

September 25, 1995

OPINION NO. 95-026

The Honorable James J. Mayer, Jr.
Richland County Prosecuting Attorney
38 South Park - Second Floor
Mansfield, Ohio 44902

Dear Prosecutor Mayer:

You have requested an opinion on the following question:

Does Ohio law permit a judge of the Court of Common Pleas, Division of Domestic Relations, which exercises the powers and jurisdiction conferred in sections 2151.01 to 2151.54 of the Ohio Revised Code, to ever become the Clerk of the juvenile branch of his Court and, if so, what are the requirements or arrangements that must first be fulfilled or entered upon before that judge can lawfully exercise the duties of being the Clerk of the juvenile branch only of his Court?

Your question arises because the individual who serves as judge of the Richland County Court of Common Pleas, Division of Domestic Relations, and exercises powers relating to juvenile courts has expressed an interest in serving as clerk of the juvenile court.

Each county in Ohio has a court that exercises the jurisdiction of a juvenile court. The courts of the various counties, however, are organized in different manners. The Revised Code provides for the creation and powers of juvenile courts as follows:

The juvenile court is a court of record and within the division of domestic relations or probate of the court of common pleas, except that the juvenile courts of Cuyahoga county and Hamilton county shall be separate divisions of the court of common pleas. The juvenile court has and shall exercise the powers and jurisdiction conferred in sections 2151.01 to 2151.99 of the Revised Code.

R.C. 2151.07; *see* R.C. 2151.011(A)(1) ("_[j]uvenile court_ means the division of the court of common pleas or a juvenile court separately and independently created having jurisdiction under [R.C. Chapter 2151]").

In Richland County, the juvenile court is within the division of domestic relations of the court of common pleas. R.C. 2301.03 states, in part:

In Richland county, the judge of the court of common pleas whose term begins on January 1, 1957, and successors, shall have the same qualifications, exercise the same powers and jurisdiction, and receive the same compensation as the other judges of the court of common pleas of Richland county and shall be *elected and designated as judge of the court of common pleas, division of domestic relations. He shall have all of the powers relating to juvenile courts, and all cases under Chapter 2151. of the Revised Code*, all parentage proceedings over which the juvenile court has jurisdiction, and all divorce, dissolution of marriage, legal separation, and annulment cases shall be assigned to him, except in cases that for some special reason are assigned to some other judge of the court of common pleas.

R.C. 2301.03(G) (emphasis added). Pursuant to R.C. 2301.03(G), a judge of the Richland County Court of Common Pleas, Division of Domestic Relations, exercises the powers and jurisdiction conferred in R.C. Chapter 2151 and serves as Richland County Juvenile Judge. *See* R.C. 2151.011(A)(2). *See generally* 1995 Op. Att'y Gen. No. 95-013.

The common pleas courts of Ohio are governed by statutes adopted in accordance with the Ohio Constitution. *See* Ohio Const. art. IV, §§4, 18; *see also, e.g.*, R.C. Chapters 2301, 2305. Ohio Const. art. IV, §4(A) provides that "[t]here shall be a court of common pleas and such divisions thereof as may be established by law serving each county of the state." Ohio Const. art. IV, §4(C) requires that "[u]nless otherwise provided by law, there shall be a probate division," and states that "[t]he judges of the probate division shall be empowered to employ and control the clerks, employees, deputies, and referees of [the] probate division of the common pleas courts." The Ohio Constitution does not specifically designate any other division of the common pleas court, does not expressly mention a juvenile court, and does not provide for the employment or control of the clerk of the juvenile court. Therefore, the designation of a clerk for the juvenile court, and the allocation and supervision of duties of that clerk, are governed by statutes enacted by the General Assembly. *See generally State ex rel. Welsh v. Hoffman*, 68 Ohio App. 171, 40 N.E.2d 204 (Mahoning County 1941).

Provisions of statute specify which official is to serve as clerk of the juvenile court. The relevant provision states:

Whenever the courts of common pleas, division of domestic relations, exercise the powers and jurisdictions conferred in sections 2151.01 to 2151.54 of the Revised Code, or whenever the juvenile judge, or a majority of the juvenile judges of a multi-judge juvenile division, of a court of common pleas, juvenile division and the clerk of the court of common pleas agree in an agreement that is signed by the judge and the clerk and entered formally in the journal of the court, the clerks of courts of

common pleas shall keep the records of such courts. In all other cases, the juvenile judge shall be the clerk of his own court.

