

October 23, 1949

The Board of Trustees, Arkansas State Teachers College, met in the President's office Sunday, October 23, 1949, pursuant to legal call of the meeting by the Chairman. The following members were present: R. A. Cox, Chairman; Amis Guthridge, Vice-Chairman; Mrs. Pauline Johnston, Secretary; James S. Colvert; O. H. Parham; Dr. J. H. Flanagan. President Irby; Business Manager Harold Eidson; Attorneys J. Wendell Henry and Guy H. Jones; Mr. Leroy Beasley, State Comptroller; M. E. Newbern; and E. S. Emerson of Emerson, Roche and Company, met with the Board. Trustee Silas D. Snow was absent.

After roll call, Chairman Cox directed that the minutes of the last meeting of the Board be read. The minutes were read and approved.

The Chairman called for any items of old business and new business which might legally be acted upon at this meeting of the Board.

Chairman Cox explained the major purpose of the meeting, stating that it was called to recommend action to the Board of Fiscal Control in disposing of the conflicting claims of M. E. Newbern against Arkansas State Teachers College and the claims of Arkansas State Teachers College against M. E. Newbern, Guy Jones, Attorney, represented Newbern and J. Wendell Henry, Attorney, represented Arkansas State Teachers College. Comptroller Leroy Beasley represented the Governor.

Copies of the original contract for operating the College Bookstore between Newbern and Arkansas State Teachers College were read by Secretary Johnston, as follows:

Contract for the operation of the College Bookstore, Arkansas State Teachers College, Conway, Arkansas

1. The Arkansas State Teachers College will provide quarters, electricity, water and heat for all normal usages of the Store.
2. That janitor service will be provided by the Store ownership.
3. That the college furniture now in the Store will be left there for use of the Store,
4. That the terms of the contract are for five (5) years from the date below, but can be dissolved by either party to the contract by written notice to the other party after ninety (90) days from date of written notice: if difference arise as to disposition of goods in the Store, at the close of the contract period, such differences shall be adjusted by three arbiters, one selected by the college, one by the Store and the third by the other two appointed arbiters. Actual cost of currently used material shall be a minimum payment.
5. Except for cushions and programs, the Store will have concession rights at all college inter-collegiate athletic events.
6. The proprietor of the Store will exercise necessary steps to assure that textbooks, supplies, and such other articles as appear necessary to the use of faculty and students be kept for sale at the Store.
7. Rent will be paid by the Store to the college monthly to the amount of ten (10) percent of gross store sales for the preceding thirty (30) days period.

Signed for the College Bookstore

Signed for Arkansas State Teachers College

M. E. Newbern, Jr

Nolen M. Irby

Witness:

Witness:

Connie Lee Springer

Harold D. Eidson

Date: July 1, 1944

Copies of the original claims made by Newbern to the Board of Fiscal Control, which he maintained were owed him by the college, were distributed to members of the Board of Trustees. The items of Newbern's original claims were:

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|--|--------------------|
| 1. Books and supplies for 7 veterans in the amount of | \$ 76.14 |
| 2. Books and supplies for 460 veterans for 2nd semester of summer, 1947, in the amount of | 3,897.05 |
| 3. Books and supplies for 34 veterans for 3 weeks summer term of 1947, in the amount of | 146.15 |
| 4. A die for the making of Senior Class rings for senior students at request of College Officials at a cost of | 300.00 |
| 5. Sales tax on merchandise sold to ASTC paid in the amount of | 994.42 |
| 6. Profit on books issued to veteran students by ASTC in violation of contract with claimant | 195.20 |
| 7. Merchandise delivered to Extension Department | 183.06 |
| 8. Merchandise delivered to Administration Department | 35.42 |
| TOTAL - - - - - | <u>\$ 5,827.44</u> |

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Attorney Jones was granted permission to address the Board of Trustees and presented an amended list of claims against the college, presenting the claims as follows:

TO THE BOARD OF TRUSTEES OF THE ARKANSAS STATE TEACHERS COLLEGE:

The following claim for amounts due since August 18, 1947, is hereby presented, and payment requested to be approved and authorized by this Board of Trustees to the claimant, M. E. Newbern, Jr., as follows: to-wit:

