OPINION NO. 67-045

Syllabus:

A Central State University facility, constructed for the purpose of inter-faith or non-denominational religious exercises which is maintained, supported, and sustained by university employees and funds, violates the First Amendment of the United States Constitution by placing the state's power and authority in a position to aid, advance, and benefit, particular religious beliefs.

To: Harry E. Groves, President, Central State University, Wilberforce, Ohio
By: William B. Saxbe, Attorney General, May 24, 1967

Your request for my opinion raises the question as to whether the proposed construction of an inter-faith chapel on the campus of Central State University, erected solely from funds received from private donations, but maintained, preserved, and supported by university employees, utilities, and funds, violates the doctrine of the separation of church and state.

Central State University is a state supported institution as Section 3343.10, Revised Code, illustrates:

> "The Central State University shall be supported by such sums and in such manner as the general assembly provides."

Opinion No. 65-79, Opinions of the Attorney General for 1965, page 2-160,-161, establishes definitely that all state university employees not required to have a teaching certificate issued pursuant to Sections 3319.22 to 3319.31, inclusive, of the Revised Code, are considered "public employees" or employed in "state service."

In essence, then you request my opinion as to whether a state supported institution may authorize a structure, intended primarily for religious purposes, to be erected on university property; whether a state supported university may sponsor religious services in such a facility; and whether a state supported university may maintain, preserve, and sustain such a facility with university employees, services, and funds?

The Ohio Constitution both encourages and protects religious pursuits. Section 7, Article I, provides:

> "All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the general assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction."

On the other hand Section 2, Article VI, of the Ohio Constitution, prohibits the use or control of public funds by any religious sect:

> "* * * no religious or other sect shall ever have any exclusive right to, or control of, any part of the school funds of this state."

Based upon this provision, the Office of the Attorney General has ruled that no authority exists in law for the diversion or use of the school funds of the state for any purpose other than the establishment and maintenance of common or public schools. Opinion No. 1409, Opinions of the Attorney General for 1933, page 1290.

The Ohio courts have not acted in this area except to re-establish the traditional view that since the legislature had placed the management of the public schools under the

exclusive control of the directors, trustees, and boards of education, the extent that religious exercises would be permitted, supported, and maintained was a discretionary matter for these local authorities. Board of Education v. Minor, 23 Ohio St., 211 (1872).

However, this viewpoint has been challenged successfully in the United States Supreme Court. In Engel v. Vitale, 370 U.S., 421 (1962), the Supreme Court ruled that the mandate of the First Amendment to the United States Constitution which provides that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, is wholly applicable to the states by the Fourteenth Amendment, and that the establishment clause creates a permanent and complete separation of church and state.

In view of these principles the Supreme Court ruled in June, 1963, that any prescribed religious instruction or exercise in the public schools is deemed to violate the establishment clause in that the state is in effect, using its facilities and funds to promote a religious exercise. Abington School District v. Schempp and Murray et al. v. Curlett et al., 374 U.S., 203 (1963).

Mr. Justice Clark, speaking for the majority, stated on page 222 of the opinion:

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> "The wholesome 'neutrality' of which this Court's cases speak thus stems from a recognition of the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the State or Federal Government would be placed behind the tenets of one or of all orthodoxies. This the Establishment Clause prohibits. * * *
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> "* * * * * * * * *"

Mr. Justice Douglas, concurring, states on page 229 and 230:

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> "* * * But the Establishment Clause is not limited to precluding the State itself from conducting religious exercises. It also forbids the State to employ its facilities or funds in a way that gives any church, or all churches, greater strength in our society than it would have by relying on its members alone. * * * Through the mechanism of the State, all of the people are being required to finance a religious exercise that only some of the people want and that violates the sensibilities of others.
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> "* * * * * * * * *

"* * * It is not the amount of public funds expended, * * * it is the use to which public funds are put that is controlling.* * *"

The mandate of the United States Supreme Court in construing the First Amendment is clear. A state is enjoined from exerting its power and authority in support of any particular spiritual belief.

Clearly then, a state university supported by public funds may not lend its aid and assistance to such activities as worship, prayer, communion, sacraments and other devotional activities commonly regarded as religious. Furthermore, in sponsoring, supporting, and maintaining religious exercises a state university is exerting its power and authority in favor of those beliefs with which such exercises are consistent and operating in opposition to all other religions.

Applying these dictates to the situation outlined in your request, it is my opinion that the operation, support, and maintenance of the proposed inter-faith chapel on the campus of Central State University would violate the mandate of the First Amendment prohibiting state support of one or all orthodoxies. The power and authority of a state supported institution may not be utilized to facilitate religious observances and to accommodate devotional exercises. Utilizing the facilities, funds, and employees of Central State University to aid or advance religious efforts breaches the traditional division between church and state and violates the First Amendment to the United States Constitution.

Accordingly it is my opinion and you are hereby advised:

A Central State University facility, constructed for the purpose of inter-faith or non-denominational religious exercises which is maintained, supported, and sustained by university employees and funds, violates the First Amendment of the United States Constitution by placing the state's power and authority in a position to aid, advance, and benefit, particular religious beliefs.