policy has been consistently followed, and that cases presenting the precise question under consideration have arisen. The problem has in particular been presented with respect to the State of Wisconsin since 1923, for in that year the legislature of that State provided by statute that the study of military training at the State



University should be optional. Wis. Laws, 1923, c. 226. It is significant that in 1926, Congress, in amending the Act of July 2, 1862, reenacted the precise language of the Act of July 2, 1861, underlined at the outset of this opinion. The Supreme Court has held in National Lead Co. v. United States, 252 U. S. 140, 146-147, that the reenactment of a statute while an administrative interpretation of the statute is in effect --

amounts to an implied legislative recognition and approval of the executive construction of the statute \* \* \*; for Congress is presumed to have legislated with knowledge of such an established usage of an executive department of the Government. United States v. Bailey, 9 Pet. 238, 256.

To the same effect are United States v. Cerecedo Hermanos y Companias, 209 U. S. 337, 339; United States v. Falk & Brother, 204 U. S. 143, 149.

I am of the opinion that the construction of the statute adopted by your Department is a reasonable one, and that it was in effect approved by Congress by the reenactment of the language in question after the adoption and publication of that construction by your Department. Added force is given to the reenactment of this language by the fact that it occurred after the legislation in Wisconsin referred to above.

I, therefore, advise you that you are justified in considering that an agricultural college which offers a proper, substantial course in military tactics complies sufficiently with the requirements as to military tactics in the Act of July 2, 1862, and the other Acts above mentioned, even though the students at that institution are not compelled to take that course.

Respectfully,

(Sgd) William D. Mitchell

Attorney General.

The Honorable

The Secretary of the Interior.