

OPINION NO. 92-034

Syllabus:

1. R.C. 121.42(A) empowers the Inspector General to investigate the management and operation of a state university or state medical college on his own initiative in order to determine whether wrongful acts and omissions have been committed or are being committed by state officers or state employees.
2. R.C. 121.42(A) does not empower the Inspector General to investigate the management and operation of a community college on his own initiative in order to determine whether wrongful acts and omissions have been committed or are being committed by state officers or state employees.

3. R.C. 121.42(A) does not empower the Inspector General to investigate the management and operation of a state community college on his own initiative in order to determine whether wrongful acts and omissions have been committed or are being committed by state officers or state employees.
4. R.C. 121.42(A) does not empower the Inspector General to investigate the management and operation of a technical college on his own initiative in order to determine whether wrongful acts and omissions have been committed or are being committed by state officers or state employees.

To: David D. Sturtz, Inspector General, Columbus, Ohio
By: Lee Fisher, Attorney General, July 29, 1992

You have requested an opinion regarding the jurisdiction of your office to undertake investigations of certain educational institutions. Your specific questions are as follow:

1. Does the Office of the Inspector General have jurisdiction to investigate wrongful acts and omissions which occur within a state assisted university or college?
2. Does the Office of the Inspector General have jurisdiction to investigate wrongful acts and omissions which occur within a state assisted community college?
3. Does the Office of the Inspector General have jurisdiction to investigate wrongful acts and omissions which occur within a state assisted technical college or technical school?

Authority to Investigate

You note in your letter that your legislative mandate "is to investigate the management and operation of state agencies." R.C. 121.42(A) states, in pertinent part, that the Inspector General shall "[i]nvestigate the management and operation of *state agencies* on his own initiative in order to determine whether wrongful acts and omissions have been committed or are being committed by state officers or state employees." (Emphasis added.) Other divisions in R.C. 121.42 similarly delineate, in related contexts, the authority of the Inspector General with respect to "state agencies." See R.C. 121.42(D)-(F); R.C. 121.42(I), (J). See also R.C. 121.41(E), (F) (defining, respectively, "[s]tate employee" and "[s]tate officer," as used in R.C. 121.41-.50); R.C. 121.41(G) (defining "[w]rongful act or omission," as used in R.C. 121.41-.50). Accordingly, if an entity is a "state agency," the Inspector General is responsible for undertaking investigations of that entity on his own initiative in accordance with R.C. 121.42(A).

Definition of "State Agency"

For purposes of R.C. 121.42(A), the dispositive inquiry is whether each type of educational institution enumerated in your letter is a "state agency." R.C. 121.41(D) defines "[s]tate agency," as used in R.C. 121.41-.50, in the following manner:

"State agency" has the same meaning as in section 1.60 of the Revised Code but does not include any of the following:

- (1) The general assembly;
 - (2) Any court;
 - (3) The secretary of state, auditor of state, treasurer of state, or attorney general and their respective offices.
- (Emphasis added.)

R.C. 1.60 in turn defines "state agency," as used in R.C. Title I (state government), except as otherwise provided in that title, as "every organized body, office, or agency established by the laws of the state for the exercise of any function of state government." Accordingly, an entity that is (1) an organized body, office, or agency (2) established by the laws of the state (3) for the exercise of any function of state government, is a "state agency" for purposes of R.C. 121.42(A).

A State University Or College Is A "State Agency," As Defined In R.C. 1.60 And R.C. 121.41(D)

In your first question you ask about a state assisted university or college. It is my understanding that your first question refers to the thirteen state universities and two state medical colleges whose general powers are addressed and set forth in R.C. Chapter 3345. Additional chapters in R.C. Title 33 (education) address each of those state universities and state medical colleges in particular.¹

These state universities and state medical colleges are "state agenc[ies]," as defined in R.C. 1.60 and R.C. 121.41(D). First, each such state university or state medical college is an organized "body," as that term is commonly understood. *See Webster's New World Dictionary* 157 (2nd college ed. 1978) (defining "body" as "a group of people or things regarded or functioning as a unit"). *See also* R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage"). Secondly, each such state university or state medical college has been created by a legislative enactment of the General Assembly, and is, therefore, "established by the laws of the state."² *See, e.g.,* 1910 Ohio Laws 320 (H.B. 44, passed May 10, 1910) (creating and establishing two additional "state normal schools, one in northeastern Ohio and one in northwestern Ohio" (now known as Bowling Green State University and Kent State University respectively, *see* R.C. 3341.01)); 1870 Ohio Laws 20 (an act by the General Assembly providing that a college, styled the Ohio Agricultural and Mechanical College (now known as the Ohio State University, *see* R.C. 3335.01), "is hereby established in this state," passed March 22, 1870); 1808 Ohio Laws 184 (an act by the General Assembly establishing and instituting, in the manner thereafter directed, a university "designated by the name and style of the Miami University," passed February 17, 1809); 1803 Ohio Laws

