

## OPINION NO. 73-018

## Syllabus:

The board of trustees of a state university may authorize advances, from unencumbered funds, to cover the necessary expenses to be incurred by a member of the university's faculty or staff in travel which is reasonably incidental to the statutory purpose for which the university was created.

---

To: Glen R. Driscoll, Pres., University of Toledo, Toledo, Ohio  
By: William J. Brown, Attorney General, March 7, 1973

Your predecessor's request for my opinion states the facts and poses the question as follows:

For many years The University of Toledo has had a policy of making advances to members of the faculty and staff to cover travel expenses. All of the other universities in Ohio also make travel advances under certain conditions.

In our case, our policy permits an advance only when the estimated net out-of-pocket expense will exceed \$50. Our travel policy also requires that an expense voucher must be submitted within three working days after completion of the travel and any advances are credited against the amount due upon submission of the voucher. This policy appears on the reverse of our Request for Authority to Travel on University Business form, a copy of which is attached.

This policy has been in force for a number of years and no questions have been raised in prior audits, but we have recently been informed by the Office of the Auditor of State that, in their opinion, such advances from public monies are in violation of Article VIII, Section 4 of the Constitution of the State of Ohio. It was suggested that this practice be discontinued, except in certain situations as defined from time to time by the auditor.

It is our understanding that at least one institution makes such travel advances from a restricted fund rather than from its general fund. The income of this special fund represents unrestricted gifts to the University. In such a case there is no state-appropriated money involved. Neither are state-appropriated

funds involved in auxiliary services, such as intercollegiate athletics.

We are of the opinion that our travel advances are legal and not an extension of credit of the State, being given only when the University requires a certain performance of an employee in the fulfillment of his assigned duties.

Your opinion is requested on the following question:

May a state university make any type of an advance of funds, from any source, to cover travel expenses to a member of its faculty or staff?

Although the income and receipts of state universities were formerly required, under R.C. 131.01, to be deposited in the state treasury, the General Assembly changed this procedure in 1965. See amendment of R.C. 3345.05, 131 Ohio Laws, 817-818. Receipts are now, for the most part, to be held and administered by the respective boards of trustees. R.C. 3345.05 now provides in pertinent part:

All registration fees, \* \* \* and all other fees, deposits, charges, receipts, and income received by each state-supported university and college, \* \* \* shall be held and administered by the respective boards of trustees of the state-supported universities and colleges \* \* \* notwithstanding section 131.01 of the Revised Code; provided that such fees, \* \* \* and income, to the extent required by \* \* \* agreements \* \* \* under Chapter 154 or section 3345.07, 3345.11, or 3345.12 \* \* \* shall be held, administered, transferred, and applied in accordance therewith.

The Ohio board of regents shall require annual reporting \* \* \* in such form and detail as determined by the board of regents in consultation with such \* \* \* universities \* \* \* and the department of finance.

All receipts and expenditures are subject to the inspection of the auditor of state.  
(Emphasis added.)

Despite the fact that expenditures authorized by the trustees are thus subject to review by the Board of Regents, and to inspection by the Auditor of State, it is clear that the General Assembly has vested the government of the state universities in the respective boards of trustees. See R.C. 3335.02, 3337.07, 3339.05, 3341.02, 3343.02, 3344.01, 3350.01, and 3352.01. Under the language of R.C. 3345.05, just quoted above, the board is authorized to hold and administer - that is, to spend - the funds of the university for any purpose which is reasonably incidental to the statutory end for which the university was created. See Opinion No. 72-023, Opinions of the Attorney General for 1972. Thus, the trustees have the power to fix the compensation of

professors and other employees. See, e.g., R.C. 3335.09, 3341.04, 3343.06, and 3344.05. It has been held repeatedly that this power of governance entrusted to the trustees is quite broad in scope. See West v. Miami University Trustees, 41 Ohio App. 367 (1931), and Long v. Board of Trustees, 24 Ohio App. 261 (1926), in which the court states at pages 263-264 as follows:

The Ohio State University is by statute made a body corporate, and very broad general powers have been conferred upon it in respect to the adoption of by-laws, rules, and regulations for the government of the University, and no express limitation is found as to the general scope of the powers and duties of the trustees as to the business to be carried on by the University.

