



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2018-3

Steve Emmons, Executive Director
Council on Law Enforcement Education and Training
2401 Egypt Road
Ada, OK 74820-0669

March 30, 2018

Dear Director Emmons:

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following questions:

1. **Would the Council on Law Enforcement Education and Training (CLEET) violate OKLA. CONST. art. X, §§ 14 or 15 by expending public funds to provide training to law enforcement cadets and officers who work for a campus police department established by a private school or institution of higher learning pursuant to the Oklahoma Campus Security Act, 74 O.S.2011 & Supp.2017, §§ 360.15 – 360.21?**
2. **Would CLEET violate OKLA. CONST. art. II, § 5 by expending public funds to provide training to law enforcement cadets and officers who work for the campus police department of a private sectarian school, university, or college established pursuant to the Oklahoma Campus Security Act?¹**

I.

BACKGROUND

A. **The Oklahoma Campus Security Act.**

The Oklahoma Campus Security Act (the “Act”), 74 O.S.2011 & Supp.2017, §§ 360.15 – 360.21, was enacted in 1991. As originally enacted, it provided in part:

¹ In view of the answers to these two questions, we need not address the third question you posed. Also, while governing boards of the entities addressed herein may employ personnel to provide, or may contract for, campus security services regardless of whether they create a campus police department pursuant to the Oklahoma Campus Security Act, *see* 74 O.S.2011, § 360.19, this Opinion addresses only those personnel employed as officers of campus police departments established under the authority granted by the Oklahoma Campus Security Act.

- A. Governing boards of institutions of higher education and boards of education of public school districts are authorized to establish campus police departments pursuant to the provisions of the Oklahoma Campus Security Act. These boards may employ and commission campus police officers and may designate uniforms, badges and insignia to be worn by such officers and displayed on vehicles or other equipment of the department.

1991 Okla. Sess. Laws ch. 313, § 7. Campus police officers commissioned pursuant to the Act “have the same powers, liabilities, and immunities as sheriffs or police officers within their jurisdiction.” 74 O.S.Supp.2017, § 360.17(A).

Once established, campus police departments of private institutions of higher education are expressly declared to be “public agencies of the State of Oklahoma for the limited purposes of enforcing the criminal statutes of Oklahoma and making agreements with local law enforcement agencies or political subdivisions of the state.” 74 O.S.Supp.2017, §360.17(D); *see also id.* § 360.20 (permitting a municipality or county sheriff “having overlapping or concurrent jurisdiction with a proposed campus police department” to enter into an agreement with the campus police department to “recogniz[e] jurisdictional boundaries and provid[e] for mutual assistance”). The commission of a campus police officer may be suspended or revoked by the governing board “for any reason,” or by the local District Attorney “for cause related to the campus police officer’s ability to exercise the powers of such commission in the interest of public security” or upon the officer’s conviction of certain enumerated offenses. *Id.* § 360.18(B).²

In its original form, the Oklahoma Campus Security Act authorized both public and “accredited” private institutions of higher education to establish campus police departments, *see* 1991 Okla. Sess. Laws ch. 313, § 5 (defining “institution of higher education”), but authorized only **public** school districts to do so. *Id.* § 7(A). In 2017, the Legislature amended the Act to add “private school” to the definitions section. “Private school” is defined as “a school that offers a course of instruction for students in one or more grades from prekindergarten through grade twelve and is not operated by a governmental entity.” 2017 Okla. Sess. Laws, ch. 64, § 1. The amendment likewise inserted the phrase “a private school” into the Act’s definitions of “[c]ampus,” “[c]ampus police officer,” “commission,” and [g]overning board.” *Id.* The legislation also amended Section 360.18 of the Act, in pertinent part, as follows:

- A. Governing boards of institutions of higher education or private schools, boards of education of public school districts and airport public trusts are authorized to establish campus police departments pursuant to the provisions of the Oklahoma Campus Security Act.

Id. § 2.

