

## OPINION NO. 72-041

## Syllabus:

1. The board of trustees of a technical college may, with the approval of the Board of Regents, build and operate dormitory units on land owned or leased by the college.

2. The board of trustees of a technical college may, with the approval of the Board of Regents, lease land owned by the college, or leased by it for college facilities, to a private developer for the purpose of building and operating a dormitory for college students.

3. The board of trustees of a technical college may not enter into an agreement with a private developer to build and operate a dormitory for college students on his own property in which the board guarantees minimum occupancy for the ensuing school years.

4. If the official plan of a technical college, approved by the Board of Regents, contained no provision for a dormitory, the plan must be amended with approval of the Regents in order to permit construction of a dormitory.

---

To: Jacob H. See, Pres., The Michael J. Owens Technical College, Perrysburg, Ohio

By: William J. Brown, Attorney General, May 16, 1972

The questions presented by your request for my opinion may be stated as follows:

- A. Is The Michael J. Owens Technical College Board of Trustees legally permitted to build and operate student housing (dormitory units) on land owned or leased for college facilities?
- B. Is The Michael J. Owens Technical College Board of Trustees legally permitted to lease land (owned or leased for college facilities) to a private developer for student housing (dormitory units)?
- C. Is The Michael J. Owens Technical College Board of Trustees permitted to enter into an agreement with a private developer on his own property for the operation of student housing (dormitory units) by guaranteeing minimum occupancy for ensuing school years?

Chapter 3357, Revised Code, controls the establishment and the operation of technical colleges. A technical college district is "organized for the principal purpose of providing for the residents of the \* \* \* district" a two-year program of technical training, which will enable those who complete the course to become assistants to professional and managerial officials in technical fields. Section 3357.01 (A) and (D), Revised Code. The creation of such districts, varying in size from a single city school district to several contiguous counties, depends upon the approval both of the State Board of Regents, and of a majority either of the boards of education involved or of the voters in the proposed district. Section 3357.02, Revised Code. The trustees appointed for the district must then submit to the Board of Regents an official plan for the technical college. Upon approval by the Board, this plan becomes the basis for the issuance of a charter to the college, and no changes may be made in the plan thereafter without the approval of the Regents. Section 3357.07, Revised Code, provides in pertinent part as follows:

"The board of trustees of a technical college district shall prepare an official plan for a technical college within the district. Such official plan shall include, but not be limited

to, a demonstration of need and prospective enrollment, a description and locations of lands, buildings, facilities, and improvements proposed to be occupied by such college; a proposed schedule for acquisition of such lands or improvements, for construction or improvements, and for operation of the college; estimates of cost of lands and improvements; proposed organization and program of such college, consistent with the proposed lands and improvements; and a proposed budget for the first two years of operation of such college.

\* \* \* \* \*

"Upon completion of the official plan, the board of trustees of the technical college district shall file a copy thereof with the Ohio board of regents which may approve or disapprove any provisions thereof. \* \* \* If the Ohio board of regents approves the official plan, it shall certify a copy of its action to the board of trustees of the technical college district and issue a charter creating the technical college to be known by the name set forth in the official plan. The official plan shall be appended to and shall become a part of such charter, and such charter shall not thereafter be changed except by charter amendment with the approval of the Ohio board of regents. \* \* \*"

You have supplied me with a copy of the "official plan" (58 pages plus a 30-page appendix) which was incorporated into the charter issued to your College by the Board of Regents in 1967. The plan is obviously geared to the needs of local industry in the comparatively limited five-county area which the College was designed to serve. See passim, but particularly pages 37 and 41. It states that, at the time of its organization, the College was sharing the facilities of the Penta-County Vocational High School, and the additional building and facilities to be constructed for the College are described in considerable detail (pages 49-53, 57-58). There is, however, no description of buildings to be used as dormitories. On the contrary, the oft reiterated mention of the needs of local industry, and the inclusion in the appendix (page VI) of a letter addressed to the Department of Health, Education and Welfare by the Penta-County Vocational High School, indicate that residential facilities were not originally contemplated. The one and only mention of dormitories in the official plan appears, at page 56, in the fee schedule.

Assuming for the moment that the provisions of Chapter 3357, supra, permit a technical college either to construct, or to contract for the use of, a building to be used as a student dormitory, Section 3357.07, supra, requires that the approval of the Board of Regents be obtained based upon a proper description of the building in the official plan. The steps you contemplate could not, therefore, properly be undertaken without an amendment of the present plan and approval of such amendment by the Regents.

Your questions envisage the following possible methods of providing dormitory units for the College: (1) construction and operation of such housing by the College itself; (2) construction and operation by a private developer on land leased from the College for that purpose; and (3) construction and operation by a private

developer on his own land under a contract with the College guaranteeing minimum student occupancy for ensuing school years. The question is whether the Board of Trustees has statutory authority to adopt any or all of these methods.

