

OPINION NO. 79-030**Syllabus:**

- 1) Fees collected by the Ohio Apprenticeship Council for its annual apprenticeship conference must be deposited with the Treasurer of State in accordance with R.C. Chapter 131.
- 2) If the Auditor of State determines that conference fees collected by the Ohio Apprenticeship Council shall be credited to the general revenue fund, established in R.C. 131.32(A), such funds may not be expended to pay the existing debts of the Council until appropriated for such purpose by the General Assembly. If, on the other hand, the Auditor of State determines that the fees may be credited to the state special revenue fund, established in R.C. 131.32(B)(3), the Controlling Board may, pursuant to R.C. 131.35(B)(3), authorize the expenditure of these funds to pay the debts incurred by the Council for the last conference.

To: Helen W. Evans, Director, Dept. of Industrial Relations, Columbus, Ohio
By: William J. Brown, Attorney General, June 13, 1979

You have requested that I consider certain questions pertaining to the financial activities of the Ohio Apprenticeship Council. Your letter sets forth the following facts:

[T]he apprenticeship council, as established by section 4101.26 of the Revised Code, has for approximately 25 years conducted an annual conference. The conference was intended to advance the concept of apprenticeship training in Ohio. The conference was established

through a unilateral action of the council and not by any statutory or departmental mandate.

The funding for this conference has come mainly from fees charged to prospective attendants which included a ten dollar registration fee last year. A portion of the conference costs was figured into the agency's budget, i.e., the printing of brochures and name tags. All remaining expenses were paid for from the fees collected. The monies were held and disbursed from a personal checking account maintained by the Executive Secretary of the council. Over the years surpluses as well as deficits have been realized. However, in the last few years, as the conference grew in size, so did the surpluses. These surpluses were retained year to year by the Executive Secretary in the personal checking account.

In late October, shortly after the last conference, the department's fiscal officer. . . became cognizant of the situation and after reviewing the matter requested the assistance of the Office of Budget and Management. Upon the advice of that office, the money, which included previous surpluses and fees from the last conference, was placed in a depository trust from which no disbursements have been made.

Based upon the foregoing, you have requested my opinion on the following questions:

Are the funds collected by the Ohio Apprenticeship Council for this annual conference state monies within the meaning of Chapter 131 of the Revised Code or are they considered some form of private funds which the council may collect and disburse as they see fit?

Further, should it be decided that this is state money, we would request your opinion as to whether or not this department is empowered to pay the existing debts incurred by the last conference from the funds currently being held in the depository trust.

The Apprenticeship Council is governed by R.C. 4101.25 through 4101.30. Its duties are prescribed in general terms by R.C. 4101.27, as follows:

The apprenticeship council may establish minimum standards for apprenticeship programs and may formulate policies and issue rules and regulations as may be necessary to carry out the purpose of sections 4101.26 to 4101.30, inclusive of the Revised Code. The council shall determine the date and place of its meetings and shall prescribe its own rules of procedure.

The executive secretary is given more specific duties by R.C. 4101.29, which provides, in part, as follows:

The executive secretary of the apprenticeship council has the following duties:

- (A) Encourage the voluntary participation of employers and employees in the furtherance of the objective of sections 4101.25 to 4101.30, inclusive, of the Revised Code; . . .
- (F) Devise all necessary procedures and records;
- (G) Prepare statistical reports regarding apprenticeship training;
- (H) Issue information related to apprenticeship;
- (I) Perform such other duties as the council may direct.

You indicate in your letter that the conferences in question were not statutorily required nor were they initiated pursuant to departmental mandate. You have not, however, questioned the authority of the Council to sponsor this type

of conference. Since the Council is a creature of statute, its authority to act in a particular manner cannot be presumed. It would appear, however, that the conferences described in your request are reasonably related to the duty of the Council's executive secretary to encourage voluntary participation in apprenticeship programs and to issue information related to apprenticeship. It is, therefore, my opinion that the Council was acting within the scope of its statutory authority when it undertook to sponsor the conferences.