In counties in which the juvenile judge is clerk of his own court, before entering upon the duties of his office as such clerk, he shall execute and file with the county treasurer a bond in a sum to be determined by the board of county commissioners, with sufficient surety to be approved by the board, conditioned for the faithful performance of his duties as clerk. The bond shall be given for the benefit of the county, the state, or any person who may suffer loss by reason of a default in any of the conditions of the bond.

R.C. 2151.12 (emphasis added).

The first sentence of R.C. 2151.12, quoted above, provides for two situations in which the clerks of courts of common pleas keep the records of the juvenile courts. The first is "[w]henever the courts of common pleas, division of domestic relations, exercise the powers and jurisdictions conferred in [R.C. 2151.01-.54]" -- that is, when the juvenile court is within the division of domestic relations. The second situation in which the clerk of the court of common pleas keeps the records of the juvenile court is "whenever the juvenile judge, or a majority of the juvenile judges of a multi-judge juvenile division, of a court of common pleas, juvenile division and the clerk of the court of common pleas agree in an agreement that is signed by the judge and the clerk and entered formally in the journal of the court." R.C. 2151.12. In this situation, there must be an agreement between the clerk of the court of common pleas and the juvenile judge, or a majority of the juvenile judges of a multi-judge juvenile division, of a court of common pleas, juvenile division, for the clerk to keep the records of the juvenile court. Use of the disjunctive word "or" indicates that the two situations exist as alternatives. *See, e.g., City of Toledo v. Lucas County Budget Commission*, 33 Ohio St. 2d 62, 64, 294 N.E.2d 661, 662 (1973). The clerk of the court of common pleas serves as clerk of the juvenile court if either of these situations exists. In all other cases, the juvenile judge serves as "clerk of his own court." R.C. 2151.12.

In Richland County, the court of common pleas, division of domestic relations, exercises the powers and jurisdiction conferred in R.C. 2151.01-.54. *See* R.C. 2301.03(G). Therefore, Richland County comes within the language of R.C. 2151.12 providing that, "[w]henever the courts of common pleas, division of domestic relations, exercise the powers and jurisdictions conferred in [R.C. 2151.01-.54],...the clerks of courts of common pleas shall keep the records of such courts." Because the Richland County Court of Common Pleas, Division of Domestic Relations, exercises the powers and jurisdiction of a juvenile court, the Clerk of the Richland County Court of Common Pleas is required by R.C. 2151.12 to keep the juvenile court records. Accordingly, Richland County is not one of the "other cases" referenced in R.C. 2151.12 in which the juvenile judge serves as clerk of his own court. R.C. 2151.12. *Cf. State ex rel. Hibbard v. Hoffman*, 101 Ohio App. 547, 550, 137 N.E.2d 606, 608 (Hamilton County 1955) (finding under similar language applicable to Hamilton County that the juvenile judge was not the clerk of his own court, "but rather that duty is cast by statute" upon the clerk of the court of common pleas).

You have asked whether Ohio law permits a juvenile court judge who serves in a situation of the sort in existence in Richland County "to ever become the Clerk of the juvenile branch of his Court and, if so, what...requirements or arrangements...must first be fulfilled or entered upon before that judge can lawfully exercise the duties of being the Clerk of the juvenile branch only of his Court[.]" It does not appear that Ohio law permits a juvenile court judge to become the clerk of the juvenile branch of the court in such circumstances.

R.C. 2151.12 does not provide an option as to which official is to serve as clerk of the juvenile court when the juvenile court is within the division of domestic relations. Instead, it states that, when the court of common pleas, division of domestic relations, exercises the powers and jurisdictions conferred in R.C. 2151.01-.54, the clerk of the court of common pleas *shall* keep the records of the juvenile court. While a juvenile judge may serve as clerk in certain other circumstances, in the circumstances existing in Richland County the duties of clerk are delegated by statute to the clerk of the court of common pleas. *See* R.C. 2151.12.

As used in Ohio statutes, the word "shall" is commonly understood to be mandatory, unless there is a clear and unequivocal legislative intent to the contrary. *See, e.g., Dorrian v. Scioto Conservancy District*, 27 Ohio St. 2d 102, 102, 271 N.E.2d 834, 835 (1971) (syllabus, paragraph 1). There is no indication in R.C. 2151.12 that the word "shall" is to be construed in any manner other than common usage. Therefore, the language of R.C. 2151.12 defining situations in which the clerk of the court of common pleas "shall" keep the juvenile court records means that the clerk of the court of common pleas is required to keep the juvenile court records in those situations.

