

OPINION 65-85**Syllabus:**

1. The Hardin County Commissioners cannot lease a station wagon from an automobile agency in order to furnish transportation for children receiving instruction in the Hardin County School for Retarded Children.
2. Under the provisions of Section 307.22, Revised Code, a board of county commissioners may receive donations and gifts to promote and advance the cause of education. However, in the absence of an agreement with the County Welfare Department to provide transportation for students of the County School for Retarded Children established under the provisions of Section 5153.16, Revised Code, there is no authority to expend funds for transportation of students to or from such school.
3. The Hardin County Welfare Department may accept a donation of a leased vehicle for the exclusive purpose of furnishing transportation for students of the Hardin County School for Retarded Children.
4. The Hardin County Welfare Department may lease a motor vehicle for the exclusive purpose of furnishing transportation for students of the Hardin County School for Retarded Children.

To: Frederick E. Markley, Hardin County Pros. Atty., Kenton, Ohio
By: William B. Saxbe, Attorney General, May 18, 1965

Your request for my opinion reads as follows:

"1. Can the Hardin County Commissioners lease a Station Wagon from an automobile agency in order to furnish transportation for children receiving instruction in the Hardin County School for Retarded Children operated by the Hardin County Commissioners through the Hardin County Welfare Department? It appears as though this question was answered in the negative in 1955 OAG Opinion 4806; however, has the 1955 opinion been overruled or modified in any way?

"2. Can the local Elks Lodge lease a Station Wagon from an automobile agency and then donate the leased vehicle to the Hardin County Commissioners for the exclusive purpose of furnishing transportation for children receiving instruction in the Hardin County School for Retarded Children operated by the Hardin County Commissioners through the Hardin County Welfare Department? The lease would be for a ten-month period, the local lodge would make all monthly

payments under same, the County would not be obligated for said payments in any way, the Lessee (Elks Lodge) would carry collision, property and liability insurance on the leased vehicle and the County would furnish the driver therefor, maintain same and pay the necessary transportation costs in connection therewith. Furthermore, the County employee driving the Station Wagon would be covered by liability and property damage insurance under the County's fleet policy endorsement regarding hired automobiles which provides the County employee with the same coverage regarding any vehicle that is hired or loaned to the County.

"3. Can the Hardin County Welfare Department lease a Station Wagon from an automobile agency subject to the rules, regulations and standards of the Commissioner of Mental Hygiene under Section 5153.161 of the Revised Code of Ohio the pertinent part which reads as follows:

"The County child welfare board, subject to the rules, regulations, and standards of the commissioner of mental hygiene shall:

"(C) Employ such personnel and provide such facilities, transportation, and equipment as are necessary;"

"Any lease would have to be with the Hardin County Welfare Department as Hardin County has no board designated as the County Child Welfare Board."

In answer to your first question, Opinion No. 4806, Opinions of the Attorney General for 1955, page 70, has not been overruled or modified. The syllabus of that opinion reads as follows:

"A board of county commissioners is without authority to lease motor vehicles for the use of the sheriff and his deputies."

As stated at page 68 of that Opinion, "a board of county commissioners, being a creature of the legislature is limited in its authority to those powers expressly granted by statute, or those to be necessarily implied therefrom." My predecessor found no such authority or power in relation to the question presented for his consideration and similarly, I find no statutory grant of authority, either expressed or implied, as to the facts presented in your first question.

A board of county commissioners may receive donations and gifts to promote and advance the cause of education in the county. See Section 307.22, Revised Code. However, you

relate that the board of county commissioners under the plan mentioned in your second question would furnish a driver for the vehicle and pay necessary costs in connection therewith. I find no authority for the board of county commissioners to expend funds to this purpose in the absence of an agreement to provide transportation to the retarded children to and from school.