With respect to your first question, the term "state monies" is not expressly defined for the purposes of R.C. Chapter 131. The scope of R.C. Chapter 131 is, however, readily apparent from the operative provisions set forth therein. The broadest of these provisions is R.C. 131.01, which provides, in pertinent part, as follows:

On or before Monday of each week, every state officer, state institution, department, board, and commission shall pay to the treasurer of state all moneys, checks, and drafts received for the state, or for the use of any such state officer, state institution, department, board or commission, during the preceding week, from taxes, assessments, licenses, premiums, fees, penalties, fines, costs, sales, rentals, or otherwise, and file with the auditor of state a detailed, verified statement of such receipts.

The statute provides, without exception, that moneys received by a state officer or board for the state or for the use of any such state officer or board, regardless of the nature of the receipt or its source, must be paid to the Treasurer of State.

R.C. 131.01 applies only when money is received for the state or for the use of any state officer or board. R.C. 131.05, on the other hand, applies when a state officer receives fees or advances of money that may be subject to refund or return to the sender or when such receipts have not yet accrued to the state. Pursuant to R.C. 131.06, the officer receiving such contingent moneys must open a separate or individual account with the state depository trust fund in the state treasury. The withdrawal and disposition of contingent moneys is provided for in R.C. 131.06 as follows:

Withdrawals of money from the fund shall be made by requisition on the treasurer of state as custodian of the fund by the authorized official of the office or department where the receipt originated. The requisition shall show the purpose of the withdrawal and other information as the treasurer of state requires. The authorized official of the office or department where the receipt originated shall draw a requisition or revenue voucher on his balance in the fund for [the] amount accruing to the state and pay it in to the state treasury through the auditor of state, in compliance with section 115.25 of the Revised Code.

The intent of the General Assembly in the enactment of the aforementioned statutes is, in my opinion, quite clear; any funds coming into the possession of a state officer or board through the performance of a state function are payable to the state treasury unless the officer or board is expressly exempt from the provisions of R.C. Chapter 131. State ex rel. Tracey v. State Board of Accountancy, 129 Ohio St. 66 (1934); see e.g., 1956 Op. Att'y Gen. No. 7539, p. 891 (R.C. 5593.12 exempts the State Bridge Commission from the provisions of R.C. Chapter 131.) As discussed previously, it is my opinion that the Council was acting in the performance of its statutory duties when it undertook to sponsor the conferences. Thus, since the Council is not expressly exempt from the requirements of R.C. Chapter 131, the conference fees received by the Council's executive secretary must be deposited with the Treasurer of State pursuant to R.C. Chapter 131.

The remaining issue is whether these conference fees are moneys received for the use of the state under R.C. 131.01 or are contingent receipts subject to the requirements of R.C. 131.05 and R.C. 131.06. The conference fees would appear

initially to fall within the latter category. It is my understanding from the information you have provided that the prospective conference participants are asked to prepay their registration fees. The Council's right to retain such fees is, however, contingent upon the performance of its promise to hold the conference. If for some reason the Council should fail to hold the conference, it could be required to refund any fees it had collected. Thus, it would appear that pre-registration fees collected by the Council prior to its annual conference must be deposited with the Treasurer of State pursuant to R.C. 131.05. Once the conference is held, however, the contingency is removed and the funds on deposit accrue to the State. At such time the balance in the fund, as well as any additional fees collected for conference purposes, must be paid into the state treasury through the Auditor of State in compliance with R.C. 115.25.

You have also inquired whether the balance of fees collected for the most recent conference, as well as surplus moneys collected for prior conferences, may be used to pay the existing debts incurred by the Council during its most recent conference. Since I have determined that the funds in question must be deposited in the state treasury, any expenditure of such funds must be in accordance with the provisions of Ohio Const. art II, §22, which states as follows: "[n]o money shall be drawn from the treasury, except in pursuance of a specific appropriation, made by law; and no appropriation shall be made for a longer period than two years." Your question, therefore, requires further analysis of the statutory procedures regulating the deposit, appropriation, and withdrawal of funds in the state treasury.

