

**OPINION NO. 83-092****Syllabus:**

1. The current in-state travel reimbursement policy, Office of Budget and Management Rule 126-1-02 (eff. Nov. 13, 1983), is not applicable, by virtue of R.C. 141.15, to the reimbursement of in-state travel expenses by technical college districts.
2. Community and technical college districts are "state-assisted institutions of higher education," as that term is used in Section 74 (uncodified) of Am. Sub. H.B. 291, 115th Gen. A. (1983) (eff. July 1, 1983).
3. The term "guidelines established by the Office of Budget and Management," as used in Section 74 (uncodified) of Am. Sub. H.B. 291, 115th Gen. A. (1983) (eff. July 1, 1983) does not refer to Office of Budget and Management Rule 126-1-02 (eff. Nov. 13, 1983) and, therefore, does not require community and technical college districts to comply with that rule in reimbursing travel expenses.

**To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 20, 1983**

I have before me your two requests for my opinion regarding the applicability of the current in-state travel reimbursement policy, 1 Ohio Admin. Code 126-1-02, to technical and/or community colleges.<sup>1</sup>

In your first request, you have inquired whether technical colleges are subject, pursuant to R.C. 141.15, to the in-state travel reimbursement policy adopted by the Office of Budget and Management (OBM). In your second request you have posed the following two questions regarding the travel reimbursement provisions of the 1983 Appropriations Act, Section 74 (uncodified) of Am. Sub. H.B. 291, 115th Gen. A. (1983) (eff. July 1, 1983):

- (1) Is a community college district or a technical college district a "state-assisted institution of higher education" within the meaning of the above language?
- (2) Does the term "guidelines" as used in the above language, mean that Section 126-1-02 of the Ohio Administrative Code, promulgated pursuant to the authority granted by Section 141.15, R.C., applies to community college districts or technical college districts?

It is my understanding that your concern in your second request is whether community and technical colleges are subject to the in-state travel reimbursement policy by virtue of the provisions of the Appropriations Act. Due to the similarity of your two requests, I have chosen to address both requests in one opinion.

The current in-state travel reimbursement policy was adopted by OBM pursuant to R.C. 141.15. R.C. 141.15 reads as follows:

Any elected or appointed state officer or state employee of any department, office, or institution of this state, whose compensation is paid, in whole or in part, from state funds, may be reimbursed for his actual and necessary traveling and other expenses incurred while traveling within this state on official business authorized by law or required in the performance of duties imposed by law.

Such reimbursement shall be made in the manner and at the rates provided by rules and regulations governing travel adopted by the office of budget and management, in accordance with and subject to the provisions of Chapter 119. of the Revised Code, except that reimbursement for expenses incurred by a member, officer, or employee of any bureau, commission, or committee created under the provisions of Chapter 103. or 105. of the Revised Code whose membership includes members or officers of the general assembly shall be made in the manner and at the rates established by the appropriate bureau, commission, or committee. (Emphasis added.)

Pursuant to R.C. 141.15, the travel reimbursement regulations and rules adopted by OBM govern only the reimbursement of in-state travel expenses incurred by "elected or appointed state officer[s] or state employee[s] of any department, office or institution of this state, whose compensation is paid, in whole or part, from state funds." Accordingly, technical colleges are subject to OBM's in-state travel reimbursement policy, by virtue of the provisions of R.C. 141.15, only if

<sup>1</sup> I note 1 Ohio Admin. Code 126-1-02 was amended effective November 13, 1983. Rule 126-1-02 sets forth, *inter alia*, authorization for various alternative transportation expenses, the rates for allowable reimbursable living expenses, including meals and lodging, and the circumstances under which the director of budget and management will grant exceptions. The term "state agency" as used in the rule is defined to mean "any department, office, or institution of this state." Rule 126-1-02(A)(1).

technical college employees are "state employees," technical colleges are institutions of the state, and technical college employees are "paid, in whole or in part, from state funds."