¹ Those state universities and state medical colleges are Ohio State University, R.C. Chapter 3335; Ohio University, R.C. Chapter 3337; Miami University, R.C. Chapter 3339; Bowling Green and Kent State Universities, R.C. Chapter 3341; Central State University, R.C. Chapter 3343; Cleveland State University, R.C. Chapter 3344; Medical College of Ohio at Toledo and Northeastern Ohio Universities College of Medicine, R.C. Chapter 3350; Wright State University, R.C. Chapter 3352; Youngstown State University, R.C. Chapter 3356; University of Akron, R.C. Chapter 3359; University of Toledo, R.C. Chapter 3360; University of Cincinnati, R.C. Chapter 3361; and Shawnee State University, R.C. Chapter 3362.

² With regard to the legislative branch of government, the use of the phrase "established by the laws of the state" in R.C. 1.60 requires the body, office, or agency in question be brought into existence by direct legislative action of the General Assembly, and not simply "in accordance with" or "pursuant to" other provisions of the Revised Code.

193 (an act by the General Assembly establishing and instituting in the town of Athens a university "by the name and style of the 'Ohio University,'" passed February 18, 1804). See also R.C. 3344.01(A) ("[t]here is hereby created the Cleveland state university"); R.C. 3350.01 ("[t]here is hereby created the medical college of Ohio at Toledo"); R.C. 3350.10 ("[t]here is hereby created the northeastern Ohio universities college of medicine"); R.C. 3359.01(A) ("[t]here is hereby created a state university to be known as 'the University of Akron'").

Finally, each state university or state medical college has been established "for the exercise of [a] function of state government," namely, the provision of higher educational opportunities. As stated in *Hall v. Medical College of Ohio at Toledo*, 742 F.2d 299, 305 (6th Cir. 1984), "[p]roviding facilities and opportunities for the pursuit of higher education is a long-recognized governmental function."

It follows, therefore, that a state university or state medical college is a "state agency," as defined in R.C. 1.60 and R.C. 121.41(D). Thus, R.C. 121.42(A) empowers the Inspector General to investigate the management and operation of a state university or state medical college on his own initiative in order to determine whether wrongful acts and omissions have been committed or are being committed by state officers or state employees.

A Community College Or A State Community College Is Not A "State Agency," As Defined In R.C. 1.60 And R.C. 121.41(D)

In your second question you ask about a state assisted community college. R.C. Chapters 3354 and 3358 address the organization and operation of community colleges and state community colleges, respectively. Both types of institutions receive or are eligible to receive financial assistance from the State of Ohio. See R.C. 3354.18 (financial aid to a community college from the state); R.C. 3358.09 (financial support by the General Assembly for state community college). A community college is located within a community college district, see R.C. 3354.07, and a community college district is a "political subdivision of the state," R.C. 3354.01(A); R.C. 3354.03. A state community college is located within a state community college district, see R.C. 3358.07, and a state community college district is a "political subdivision composed of the territory of a county, or two or more contiguous counties," R.C. 3358.01(A).

A community college governed by the provisions of R.C. Chapter 3354 is not a "state agency," as defined in R.C. 1.60 and R.C. 121.41(D), because a community college is not created by a legislative enactment of the General Assembly, and thus is not "established by the laws of the state." Rather, a community college is created and established by the issuance of a charter by the Ohio Board of Regents, R.C. 3354.07 ("[i]f the Ohio board of regents approves the official plan, it shall certify a copy of its action to the board of trustees of the community college district and issue a charter creating and establishing the community college"), following the submission of a proposal to the Board to create a community college district by the county commissioners of one county, or two or more contiguous counties, R.C. 3354.02(A), (B), or the qualified electors of one county, or two or more contiguous counties, R.C. 3354.02(C). See *Hall v. Medical College of Ohio at Toledo*, 742 F.2d at 303 n.2 (noting that each of the state universities and colleges created by the General Assembly within the past two decades "are governed by organic statutes with very similar terms," and that "[b]y way of contrast, the legislature during this same time period made provision for the establishment — by local initiative, not directly by state statute — of community college, university branch, technical college and state community college districts") (emphasis in original). See also R.C. 3358.02(D) (setting forth the procedure for converting a state community college to a community college).

