

## OPINION NO. 71-051

**Syllabus:**

State funds may not be used to finance an office of student defender at a state university, where such office is to be devoted primarily to providing legal representation of students in criminal and civil proceedings.

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**To:** Claude R. Sowle, Pres., Ohio University, Athens, Ohio  
**By:** William J. Brown, Attorney General, September 10, 1971

You have requested my opinion as to the legality of using state funds to finance a student defender office at Ohio University. Specifically, you propose that the University employ a lawyer and a clerical staff to represent indigent Ohio University students in both civil and criminal matters. State funds would be the primary source of support, but certain students would contribute some money to their defense. The lawyer and his staff would have their offices on University grounds and be governed by a board of trustees, half of whom would be students.

The legal issue presented is whether state funds may be used to finance a student defender office. That is, may the state select indigent students out of the general population and subsidize their legal expenses?

Unless prohibited by statute, the board of trustees of a state university has broad powers to carry on the university. Cincinnati v. Jones, 16 Ohio Dec. 343 (1905). The powers also include the power to engage in certain incidental enterprises. Long v. Bd. of Trustees, 24 Ohio App. 261 (1926).

No statutory authority has come to my attention that specifically permits or forbids such expenditure.

A review of cases in this and other jurisdictions reveals that the courts have upheld such expenditures as establishing a student book store, Long v. Bd. of Trustees, *supra*; erecting a house for the university president, Cincinnati v. Jones, *supra*; the maintenance of a student infirmary, Davis v. Board of

Regents, 66 Cal. App. 693 (1924); the maintenance of agricultural experimental stations, State ex rel. v. Whitmore, et al., 85 Nebr. 566 (1909); and expenditures for the construction of athletic fields, Board of Directors v. City of Cincinnati, 1 Ohio N.P. (n.s.) 105 (1903). The thread running through these decisions is that such expenditures are connected with the well-being of the communal body of the university and promote the purposes for which the university was founded.

In contrast, it is difficult to conceive a manner in which the office of student defender could be realistically justified as advancing the well-being of the communal body or promoting the purpose of education. The student defender office would render aid in both civil and criminal matters. This legal representation is so enmeshed in the private rights of the individual and so remotely connected with the communal side as not to be connected with the university. The beneficiary of such aid is the student in his private capacity as a citizen. His rights in such an action inhere in him as a citizen, and not as a result of his status as a member of the university community. Viewing such an office as an educational pursuit is unrealistic, since student contact with the office would be restricted to the positions of trustee, office clerk and client.

One of my predecessors, in Opinion No. 593, Opinions of the Attorney General for 1949, held that public moneys may not be used for private purposes. Although the legislative body has wide latitude in declaring a "public purpose", it has, in the case you have posed, remained silent. Neither am I able to infer from the statutes or case law, in this or other jurisdictions, that such an expenditure can be justified. I say this with the knowledge that the propriety of expenditures to carry on a university must be determined in view of the facts and conditions that exist at the time. Carrel v. State ex rel., 11 Ohio App. 281 (1919). After reviewing the facts and conditions relative to the proposed plan, I cannot consider the expenditures to be a legitimate expenditure of public funds.

In stating my opinion I do not intend my comments to apply beyond the type of service discussed herein and, specifically, do not intend them to apply to a service rendered students as a part of the teaching program of a university.

In specific answer to your question, it is my opinion and you are advised that state funds may not be used to finance an office of student defender at a state university, where such office is to be devoted primarily to providing legal representation of students in criminal and civil proceedings.