

**OPINION NO. 68-036****Syllabus:**

1. The Executive Secretary of the Lucas County Child Welfare Board may be appointed legal guardian of a minor when said minor's funds, originally deposited under the provisions of Section 2111.05, Revised Code, have increased to over One Thousand Dollars.

2. By accepting the responsibilities of such a guardianship, the Executive Secretary of the Lucas County Child Welfare Board is performing the official duties and exercising the powers of his office as set forth in Section 5153.16, Revised Code, and is not entitled to receive guardianship compensation.

3. Section 309.09, Revised Code, requires the Prosecuting Attorney of Lucas County to represent the Executive Secretary of the Lucas County Child Welfare Board except when said Executive Secretary is authorized under Section 305.14, Revised Code, to retain private counsel at county expense.

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**To: Harry Friberg, Lucas County Pros. Atty., Toledo, Ohio**  
**By: William B. Saxbe, Attorney General, February 23, 1968**

You state in your request for my opinion that Section 2111.05, Revised Code, permits the deposit of funds of minors under the care of the Lucas County Child Welfare Board to the Executive Secretary of said Board when these sums are under One Thousand Dollars.

You then request my opinion whether the Executive Secretary may be appointed legal guardian of the minor when the original sum has increased to over One Thousand Dollars, and if he may be so appointed, may he receive guardianship compensation. Furthermore, in the event that the Executive Secretary is appointed, you inquire if the Office of the Prosecuting Attorney of Lucas County is obligated to represent him in the guardianship, or may he engage private counsel.

Section 2111.01 (A), Revised Code, defines a guardian as:

"\* \* \*any person, association or corporation, appointed by the Probate Court to have the care and management of the person, the estate, or both of a minor, incompetent, habitual drunkard, idiot, imbecile, or lunatic, or of the estate of a confined person.

"\* \* \* \* \* \* \* \*"

Section 2111.02, Revised Code, provides in part:

"When found necessary, the Probate Court on its own motion or by an application by any interested party shall appoint a guardian of the person, the estate, or both of a minor,\* \* \*provided the person for whom the guardian is appointed is a resident of the county or has a legal settlement therein.\* \* \*"

Thus, the General Assembly has given the power to the Probate Court to appoint a guardian when "necessary." Manifestly, this confers upon the Probate Court a wide discretion as to when or under what circumstances it will act to make the appointment. Although as a matter of policy, the Probate Court usually endeavors to appoint one, or someone acceptable to some or all of the next of kin of the minor, it is not required by statute to do so. The best interests of the minor is the controlling consideration in selecting his guardian. In Re Luck, 7 N.P. 49 (1900).

However, the County Welfare Board is a public body established by law and it has only those powers and duties as the General Assembly has seen fit to grant together with such powers as are necessarily implied from the powers specifically granted. Therefore, although the sections of the Revised Code regarding guardianship grants wide discretion to the Probate Court in appointing a guardian, it must be determined whether the General Assembly, in creating County Welfare Boards and defining their powers and duties, authorized the Executive Secretary to accept the appointment and assume the duties of the guardianship.

Section 5153.16, Revised Code, provides in part:

"The county welfare board shall, subject to the rules, regulations, and standards of the division of social administration, have the following powers and duties on behalf of the children in the county deemed by the board or department to be in need of public care or protective services:

"\* \* \* \* \* \* \* \*"

"(B) To enter into agreements with the parent, guardian, or other person having legal custody of any child, or with the division, another department, or department of mental hygiene and correction, or any certified organization within or outside the county, or any agency or institution outside the state, having legal custody of any child, with respect to the custody, care, or placement of any such child, or with respect to any

matter, in the interest of such child, provided the permanent custody of a child shall not be transferred by a parent to the board or department without the consent of the juvenile court;

\* \* \* \* \*

"(D) To provide care of all kinds which the board deems for the best interests of any child the board finds in need of public care or service, provided that such care shall be provided by the board by its own means or through other available resources, in such child's own home, in the home of a relative, or in a certified foster home, receiving home, school hospital, convalescent home, or other institution, public or private, within or outside the county or state;