Similarly, a state community college also is not a "state agency," as defined in R.C. 1.60 and R.C. 121.41(D). As in the case of a community college formed in

accordance with the provisions of R.C. Chapter 3354, a state community college is created and established by the issuance of a charter by the Ohio Board of Regents, R.C. 3358.07 ("[i]f the board of regents approves the official plan, it shall certify a copy of its action to the board of trustees of the state community college district and issue a charter creating and establishing the state community college"), following the submission of a proposal to the Board to create a state community college district by the qualified electors of one county, or two or more contiguous counties, R.C. 3358.02(B)(1), or the county commissioners of one county, or two or more contiguous counties, R.C. 3358.02(B)(2), (3). Insofar as a state community college is created in the foregoing manner, rather than by a legislative enactment of the General Assembly, it cannot be said to be "established by the laws of the state," and thus is not a "state agency," as defined in R.C. 1.60 and R.C. 121.41(D).³

Because neither a community college nor a state community college is a "state agency," as defined in R.C. 1.60 and R.C. 121.41(D), R.C. 121.42(A) does not empower the Inspector General to investigate the management and operation of such institutions on his own initiative in order to determine whether wrongful acts and omissions have been committed or are being committed by state officers or state employees.

A Technical College Is Not A "State Agency," As Defined In R.C. 1.60 And R.C. 121.41(D)

In your third question you ask about a state assisted technical college or technical school. R.C. Chapter 3357 governs the organization and operation of technical colleges. A technical college is, in the appropriate circumstances, eligible to receive financial assistance from the State of Ohio. R.C. 3357.15. A technical college is located within a technical college district, *see* R.C. 3357.07, and a technical college district is a "political subdivision of the state," R.C. 3357.01(B); R.C. 3357.04.

A technical college governed by the provisions of R.C. Chapter 3357 is not a "state agency," as defined in R.C. 1.60 and R.C. 121.41(D), because a technical college is not created by a legislative enactment of the General Assembly, and thus is not "established by the laws of the state." As in the case of both a community college and a state community college, a technical college is created by the issuance of a charter by the Ohio Board of Regents, R.C. 3357.07 ("[i]f 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"), following the submission of a proposal to the Board to create a technical college district either by certain school district boards of education, R.C. 3357.02(A)-(D), or by qualified electors of a city school district, a county, two or more contiguous school districts, or two or more contiguous counties, R.C.

³ The conclusion that a state community college formed in accordance with R.C. Chapter 3358 is not a "state agency," as defined in R.C. 1.60 and R.C. 121.41(D), for purposes of the Inspector General's investigatory jurisdiction under R.C. 121.42(A), is not intended to call into question prior determinations that a state community college is an arm or instrumentality of the state for purposes of either the immunity from suit conferred upon the state by the eleventh amendment to the United States Constitution, or the jurisdictional provisions of the Ohio Court of Claims act, R.C. 2743.01-.20, *see Nimmo v. Southern State Community College*, No. C-1-83-738, slip op. at 4 and 6 (S.D. Ohio November 19, 1985) (holding that Southern State Community College "is an arm of the state of Ohio and therefore entitled to Eleventh Amendment immunity," and also noting that Ohio appears to consider a state community college an arm of the state and thus covered by Ohio's Court of Claims act), and that employees of a state community college district are, pursuant to R.C. 124.01, "in the service of the state" for purposes of the civil service provisions of R.C. Chapter 124, *see* 1978 Op. Att'y Gen. No. 78-052. *But cf. Shawnee State Community College v. Coriell*, Case No. 1260 (Ct. App. Scioto County Feb. 2, 1981) (unreported), *affirming* Case No. CIV 78-397 (C.P. Scioto County May 23, 1979) (unreported) (holding that the civil service provisions of R.C. 124.01(A) and (B) do not apply to employees of a state community college).

3357.02(E). Insofar as a technical college is created in the foregoing manner, and not by legislative enactment of the General Assembly, it cannot be said to be "established by the laws of the state," and, accordingly, is not a "state agency," as defined in R.C. 1.60 and R.C. 121.41(D).

Because a technical college is not a "state agency," as defined in R.C. 1.60 and R.C. 121.41(D), R.C. 121.42(A) does not empower the Inspector General to investigate the management and operation of a technical college on his own initiative in order to determine whether wrongful acts and omissions have been committed or are being committed by state officers or state employees.

Conclusion

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

1. R.C. 121.42(A) empowers the Inspector General to investigate the management and operation of a state university or state medical college on his own initiative in order to determine whether wrongful acts and omissions have been committed or are being committed by state officers or state employees.
2. R.C. 121.42(A) does not empower the Inspector General to investigate the management and operation of a community college on his own initiative in order to determine whether wrongful acts and omissions have been committed or are being committed by state officers or state employees.
3. R.C. 121.42(A) does not empower the Inspector General to investigate the management and operation of a state community college on his own initiative in order to determine whether wrongful acts and omissions have been committed or are being committed by state officers or state employees.
4. R.C. 121.42(A) does not empower the Inspector General to investigate the management and operation of a technical college on his own initiative in order to determine whether wrongful acts and omissions have been committed or are being committed by state officers or state employees.