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1. BOARDS OF TRUSTEES OF, OHIO STATE UNIVERSITY, BOWLING GREEN UNIVERSITY, OHIO UNIVERSITY AND CENTRAL STATE COLLEGE ARE AUTHORIZED TO TRAVEL OUTSIDE STATE ON OFFICIAL BUSINESS AT STATE EXPENSE WITHOUT APPROVAL OF EMERGENCY BOARD. ALL OTHER OFFICERS AND EMPLOYEES, INCLUDING TRUSTEES OF MIAMI UNIVERSITY MUST HAVE EMERGENCY BOARD APPROVAL.
2. WORDS "AT STATE EXPENSE" REFER TO EXPENSES PAID FROM MONIES APPROPRIATED BY THE LEGISLATURE. EXPENSES PAID FROM OTHER SOURCES, SUCH AS FROM AN ATHLETIC FUND, NEED NOT HAVE EMERGENCY BOARD APPROVAL. §§ 3335.02, 3337.01, 3341.02, 3343.04, AND 127.05.

SYLLABUS:

1. Members of the boards of trustees of Ohio State University, Ohio University, Bowling Green University, Kent State University, and Central State College are, pursuant to Sections 3335.02, 3337.01, 3341.02, and 3343.04, Revised Code, authorized to travel outside the state on official business, at state expense, without the approval of the emergency board; but all other officers and employees of these state educational institutions, and all trustees, officers and employees of Miami University must, pursuant to Section 127.05, Revised Code, obtain the approval of the emergency board to travel on official business outside the state at state expense.

2. The words "at state expense," as used in said Section 127.05 refer to expenses which are paid from moneys appropriated by the legislature; and where the out-of-state travel expenses of a trustee, officer, or employee of a state educational institution, incurred on official business, are not paid from funds appropriated from the state treasury by the legislature, but are paid from other funds available to the institution, such as an athletic fund, such payment is not at state expense within the purview of that section and such expenses may be paid without the approval of the emergency board.

Columbus, Ohio, December 5, 1961

Hon. James A. Rhodes, Auditor of State
State House, Columbus 15, Ohio

Dear Sir:

Your recent request for my opinion asks specific questions as follows:

"1. A formal opinion is therefore respectfully requested as to the meaning and import of the words 'or perform official duties outside the state unless authorized by law or by the emergency board.' Does the amendment to Section 127.05, Revised Code, require the expense of travel outside the state on official business to be specifically provided for by statute or is such travel expense approval contemplated without emergency board approval, by implication?"

"2. Are the powers vested in the several boards of university trustees of the five state universities and of Central State College broad enough to exempt such universities and Central State College from the operation of Section 127.05, Revised Code, should you hold that Emergency Board action is necessary in all other state departments, boards and commissions?"

Section 127.05, Revised Code, to which you refer, was amended by the 104th General Assembly (Am. Sub. S. B. No. 589) to read as follows:

"No executive, legislative, or judicial officer, board, commission, or employee of the state shall, at state expense, attend any association, conference, convention, or perform official duties outside the state unless authorized by law or by the emergency board. Before such allowance may be made, the head of the department shall make application in writing to the emergency board showing necessity for such attendance and the probable cost to the state. If a majority of the members of the emergency board approve the application, such expense shall be paid from any moneys appropriated to said department, board, bureau, or commission for traveling expenses."

The same bill enacted Section 141.15, Revised Code, to read 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 department of finance, 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 em-

ployee of any bureau, commission, or committee created under the provisions of Chapters 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.”

As to the first question of your request, I call your attention to my Opinion No. 2538, issued on September 26, 1961, in which I construed the effect of Sections 127.05 and 141.15, *supra*, as effective July 26, 1961. The first three paragraphs of the syllabus of that opinion read as follows:

“1. Pursuant to Section 127.05, Revised Code, no state officer or employee may perform official duties outside the state, at state expense, unless authorized by law or by the emergency board.