\* \* \* \* \*

"(G) To provide temporary emergency care for any child deemed by the board to be in need of such care, without agreement or commitment;

\* \* \* \* \*

"(L) To co-operate with, make its services available to, and act as the agent of persons, courts, the department of public welfare, and other organizations within and outside the state, in matters relating to the welfare of children;

\* \* \* \* \*

It is axiomatic that when a statute confers powers and duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication. Sutherland, Statutory Construction, Vol. 3, Section 54.02 (1943). Furthermore, statutes of a beneficent tendency, grounded upon principles of a humane policy, have consistently been given a liberal construction by Ohio courts. Thomas v. Huesman, 10 Ohio St. 152 (1859); In Re Kraus, 79 Ohio St. 314 (1909); State ex rel Gaddis v. Industrial Com., 133 Ohio St. 553 (1938).

Therefore, the Executive Secretary may be appointed legal guardian in situations where the appointment would serve the minor's best interests and such appointment appears necessary to effectively implement the general powers and duties set out in Section 5153.16, supra.

Furthermore, since the Executive Secretary is permitted by statute to accept the responsibilities of guardianship, no ordinary guardianship compensation should be forthcoming. He is performing in no less than his official capacity and no additional compensation should be required for such services outside the regular salary due such an officer.

You next inquire whether the Prosecuting Attorney of Lucas County has an obligation to render legal service to the Executive Secretary in the event he is appointed legal guardian, or may the Executive Secretary engage private counsel to represent him in the guardianship.

Section 309.09, Revised Code, provides that the prosecuting attorney shall be the legal adviser to all county officers and boards in matters connected with their official duties. My predecessor, in Opinion No. 172, Opinions of the Attorney General for 1959, page 85, interprets this section in the third paragraph of the syllabus as follows:

"3. Under the provision of Section 309.09, Revised Code, the prosecuting attorney is required to act as legal counsel for the county child welfare board."

However, Section 309.09, supra, further provides that no county officer may employ any other counsel at county expense except as provided in Section 305.14, Revised Code. The latter section provides as follows:

"If it deems it for the best interest of the county, the court of common pleas, upon the application of the prosecuting attorney and the board of county commissioners, may authorize the board to employ legal counsel to assist the prosecuting attorney, the board, or any other county board or officer, in any manner of public business coming before such board or officer, and in the prosecuting or defense of any action or proceeding in which such county board or officer is a party or has an interest, in its official capacity."

Therefore, while Section 309.09, Revised Code, requires the prosecuting attorney to represent the Executive Secretary of the County Welfare Board, it is conceivable that situations may occur where, as provided in Section 305.14, supra, the court of common pleas, on application by the prosecuting attorney and the board of county commissioners, determines that the interests of the county would be best served by permitting the Executive Secretary to retain private counsel. The Executive Secretary would be authorized to engage private counsel to represent him in the guardianship at county expense of Lucas County. Therefore, the Prosecuting Attorney is required to represent the Executive Secretary of the Lucas County Child Welfare Board in regard to guardianship activities, except when the Executive Secretary is authorized under the provisions of Section 305.14, supra, to retain private counsel at county expense.

Accordingly, it is my opinion and you are hereby advised:

1. The Executive Secretary of the Lucas County Child Welfare Board may be appointed legal guardian of a minor when said minor's funds, originally deposited under the provisions of Section 2111.-05, Revised Code, have increased to over One Thousand Dollars.
2. By accepting the responsibilities of such a guardianship, the Executive Secretary of the Lucas County Child Welfare Board is performing the official duties and exercising the powers of his office as set forth in Section 5153.16, Revised Code, and is not entitled to receive guardianship compensation.
3. Section 309.09, Revised Code, requires the Prosecuting Attorney of Lucas County to represent the Executive Secretary of the Lucas County Child Welfare Board except when said Executive Secretary is authorized under Section 305.14, Revised Code, to retain private counsel at county expense.