In 1981 Op. Att'y Gen. No. 81-062, my predecessor had occasion to opine as to whether employees of community and technical college districts were employees of the state for purposes of determining whether such employees were entitled to vacation benefits under R.C. 121.161 (currently at R.C. 124.13), which provided vacation leave for "[e]ach full-time state employee." In rendering his decision, my predecessor analyzed the statutory provisions under which technical and community colleges operate. R.C. 3354.03, governing community college districts, and R.C. 3357.04, governing technical college districts, define such college districts as "political subdivision[s] of the state," invested with the traditional governmental powers of eminent domain, taxation and assessment. On the basis of these statutory provisions, my predecessor concluded that employees of community and technical college districts are employees of that particular college district and not employees of the state, counties or cities. See 1962 Op. Att'y Gen. No. 3073, p. 486, syllabus ("[e]mployees of a community college district created under [R.C. Chapter 3354] are not employees of the state, counties, cities, city health districts or city school districts. . ."). I agree with the conclusion reached by my predecessor in Op. No. 81-062 that employees of community college districts created under R.C. chapter 3354 and technical college districts are not state employees.

OBM's in-state travel reimbursement policy is applicable, pursuant to R.C. 141.15, only to state employees, of an institution of the state, whose compensation is paid in whole or in part from state funds. In light of the fact that employees of technical college districts do not meet the first criteria of R.C. 141.15, being state employees, it is unnecessary to discuss whether technical college districts are state institutions whose employees are paid from state funds. Accordingly, in response to your first request, it is my opinion that the current in-state travel reimbursement policy is not applicable, by virtue of R.C. 141.15, to the reimbursement of in-state travel expenses by technical college districts.

However, the fact that technical college districts are not generally subject to OBM's current in-state travel reimbursement policy by virtue of the fact that their employees are not "state employees" as provided by R.C. 141.15, does not mean that such college districts cannot, by subsequent action of the General Assembly, be made subject to OBM's in-state travel reimbursement policies. The two questions posed in your second request seem to suggest that the payment of in-state travel expenses by community and technical colleges may be subject to OBM's travel reimbursement policies by virtue of Section 74 (uncodified) of the 1983 Appropriations Act, Am. Sub. H.B. 291.<sup>2</sup>

Section 74 of Am. Sub. H.B. 291 provides, in pertinent part, as follows:

Out-of-state travel regulations for official travel by officers, staff, and students of state-assisted institutions of higher education shall be determined by the board of trustees of each respective institution.

No part of an appropriation made in this act, including student instructional fees, local tax levies, restricted funds, or other public funds, shall be available to the board of trustees of a state-assisted institution of higher education for use as travel advance moneys to any administrative officer, faculty member, or classified employee of

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<sup>2</sup> You have inquired only whether community and technical college districts are subject to OBM's in-state travel reimbursement policies by virtue of the Appropriations Act. Therefore, this opinion does not discuss whether community and technical college districts may be subject to OBM's travel reimbursement policies by virtue of other legislative acts.

said institution. All travel expenditures except charges for the actual cost of commercial transportation shall be handled on a reimbursement basis according to regulations promulgated by the boards of trustees and within the guidelines established by the Office of Budget and Management. (Emphasis added.)

The first paragraph of Section 74 authorizes the board of trustees of a "state-assisted [institution] of higher education" to determine regulations for out-of-state travel. The second paragraph provides that reimbursement of "[a]ll travel expenditures except charges for the actual cost of commercial transportation," (emphasis added), must be handled pursuant to "regulations" promulgated by boards of trustees and within the "guidelines" established by OBM. Construing these two paragraphs in harmony leads to the conclusion that the legislative intent was for boards of trustees of such institutions to have exclusive authority as to the promulgation of general regulations governing out-of-state travel, but to have limited authority as to the reimbursement of travel expenses; such expenses can be reimbursed only within guidelines provided by OBM. State ex rel. Myers v. Industrial Commission, 105 Ohio St. 103, 136 N.E. 896 (1922) (syllabus, paragraph one) ("[t]he different sections and parts of sections of the same legislative enactment should if possible be so interpreted as to harmonize and give effect to each and all. . .").