“2. Where a state officer or employee is authorized by a specific statute, other than Section 141.15, Revised Code, to be reimbursed for his necessary expenses incurred in the performance of his official duties, he is “authorized by law” within the purview of Section 127.05, Revised Code, to travel on official duties outside the state at state expense, and does not need the approval of the emergency board to so travel at state expense; however, where there is no such specific statute authorizing the officer or employee to be reimbursed for his necessary expenses, he must obtain the approval of the emergency board to travel on official business outside the state, at state expense.

“3. Whether the official duties of a state officer or employee require that he travel outside the state depends on the statute pertaining to said duties and the particular facts involved.”

In said Opinion No. 2538, I noted certain sections of law which are specific statutes authorizing reimbursement for necessary expenses. In this regard, after referring to Section 4901.09, Revised Code, I stated:

“Other examples of specific provisions of law authorizing the reimbursement of necessary expenses are Section 117.02, Revised Code, pertaining to state examiners; Section 121.12, Revised Code, pertaining to the many directors of state departments, and to other personnel; Section 5501.03, Revised Code, pertaining to the director of highways; and Section 5501.10, Revised Code, pertaining to certain employees of the department of highways. I might add that there are many other sections of law specifically providing for the reimbursement of necessary expenses, but time and space do not allow my detailing the same in this opinion.”

Further, in my Informal Opinion No. 373, issued to the director of mental hygiene and correction on October 16, 1961, I concluded as follows:

“In answer to your request, therefore, it is my opinion that under Section 127.05, Revised Code, the Department of Mental Hygiene and Correction is authorized to pay the travel expenses of its employees who accompany non-resident mental patients to their place of legal residence pursuant to Sections 5123.31 and 5123.63, Article VII (b) and also the travel expenses of those employees who accompany delinquent juveniles outside, or return them to, the state pursuant to Section 2151.56, Article VII (d), Revised Code; and that such payments may be made without the approval of the emergency board.”

Since I believe that the conclusions of Opinion No. 2538 and Informal Opinion No. 373, *supra*, will provide an answer to your first question, I do not deem it necessary to further consider that aspect of your request.

Your second question is concerned directly with the application of Section 127.05, *supra*, to the state educational institutions; and first to consider in that regard is whether there are any special statutes (excluding Section 141.15, Revised Code) applying to officers and employees of the universities, and allowing the reimbursement of expenses incurred in performing official duties.

The six state educational institutions here concerned are Ohio State University, Ohio University, Miami University, Bowling Green University, Kent State University, and Central State College, each being administered by a board of trustees which is appointed by the governor. For example, Section 3335.02, Revised Code, pertaining to Ohio State University, reads as follows:

“The government of the Ohio state university shall be vested in a board of seven trustees, who shall be appointed by the governor, with the advice and consent of the senate. One trustee shall be appointed each year for a term of seven years from the fourteenth day of May of such year. The trustees shall not receive compensation for their services, but shall be paid their reasonable necessary expenses while engaged in the discharge of their official duties.”

It will be noted that under said Section 3335.02, the trustees “shall be paid their reasonable necessary expenses while engaged in the discharge of their official duties.” Thus, a trustee of Ohio State University is authorized by a specific statute, other than Section 141.15, Revised Code, to be reimbursed for his necessary expenses incurred in the performance of his official duties, and is, therefore, “authorized by law” within the pur-

view of Section 127.05, *supra*, to travel on official duties outside the state, at state expense, without approval of the emergency board. (See Opinion No. 2538, *supra*.)

It will further be noted that since Sections 3337.01, 3341.02 and 3343.04, Revised Code, similarly authorize the trustees of Ohio University, Bowling Green University, Kent State University, and Central State College to be reimbursed for necessary expenses incurred in the discharge of their official duties, the trustees of these latter named universities do not require approval of the emergency board to travel on official business outside the state, at state expense.

Since I am unable to find a similar provision applying to the trustees of Miami University, or to the other officers and employees of any of the schools, I must conclude that the sole authority for said Miami trustees and said other officers and employees for reimbursement of necessary expenses is found in Sections 127.05 and 141.15, *supra*.

