

**OPINION NO. 70-154****Syllabus:**

1. The provisions for dismissal in Section 3345.23, Revised Code, and for suspension in Section 3345.22, Revised Code, are applicable to each of the offenses identified in Section 3345.23 (D), Revised Code.

2. Whether Section 3345.22 or Section 3345.23, Revised Code, is applicable in a particular instance is dependent upon whether the individual has been arrested and thus subject to suspension under the former section or whether he has been convicted and thus subject to dismissal under the latter.

3. In invoking the disciplinary provisions of Sections 3345.-22 and 3345.23, Revised Code, each case must be considered at the local level with respect to its factual situation and a proper element of judgment injected to insure that the objectives of subject legislation are accomplished both in word and in spirit.

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To: Claude R. Sowle, President, Ohio University, Athens, Ohio  
By: Paul W. Brown, Attorney General, November 17, 1970

You have requested my opinion regarding an interpretation of Section 3345.23 (D) of the Ohio Revised Code which reads:

"(D) Without limiting the grounds for dismissal, suspension, or other disciplinary action against student, faculty or staff member, or employee of a college or university which receives any state funds in support thereof, the commission of an offense under sections 2901.-19, 2901.23 to 2901.252, inclusive, 2907.02, 2907.021, 2907.05, 2907.06, 2907.08, 2907.082, 2909.01, 2909.09, 2909.24, 2923.01, 2923.012, 2923.43, 2923.52 to 2923.54, inclusive, or division (A)(1) or division (B) of section 2923.61 of the Revised Code on or affecting persons or property on such college or university or when an emergency has been declared pursuant to section 3345.26 of the Revised Code, is cause for dismissal pursuant to this section or for suspension pursuant to section 3345.-22 of the Revised Code. Criminal cases resulting from arrests for offenses covered by division (D) of this section shall take precedence over all civil matters and proceedings and over all other criminal cases."

Your inquiry is as follows:

"The most perplexing portion of the language in the foregoing subsection appears to be that which follows the word, 'inclusive' in line ten where it is stated:

"'. . .or division (A)(1) or division (B) of section 2923.61 of the Revised Code, on or affecting persons or property on such college or university or when an emergency has been declared...'

"Does the language, 'on or affecting persons or property on such college or university' modify all of the language preceding the word 'inclusive, first above mentioned, or is it limited to a modification of the language, 'or division (A)(1) or division (B) of section 2923.61.'

"In a similar manner, does the language, 'when an emergency has been declared pursuant to section 3345.26 of the Revised Code,' modify all of the content of the subsection preceding the word, 'inclusive' first above mentioned or is that language limited to a modification of the provisions following the word 'inclusive'.

"Specific examples which would pose perplexing problems are as follows:

"1. A group of students rioting on a city

street three blocks from the nearest university property are subsequently convicted of second degree riot. The riotous conduct occurred prior to a declaration of emergency under the provisions of section 3345.26.

"QUERY: Under such circumstances, are the students subject to dismissal pursuant to section 3345.23 or for suspension pursuant to section 3345.22 of the Revised Code?"

"2. An employee of the University in the privacy of his home located some miles from the campus strikes his wife and is subsequently convicted of assault and battery at a time when no state of emergency has been declared pursuant to section 3345.26.

"QUERY: Is such employee subject to suspension under section 3345.23 (D) or section 3345.22?"

The answer to your first question would appear to lie in the fact that the word "or" following the word "inclusive" is quite obviously used in the conjunctive rather than the disjunctive. Preceding the word "inclusive", there are listed, either by number or by inclusion, twenty two sections from Title 29 of the Revised Code, identifying offenses which will be applicable with respect to the disciplinary actions provided for in Sections 3345.22 and 3345.23 of the Revised Code. Immediately following the conjunctive joinder there are identified additional offenses under Section 2923.61 of the Revised Code, which are also applicable. It would appear therefore, that the word "or", being in the conjunctive, the language "on or affecting persons or property on such college or university" modifies all of the identified crimes which precede such language. The same reasoning is applicable to the language "or when an emergency has been declared pursuant to section 3345.26 of the Revised Code" and this phrase merely identifies another circumstances under which commission of any of the identified crimes will invoke application of the disciplinary action in Sections 3345.22 and 3345.23, supra.

The question as to whether Section 3345.22 or Section 3345.23, supra, applies is spelled out in each of such sections. Section 3345.22, supra, provides that an individual who has been arrested may, after a prescribed hearing, be suspended, whereas Section 3345.23, supra, provides that the conviction of an individual "automatically effects his dismissal." Consequently, the answer to your queries regarding specific examples turns only upon whether the individual has been arrested or whether he has been convicted.

Any number of situations can be imagined with the objective of testing or depreciating the language of subject legislation. For instance, we can pose questions involving "a student, faculty or staff member or employee" of your university who is attending a family reunion in Perrysburg, Ohio and commits an offense identified in Section 3345.23 (D), supra. It would involve a considerable stretch of the imagination to suggest that this would be on or affecting persons or property of your university or that your declaration of an emergency would be applicable thereto. Consequently, a proper element of judgment must be injected at the local level to insure that the objectives of subject legislation are accomplished both in word and in spirit.

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

1. The provisions for dismissal in Section 3345.23, Revised Code, and for suspension in Section 3345.22, Revised Code, are applicable to each of the offenses identified in Section 3345.23 (D), Revised Code.

2. Whether Section 3345.22 or Section 3345.23, Revised Code, is applicable in a particular instance is dependent upon whether the individual has been arrested and thus subject to suspension under the former section or whether he has been convicted and thus subject to dismissal under the latter.

3. In invoking the disciplinary provisions of Sections 3345.-22 and 3345.23, Revised Code, each case must be considered at the local level with respect to its factual situation and a proper element of judgment injected to insure that the objectives of subject legislation are accomplished both in word and in spirit.