

**Note from the Attorney General's Office:**

1939 Op. Att'y Gen. No. 39-1216 was overruled in part by 1985 Op. Att'y Gen. No. 1985-051.

1215.

DELINQUENT TAX ANTICIPATION NOTES OF MAYFIELD  
VILLAGE SCHOOL DISTRICT, CUYAHOGA COUNTY,  
\$32,000.00.

COLUMBUS, OHIO, September 20, 1939.

*Retirement Board, State Teachers Retirement System, Columbus, Ohio.*

GENTLEMEN:

RE: Delinquent Tax Anticipation Notes of Mayfield Village  
School District, Cuyahoga County, Ohio, \$32,000.00.

I have examined the transcript of proceedings relative to the above notes purchased by you. These notes comprise all of an issue of delinquent tax anticipation notes in the aggregate amount of \$32,000, dated September 1, 1939, and bearing interest at the rate of 4% per annum.

Said notes are not general obligations of the school district, and are not to be serviced by any current or future tax levies. They are issued under and pursuant to the provisions of Section 2293-43a of the General Code (Amended Senate Bill No. 103, 93rd General Assembly), are payable only from the unpledged delinquent taxes in anticipation of the collection and distribution of which they are issued, and, under the express terms of the law, are lawful investments of your Board.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*

1216.

UNIVERSITY, STATE—TRUSTEES—DORMITORY FEES—  
SUCH FUNDS MAY NOT BE EXPENDED TO ERECT  
STADIUM, AUDITORIUM, PHYSICAL EDUCATION BUILD-  
ING, NATATORIUM, RESIDENCE, OFFICE EQUIPMENT  
FOR PRESIDENT, FEES: ATTORNEY OR ARCHITECT—  
SUCH FUNDS LIMITED TO ERECTION AND IMPROVE-  
MENT OF DORMITORY.

*SYLLABUS:*

1. *The trustees of a state university may not expend funds derived from the operation of dormitories constructed under the authority of Section 7923-1, General Code, under their control, for the erection of a stadium, an auditorium, a physical education building, or a natatorium, or to buy a home for the president of the university.*

2. *Such funds may not be used to purchase equipment of an office for the president emeritus.*

3. *Such funds may not be used for the payment of attorney fees nor for the payment of architect fees incurred in connection with the erection and improvement of the buildings of the university other than a dormitory.*

COLUMBUS, OHIO, September 20, 1939.

HON. JOSEPH T. FERGUSON, *Auditor of State, Columbus, Ohio.*

DEAR SIR: Your request for my opinion reads:

"This office is making an examination and audit of the books of one of the state universities, and during the course of the audit several questions of a legal nature have arisen that are not only of particular interest to the instant audit and subsequent audits, but are of further interest to the trustees of the state universities in respect to the proper control and handling of certain funds.

At the particular university being examined, there is maintained a fund known as the Dormitory Fund, representing receipts collected from students who occupy or use the services of the dormitory.

An examination of certain disbursements from the Dormitory Fund establishes the fact that many expenditures from this fund were for what may be termed non-dormitory purposes; and, any revenue derived by virtue of the expenditures will not be posted to the credit of the Dormitory Fund.

The following expenditures are presented as showing specific disbursements of dormitory funds for purposes other than the direct maintenance or operation of the dormitories proper, to-wit A withdrawal of some \$25,000.00 from the Dormitory Fund, and used in the construction of a stadium at the university; some \$70,000.00 withdrawn and applied on the construction of an auditorium; some \$10,000.00 withdrawn to purchase a home for the president of the university; some \$600.00 withdrawn and used to purchase equipment for the office of the president emeritus; some \$6,000.00 withdrawn and used for payment of architect fees in regard to the construction of a Women's Physical Education Building; some \$109,000.00 withdrawn and applied on the construction of a Women's Physical Education Building and Natatorium; and various withdrawals to pay for professional services rendered by law firms in regard to the construction of new buildings.

Several of the items above noted were consummated prior to the enactment of Senate Bill 352 (117 v. 371 Eff. Aug. 12, 1937) and Senate Bills 348 and 492 (117 v. 912, 3rd Ses. S. 492;

117 v. 370 Eff. Oct. 11, 1938); several of the withdrawals and credits were made subsequent to the enactment of the acts cited.

We are acquainted with certain Attorney General opinions which hold generally that dormitory funds need not be deposited in the State Treasury, but may be expended by the university officials for the maintenance, repair, and operation of the dormitories. Reference is made to recent opinions on this subject, namely 1937 O. A. G. numbers 1162 and 898; and 1938 O. A. G. number 2899, and to opinions therein cited.

The query has arisen, however, in the interpretation of the opinions, and the law relevant thereto, as to whether the disbursements from the dormitory funds must be confined strictly and exclusively to purposes that may be directly for the benefit of the dormitories, and occupants therein, or whether the expenditures may be legally justified on the basis that the benefits accruing from the disbursement of this local fund are for the benefit of the student body as a whole, or for a general educational purpose.