I conclude, therefore, that the employees, officers and trustees of Miami University, and all officers and employees, other than the trustees, of the other state educational institutions cannot in view of Section 127.05, Revised Code, perform official duties outside the state, at state expense, without the approval of the emergency board.

The further question raised by your request concerns an interpretation of the words "at state expense" as used in Section 127.05, *supra*; and this, in turn, is concerned with the nature of the different funds available to the institutions here considered for payment of expenses.

Section 131.01, Revised Code, provides :

"On or before Monday of each week, every state officer, state institution, department, board, commission, *and every college or university receiving state aid* shall pay to the treasurer of state all moneys, checks, and drafts received for the state, or for the use of any such state officer, state institution, department, board, commission, or college or university receiving state aid, during the preceding week, from taxes, assessments, licenses, premiums, fees, penalties, fines, costs, sales, rentals, or otherwise, and file with the auditor of state a detailed, verified statement of such receipts. If tuitions and fees are paid to the officers of any college or university receiving state aid, said officers shall retain a sufficient amount of such tuitions and fees to enable them to make refunds of tuitions and fees incident to the administration of the tuition fund and fees. At the end of each term of any college or

university receiving state aid the officers in charge of the tuition fund and fees shall make and file with the auditor of state an itemized statement of all tuitions and fees received and the disposition of them.” (Emphasis added)

Section 131.05, Revised Code, provides:

“Every state officer, state institution, department, board, commission, or college or university, receiving fees or advances of money, or which, under section 131.01 of the Revised Code, collects or receives fees, advances, or money, shall deposit all such receipts to the credit of the state depository trust fund, when such receipts may be subject to refund or return to the sender, or when such receipts have not yet accrued to the state. Such deposits shall be made within forty-eight hours of their receipt, in case of an office, institution, department, board, or commission located at Columbus, and within six days, in case such office, institution, department, board, or commission is not located at Columbus.” (Emphasis added)

The institutions here concerned receive operating revenues from appropriations made from the state general revenue fund by the legislature, from student fees, from donations or bequests of money, and from receipts from various activities (such as athletic events).

While under Sections 131.01 and 131.05, *supra*, moneys, checks and drafts received by state agencies, including the institutions here concerned, must be deposited with the state treasurer or in the depository trust fund, certain funds received by said institutions are exempt from such requirement. In this regard, Section 3345.05, Revised Code, reads as follows:

“All receipts from student fees of the state universities receiving state aid, required by law to be paid into the state treasury, shall be credited therein to special funds to be appropriately designated by the names of the respective institutions from which they are received. Such funds shall be applied to the uses and purposes of such respective institutions and shall be used for no other purpose.

“Those receipts which are required by law to be paid into the state treasury shall be limited to registration fees and non-resident tuition fees, which fees shall be credited to the student fee memo accounts of the respective institutions, academic fees for the support of off-campus instruction, laboratory and course fees when so assessed and collected, and student health fees for the support of a student health service, which fees shall be credited to the designated rotary accounts of the respective institutions. *All other fees, deposits, charges, receipts, and income from all or part of*

the students 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. Fees, charges, revenues, or receipts, and proceeds of borrowings or of sale of evidences of indebtedness, received before or after the effective date of this section by said respective boards of trustees pursuant to sections 3345.07 and 3345.11 of the Revised Code, shall be held and administered by said respective boards of trustees and used only for the purposes for which they are collected or received.”
(Emphasis added)

Section 3345.07, Revised Code, referred to in Section 3345.05, *supra*, pertains to the construction and operation of dormitories and dining halls, and reads in part:

“The boards of trustees * * * may acquire sites for, and construct, equip, maintain, and operate upon sites within or in close proximity to the campuses * * * buildings to be used as dormitories or other suitable living quarters, or as dining halls, for students and members of the faculty and servants and the wives and families of married students of said universities, and pay for same out of any funds in their possession derived from the operation of any such buildings under their control, or out of funds borrowed therefor, or out of funds appropriated therefor by the general assembly, or out of funds or property received by gift, grant, legacy, devise, or otherwise for such purposes.

