

OPINION NO. 90-033**Syllabus:**

1. R.C. 3333.26(B) requires that any state university or college as defined in R.C. 3345.12(A)(1), community college, state community college, university branch, or technical college grant a waiver of tuition and student fees to eligible children of public safety workers who were killed in the line of duty.
2. No provision is made for reimbursing the educational institutions listed in R.C. 3333.26(B) for tuition and fee waivers granted pursuant to that provision.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, April 25, 1990

I have before me your request for an opinion relating to the payment of tuition for children of Ohio public safety workers who died in the line of duty. You have asked the following questions:

Does Section 3333.26 of the Revised Code require that all state colleges and universities waive tuition to eligible children of public safety workers who died in the line of duty?

If so, how are the colleges and universities to fund the tuition waivers?

It appears that your first question is directly addressed by statute. R.C. 3333.26(B) states, in part:

Any resident of this state who is under twenty-six years of age, or under thirty years of age if he has been honorably discharged from the armed services of the United States, and who is the child of an Ohio fire fighter, volunteer fire fighter, police officer, member of the highway patrol, employee designated to exercise the powers of police officers pursuant to section 1545.13 of the Revised Code, or other peace officer as defined by division (B) of section 2935.01 of the Revised Code, killed in the line of duty, and who is admitted to any state university or college as defined in division (A)(1) of section 3345.12 of the Revised Code, community college, state community college, university branch, or technical college, shall not be required to pay any tuition or any student fee for up to four academic years of education, which shall be at the undergraduate level.

R.C. 3333.26(B) thus relates to a situation in which a resident of the state is the child of a public safety worker of one of the named safety forces and that public safety worker was killed in the line of duty. If such a resident meets the age requirements and is admitted to any of the educational institutions referred to in the statute, that individual "shall not be required to pay any tuition or any student fee for up to four academic years of education, which shall be at the undergraduate level."

You have asked whether R.C. 3333.26 requires that "all state colleges and universities waive tuition to eligible children of public safety workers who died in the line of duty." By its terms, R.C. 3333.26(B) applies "to any state university or college as defined in [R.C. 3345.12(A)(1)], community college, state community college, university branch, or technical college." R.C. 3345.12(A)(1) defines "[s]tate university or college" to mean "the state universities identified in [R.C. 3345.011], the northeastern Ohio universities college of medicine, and the medical college of Ohio at Toledo." R.C. 3345.011 defines "[s]tate university" to mean "a public institution of higher education which is a body politic and corporate" and recognizes the following as state universities: "university of Akron, Bowling Green state university, Central state university, university of Cincinnati, Cleveland state university, Kent state university, Miami university, Shawnee state university, university of Toledo, Wright state university, and Youngstown state university." R.C. 3333.26(B) thus clearly provides that each of the educational institutions referenced therein is prohibited from requiring an eligible individual "to pay any tuition or any student fee" for up to four academic years of education at the undergraduate level.

I note that when this provision was first enacted it appeared in R.C. 3345.02 and applied only to state universities. See 1975-1976 Ohio Laws, Part II, 2409 (Am. H.B. 337, eff. July 14, 1976) (stating as its purpose: "to eliminate tuition and student fees at state universities for children of fire fighters and peace officers killed in the line of duty"). It was subsequently moved to R.C. 3333.26 and expanded to include the educational institutions now listed in the statute. See 1979-1980 Ohio Laws, Part I, 1653 (Am. H.B. 122, eff. April 18, 1980). In response to your first question, I conclude that R.C. 3333.26 requires that all such educational institutions grant a waiver of tuition and student fees to eligible children of public safety workers who were killed in the line of duty.

You have also asked how the educational institutions are to fund tuition waivers granted pursuant to R.C. 3333.26(B). R.C. 3333.26 makes no provision for the funding of such waivers, and I am aware of no other legislative provision that addresses that issue. It appears, therefore, that the educational institutions in question are simply not to collect any tuition or student fees from or on behalf of such eligible individuals and are to fund their operations with other moneys that are available to them for various purposes. See, e.g., R.C. 3345.05 (authority of the board of trustees of a state-supported university or college to hold and administer all fees, state appropriations, deposits, charges, receipts, and income received by the institution); R.C. 3345.12(A)(9) (defining "[a]vailable receipts"); R.C. 3345.16 (authority of the board of trustees of a state college or university to accept donations); Am. Sub. H.B. 111, 118th Gen. A. (1989) (eff. July 1, 1989).

I have examined Am. Sub. H.B. 111, the recent budget bill that, *inter alia*, appropriated money to the Ohio Board of Regents for various purposes, including use by specified educational institutions. Am. Sub. H.B. 111 (section 91, uncodified). Am. Sub. H.B. 111 contains the following language:

In providing instructional and other services to students, boards of trustees of state-assisted institutions of higher education shall supplement state subsidies by income from charges to students. Each board shall establish the fees to be charged to all students, including an instructional fee for educational and associated operational support of the institution and a general fee for noninstructional services including locally financed student services facilities used for the benefit of enrolled students. The instructional fee and the general fee shall encompass all charges for services assessed uniformly to all enrolled students.

