

OPINION NO. 73-038

Syllabus:

The board of trustees of a state university may authorize advance payment of compensation to university employees under annual employment contracts prior to the actual performance of contractual duties.

To: Glen R. Driscoll, Pres. University of Toledo, Toledo, Ohio
By: William J. Brown, Attorney General, May 2, 1973

I have before me your request for my opinion, which reads as follows:

Will you please provide The University of Toledo with an official opinion as to whether or not it is permissible to make the first payment to persons on an annual appointment on the second day of their contract year?

I assume that this payment schedule has been approved by the board of trustees of the University of Toledo. I also assume that by "first payment" you mean the initial installment paid under an employment contract for services rendered for a fixed period of time.

Your question here appears to be covered by Opinion No. 73-018, Opinions of the Attorney General for 1973. As you will recall, that Opinion, also rendered at your request, concerned the power of the board of trustees of the University of Toledo to authorize advances to cover travel expenses of members of its faculty or staff. It was my opinion, and you were so advised, that:

The board of trustees of a state university may authorize advances, from unencumbered funds, to cover the necessary expenses to be incurred by a member of the university's faculty or staff in travel which is reasonably incidental to the statutory purpose for which the university was created.

In that Opinion consideration was given to R.C. 3345.05, other statutes defining the powers and duties of the boards of trustees of state universities, Article VIII, Section 4, Ohio Constitution (concerning the lending of aid and credit of the state), and cases and opinions interpreting these statutes and the aforementioned Section of the Constitution. The conclusion from that analysis was that, if the board of trustees approved, and if the advance was reasonably incidental to the statutory end for which the University was created, then such an advance would be authorized.

The advances there were made to cover travel expenses incurred in the performance of assigned duties of the University employee. Here, payment would be made as compensation for the future performance of assigned duties under annual employment contracts. The authority of the board of trustees of the University of Toledo to fix the compensation of University employees appears in R.C. 3360.03, which provides in pertinent part:

The board of trustees of the university of Toledo shall employ, fix the compensation of, and remove, the president and such number of professors, teachers, and other employees as may be deemed necessary. The board shall do all things necessary for the creation, proper maintenance, and successful and continuous operation of the university * * *.

If the board of trustees deems this compensation arrangement necessary to the proper operation of the University and has given its approval, the plan as outlined in your request is authorized. See Opinion No. 67-097, Opinions of the Attorney General for 1967; cf., also, Opinion No. 2608, Opinions of the

Attorney General for 1958.

This is not to say, however, that, under a different set of circumstances, advance payment would not be unreasonable. As I pointed out in the prior Opinion, the advance payment is only justified if it is reasonably incidental to the statutory purpose of the University, and abuses are subject to inspection by the Auditor of State.

In specific answer to your question it is my opinion, and you are so advised, that the board of trustees of a state university may authorize advance payment of compensation to university employees under annual employment contracts prior to the actual performance of contractual duties.