In the first question of your request you ask whether community and technical college districts are "state-assisted institutions of higher education" as that term is used in the 1983 Appropriations Act. I am not aware of any statutory definition of the term "state assisted institutions of higher education" as used in Am. Sub. H.B. 291. The term, therefore, must be given its plain and ordinary meaning. R.C. 1.42 ("[w]ords and phrases shall be read in context and construed according to the rules of grammar and common usage").

The term "higher education" is defined generally as "college or university education." Webster's New World Dictionary 662 (2d college ed. 1978). Thus, the term "state-assisted institutions of higher education" appears to refer merely to state-assisted colleges or universities, a term which has been defined, at least for some purposes, as including community and technical colleges. See, e.g., R.C. 154.01(F); R.C. 3333.041. Community and technical college districts clearly receive state funding or aid. See, e.g., Am. Sub. H.B. 291, §74. Accordingly, it is my opinion that community and technical college districts are "state-assisted institutions of higher education" as that term is used in the 1983 Appropriations Act.

In the second question of your request you inquire whether the term "guidelines," as used in the Act, means OBM's current travel reimbursement policy, rule 126-1-02, and, therefore, requires that all travel expenditures incurred by those authorized to travel for community and technical college districts be reimbursed in accordance with rule 126-1-02.

There is no indication in the Appropriations Act as to what guidelines the General Assembly refers. However, the term "guidelines," by its very definition, connotes something different and less stringent than a "rule."

Webster's Dictionary defines "guideline" as "a standard or principle by which to make a judgment or determine a policy or course of action." Webster's New World Dictionary 621 (2d college ed. 1978). "Rule" is defined in Webster's Dictionary as "an authoritative regulation for action, conduct, method, procedure, arrangement." Webster's New World Dictionary 1245 (2d college ed. 1978). Consequently, it must be concluded that the intent of the General Assembly, in using the term "guidelines" rather than the term "rule," was to require that all travel expenses reimbursed from funds appropriated under the Act be reimbursed in accordance with general principles or standards established by OBM, rather than in accordance with the specific provisions of rule 126-1-02. Had the General Assembly intended to require reimbursement in accordance with rule 126-1-02, it could have expressly so provided. See R.C. 141.151 (interview expenses shall be reimbursed "in the manner and at rates provided by rules adopted by the office of budget and

management in accordance with and subject to the provisions of Chapter 119. of the Revised Code"). Accordingly, it is my opinion that the term "guidelines" as used in Am. Sub. H.B. 291 does not refer to rule 126-1-02 and, therefore, does not require community and technical college districts to comply with that rule in reimbursing travel expenses.

In conclusion, it is my opinion, and you are so advised, that:

1. The current in-state travel reimbursement policy, Office of Budget and Management Rule 126-1-02 (eff. Nov. 13, 1983), is not applicable, by virtue of R.C. 141.15, to the reimbursement of in-state travel expenses by technical college districts.
2. Community and technical college districts are "state-assisted institutions of higher education," as that term is used in Section 74 (uncodified) of Am. Sub. H.B. 291, 115th Gen. A. (1983) (eff. July 1, 1983).
3. The term "guidelines established by the Office of Budget and Management," as used in Section 74 (uncodified) of Am. Sub. H.B. 291, 115th Gen. A. (1983) (eff. July 1, 1983) does not refer to Office of Budget and Management Rule 126-1-02 (eff. Nov. 13, 1983) and, therefore, does not require community and technical college districts to comply with that rule in reimbursing travel expenses.

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<sup>3</sup> I am not aware of any such guidelines which have been established by OBM. However, if such guidelines were established, compliance of community and technical colleges would be required, pursuant to the Appropriations Act.