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SYLLABUS :

1. Under Section 2151.35, Revised Code, a juvenile court may, upon finding that a child is neglected, dependent, or delinquent, commit the child to any person or institution meeting the requirements of Sections 5103.02 and 5103.03, Revised Code, even though a county child welfare board exists and could provide care and support for the child; and, under Section 2151.10, Revised Code, the board of county commissioners has a duty to appropriate each year such sum as will provide the court with necessary funds for the care, maintenance, education, and support of neglected, dependent, and delinquent children.

2. When a board of county commissioners fails to appropriate funds under Section 2151.10, Revised Code, for the use of the juvenile court in the maintenance and support of a dependent child, the juvenile court may not order the county auditor to issue a warrant for such purpose, as under Section 5705.41, Revised Code, no expenditure of county funds may be made unless funds have been appropriated for that purpose; but the court may proceed against the board of county commissioners to compel it to appropriate the necessary funds.

Columbus, Ohio, December 19, 1962

Hon. Thomas L. Tribbie, Prosecuting Attorney
Guernsey County, Cambridge, Ohio

Dear Sir:

Your request for my opinion reads:

"A question has arisen in this county with regard to the authority of the Juvenile Court to order the County Auditor to draw a warrant upon the county treasury to pay for the maintenance and support of a minor child found by said court to be neglected and dependent.

"There is a Child Welfare Board which functions in this county to administer welfare aid for children in this county. The only appropriation made by the County Commissioners for the purpose of child welfare was to the Child Welfare Board.

"Purporting to act under authority granted by Section 2151.10 of the Ohio Revised Code, the Juvenile Court made a finding that a minor child was dependent and neglected, and further ordered the child into the temporary custody of a nonrelated adult, and that the County Auditor draw his warrant in the amount of \$35.00 each month payable to said adult. The County Auditor has requested legal advice with regard to what action to take, particularly in the absence of an appropriation.

"The specific questions thus presented are as follows, to-wit:

(1) "Is it mandatory upon the Board of County Commissioners, by virtue of the provisions of R. C. 2151.10 to make appropriations for disbursement by the Juvenile Court to provide care, maintenance, and support for children found to be neglected, dependent, and delinquent when there is functioning in the county a Child Welfare Board to which funds were appropriated for the purpose of the care and support of children?

(2) "If the Board of County Commissioners has failed to make an appropriation of funds to be disbursed by the order of the Juvenile Court for the care, maintenance and support of children found to be delinquent, dependent, and neglected by said court, can the County Auditor nevertheless issue his warrant for such purpose upon the order of the Juvenile Court?

"We therefore request your opinion with regard to the preceding two questions, in light of the factual background as set forth above."

Under Section 2151.35, Revised Code, a juvenile court, upon finding that a child is dependent, neglected, or delinquent, may among other things:

“(A) Place the child on probation, under supervision in its own home, in the custody of a relative, in an institution, or in a certified foster home, wherever situate, upon such terms as the court shall determine; provided that the court may place delinquent children on a free or wage basis in uncertified foster homes. The court shall, at the time of placing the child, determine which school district must bear the cost of educating the child while he is residing at such place as the court directs. The decision of the court concerning the expense of the child’s education shall be made a part of the order provided by this section;

“(B) Commit the child temporarily or permanently to the division of social administration of the department of public welfare, or to a county department of welfare which has assumed the administration of child welfare, county child welfare board, or certified organization, or to any institution, or to any agency in Ohio or in another state authorized and qualified to provide or secure the care, treatment, or placement required in the particular case;

“* * * * * * * * *”

“(D) Make such further disposition as the court deems proper;

“* * * * * * * * *”

That a juvenile court is not restricted to committing a child to the local child welfare board, thus, seems abundantly clear; such a commitment is only one of the numerous alternative courses that are explicitly made available.

One qualification should be noted as it may be pertinent. Under Section 5103.03, Revised Code, institutions that care for children must be certified by the division of social administration, department of public welfare. Said Section 5103.03, *supra*, reads in part:

“* * * * * * * * *”

“When the division is satisfied as to the care given such children, and that the requirements of the statutes and regulations covering the management of such institutions, corporations, and associations are being complied with, it shall issue to the institution, corporation, or association a certificate to that effect, which shall continue in force for one year, unless sooner revoked by the division.

“The division may issue a temporary certificate covering a period of less than one year authorizing such an institution, corporation, or association to operate until minimum requirements have been met. A certificate may be revoked by the division if it finds that the institution, corporation, or association is in violation of law or regulation. No child shall be committed by the juvenile court to an association, corporation, or institution which has not such certificate unrevoked and received within fifteen months next preceding the commitment.