There is, of course, a distinction between moneys made available by legislative appropriations and moneys contributed by the students for local activities. It is our understanding that the state money may only be expended for purposes designated in the appropriation act; the expenditure of strictly local moneys contributed by the students may be justified if properly expended for the benefit of the students. However, we do not feel that all of the above quoted items could be lawfully justified as being for the benefit of the students, in the event that dormitory money may be expended for non-dormitory purposes.

In view of the foregoing specific disbursements, we desire your advice as to whether the specific withdrawals and expenditures of dormitory funds for the purposes above cited are lawful and in accordance with authority vested in the university officials, and any comments that you may have generally as to the duty of university trustees in regard to these or related local funds."

Section 9723-1, General Code, as enacted in 117 O. L., 370, reads:

"That the boards of trustees of Kent state university, Miami university and Ohio state university are hereby authorized to construct, equip, maintain, and operate upon sites within the campuses of the above universities respectively as their respective boards may designate therefor, buildings to be used as dormitories for students and members of the faculty and servants of said state universities, and to pay for same out of any funds in their possession derived from the operation of any dormitories under their control, or out of funds borrowed therefor, or out of funds

appropriated therefor by the general assembly of Ohio, or out of funds or property received by gift, grant, legacy, devise or otherwise, for such purpose, and to borrow funds for such purposes upon such terms as said boards may deem proper, and to issue notes or other written instruments evidencing such indebtedness, provided, however, that such indebtedness shall not be a claim against or a lien upon any property of the state of Ohio or any property of or under the control of said boards of trustees excepting such part of the receipts of the operation of any dormitories under their control as the said boards of trustees may respectively pledge to secure the payment of any such indebtedness."

This section was amended by the present legislature to read as follows:

"That the boards of trustees of Kent state university, Bowling Green state university, Ohio university, Miami university and Ohio state university are hereby authorized to construct, equip, maintain and operate upon sites within the campuses of the above universities respectively as their respective boards may designate therefor, buildings to be used as dormitories for students and members of the faculty and servants of said state universities, and to pay for same out of any funds in their possession derived from the operation of any dormitories under their control, or out of funds borrowed therefor, or out of funds appropriated therefor by the general assembly of Ohio, or out of funds or property received by gift, grant, legacy, devise, or otherwise, for such purpose, and to borrow funds for such purposes upon such terms as said boards may deem proper, and to issue notes or other written instruments evidencing such indebtedness, which notes or other written instruments shall be negotiable, provided, however, that such indebtedness shall not be a claim against or a lien upon any property of the state of Ohio or any property of or under the control of said boards of trustees excepting such part of the receipts of the operation of any dormitories under their control as the said boards of trustees may respectively pledge to secure the payment of any such indebtedness.

When such notes or other written instruments have been issued subject to call for redemption prior to maturity, the issuing board shall have power to refund the same upon such terms as said board may deem proper.

Such notes or other written instruments shall be lawful investments of banks, savings banks, trust companies, trustees, and trustees of sinking funds of municipalities and counties, and of

the state industrial commission notwithstanding the provisions of section 1465-58 of the General Code, of the retirement board of the state teachers' retirement system notwithstanding the provisions of section 7896-16 of the General Code, of the retirement board of the state public school employees' retirement system notwithstanding the provisions of section 7896-79 of the General Code, and of the retirement board of the public employees' retirement system notwithstanding the provisions of section 486-41 of the General Code, and of domestic insurance companies notwithstanding the provisions of section 9357 of the General Code, and shall be acceptable as security for the deposit of public moneys."

A similar statutory provisions with reference to Bowling Green State University is contained in Section 7924-1a, General Code.

It is fundamental that if bonds or notes have been issued under authority of these sections and the income has been pledged for the payment thereof, any other use of the fund so pledged would violate the vested contract right of the bond or note holders. I therefore assume for the purposes of this opinion that the dormitory funds in question had not been pledged for the payment of notes or bonds issued under authority of Sections 7923-1 and 7924-1a, General Code.

My predecessors in office have had occasion to consider the nature of the fund which you refer to as "Dormitory Fund." In the syllabus of the opinion found in Opinions of the Attorney General for 1915, Vol. I, page 35, my predecessor said:

"Receipts from dining room service and room rent in dormitories are not for the use of any university, college or normal school as such, but for the use and maintenance of the dormitory \* \* \*"

In the third branch of the syllabus of the opinion in Opinions of the Attorney General for 1920, Vol. I, page 283, my predecessor stated:

"Such moneys should be used for the maintenance of the dormitory room rent and board service, and in this connection the term 'maintenance' includes, among other things, the cost of light, heat, water, repairs, upkeep of equipment and insurance."