In Opinion No. 71-051, Opinions of the Attorney General for 1971, I stated that "[u]less prohibited by statute, the board of trustees of a state university has broad powers to carry on the university." And I think that what I had to say recently of the authority of boards of education applies with equal force here (Opinion No. 71-026, Opinions of the Attorney General for 1971):

The Supreme Court has held that the authority conferred upon a board of education to adopt rules and regulations to carry out its statutory functions vests in the board a wide discretion, Greco v. Poper, 145 Ohio St. 243, 249 (1945); provided, of course, that specific statutory limitations on the board's authority are not exceeded, Verberg v. Board of Education, 135 Ohio St. 246 (1939). "The school laws must be liberally construed in order to carry out their evident policies and conserve the interests of the school youth of the state, and any doubt must be resolved in favor of the construction that will provide a practical method for keeping the schools open and in operation." 48 O. Jur. 2d 677; Rutherford v. Board of Education, 127 Ohio St. 81, 83 (1933).

See also Opinion No. 71-068, Opinions of the Attorney General for 1971.

I assume, of course, that the policy of advances to cover travel expenses has been sanctioned by your board of trustees. On that assumption, I cannot see in Article VIII, Section 4, Ohio Constitution, any prohibition against the advance of state funds to a state employee for the necessary expenses he is about to incur in travel on state business. That Section reads as follows:

The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual, association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever.  
(Emphasis added; see Opinion No. 73-006, Opinions of the Attorney General for 1973.)

There was no such provision in the original Constitution of

1802. The abuses arising out of the investment of state funds in such private enterprises as railroads and banks led to its adoption in the Constitution of 1851. C.W. & Z. Rail Road Co. v. Commissioners of Clinton County, 1 Ohio St. 77, 105 (1852); Cass v. Dillon, 2 Ohio St. 607, Ranney, J., dissenting, pages 630-647 (1853). But the purpose of Section 4 was to prohibit financial aid by the state to private business enterprises; it does not prohibit the use of public funds for a public purpose. State, ex rel. Leverton v. Kerns, 104 Ohio St. 550, 554-555 (1922). Recent Supreme Court decisions have given a liberal interpretation to the concept of "public purpose" as applied to the use of public funds. Bazell v. City of Cincinnati, 13 Ohio St. 2d 63 (1968); State, ex rel. McClure v. Pagerman, 155 Ohio St. 320 (1951); State, ex rel. Bruestle v. Rich, 159 Ohio St. 13, 26-27 (1953); Opinion No. 71-070, Opinions of the Attorney General for 1971; Opinion No. 71-067, Opinions of the Attorney General for 1971; and Opinion No. 268, Opinions of the Attorney General for 1963. So long, therefore, as the travel to be undertaken by a university employee is reasonably incidental to the public purpose for which the university exists, an advance of necessary expenses is in no manner violative of the Constitution.

Neither can I discover any statutory prohibition of the practice. It is true that some Sections of the Revised Code speak in terms of "reimbursement", but this does not necessarily forbid advances in view of the broad authority of governance granted to university trustees. Thus, the trustees of each state university have specific authority to determine out-of-state travel regulations for their respective institutions although, under R.C. 127.05, out-of-state travel by state officials and employees at state expense must generally be approved by the Emergency Board. The appropriations act for the present biennium provides as follows (Amended Substitute House Bill No. 457, at page 194 of the pamphlet law):

Out-of-state travel regulations and reimbursement 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. As of December 31, 1971, and for each six months thereafter ending June 30, 1973, each institution shall submit to the Ohio board of regents a report on official out-of-state travel on such form and in such detail as the board of regents may prescribe.

As your predecessor's letter states, the Bureau of Inspection itself recognizes that there are certain situations in which an advance of necessary expenses is justified. The boards of trustees, which have authority to hold and administer the funds of the universities, have the authority to determine when advances are justified. Of course, an advance is only justified when it is reasonably incidental to the statutory end for which the university was created. See Opinion No. 72-023, Opinions of the Attorney General for 1972; Opinion No. 72-041, Opinions of the Attorney General for 1972. If there are abuses, the Regents will note them in the report of the trustees, and the Auditor of State, upon inspection, will submit a report of his findings to the proper authority.

In specific answer to your question it is my opinion, and you are so advised, that the board of trustees of a state university may authorize advances, from unencumbered funds, to

OAG 73-019

ATTORNEY GENERAL

2-64

cover the necessary expenses to be incurred by a member of the university's faculty or staff in travel which is reasonably incidental to the statutory purpose for which the university was created.