

**OPINION 65-207****Syllabus:**

1. Individuals receiving emeritus compensation from state assisted institutions of higher learning in Ohio receive such pay as a supplemental retirement benefit.

2. Such individuals are not subject to employment restrictions imposed upon retirants by Section 3307.38.1, Revised Code, and 3307.40.1, Revised Code, relating to forfeiture of pensions.

3. Authority exists for the payment of these additional retirement benefits on the rationale that a governing body has implied powers to effectuate its expressly granted powers and to accomplish the primary purpose for which the institutions were established.

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**To: Roger Cloud, Auditor of State, Columbus, Ohio**  
**By: William B. Saxbe, Attorney General, November 30, 1965**

Your request for my opinion provides in pertinent part as follows:

"1. Are individuals receiving emeritus compensation from the state assisted institutions of higher learning in Ohio to be considered to be receiving such pay as employees or as an additional retirement benefit?"

"2. Are such individuals subject to employment restrictions imposed upon retirants by the laws governing administration of the various state retirement systems?"

"3. In the event such payments constitute supplementary retirement benefits, does authority exist for public moneys to be paid for this purpose?"

In response to the first question raised, it is concluded that individuals who are the recipients of

emeritus compensation from state assisted institutions of higher learning in Ohio receive such pay as an additional retirement benefit. The reasons for this conclusion are numerous. First, payment of these benefits is not conditioned upon the fact that the recipients observe certain duty hours or perform any assigned tasks. Nor are these individuals required to be in attendance on any or all working days. The fact that these individuals, in some instances, do make valuable contributions can be attributed mainly to the fact that they are, as a whole, an extremely dedicated group, whose contributions are the result of their own self-discipline.

The finding that this compensation is received as a retirement benefit is further buttressed by the fact that in many instances the amount received is minimal. Consequently, it would be highly impractical to expect that the recipient would perform any duties in consideration for the funds. In such a case, the amount received would be without question a gratuity or benefit. In the case where the amount received is substantial there is still no implied condition that the recipient perform any duties. As a matter of fact, many of the recipients of supplemental retirement benefits reside in out of state locations, therefore, they obviously perform no services in return for payments received.

In response to the second question posed, it is concluded that individuals who occupy emeritus positions are not subject to employment restrictions imposed upon retirants by Section 3307.38.1, Revised Code, and Section 3307.40.1, Revised Code, which govern employment of retired teachers. These two sections contemplate the re-employment of retired teachers with resultant loss of pension rights. Section 3307.38.1, Revised Code, provides in pertinent part as follows:

"\* \* \*                   \* \* \*                   \* \* \*  
       "(B) A superannuate may be em-  
 ployed as a regular teacher, provided;  
 "\* \* \*                   \* \* \*                   \* \* \*"

(Emphasis added)

As can be readily seen, this statute deals with a return to full-time employment with all the attendant duties and obligations. It seemingly does not deal with the case of one who holds an emeritus position. Further, holding an emeritus position is not regular employment in the statutory definition of the word. Section 3307.01 (C), Revised Code, provides as follows:

"(C) 'Regularly employed' means  
full-time employment in any year for  
 twelve or more consecutive school weeks  
 in the same position."

(Emphasis added)

The third question posed in your request bears upon the issue of whether authority exists for public monies to be paid for supplementary retirement benefits. Initially let it be stated that to the best of my knowledge the source from which these benefits are paid is the interest earned on unmarked private endowment funds. Concededly, there is no statutory provision which expressly authorizes the governing body of an educational institution to grant supplemental retirement benefits over and above that amount provided for in one of the State Retirement Systems. This, however, is not fatal to the opinion that such a body is, in fact, empowered to make this expenditure. In a discussion of the general powers of the governing body of an institution, 55 Am. Jur., Universities and Colleges, Section 6, provides in part as follows:

"Like other corporations, an incorporated college or university has only such power as is conferred by statute, together with the implied or incidental power to do whatever is reasonably necessary to effectuate its expressly granted powers and to accomplish the purposes for which it was formed.\* \* \*"

Section 3335.09, Revised Code, vests in the Board of Trustees of Ohio State University express power to elect, fix the compensation of, and remove professors as is necessary. Similar authority can be found in regard to the other state institutions. Also, it is a proposition too well established to be controverted that the primary object of all institutions of higher learning is to provide as high a level of educational opportunities as is feasible. It would, therefore, seem that the governing bodies have implied powers to grant supplementary retirement benefits in order to effectuate its expressly granted power to staff the various institutions with well-qualified persons and to accomplish the primary purpose for which these institutions were formed.

Therefore, it is my opinion and you are accordingly advised that:

1. Individuals receiving emeritus compensation from state assisted institutions of higher learning in Ohio receive such pay as a supplemental retirement benefit.
2. Such individuals are not subject to employment restrictions imposed upon retirants by Section 3307.38.1, Revised Code, and 3307.40.1, Revised Code, relating to forfeiture of pensions.
3. Authority exists for the payment of these additional retirement benefits on the rationale that a governing body has implied powers to effectuate its expressly granted powers and to accomplish the primary purpose for which the institutions were established.