² If an officer is convicted of a felony or “a crime involving moral turpitude,” the officer’s commission “shall be revoked by the district attorney[.]” *Id.*

B. The Council on Law Enforcement Education and Training.

The Council on Law Enforcement Education and Training (“CLEET”) provides training and certification of all persons commissioned as law enforcement officers under the laws of the State of Oklahoma. *See generally* A.G. Opin. 2017-15. A commissioned but uncertified public law enforcement officer must be certified by CLEET within six months of the officer’s appointment or the officer forfeits his or her appointment and the employing agency must withhold the officer’s compensation or wages. *See* 70 O.S.Supp.2017, § 3311(E)(4). Once certified, a full time law enforcement officer³ must annually obtain 25 hours of CLEET accredited or provided training. *Id.* § 3311.4(A); *see also* A.G. Opin. 2017-15. Campus police officers are equally subject to these certification and training requirements. A.G. Opin. 1995-74.

CLEET is not authorized to charge either the law enforcement officer or the officer’s employing agency for such training, though it may require the employing agency to pre-pay the cost of providing meals to the agency’s cadets during CLEET training by assessing a registration fee. A.G. Opin. 2017-15.

II. DISCUSSION

A. Because a campus police department established by a private school or private institution of higher learning serves a public purpose, CLEET may expend public funds for training the department’s cadets and officers.

Your first question is whether CLEET, by providing basic and continuing training without charge to officers of campus police departments, would violate either Section 14 or Section 15 of Article 10 of the Oklahoma Constitution. Section 14 provides, in pertinent part, that “taxes shall be levied and collected by general laws, and *for public purposes only*[.]” OKLA. CONST. art. X, § 14(A) (emphasis added). The term “public purposes” used in Section 14 “is not to be construed in a narrow and restricted sense.” *Way v. Grand Lake Ass’n, Inc.*, 1981 OK 70, ¶ 32, 635 P.2d 1010, 1015 (quoting *Bd. of Com’rs of Marshall Cty. v. Shaw*, 1947 OK 181, 182 P.2d 507). Rather, it “is synonymous with ‘governmental purposes,’ and means a purpose affecting the inhabitants of the state or taxing district as a community, and not merely as individuals.” *Id.*; *see also* *Burkhardt v. City of Enid*, 1989 OK 45, ¶ 9, 771 P.2d 608, 610-11 (“For taxation purposes, public use ‘requires that the work shall be essentially public and for the general good of all the inhabitants of the taxing body.’” (quoting *Shaw*, 1947 OK 181, 182 P.2d 507)). Moreover, an expenditure of tax dollars “does not lose its public purpose merely because it involves a private actor.” *Burkhardt*, 1989 OK 45, ¶ 10, 771 P.2d at 611; *see also* *State ex rel. Brown v. City of Warr Acres*, 1997 OK 117, ¶ 13, 946 P.2d 1140, 1144 (same).

As explained above, the Oklahoma Campus Security Act authorizes governing boards of both accredited private institutions of higher education and private schools to create campus police departments and to hire and commission campus police officers, whose jurisdiction is defined by

³ A law enforcement officer is deemed “full time” if the officer is paid for working more than 25 hours per week. 70 O.S.Supp.2017, § 3311(E)(6).

law. *See* 74 O.S. Supp.2017, §§ 360.17(A), 360.18(A). The Act also sets forth explicitly the authority of such officers to enforce public laws in the State:

- A. As limited by law, the provisions of this section, and the governing board, a CLEET certified campus police officer shall have the authority to enforce:
 - 1. State criminal statutes;
 - 2. Municipal ordinances, if authorized by an agreement with the municipality; and
 - 3. Rules and regulations of the school [or] institution of higher education . . . employing such campus police officer.

Id. § 360.17(B). Campus police officers “have the same powers, liabilities, and immunities as sheriffs or police officers within their jurisdiction,” *id.* § 360.17(A), and are, by definition, “police or peace officers,” within the meaning of the statutes governing CLEET. *See* 70 O.S.Supp.2017, § 3311(E)(6).

