

**OPINION NO. 77-002****Syllabus:**

1. A state university may pursuant to R.C. 3345.16 use donated funds for the purpose of purchasing liability insurance to protect officers, employees, and students against personal liability arising out of their involvement in official university activities.

2. Donated funds may not be used pursuant to R.C. 3345.16 to purchase liability insurance covering a state university itself or its officers in their representative capacity.

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**To: M. Merle Harrod, Chairman, Board of Trustees, Ohio State University,  
Columbus, Ohio**

**By: William J. Brown, Attorney General, January 18, 1977**

You have requested my opinion concerning the authority of The Ohio State University to use funds donated to the university for the purpose of purchasing liability insurance to protect the institution, its trustees, employees and students.

For the reasons set forth in the following analysis it is my opinion that such funds may be used to purchase liability insurance to protect trustees, employees and students from personal liability arising out of their involvement in official activities, which are related to the operation of

the university. Such funds, however, may not be used to purchase liability insurance covering the University or its trustees and officers in their official representative capacity.

As you have noted funds derived from donations are not subject to the same restrictions with regard to their expenditure as are imposed on other "public moneys." Specifically R.C. 3345.16 provides in pertinent part as follows for the disposition of donations:

"The board of trustees of a state college or university may receive, and hold in trust, for the use and benefit of the college or university, any grant or devise of land, and donation or bequest of money or other personal property, to be applied to the general or special use of the college or university including use for student loan and scholarship purposes, unless otherwise directed in the donation or bequest."

In 1975 Op. Att'y Gen. No. 75-079, I had occasion to consider the character of donated funds received and held by a state college or university pursuant to R.C. 3345.16. Because such funds, when received by the Ohio State Development Fund, are funds under the control of the board of trustees "in accordance with or under authority of . . . law", I concluded that they were "public money" for purposes of R.C. 117.10 and were, therefore, subject to inspection and audit by the Bureau of Inspection and Supervision of Public Offices pursuant to that section.

I noted, however, that this characterization as "public money" did not restrict the uses of these funds to those specifically authorized by statute or constitutional provision. On this point I said:

"It must be noted, however, that the expenditure of private funds obtained pursuant to R.C. 3345.16 is not limited to the purposes set forth in R.C. 3345.05 or any other section of the code. The first paragraph of R.C. 3345.16 expressly provides that funds donated pursuant to the Section may be 'applied to the general or special use of the college or university including use for student loan and scholarship purposes, unless otherwise directed in the donation or bequest.' This language is sufficiently broad that the Board of Trustees of the Ohio State University may expend moneys from the Development Fund for any purpose which is related in a general way to the operation of the University. Naturally, the same would hold true for the boards of trustees of other state colleges and universities which supervise their own development funds."  
(Emphasis added.)

It follows, therefore, that donated funds, which are received by the University may be expended for any "general or specific use of the university" notwithstanding the absence

of specific statutory authority for such expenditure. It does not follow, however, that the trustees of a university have unlimited discretion in spending such funds. In this regard the understanding is basic to Opinion No. 75-079, *supra*, that expenditures be related to the general operation of the University. Furthermore, it should be noted that the authority to spend donations arises under R.C. 3345.16, which is in fact general statutory language in that it does not enumerate specific authorized uses. As such the general grant of authority is subject to exceptions in the event of conflict with special or local provisions of the Revised Code. See R.C. 1.51.

With respect then to liability insurance, the absence of specific statutory authority as in R.C. 3345.20 and R.C. 3345.201 does not preclude the purchase of such insurance for officers, other employees and students pursuant to R.C. 3345.16, provided no other special or local provision operates to prohibit the expenditure. On this point see also 1974 Op. Att'y Gen. No. 74-098 in which I had occasion to consider whether a state college or university could purchase liability insurance using moneys from appropriations. In concluding that there was no such authority, I noted that the opinion did not apply to donated funds, which could be expended for any proper university purpose, notwithstanding the absence of any express statutory authority.

The purchase of liability insurance to cover officers, employees and students from personal liability resulting from their involvement in official university activities is in fact an expenditure related to the operation of the university. This was implicitly recognized by the General Assembly itself in the enactment of R.C. 3345.20 and R.C. 3345.201, which specifically authorized the purchase of liability insurance to cover respectively student teachers and their supervisors and agents, students, employees and other staff members of a state university's clinical teaching and research hospital.

Furthermore, as discussed in Op. No. 74-098, *supra*, the payment of insurance costs for employees has frequently been characterized as compensation. As such it is related to the operation of the university and pursuant to R.C. 3345.16 would be a proper expenditure, notwithstanding the fact that the purchase of liability insurance is not among the uses specifically authorized.

It must be noted, however, that while the purchase of liability insurance to protect officers, employees, and students against personal liability would be a proper expenditure of donated funds pursuant to R.C. 3345.16, such insurance may not be purchased to cover the university itself. As discussed in Op. No. 74-098, *supra*, prior to the enactment of Am. Sub. H.B. No. 800, *eff.* 1/1/75, (R.C. Chapter 2743), which waived the state's sovereign immunity, there was no reason for a state university to purchase liability insurance for itself. Although the waiver did open the universities and other state institutions to possible suit, the General Assembly set forth a comprehensive procedural scheme regulating every aspect of suits brought

against the state. See R.C. 2743.01, et seq. Under R.C. 2743.19 the state in effect became a self-insurer. One exception to this scheme of self-insurance has been made. As a result of Am. Sub. H.B. No. 1192, eff. 1/30/76, universities may now, pursuant to R.C. 2743.02(C) purchase liability insurance for the purpose of protecting themselves in the event of a judgment against a university hospital.

As a result of this change the General Assembly has recognized that the purchase of liability insurance to protect the university itself is a purpose related to the operation of the university. It does not follow, however, that the university has implied authority under R.C. 3345.16 to use donated funds to purchase liability insurance covering itself in areas other than the operation of a hospital. Such authority cannot in my opinion be inferred.

As discussed above R.C. 3345.16 provides a general grant of authority to use donated funds for any purpose related to the operation of the university, notwithstanding the absence of specific statutory authority for such an expenditure. As a general statutory provision R.C. 3345.16 is subject to exceptions in the event of conflict with special or local statutory provisions. See R.C. 1.51. R.C. Chapter 2743 is such a special statute. It imposes a clear-cut qualification on the state's waiver of sovereign immunity and the manner in which judgments against the state are to be satisfied. See Op. No. 74-098, supra.

Nothing in Am. Sub. H.B. No. 1192, supra, indicates an intention by the General Assembly to change this scheme of self-insurance beyond the authorization of liability insurance for university and other hospitals covered by R.C. 2743.02 (C). As such there is still no basis for the purchase of liability insurance to cover a state university, or its officers in their capacity as representatives of the university, notwithstanding any general grant of authority under R.C. 3345.16. Such an expenditure would be in clear conflict with the intent of the General Assembly in R.C. Chapter 2743, and authority for the expenditure may, therefore, not be inferred from R.C. 3345.16. See R.C. 1.51.

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

1. A state university may pursuant to R.C. 3345.16 use donated funds for the purpose of purchasing liability insurance to protect officers, employees, and students against personal liability arising out of their involvement in official university activities.

2. Donated funds may not be used pursuant to R.C. 3345.16 to purchase liability insurance covering a state university itself or its officers in their representative capacity.