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Section 3345.11, Revised Code, also referred to in Section 3345.05, *supra*, reads in part:

“The boards of trustees * * * are hereby authorized to construct, equip, maintain and operate * * * structures, buildings or facilities to be used for athletic purposes, student activity centers, faculty centers, dining halls, bookstores, auditoriums, parking of motor vehicles, and contract research facilities, and to acquire sites therefor.

“For the purpose of paying the costs of such construction and equipment and the acquisition of sites, or any part thereof, or the repayment of any loans obtained for such purposes the respective boards of trustees may use any funds in their possession not otherwise obligated, revenues derived from athletic events, revenues derived from the operation of such activity centers, faculty centers, dining halls, bookstores, auditoriums, parking facilities, and contract research facilities, including but not limited to such portions of student activity fees charged and paid for such purposes, any other revenues or receipts derived or to be derived

from the operation of such structures, buildings or facilities, *any funds appropriated or which may be hereafter appropriated specifically* therefor by the General Assembly, and any funds or property received or which may be hereafter received by them by gift, grant, legacy, devise or otherwise for such purposes.

“* * *

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(Emphasis added)

It will be noted that the words “any funds appropriated or which may be hereafter appropriated” are set forth separately from the other revenues described in the section. Thus, it is indicated that such other revenues are not deposited in the state treasury, and are available to the respective boards of trustees without an appropriation by the legislature.

In view of the above, it appears that certain fees received from students must be paid into the state treasury pursuant to Section 131.01, *supra*; but that all other receipts from students, and all revenues derived from athletic events, student activity centers, faculty centers, dining halls, bookstores, auditoriums, parking facilities and contract research facilities, are held and administered by the respective boards of trustees. In this regard, it appears that the revenues not required to be deposited in the state treasury are not considered to be for the state or for the officer or agency receiving them within the purview of Section 131.01, *supra*; but are for the particular activity in which they are collected.

It appears clear that when funds are appropriated from the state treasury, and are used to pay expenses of officers or employees, such is done at state expense within the purview of Section 127.05, *supra*. On the other hand, the use of revenues which are never deposited in the state treasury and are not subject to appropriation by the legislature would not, in my opinion, be at state expense within the meaning of said Section 127.05; and strengthening my conclusion in this regard is the fact that such non-appropriated revenues are, pursuant to statute, to be held and administered by the respective boards of trustees, as obviously, if the trustees are to administer these funds, they are not subject to administration by any other agency.

Finally, that the approval of the emergency board pertains only to appropriated funds is clearly evidenced by the last sentence of Section 127.05, *supra*, which sentence reads:

“* * * If a majority of the members of the emergency board approve the application, such expense shall be paid from any

moneys appropriated to said department, board, bureau, or commission for traveling expenses.”

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

1. Members of the boards of trustees of Ohio State University, Ohio University, Bowling Green University, Kent State University, and Central State College are, pursuant to Sections 3335.02, 3337.01, 3341.02, and 3343.04, Revised Code, authorized to travel outside the state on official business, at state expense, without the approval of the emergency board; but all other officers and employees of those state educational institutions, and all trustees, officers, and employees of Miami University must, pursuant to Section 127.05, Revised Code, obtain the approval of the emergency board to travel on official business outside the state at state expense.

2. The words “at state expense,” as used in said Section 127.05 refer to expenses which are paid from moneys appropriated by the legislature; and where the out-of-state travel expenses of a trustee, officer, or employee of a state educational institution, incurred on official business, are not paid from funds appropriated from the state treasury by the legislature, but are paid from other funds available to the institution, such as an athletic fund, such payment is not at state expense within the purview of that section and such expenses may be paid without the approval of the emergency board.

Respectfully,

MARK McELROY

Attorney General