“* * * * * * * * *”

An individual who has care of a child who is not a kinsman is, for the purposes of Section 5103.03, *supra*, an institution. In this regard Section 5103.02, Revised Code, reads in part:

“As used in sections 5103.03 to 5103.19, inclusive, of the Revised Code:

“‘Institution’ or ‘association’ includes * * *; any individual who, for hire, gain, or reward, receives or cares for children for periods of four or more hours per day for two or more consecutive weeks, unless he is related to them by blood or marriage; * * * provided, that any organization, society, association, school, agency, child guidance center, or children’s clinic licensed, regulated, approved, operated under the direction of, or otherwise certified by the department of education, a local board of education, or the division of mental hygiene of the department of public welfare, or any individual who provides care for only a single family group placed there by their parents or other relative having custody, shall not be considered as being within the purview of these sections.”

The exclusion for the individual who provides care for only a single family group would, at first reading, seem to be pertinent; but, the second part of that exclusion requires the child to have been placed by a parent or other relative having custody. Here it was done by the court—thereby causing this exclusion to lose its pertinency. Accordingly, I conclude that commitments by a juvenile court must be to persons or institutions authorized to provide care under Sections 5103.02 and 5103.03, Revised Code; but, for the purposes of this opinion, I shall assume that the particular commitment was in accordance with those sections.

Your real question is whether a board of county commissioners has a duty to appropriate funds to be spent by the juvenile court for the care of children found to be neglected, dependent, or delinquent, even though the board has appropriated funds to the county child welfare board for

the same purpose. In this regard, Section 2151.10, Revised Code, reads in part :

“The board of county commissioners *shall* appropriate * * * such sum each year as will provide for the maintenance and operation of the detention home, the care, maintenance, education, and support of neglected, dependent, and delinquent children, other than children entitled to aid under sections 5107.01 to 5107.16, inclusive, of the Revised Code, and for necessary orthopedic, surgical, and medical treatment, and special care as may be ordered by the court for any neglected, dependent, or delinquent children. All disbursements from such appropriations shall be upon specifically itemized vouchers, certified to by the judge.”
 (Emphasis added)

In my opinion, this section places a duty upon the board of county commissioners to appropriate funds for the juvenile court’s use in providing care for dependent, neglected, or delinquent children; the mandatory terms used, especially the use of the word “shall” makes this especially plain. Furthermore, the Supreme Court has resolved whatever doubt there may once have been; *State, ex rel. Motter v. Atkinson*, 146 Ohio St., 11, 63 N.E. 2d, 440 (1945); *State, ex rel. Clarke v. Board of County Commissioners of Lawrence County*, 141 Ohio St., 16, 46 N.E. 2d., 410 (1941). Though these cases involved appropriations to meet the juvenile court’s administrative expenses rather than expenses for the care, maintenance, and support of needy children, both objects stem in equal fashion from the same verb, as would be observed should one desire to parse the sentence. Also, the language of the section makes it clear that money appropriated is appropriated to the juvenile judge, as the judge certifies the vouchers.

Your second question is whether a juvenile court may order the county auditor to issue a warrant for the purposes permitted under Section 2151.10, *supra*, when the board of county commissioners fails to appropriate the required sums. In this regard, Section 5705.41, Revised Code, reads in part :

“No subdivision or taxing unit shall :

“* * * * * * * * *

“(B) Make any expenditures of money unless it has been appropriated as provided in such sections ;

“* * * * * * * * *”

Thus, before there can be any expenditure, there must first be an appropriation. Accordingly, in the absence of an appropriation, the juvenile court may not order the county auditor to issue a warrant.

The court's remedy is to proceed against the board of county commissioners to compel it to make the appropriation. In this regard, the syllabus in *State, ex rel, Clark v. Board of County Commissioners, supra*, reads:

"Under Section 1639-57, General Code, it is the duty of county commissioners to appropriate annually a sum of money sufficient to meet all the administrative expenses of the Juvenile Court in their county, inclusive of the salary and traveling expenses of a regularly appointed probation officer, and an action in mandamus will lie to compel the performance of such duty." Accordingly, it is my opinion and you are advised:

1. Under Section 2151.35, Revised Code, a juvenile court may, upon finding that a child is neglected, dependent, or delinquent, commit the child to any person or institution meeting the requirements of Sections 5103.02 and 5103.03, Revised Code, even though a county child welfare board exists and could provide care and support for the child; and, under Section 2151.10, Revised Code, the board of county commissioners has a duty to appropriate each year such sum as will provide the court with necessary funds for the care, maintenance, education, and support of neglected, dependent, and delinquent children.

2. When a board of county commissioners fails to appropriate funds under Section 2151.10, Revised Code, for the use of the juvenile court in the maintenance and support of a dependent child, the juvenile court may not order the county auditor to issue a warrant for such purpose, as under Section 5705.41, Revised Code, no expenditure of county funds may be made unless funds have been appropriated for that purpose; but the court may proceed against the board of county commissioners to compel it to appropriate the necessary funds.

Respectfully,
MARK McELROY
Attorney General