Your inquiry includes the question whether any sort of arrangement could be made to transfer the duties of clerk from the clerk of the court of common pleas to the juvenile court judge. It does not appear that such an arrangement is permissible under the provisions governing the Richland County Juvenile Court.

The clerk of the court of common pleas is an elected official, *see* R.C. 2303.01, who has various administrative duties relating to the court. *See* R.C. Chapter 2303. In order to carry out the statutory duties of the office, the clerk may hire assistants, clerks, bookkeepers, and other employees and may appoint deputies. *See* R.C. 325.17; R.C. 2303.05. The clerk, however, has no express statutory authority to transfer to the juvenile judge the responsibility of keeping the records of the juvenile court, and there is no basis for implying such authority from any existing statutory language. Rather, the use of "shall" in R.C. 2151.12 indicates that the duty of keeping juvenile court records in the situation in existence in Richland County must be performed by the clerk of the court of common pleas, or by deputies or employees duly designated by that clerk. *See generally* 1979 Op. Att'y Gen. No. 79-067 at 2-223 (through use of the word "shall," "[t]he statute...imposes a mandatory duty...unless there is also authority granted...to delegate these duties").

The conclusion that no arrangement transferring the clerk's duties to the juvenile judge is permissible in the situation here under consideration is supported by the fact that R.C. 2151.12 expressly provides that, in certain circumstances, the juvenile judge, or a majority of the judges of a multi-judge juvenile division, may enter into an agreement with the clerk of the court of common

pleas that the clerk will keep the juvenile court records. The statute contains no similar language permitting the judge of a division of domestic relations that exercises juvenile court jurisdiction to assume the record-keeping responsibilities of the clerk of the court of common pleas. Since one type of agreement transferring record-keeping duties from the juvenile judge to the clerk is specifically authorized, the absence of any reference to another type of agreement for transferring duties between those two parties indicates that no other type of agreement is permitted. *See, e.g., Montgomery County Board of Commissioners v. Public Utilities Commission*, 28 Ohio St. 3d 171, 175, 503 N.E.2d 167, 170 (1986) ("[a]s a general rule of statutory construction, the specific mention of one thing implies the exclusion of another" (citations omitted)); *see also* 1995 Op. Att'y Gen. No. 95-005 at 2-27.

The fact that in certain counties the juvenile judge is designated by R.C. 2151.12 as "the clerk of his own court" indicates that the General Assembly did not question the ability of a juvenile judge to keep the court's records or fear that an inappropriate conflict of interest might result. Nonetheless, when, as in Richland County, the court of common pleas, division of domestic relations, exercises the powers and jurisdiction of a juvenile court, existing law does not permit any arrangement under which the juvenile judge serves as clerk of the juvenile court.

For the reasons discussed above, it is my opinion and you are advised:

1. Pursuant to R.C. 2301.03(G), a judge of the Richland County Court of Common Pleas, Division of Domestic Relations, exercises the powers and jurisdiction conferred in R.C. Chapter 2151 and serves as Richland County Juvenile Judge.
2. Because the Richland County Court of Common Pleas, Division of Domestic Relations, exercises the powers and jurisdiction of a juvenile court, the Clerk of the Richland County Court of Common Pleas is required by R.C. 2151.12 to keep the juvenile court records.

3. When, as in Richland County, the court of common pleas, division of domestic relations, exercises the powers and jurisdiction of a juvenile court, existing law does not permit any arrangement under which the juvenile judge serves as clerk of the juvenile court.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

September 25, 1995

The Honorable James J. Mayer, Jr.
Richland County Prosecuting Attorney
38 South Park - Second Floor
Mansfield, Ohio 44902

SYLLABUS:

95-026

1. Pursuant to R.C. 2301.03(G), a judge of the Richland County Court of Common Pleas, Division of Domestic Relations, exercises the powers and jurisdiction conferred in R.C. Chapter 2151 and serves as Richland County Juvenile Judge.
2. Because the Richland County Court of Common Pleas, Division of Domestic Relations, exercises the powers and jurisdiction of a juvenile court, the Clerk of the Richland County Court of Common Pleas is required by R.C. 2151.12 to keep the juvenile court records.
3. When, as in Richland County, the court of common pleas, division of domestic relations, exercises the powers and jurisdiction of a juvenile court, existing law does not permit any arrangement under which the juvenile judge serves as clerk of the juvenile court.