Under Section 3357.09, Revised Code, the board of trustees of a technical college has broad powers, subject to the approval of the Board of Regents to use or dispose of college property in any manner appropriate to the purposes of the institution. In pertinent part, that Section provides as follows:

"The board of trustees of a technical college district may with the approval of the Ohio board of regents:

"(A) Own and operate a technical college, pursuant to an official plan prepared and approved in accordance with section 3357.07 of the Revised Code;

"(B) Hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease, use, and sell, real and personal property as necessary for the conduct of the program of the technical college on whatever terms and for whatever consideration may be appropriate for the purposes of the institution;

" \* \* \* \* \* "

An analogous situation was discussed by one of my predecessors in Opinion No. 1147, Opinions of the Attorney General for 1957. The trustees of Kent State University had asked whether land under their control might be leased to university organizations, sororities or fraternities for the purpose of constructing student housing. My predecessor, pointing to Section 3341.04, Revised Code, which gives the Kent State trustees broad general powers similar to those granted to technical college trustees in Section 3357.09, supra, said:

"There is nothing in the statute restricting \* \* \* choice of lessees, nor is there any restriction that might prohibit use of the leased land for purposes of constructing thereon student housing facilities."

It may be urged that a state university and a technical college are not comparable; that the former draws students from all parts of the state and the nation, while the student body of the latter is limited to a small area; that the former is given specific authority to maintain dormitories (Sections 3347.01 to 3347.09, Revised Code), while the latter has no such statutory authority. However, although the principal purpose of a technical college is to supply the needs of its particular district, the General Assembly did contemplate that its courses might have state-wide and even nation-wide attraction and it made specific provision for the fees to be charged those coming from outside the district. Section 3357.09, Revised Code. The reasoning of my predecessor in Opinion No. 1147, supra, does, therefore, have application here, and I conclude that, in the light of the broad statutory powers of the Board of Trustees, the answers to your first two questions must be in the affirmative. Subject to approval by the Board of Regents, the College may itself construct and operate the dormitory units, or it may lease land to a private developer for the same purpose.

I would caution, however, that the Board of Trustees may not finance a dormitory project by the issuance of revenue bonds. The power of the Board in this respect is limited by Section 3357.112, Revised Code, which provides, in pertinent part, as follows:

"To provide all or part of the moneys for acquiring, constructing, equipping, furnishing, repairing, remodeling, renovating, enlarging, and improving buildings, structures, and facilities for vehicle parking, dining and food preparation, bookstores, health centers and infirmaries, student services and activities, athletic and recreational purposes, auditoriums, and any one or more or combination thereof, \* \* \* the board of trustees of any technical college district may, by resolution, provide for borrowing money and issuing bonds, \* \* \* which may be secured by a pledge of the lien on such revenues of the district from the operation or ownership of such facilities, \* \* \*."

It will be noted that there is no mention of dormitories. In contrast, the power of the state universities to finance the construction of dormitories, as well as other necessary buildings, by means of revenue bonds is granted in considerable detail. Sections 3345.07 to 3345.12, and Sections 3347.01 to 3347.09, Revised Code. And the financing authority of the university branch districts in this respect is practically identical with Section 3357.112, *supra*, with the significant addition of dormitories to the list of authorized facilities. Section 3355.091, Revised Code, provides, in pertinent part:

"To provide all or part of the moneys for acquiring, constructing, equipping, furnishing, repairing, remodeling, renovating, enlarging, and improving buildings, structures, and facilities for vehicle parking, dining and food preparation, suitable housing and dormitories for students, instructors, members of the faculty, and the administration and maintenance staff of the branch district university, bookstores, health centers and infirmaries, student services and activities, athletic and recreational purposes, auditoriums, and any one or more or combination thereof, \* \* \*." (Emphasis added.)

The answer to your third question must be in the negative. In the first place, there is nothing in the statutory powers of the Board of Trustees which gives them the authority to require students to live in a dormitory owned and operated by a private developer. Furthermore, even if such authority existed, the Board could never be sure that there would be enough students from year to year to fulfill the minimum occupancy commitment. The present drop in the birth-rate enhances this inherent uncertainty. Should the commitment not be kept, the Board would be bound under the contract to make up the difference out of other available funds. This would mean the expenditure of public funds for a purely private purpose, the profit of the private developer. It is, of course, well settled that public funds are to be spent only for a public purpose. State ex rel. Dickman v. Deffenbacher, 164 Ohio St. 142, 149-151 (1955); State ex rel. Leaverton v. Kerns, 104 Ohio St. 550, 552-553 (1922); Opinion No. 72-023, Opinions of the Attorney General for 1972; Opinion No. 71-058, Opinions of the Attorney General for 1971.

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

1. The board of trustees of a technical college may, with the approval of the Board of Regents, build and operate dormitory units on land owned or leased by the college.

2. The board of trustees of a technical college may, with the approval of the Board of Regents, lease land owned by the college, or leased by it for college facilities, to a private developer for the purpose of building and operating a dormitory for college students.

3. The board of trustees of a technical college may not enter into an agreement with a private developer to build and operate a dormitory for college students on his own property in which the board guarantees minimum occupancy for the ensuing school years.

4. If the official plan of a technical college, approved by the Board of Regents, contained no provision for a dormitory, the plan must be amended with approval of the Regents in order to permit construction of a dormitory.