In Opinion No. 5, Opinions of the Attorney General for 1963, I stated in the second paragraph of the syllabus as follows:

"2. The problem of providing transportation for retarded children to and from schools for retarded children established pursuant to Section 5153.16, Revised Code, should be decided by agreement between the school boards and the board of county commissioners and the child welfare board as provided for in Section 5153.16, Revised Code; * * *"

You do not state that there is an agreement regarding transportation of children to the school. For the purpose of this opinion, I, therefore, assume there is no such agreement. In the absence of such an agreement, I find no authority for the board of county commissioners to provide the transportation or any of the matters incidental thereto.

Section 5153.15, Revised Code, reads:

"The powers and duties enumerated in sections 5153.16 to 5153.19, inclusive, of the Revised Code, with respect to the care of children, needing or likely to need public care or services, shall be vested in a single agency of county government, namely, a county department of welfare or a county child welfare board."

Thus, the direct and immediate responsibility of providing services for the children under consideration falls upon the Hardin County Department of Welfare.

Your letter of inquiry relates that the Hardin County School for Retarded Children is operated by the Hardin County Commissioners through the Hardin County Welfare Department. I assume that the school you refer to was established under the provision of Section 5153.16, Revised Code, which provides in part as follows:

"The county child welfare board shall, * * * have the following powers and duties on behalf of children in the county deemed by the board or department to be in need of public care or protective services:

"* * * * *"

"(I) Subject to the approval of the board of county commissioners and the divi-

sion, to establish and operate a training school * * * or other institution for the care of children maintained by such municipal corporation or political subdivision, * * * provided that the board may enter into an agreement with a municipal corporation, a board of education, and the board of county commissioners, or with any of them, to provide for the maintenance and operation of children's training schools; such agreement may provide of the contribution of funds by any such * * * board of county commissioners, in such proportions and amounts as their agreements state, * * *"

Section 5153.161 (C), Revised Code, specifically provides as follows:

"The county child welfare board, subject to the rules, regulations, and standards of the commissioner of mental hygiene shall:

"(C) Employ such personnel and provide such facilities, transportation, and equipment as are necessary;"

The legislature has specifically provided that such transportation is a duty of the county department of welfare.

Section 5153.30, Revised Code, provides for the acceptance of gifts and property for child care and services by a county department of welfare and authorizes that agency to establish or maintain services through the use of such gifts. That section reads:

"The county child welfare board or county department of welfare may accept and receive bequests, donations, and gifts of funds or property, real or personal, for child care and services. The facilities or services to be established or maintained through any such gift shall be subject to the approval of the division of social administration."

Section 5153.34, Revised Code, reads in pertinent part as follows:

"The county child welfare board or county department of welfare may acquire such property and equipment and purchase such supplies and services as are necessary for the proper conduct of its work, including the ownership, operation, and maintenance of motor vehicles. * * *"

(Emphasis added)

Considering Sections 5153.161 (C), 5153.30, 5153.34, supra, together, a clear legislative intent is revealed to allow the county welfare department to provide transportation by either receiving a donation of the use of a leased

vehicle or entering into a lease agreement for the use of a motor vehicle.

In conclusion, it is my opinion and you are advised, as follows:

1. The Hardin County Commissioners cannot lease a station wagon from an automobile agency in order to furnish transportation for children receiving instruction in the Hardin County School for Retarded Children.

2. Under the provisions of Section 307.22, Revised Code, a board of county commissioners may receive donations and gifts to promote and advance the cause of education. However, in the absence of an agreement with the County Welfare Department to provide transportation for students of the County School for Retarded Children established under the provisions of Section 5153.16, Revised Code, there is no authority to expend funds for transportation of students to or from such school.

3. The Hardin County Welfare Department may accept a donation of a leased vehicle for the exclusive purpose of furnishing transportation for students of the Hardin County School for Retarded Children.

4. The Hardin County Welfare Department may lease a motor vehicle for the exclusive purpose of furnishing transportation for students of the Hardin County School for Retarded Children.