

OPINION NO. 71-011

Syllabus:

The receipt of an instructional grant by an eligible undergraduate student through a college or university under Section 3333.12, Revised Code, does not constitute a receipt of state funds in support of such institution of higher learning for the purposes of Sections 3345.22 and 3345.23, Revised Code.

To: Reynold C. Hoefflin, Greene County Pros. Atty., Xenia, Ohio
By: Paul W. Brown, Attorney General, January 8, 1971

Your request for my opinion is on the following question:

Does the receipt of an instructional grant by an undergraduate student through a college or university under Section 3333.12, Revised Code, constitute a receipt of "state funds in support thereof" by such college or university for the purposes of Sections 3345.22 and 3345.23 (D), Revised Code?

Section 3345.22 (A), supra, provides as follows:

"A student, faculty or staff member, or employee of a college or university which receives any state funds in support thereof, arrested for any offense covered by division (D) of Section 3345.23 of the Revised Code shall be afforded a hearing, as provided in this section, to determine whether he shall be immediately suspended from such college or university. Such hearing shall be held within not more than five days after his arrest, subject to reasonable continuances for good cause shown, which continuances shall not exceed a total of ten days."

Section 3345.23 (D), supra, contains the following provisions:

"Without limiting the grounds for dismissal, suspension, or other disciplinary action against a student, faculty or staff member, or employee of a college or university which receives any state funds in support thereof, the commission of an offense under Sections 2901.19, 2901.23 to 2901.252, inclusive, 2907.02, 2907.021, 2907.05, 2907.06, 2907.08, 2907.082, 2909.01, 2909.09, 2909.24, 2923.01, 2923.012, 2923.43, 2923.52 to 2923.54, inclusive, or division (A) (1) or Division (B) of Section

2923.61 of the Revised Code, on or affecting persons or property on such college or university or when an emergency has been declared pursuant to Section 3345.26 of the Revised Code, is cause for dismissal pursuant to this section or for suspension pursuant to Section 3345.22 of the Revised Code. Criminal cases resulting from arrests for offenses covered by division (D) of this section shall take precedence over all civil matters and proceedings and over all other criminal cases."

The answer to your question depends upon whether the payment of an instructional grant to an undergraduate student through a college or university constitutes a transfer of state funds for the assistance or support of such college or university.

Section 3333.12, supra, provides in part as follows:

"The Ohio board of regents shall establish and administer an instructional grant program for full time undergraduate students in an Ohio institution of higher education which is state-assisted or which has received a certificate of authorization from the board pursuant to Chapter 1713. of the Revised Code. * * *"

Contained in the above provision is a distinction between Ohio institutions of higher learning which receive state assistance and those institutions which do not receive state assistance but which are properly authorized and certified by the State of Ohio. This distinction would indicate that eligible undergraduate students may receive instructional grants through colleges and universities, properly authorized and certified, which do not receive any state support or assistance.

An instructional grant is a gift of funds of specified amounts from the State of Ohio to eligible undergraduate students. The function of Ohio colleges and universities in relation to these transfers is merely to facilitate the transfer of such funds from the state to deserving students. Since the benefit from these gifts is derived solely by the students, it would be improper to attribute a characteristic to these transfers which is not contained in the nature of the transaction, namely the assistance or support of an institution of higher learning.

Therefore, it is my opinion, and you are hereby advised that the receipt of an instructional grant by an eligible undergraduate student through a college or university under Section 3333.12, Revised Code, does not constitute a receipt of state funds in support of such institution of higher learning for the purposes of Sections 3345.22 and 3345.23, Revised Code.