R.C. 115.25, which sets forth, in part, the duties of the Auditor of State with respect to the deposit of funds in the state treasury, provides that "[a]ll payments into the state treasury shall be by pay-in order or draft of the auditor of state Such pay-in order or draft shall specify the amount to be paid, on what account, and to the credit of what fund." The various funds within the state treasury are established in R.C. 131.32, which provides, in pertinent part, as follows:

The funds of the state are as follows:

- (A) "General revenue fund" which includes all moneys in the state treasury which are not accounted for in any other fund of the state;
- (B) "Special revenue funds" which are to account for the proceeds of specific revenue sources or to finance specified activities that are required by law or administrative relation. These funds include, but are not limited to:
 - (3) "State special revenue fund" which shall receive all fees or charges levied by the state which have been designated by law or by legitimate administrative authority for a specific designated use or purpose;
- (C) "Debt service funds" which are to account for the payment of interest and principal on debt. . . .
- (D) "Capital projects funds" which are to account for the receipt and disbursement of moneys used for the acquisition of capital facilities. . . .
- (E) "Enterprise funds" which are to account for the financing of services to the general public where all or most of the costs involved are paid in form of charges by users of such services. . . .
- (F) "State intergovernmental service fund" which shall account for the financing of special activities and services performed by a designated organization unit within a governmental jurisdiction for other organizational units within the same governmental jurisdiction;
- (G) "Agency and distribution funds" which are to account for assets held by a state governmental unit as trustee or agent for individuals and other governmental units. . . .
- (H) "Depository trust fund," established in section 131.04 of the Revised Code, which shall receive moneys as provided in that section.

. . . .

For any receipt of the state which is not specifically credited to a fund by law, the auditor of state shall assign such receipt to a fund established under this section.

Pursuant to R.C. 131.32, if a receipt is not specifically credited to a fund by law, the Auditor of State must select the fund to which the receipt will be credited. While I do not intend to preempt the Auditor's authority to make this determination, it would appear that the receipts about which you have inquired may properly be credited to the state special revenue fund established under R.C. 131.32(B)(3). If the Auditor of State determines that the funds in question should be credited to the state special revenue fund, the appropriation and expenditure of such funds is governed by R.C. 131.35(B)(3), set forth below:

With respect to funds received into any special account in the state special revenue fund or the state intragovernmental service fund:

(3) Additional special accounts may be created by the controlling board to receive revenues not anticipated in an appropriations act for the biennium in which such new revenues are received. Expenditures from such additional special accounts may be authorized by the controlling board, provided that such authorization shall not extend beyond the end of the biennium in which such special account is created.

Pursuant to this statute, the Controlling Board may authorize the Department to expend the funds to pay the existing debts incurred by the Council for the most recent conference. If, on the other hand, the Auditor of State determines that the funds in question must be paid into the general revenue fund, such funds may not be expended to pay the existing debts of the Council until such time as the General Assembly specifically appropriates the funds for such use. 1956 Op. Att'y Gen. No. 7137, p. 699.

In conclusion, it will be noted that the conclusions set forth in this opinion should not be interpreted as the only permissible manner in which receipts of this type may be handled. The facts set forth in your request describe an unusual series of transactions, since the funds were not initially treated as public funds; and my consideration of the issues raised is limited to those facts. Where receipts of this type are properly recognized as public funds prior to collection, however, alternative statutory procedures may be available.

In specific answer to your questions, it is, therefore, my opinion, and you are advised, that:

- 1) Fees collected by the Ohio Apprenticeship Council for its annual apprenticeship conference must be deposited with the Treasurer of State in accordance with R.C. Chapter 131.
- 2) If the Auditor of State determines that conference fees collected by the Ohio Apprenticeship Council shall be credited to the general revenue fund, established in R.C. 131.32(A), such funds may not be expended to pay the existing debts of the Council until appropriated for such purpose by the General Assembly. If, on the other hand, the Auditor of State determines that the fees may be credited to the state special revenue fund, established in R.C. 131.32(B)(3), the Controlling Board may, pursuant to R.C. 131.35(B)(3), authorize the expenditure of these funds to pay the debts incurred by the Council for the last conference.