Even if employed by a private entity, campus police officers are legislatively authorized to be, and to exercise the authority of, Oklahoma law enforcement officers, with duties defined by law. Their commissions are subject to suspension or revocation by the local District Attorney for the several legal causes set forth in the Act. *See* 74 O.S.Supp.2017, § 360.18(B). Furthermore, the Legislature has explicitly declared campus police departments established under the Act by accredited private institutions of higher education to be “public agencies in the State of Oklahoma for the limited purposes of enforcing the criminal statutes of Oklahoma and making agreements with local law enforcement agencies or political subdivisions of the state[.]” *Id.* § 360.17(D). By amending the Act in 2017 to authorize governing boards of “private schools” to create campus police departments and to commission campus police officers, the Legislature accorded to such officers acting within their authorized jurisdictions both the status and authority of public law enforcement officers. *See id.* §§ 360.16, 360.17(A).⁴

Plainly, the creation and maintenance of campus police departments that act through commissioned campus police officers who exercise statutorily defined law enforcement powers is a “governmental purpose.” Moreover, that purpose is performed under the proper regulation of State authorities: the local District Attorney, who must revoke the officer’s commission upon the existence of statutory cause, and CLEET, which possesses the authority to suspend or revoke the officer’s certification upon the existence of statutory cause. 70 O.S.Supp.2017, § 3311(J).

The training provided by CLEET for such law enforcement officers is also plainly a “public purpose.” CLEET’s statutory purpose is to “ensure the professional training and continuing education of law enforcement officers in the State of Oklahoma.” 70 O.S.Supp.2017, § 3311(A).

⁴ The omission by the Legislature to amend Section 360.17(D) to also declare a private school’s campus police departments to be “public agencies” appears to be inadvertent. Like the campus police department of a private institution of higher education, that of a private school is limited in its legal authority and scope of jurisdiction to the campus police officers’ defined public functions. *See* 74 O.S.Supp.2017, § 360.17(A), (B).

The training provided to campus police officers commissioned by accredited private institutions of higher education and private schools is just as vital and necessary to the public good as the training of the campus officers of public entities. Accordingly, taxes levied, collected, and appropriated to CLEET for the public purpose of law enforcement training may be expended for this purpose.

B. CLEET-provided training of campus police officers commissioned by a private school or private institution of higher learning is not a constitutionally-prohibited gift.

Since CLEET is not authorized to demand compensation for the cost of training Oklahoma's public law enforcement officers, you ask whether CLEET-provided training of campus police officers commissioned by private schools or private institutions of higher education would be prohibited by Article X, Section 15 of the Oklahoma Constitution. Section 15 provides, in pertinent part:

Except as provided by this section, the credit of the State shall not be given, pledged, or loaned to any individual, company, corporation, or association, municipality, or political subdivision of the State, *nor shall the State ... make donation by gift ... to any company, association, or corporation.*

OKLA. CONST. art. X, § 15 (emphasis added). For the purposes of Section 15, a "gift" is the "gratuitous transfer of the property of the state voluntarily and without consideration." *Hawks v. Bland*, 1932 OK 101, ¶ 22, 9 P.2d 720, 722.

Private schools and private institutions of higher education are under no obligation to create campus police departments. Indeed, by doing so they incur financial obligations to pay and properly equip the campus police officers and department staff,⁵ together with assuming the liabilities associated with operating a police department. Creation of a campus police department benefits the public by providing continuing patrol and enforcement of State and local laws upon or adjacent to campus, and by reducing the need for local, county, or State officers on or near campus. By providing law enforcement on and adjacent to campus, a private entity creating and funding the campus police department provides to the State valuable consideration in exchange for the benefit of CLEET-provided training of the department's officers. *See* 15 O.S.2011, § 106 (defining consideration as "[a]ny benefit conferred, or agreed to be conferred upon the promisor...to which the promisor is not lawfully entitled"); *see also Way v. Grand Lake*, 1981 OK 70, ¶ 40, 635 P.2d at 1018 (holding that appropriations paid to private entities to promote local tourism did not violate Section 15), *Burkhardt*, 1989 OK 45, ¶ 13, 771 P.2d at 611-12 (holding that obligations assumed by private university in exchange for benefits received from city were sufficient consideration to avoid constitutional gift prohibition applicable to municipalities). Accordingly, provision of State-mandated training by CLEET to campus police officers employed by private schools or private institutions of higher education is not an unconstitutional gift.