Am. Sub. H.B. 111 (section 91.02, uncodified). This language might be read as indicating that all students, without exception, must pay fees. It is, however, general language. In contrast, R.C. 3333.26(B) deals with waiver of tuition and fees in particular circumstances. If a conflict exists, the specific language of R.C. 3333.26(B) should prevail over the general language of Am. Sub. H.B. 111. See R.C. 1.51; *City of Cincinnati v. Thomas Soft Ice Cream, Inc.*, 52 Ohio St. 2d 76, 78, 369 N.E.2d 778, 780 (1977) ("courts will not hold prior legislation to be impliedly repealed by the enactment of subsequent legislation unless the subsequent legislation clearly requires such a holding"). I note, however, that Am. Sub. H.B. 111 (section 91.02, uncodified) goes on to provide that "[t]he board of trustees of a state-assisted institution of higher education shall not authorize a waiver or nonpayment of instructional fees or of general fees for any particular student or any class of students other than waivers specifically authorized by law," thus recognizing the validity of such tuition and fee waivers as are provided by law. I conclude, therefore, that, when read together, R.C. 3333.26 and Am. Sub. H.B. 111 authorize the waiver of tuition and student fees as set forth in R.C. 3333.26(B). See generally R.C. 1.51. This tuition and fee waiver is not conditioned upon reimbursement of the institution for the moneys that it is thereby precluded from collecting.

The arrangement established by R.C. 3333.26(B) contrasts with that established by R.C. 3333.26(C), relating to certain nonprofit educational institutions. R.C. 3333.26(C) states:

Any institution that is not subject to division (B) of this section and that is nonprofit and has a certificate of authorization issued under section 1713.02 of the Revised Code,¹ except a diploma school of nursing, that reduces tuition and student fees of a student who is eligible to attend an institution of higher education under the provisions of division (B) of this section by an amount indicated by the Ohio board of regents shall be eligible to receive a grant in that amount from the board of regents. Each institution that enrolls students under division (B) of this section shall report to the board of regents, by the first day of July of each year, the number of students who were so enrolled and the average amount of all such tuition and fees waived during the preceding year. The board of regents shall determine the average amount of all such tuition and fees waived during the preceding year. The average amount of tuition and fees waived under division (B) of this section during the preceding year shall be the amount of grants that participating institutions shall receive under this division during the current year, but no grant under this division shall exceed the tuition and student fees due and payable by the student prior to the reduction referred to in this division. Such grants shall be made for four years of undergraduate education of an eligible student. (Emphasis and footnote added.)

¹ R.C. 1713.02 governs the issuance of certificates of authorization by the Ohio Board of Regents to nonprofit educational institutions.

R.C. 3333.26(C) thus provides for the payment of grants by the Ohio Board of Regents to certain nonprofit educational institutions that reduce by a prescribed amount the tuition and student fees of a student who is eligible to benefit under R.C. 3333.26(B). R.C. 3333.26(C) expressly excludes institutions that are subject to R.C. 3333.26(B) and is, therefore, not applicable to the institutions about which you have inquired.

The provisions of R.C. 3333.26 are also distinguishable from the provisions that govern the granting of scholarships to Ohio war orphans. *See* R.C. 5910.01–.06. The Ohio War Orphans Scholarship Board, *see* R.C. 5910.02, is given authority to grant scholarships consisting of exemption from the payment of general and instructional fees at state-supported colleges or universities that are approved by the Chancellor of the Board of Regents, R.C. 5910.04(A); grants to eligible individuals who attend other educational institutions, R.C. 5910.04(B); and grants for room, board, books, and laboratory fees issued in conjunction with either of the other types of scholarships, R.C. 5910.032. The Ohio War Orphans Scholarship Board is directed to determine how many scholarships are to be granted "based upon available funds provided by the Ohio general assembly." R.C. 5910.65. The General Assembly has specifically appropriated funds to the Ohio Board of Regents "to reimburse state-assisted institutions of higher education for waivers of instructional fees and general fees provided by them...in accordance with the provisions of section 5910.04 of the Revised Code." Am. Sub. H.B. 111 (section 91.03, uncodified); *see also* R.C. 5910.032. No similar funds have been appropriated to reimburse tuition and fee waivers granted pursuant to R.C. 3333.26(B).

Various other types of educational assistance programs are established by statute, and the question whether, or in what amount, a state-supported educational institution is to be paid tuition or fees by or on behalf of individuals receiving such assistance depends, in each instance, upon the applicable legislative provisions. *See, e.g.*, R.C. 3333.12 (providing for instructional grants, paid to an eligible student through the institution in which he is enrolled); R.C. 3333.21–.25 (providing for Ohio academic scholarships, paid directly to the students); R.C. 3345.27 (permitting senior citizens to attend courses at a state university or college on a noncredit basis, without paying tuition, if space is available and approval is obtained); R.C. 5919.34 (establishing a program of educational grants for enlisted members of the Ohio National Guard, administered by the Adjutant General, and providing for payment to a state-assisted education institution of sixty per cent of tuition charges). It does not appear that the absence of a provision for reimbursement of amounts of tuition and fees that are waived pursuant to statute in any way invalidates, or affects the applicability of, the statute granting the waiver.

It is, therefore, my opinion, and you are hereby advised, as follows:

1. R.C. 3333.26(B) requires that any state university or college as defined in R.C. 3345.12(A)(1), community college, state community college, university branch, or technical college grant a waiver of tuition and student fees to eligible children of public safety workers who were killed in the line of duty.
2. No provision is made for reimbursing the educational institutions listed in R.C. 3333.26(B) for tuition and fee waivers granted pursuant to that provision.