Pursuant to the terms of a five year contract entered into by the claimant with Dr. Nolen M. Irby, President of Arkansas State Teachers College under date of July 1, 1944, and terminated by the said Dr. Nolen M. Irby under terms of the contract, in August, 1947, the claimant presents the following claims:

| | |
|---|-------------------|
| 1. Books and supplies for 7 veterans in the amount of | \$ 76.14 |
| 2. Books and supplies for 460 veterans for the 2nd semester of summer, 1947, in the amount of | 3,897.05 |
| 3. Books and supplies for 34 veterans for the 3 week summer term of 1947, in the amount of | 146.15 |
| 4. Merchandise delivered to Extension Dept. summer of 1947, in the amount of | 183.06 |
| 5. Merchandise delivered to Administration Dept. in summer of 1947, in the amount of | 35.42 |
| TOTAL FOR MERCHANDISE, DELIVERED, UNPAID - - - - - | <u>\$4,337.82</u> |
| 6. Interest on unpaid accounts above, for 2 years, 2 months, at rate of 6% per annum | 563.98 |
| 7. Die for senior rings, ordered by claimant in spring of 1947, at request of College Officials, in the amount of | 300.00 |
| 8. Sales tax on merchandise in amount of \$49,721.06, delivered to ASTC and purchased by the VA for veterans attending ASTC, on which claimant could not collect said sales tax, in amount of | 994.42 |
| 9. Profits due claimant under contract on books dispensed by ASTC to veterans, which profit was lost to claimant on same books ordered by claimant for sale under his contract, in amount of | 195.20 |
| TOTAL AMOUNT OF CLAIM | <u>\$6,391.42</u> |

Claimant admits and agrees that he is indebted to the Arkansas State Teachers College in a sum of approximately \$2,700.00 for rental under said contract, which sum is to be subtracted from the total amount of his claim herein. Claimant alleges that other than said rental sums, he owes the college nothing, and requests that the difference between the said sum of \$6,391.42 and said rents be allowed him and approved and ordered paid by this Board of Trustees.

Guy H. Jones
Attorney for Claimant

Chairman Cox noted the difference in the claims as being an added item (item 6 in the amended claim) for 6 percent interest, totalling \$563.98 and asked for clarification of the charge. Attorney Jones explained that the charge had been added because of a judgement recently secured against Newbern by certain book companies to an amount of over \$2,000.00 and stated that Newbern had been unable to pay the accounts because the college had not paid him.

Attorney Henry described the closing out of Newbern's contract with the college for the operation of the College Bookstore, stating generally that all provisions for the ending of the contract had been complied with. No one objected to his statements.

President Irby stated that in the presence of Mr. Eidson and himself, Newbern had agreed to pay all outstanding obligations against the College Bookstore including 10 percent rentals on sales to veterans, due under the terms of the contract.

Attorney Jones claimed that because the college had not collected 10 percent on sales to veterans at the end of each month, that the college lost its rights to collect. Newbern stated that he had told President Irby that he would not pay the 10 percent on sales to veterans and that President Irby made no reply. He claimed that his statement was made in 1945 or 1946.

Each item claimed by Newbern was discussed at length by the Attorneys and Board Members.

Trustee Guthridge made the motion that claims 1, 2, 3, 4, 5, totalling \$4,337.82 be allowed as a just claim against Arkansas State Teachers College. Trustee Johnston seconded the motion which carried unanimously.

Trustee Johnston made the motion that items 7 and 9, (\$300.00 and \$195.20) be disallowed as unfair and unjust claims against State Teachers College. Trustee Colvert seconded the motion which carried unanimously.

Trustee Flanagin made the motion that item 8 totalling \$994.42 be not allowed because the claim is not a just one against the College, but is one which should be presented to the State Apportionment Fund since the State received the amount and not the College. Trustee Parham seconded the motion which carried unanimously.

No action was taken on Claim 6, except as referred to later in the proceedings.

Attorney Henry presented claims against Newbern as accounts owed Arkansas State Teachers College as follows:

1. Rents covering sales made to veterans 1944 through August 15, 1947, a total of \$4,738.87.
2. Other rents from January 1, 1947 to August 16, 1947, a total of \$2,700.00.

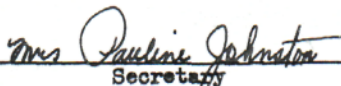
Attorney Jones admitted Item 2, as a fair claim against Newbern, but denied that Item 1 was a valid claim.

A general discussion followed bringing out the fact that settlement with Newbern depended upon the validity of the contract as it applied to sales to veterans and whether or not the college had abrogated its rights to collect rentals on sales to veterans. The matter of interest, item 6, Newbern's amended claim was discussed. Without formal action of the Board, it was agreed that interest on Newbern's obligations to the College would more than offset that claim against the college.

The Board held that the validity of the contract as applying to sales to veterans was a matter to be referred to another authority and Trustee Flanagin made the motion that a brief be prepared for the Board of Fiscal Control showing the controversy between the Board of Trustees and Newbern related to the validity of State Teachers College claims against Newbern and Newbern's claims for interest, and that Comptroller Beasley, President Irby, Bursar Eidson, Trustee Flanagin and Trustee Guthridge prepare the brief. Trustee Colvert seconded the motion which carried unanimously.

There being no further business, the Board of Trustees adjourned until legally called into session again.


Chairman


Secretary