⁵ The governing bodies of entities creating a campus police department employ and commission campus police officers, designate the uniforms, badges, and insignia to be worn by the campus police officers and displayed on department vehicles and equipment, and must provide the officers a written commission and a photo identification evidencing the officer's appointment and authority. 74 O.S.Supp.2017, § 360.18(A).

C. CLEET-provided training of campus police officers commissioned by a private sectarian school or institution of higher learning does not violate Article II, Section 5 of the Oklahoma Constitution.

You also ask whether CLEET, by providing training to campus police officers commissioned by private sectarian schools or institutions of higher learning under the Oklahoma Campus Security Act, would violate Article II, Section 5 of the Oklahoma Constitution. Often referred to as the Blaine Amendment, Article II, Section 5 provides:

No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.

OKLA. CONST. art. II, § 5. This prohibitory language is undoubtedly “broad and expansive.” *See Prescott v. Okla. Capitol Pres. Comm’n*, 2015 OK 54, ¶ 4, 373 P.3d 1032, 1033. Nevertheless, if a sectarian institution that benefits from public resources provides sufficient consideration in return, the Oklahoma Supreme Court has held that the institution’s receipt of public benefits will not violate Article II, Section 5. *See Burkhardt*, 1989 OK 45, ¶¶ 15-16, 771 P.2d at 612; *Murrow Indian Orphans Home v. Childers*, 1946 OK 187, ¶ 9, 171 P.2d 600, 603 (“[S]o long as [the services provided by the institution] involve the element of substantial return to the state and do not amount to a gift, donation, or appropriation to the institution having no relevancy to the affairs of the state, there is no constitutional provision offended.”); *see also Oliver v. Hofmeister*, 2016 OK 15, ¶ 24, 368 P.3d 1270, 1276 (citing *Murrow* in upholding the use of State-funded scholarship program to enable disabled students to attend private sectarian schools, thereby relieving public school districts of the obligation to provide services for such students). As noted above, a campus police department provides a law enforcement presence on and adjacent to campus. This presence—which includes the authority to enforce State criminal statutes and municipal ordinances, *see* 74 O.S. Supp.2017, § 360.17(B)—is a public benefit that serves as sufficient consideration for the CLEET-provided training of the campus police officers.

Moreover, your question also implicates the protections of the First Amendment to the U.S. Constitution, which provides in relevant part that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof[.]” U.S. CONST. amend. 1, cl. 1. This restriction is equally applicable to the states through the Fourteenth Amendment. *Cantwell v. Connecticut*, 310 U.S. 296, 305 (1940).

In this context, the United States Supreme Court recently considered the application of Missouri’s version of the Blaine Amendment⁶ in *Trinity Lutheran Church v. Comer*, 137 S. Ct. 2012 (2017). In *Comer*, a church sought to participate in Missouri’s Scrap Tire Program as a means of resurfacing the church playground. The state’s program was intended to reduce the number of used tires sent to landfills by offering reimbursement grants to nonprofit organizations that purchased

⁶ “That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship.” MO. CONST. art. I, § 7.

playground surfaces made from recycled tires. The church qualified under the grant criteria, but based on the Blaine Amendment it was deemed ineligible because it was a church. *Id.* at 2012. The church sued the program administrator in federal court, but the case was dismissed and the dismissal was affirmed on appeal. *Id.* at 2018-19.

In reversing the decisions of the lower courts, the Supreme Court opined:

The Free Exercise Clause “protect[s] religious observers against unequal treatment” and subjects to the strictest scrutiny laws that target the religious for “special disabilities” based on their “religious status.” . . . Applying that basic principle, this Court has repeatedly confirmed that denying a generally available benefit solely on account of religious identity imposes a penalty on the free exercise of religion that can be justified only by a state interest “of the highest order.”

