

OPINION NO. 79-067**Syllabus:**

The provisions of R.C. 2151.421 impose the duties of investigation and disposition of reported cases of child abuse and neglect solely on children services boards and county welfare departments which have assumed the functions of a children services board, and, therefore, prohibit delegation of these duties to private entities.

To: Kenneth B. Creasy, Director, Department of Public Welfare, Columbus, Ohio
By: William J. Brown, Attorney General, October 2, 1979

I have before me your request for my opinion regarding R.C. 2151.421. Your question was precipitated by the fact that a county welfare department has permitted a private entity to perform the functions outlined in R.C. 2151.421 concerning the investigation and disposition of suspected occurrences of child abuse or neglect. Your question can be restated as follows:

May a county welfare department which has assumed the functions of a children services board delegate the duties set forth in R.C. 2151.421 to a private, non-profit corporate entity?

Through R.C. 2151.421, the General Assembly has delegated the duty of investigating cases of child abuse or neglect to children services boards or county welfare departments which have assumed the functions of a children services board. The statute reads, in pertinent part:

Upon the receipt of a report concerning the possible abuse or neglect of a child, the municipal or county peace officer shall refer such report to the appropriate county department of welfare or children services board.

. . . .

The county department of welfare or children services board shall investigate, within twenty-four hours, each report referred to it under this section to determine the circumstances surrounding the injury or injuries, abuse, or neglect, the cause thereof, and the person or persons responsible. The investigation shall be made in cooperation with the law enforcement agency. The county department of welfare or children services board shall report each case to a central registry which the state department of public welfare shall maintain in order to determine whether prior reports have been made in other counties concerning the child or other principals in the case. The department or board shall submit a report

of its investigation, in writing to the law enforcement agency.

The county department of welfare or children services board shall make such recommendations to the county prosecutor or city director of law as it deems necessary to protect such children as are brought to its attention. (Emphasis added.)

A county welfare department may act as a children services board, with the powers and duties thereof, pursuant to R.C. 5153.02.

Although I am aware of no cases or opinions of this office which conclude that the duties set forth in R.C. 2151.421 are imposed exclusively on children services boards and county welfare departments, such a conclusion is required by the clear and unambiguous language of the statute. The statute, as set forth above, directs the performance of the duties therein by the repeated and unqualified use of the word "shall." "Shall" imposes a mandatory duty unless there appears a clear and unequivocal legislative intent that it should receive a construction other than that in ordinary usage. *State ex rel. Niles v. Bernard*, 53 Ohio St. 2d 31 (1978); *Malloy v. Westlake*, 52 Ohio St. 2d 103 (1977); 1979 Op. Att'y Gen. No. 79-035. I can find no indication in R.C. 2151.421 of a legislative intent that the word should be construed other than as ordinarily used. The statute, therefore, imposes a mandatory duty on the children services board or the county welfare department to investigate reported cases of abuse unless there is also authority granted to these entities to delegate these duties.

The children services board and the county welfare department are the sole entities to which authority has been given to carry out the mandates of R.C. 2151.421, and neither is given authority to delegate that responsibility in R.C. 2151.421 or in R.C. Chapter 5153. When power or authority is granted to a governmental agency, such agency may exercise only that authority which is expressly conferred on it by statute. *New Bremen v. Public Utilities Commission*, 103 Ohio St. 23 (1921). It follows that the power to delegate authority, if not expressly conferred, is excluded.

There are, however, exceptions to the general rule which allow implication of authority to delegate statutory duties. Whether such authority may be implied is controlled by the nature of the duty. *Kelley v. City of Cincinnati*, 7 Ohio N.P. 360 (C.P. Hamilton County 1900). See also *Bell v. Board of Trustees*, 34 Ohio St. 2d 70 (1973). If a duty imposed by statute is purely ministerial, i.e., a "mere physical act," it may be delegated; the duty is not delegable, however, if it requires judgment and discretion in its performance. 1973 Op. Att'y Gen. No. 73-126 (overruled, in part, for other reasons, by 1977 Op. Att'y Gen. No. 77-064). The presumption exists that the Legislature has delegated duties to an agency named in a statute because the agency is deemed competent to exercise the judgment and discretion necessary for performance of the duties. Cf. 1977 Op. Att'y Gen. No. 77-064 (concluded that certain public officers may not designate alternates to serve in their capacity). It would contravene the legislative intent of such a statute, therefore, to allow a judgmental and discretionary act to be delegated to an entity other than the entity originally entrusted with the duty by statute.

The duties imposed on children services boards and county welfare departments which have assumed the functions of children services boards require a substantial degree of judgment and discretion in their performance. R.C. 2151.421 directs these departments to determine what the circumstances are surrounding reported cases of child neglect or abuse, what caused the neglect or abuse, and who is the responsible party. It is clear that such determinations require the exercise of competent judgment and discretion.

Due to the absence of any indication of a contrary construction, it is my opinion that R.C. 2151.421 requires children services boards or county welfare boards which have assumed the functions of a children services board to perform the duties stated therein. Such duties have been delegated solely to these departments and, due to their judgmental nature, cannot be delegated by them to other entities.

Accordingly, it is my opinion, and you are advised, that the provisions of R.C.

2151.421 impose the duties of investigation and disposition of reported cases of child abuse and neglect solely on children services boards and county welfare departments which have assumed the functions of a children services board, and, therefore, prohibit delegation of these duties to private entities.