In another opinion of one of my predecessors (Opinions of the Attorney General, 1930, Vol. I, page 1403) the question as to the proper administration of this fund was considered. In that opinion such Attorney General expressed some doubt as to whether such funds should not be paid into the State Treasury under the requirement of Section 24, General Code, but followed the rulings of two of his predecessors to the

effect that Section 24, General Code, did not make such requirement. See Opinions of the Attorney General, 1915, Vol. I, page 35, and Opinions of the Attorney General, 1920, Vol. I, page 283. My immediate predecessor, in an opinion dated August 31, 1938, bearing number 2899, expressed a similar view. In the light of these opinions, I consider the question settled as to whether or not such funds are "moneys \* \* \* received for \* \* \* the use of any \* \* \* state institution, \* \* \* college, normal school or university receiving state aid," as used in Section 24, General Code, and, by reason of such continuous interpretation, follow such holdings for the purpose of the present inquiry.

Your inquiry, when placed in query form, is: May a university, which has in its dormitory fund an excess of funds derived from receipts from students in payment for dormitory facilities, apply such excess toward the cost of construction of a stadium, a physical education building, an auditorium, a home for its president, equipment for its president emeritus and fees to architects and lawyers in connection with such construction?

Under date of July 22, 1937 (Opinions of the Attorney General, 1937, Vol. II, page 1615), my predecessor in office held that Section 7923-1, General Code, did not authorize a board of trustees of Kent State University to use funds derived from the rental of dormitory facilities to students and professors, for the erection and equipment of a house for the president of such university. In such opinion, he calls attention to the fact that Section 7923-1, General Code, grants to the board of trustees of Kent State University authority "to construct, equip and operate \* \* \* buildings to be used as dormitories for students and members of the faculty and servants" and to pay for the same out of donations, sums appropriated therefor by the legislature *and funds derived from the operation of the dormitory*. While my predecessor does not specifically so state, his opinion is apparently founded upon the proposition of law that the trustees of a state university are public officials; that when a statute grants authority to a public officer or board to expend or use a fund in a particular manner, such grant of power is likewise a limitation of the use of the fund in any other manner (see *State, ex rel. Clarke, vs. Cook, Auditor*, 103 O. S., 465; *State, ex rel. Locher, vs. Menning*, 95 O. S., 97; *Frisbee Company vs. City of East Cleveland*, 98 O. S., 266; *McCormick vs. City of Niles*, 81 O. S., 246); and that since the legislature authorized the trustees of the university to use moneys derived from the rental of dormitory facilities for the construction, operation and maintenance of dormitories and for the payment of notes or obligations issued to obtain funds for such purposes, they may be used for such purpose and no other.

Such opinion of my predecessor is founded upon well established rules. I find no reason to depart from the rule therein laid down. I find no provision of law which would lead to any other conclusion with reference to other state universities.

If such funds may be used only for the acquisition and maintenance

of dormitory facilities and no other purpose, it is self evident that unless the items mentioned in your request come within the meaning of the term "acquisition or maintenance of dormitory facilities," they are improper expenditures.

In the case of Hillsdale College vs. Rideout, 82 Mich., 94, the court defined the term "dormitory" to include building quarters for sleeping and lodging purposes and as not including a dining hall.

The Century Dictionary defines the term "dormitory" as "A place, building, or room to sleep in. Specifically—(a) A place in convents where the monks or nuns sleep, either divided into a succession of small chambers or cells, or left undivided, in the form of a long room. The dormitory has usually immediate access to the church or chapel, for the convenience of its occupants in attending nocturnal services. (b) That part of a boarding school or other institution where the inmates sleep, usually a large room, either open or divided by low partitions, or a series of rooms opening upon a common hall or corridor: in American colleges, sometimes an entire building divided into sleeping rooms. 2. A burial-place; a cemetery."

I have quoted the above definition for the reason that it gives the widest definition of the term "dormitory" that has come to my attention. As stated in the third paragraph of the headnotes of the case of Woolford Realty Company, Inc., vs. Rose, 268 U. S., 568; "The popular or received import of words furnishes general rule for interpretation of laws." Since none of the purposes mentioned in your letter come within the ordinary meaning of construction or maintenance of dormitories or the payment of bonds or notes issued for such purpose, it is my opinion that they were unauthorized expenditures.

Specifically answering your inquiry, it is my opinion that:

1. The trustees of a state university may not expend funds derived from the operation of dormitories constructed under the authority of Section 7923-1, General Code, under their control, for the erection of a stadium, an auditorium, a physical education building, or a natatorium, or to buy a home for the president of the university.

2. Such funds may not be used to purchase equipment of an office for the president emeritus.

3. Such funds may not be used for the payment of attorney fees nor for the payment of architect fees incurred in connection with the erection and improvement of the buildings of the university other than a dormitory.

Respectfully,

THOMAS J. HERBERT,  
*Attorney General.*