Comer, 137 S. Ct. at 2019 (citations omitted). The Court found that the state’s policy, which was based upon Missouri’s Blaine Amendment, expressly discriminated against an otherwise eligible grant applicant *solely* because of the religious character of the applicant church. The policy therefore imposed a penalty on the free exercise of religion, thus triggering the Court’s “most exacting scrutiny.” Relying upon the precedent of a prior decision, the Court reasoned:

Like the disqualification statute in *McDaniel*, the Department's policy puts Trinity Lutheran to a choice: It may participate in an otherwise available benefit program or remain a religious institution. Of course, Trinity Lutheran is free to continue operating as a church, just as *McDaniel* was free to continue being a minister. But that freedom comes at the cost of automatic and absolute exclusion from the benefits of a public program for which the Center is otherwise fully qualified. And when the State conditions a benefit in this way, *McDaniel* says plainly that the State has punished the free exercise of religion: “To condition the availability of benefits . . . upon [a recipient's] willingness to . . . surrender[] his religiously impelled [status] effectively penalizes the free exercise of his constitutional liberties.”

Id. at 2021-22 (bracketed material in the original) (quoting *McDaniel v. Paty*, 435 U.S. 618, 626).

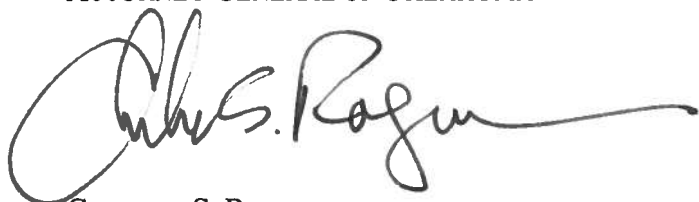
Regarding your question, the State of Oklahoma, through CLEET, provides training to campus police officers without charge to the employing entity. CLEET is not authorized to charge anyone or any entity a fee for such training. Denying CLEET training to a campus police officer commissioned by a sectarian entity *solely* on the basis that the officer’s employer is a sectarian entity would impose a penalty on the free exercise of religion by not permitting the sectarian entity’s campus police officers to obtain CLEET certification and, thus, exercise the lawful authority provided under the Oklahoma Campus Security Act. As in *Comer*, the sectarian entity would be presented a choice: forego its religious affiliation or opt not to establish a campus police department under the Act. Such a penalty upon the free exercise of religion “is odious to [the U.S.] Constitution...and cannot stand.” *Comer*, 137 S. Ct. at 2025. Accordingly, Article II, Section 5 of the Oklahoma Constitution cannot be held to prevent CLEET from providing training to a campus police officer commissioned by a private school or institution of higher education solely on the basis that the commissioning entity is of a sectarian character.

It is therefore, the official Opinion of the Attorney General that:

1. Training provided by the Council on Law Enforcement Education and Training (CLEET) to campus police officers commissioned by private institutions of higher education or private schools pursuant to the Oklahoma Campus Security Act, 74 O.S.Supp.2017, § 360.18, is a “public purpose” consistent with OKLA. CONST. art. X, § 14.
2. Training provided by CLEET to campus police officers commissioned by private institutions of higher education or private schools pursuant to the Oklahoma Campus Security Act, 74 O.S.Supp.2017, § 360.18, does not confer a gift upon the commissioning private entity in violation of OKLA. CONST. art. X, § 15.
3. Training provided by CLEET to campus police officers commissioned by a private sectarian school or institution of higher learning pursuant to the Oklahoma Campus Security Act, 74 O.S.Supp.2017, § 360.18, does not violate OKLA. CONST. art. II, § 5. *See Burkhardt v. City of Enid*, 1989 OK 45, 771 P.2d 608, *Murrow Indian Orphans Home v. Childers*, 1946 OK 187, 171 P.2d 600; *see also Trinity Lutheran Church v. Comer*, 137 S. Ct. 2012 (2017).



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