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COUNTY CHILD WELFARE BOARD OR A COUNTY WITHOUT A COUNTY CHILD WELFARE BOARD MAY OPERATE A TRAINING CENTER UNDER DIRECTION AND SUPERVISION OF THE COMMISSIONER OF MENTAL HYGIENE—§§5127.01, 5127.03, R.C.

SYLLABUS:

1. A county child welfare board or a county welfare board in counties without a county child welfare board may operate a training center under the direction and supervision of the commissioner of mental hygiene pursuant to Section 5127.01, Revised Code, and may receive state funds pursuant to Section 5127.03, Revised Code, for the costs of such operation.

2. A private association, incorporated or unincorporated, may not operate a training center established pursuant to Section 5127.01, Revised Code, and may not receive state funds pursuant to Section 5127.03, Revised Code, for the costs of operation, but members of any such association may be employed by the county child welfare board to operate a training center pursuant to Section 5127.01, Revised Code, for which the county child welfare board may receive state funds pursuant to Section 5127.03, Revised Code.

Columbus, Ohio, April 6, 1960

Hon. Robert A. Haines, M.D., Director
Department of Mental Hygiene and Correction
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion on the interpretation and effect of Opinion No. 997, Opinions of the Attorney General for 1959, in relation to the schools for mentally retarded children.

You state that you have become concerned with the possible interpretation of my recent opinion as meaning that county schools for the mentally retarded, which are conducted in cooperation with the division of mental hygiene and the various county councils for the mentally retarded, are not operating in accordance with law. The parts of that opinion which give you concern are apparently branches 2, 4, and 5 of the syllabus, which read as follows:

“2. Although pursuant to Chapter 5127., and 5153., Revised Code, a county child welfare board may supervise classes

for mentally deficient children, no statutory authority exists for the supervision of classes established by private agencies.

“4. A county child welfare board is without authority to enter into a contract whereby the responsibility for the training of mentally deficient children is transferred to a private agency.

“5. A county child welfare board may not accept state funds provided under Section 5127.03, Revised Code, or other sections, for the maintenance of training classes for mentally deficient children where such classes are operated by a private agency.”

You will note that this opinion dealt exclusively with the powers of a county child welfare board or a county department of welfare in those counties in which such a county child welfare board has not been established. It did not deal directly with the division of mental hygiene. In Opinion No. 997, Opinions of the Attorney General for 1959, I stated in my conclusion that neither a county child welfare board nor a board of county commissioners may, by agreement, delegate the maintenance of a training center to a private organization.

Section 5153.16, Revised Code, authorize a county child welfare board, in part, as follows:

“(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;

I interpret this provision to mean that the county child welfare board may send any child in its care to any public or private institution within or without the state. This is not limited to the mentally retarded child but also includes delinquent children or children with any other type of problem necessitating public care or service. The same section also grants authority to the county child welfare board to establish and operate a training school. This provision reads as follows:

“(I) Subject to the approval of the board of county commissioners and the division, to establish and operate a training school or enter into an agreement with any municipal corporation or other political subdivision of the county respecting the operation, acquisition, or maintenance of any children’s home, training school, or other institution for the care of children maintained

by such municipal corporation or political subdivision, and may, pursuant to such agreement, acquire, operate, and maintain such an institution; 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 for the contribution of funds by any such municipal corporation, board of education, or board of county commissioners, in such proportions and amounts as their agreements state, and for the operation and supervision of such training schools by any one of them, or by the joint action of two or more of them; provided that municipal corporations, school boards, and boards of county commissioners may expend moneys from their general funds for maintaining and operating such joint children's training schools;"

Under this provision a county child welfare board may establish *and operate* a training school which may be exclusively for the mentally retarded or may be for children with any other type of problem necessitating specialized training. In utilizing either of these two provisions alone a county child welfare board is limited to its own funds, or funds from other sources available to it excluding the state. A county child welfare board may not utilize state funds unless specifically authorized to do so by the General Assembly. To date the General Assembly has failed to authorize any such expenditures of state funds except as provided in Chapter 5127., Revised Code.

Turning to this chapter we find that Section 5127.01, Revised Code, authorizes the commissioner of mental hygiene to establish in any county or district a training center for mentally deficient youths. The pertinent part of this section reads as follows:

"The commissioner of mental hygiene, with the approval of the director of mental hygiene and correction, shall establish in any county or district a training center for the special training of mentally deficient youths under twenty-one years of age, including those who have been adjudged by the proper authorities to be ineligible for enrollment in public schools under sections 3317.01 to 3317.15, inclusive, 3321.01, and 3323.01 of the Revised Code, and who are determined by the division of mental hygiene to be capable of profiting by specialized training. Special attention shall be given to the establishment of a training program for the mentally deficient for the purpose of enabling them to become accepted by society and to find employment in the structure of society to the extent that they may be fitted therefore. The commissioner shall be the final authority in determining the

nature and degree of mental deficiency, decide all questions relative or incident to the establishment and operation of each training center, determine what constitutes special training, promulgate all rules and regulations, subject to sections 119.01 to 119.13, inclusive, of the Revised Code, governing the approval of mentally deficient youth for such training, determine or approve all forms used in the operation of programs undertaken under this section and approve the current operating costs of such programs.”

Section 5127.02, Revised Code, provides for the establishment of such schools upon petition to the county child welfare board or public children’s agency in any county with such petition being forwarded by the board to the commissioner of mental hygiene.

Section 5127.03, Revised Code, provides for the payment of state funds for the support of the training centers authorized by Section 5127.01, Revised Code. Section 5127.03, Revised Code, reads as follows:

“On the thirtieth day of June of each year, the county welfare board or a public children’s agency shall certify to the commissioner of mental hygiene:

“(A) The names and residences of the persons receiving training pursuant to section 5127.01 of the Revised Code;

“(B) The period of time each deficient youth received such training;

“(C) An itemized report of expenditures which have been approved by the commissioner for providing such training;

“(D) The net per capita cost for providing such training.

“The division of mental hygiene, upon receipt and approval of the report provided in this section, shall present a voucher to the auditor of state in favor of the agency providing the specialized training in an amount equal to the net cost of said training. The local agency shall bear the portion of the cost of such training as is determined by the commissioner, and the net cost to the state of said training shall not exceed three hundred dollars per year for each mentally deficient youth so trained. Upon presentation of such voucher, the auditor of state, if satisfied as to the correctness of the voucher, shall draw a warrant on the treasurer of state in the amount of the voucher.”

It must be emphasized that Section 5127.03, Revised Code, provides for certification by the county welfare board or a public children’s agency to the division of mental hygiene of the number and costs of students attending training centers established by the commissioner of mental hygiene, pursuant to Section 5127.01, Revised Code. Upon receipt of this

information the division of mental hygiene presents a voucher to the auditor of state in favor of the agency providing the specialized training. This is the only source of statutory authority found for the payment of state funds to educate mentally retarded children.

It becomes immediately apparent that the primary question to be answered is what constitutes a training center under Section 5127.01, Revised Code. This section states that the commissioner of mental hygiene shall *establish* a training center for mentally deficient youths, such provision implying that such a center would be a state facility run by employees of the commissioner. Later language in the section, however, states that the commissioner shall be the "final authority" in determining student eligibility, shall "decide all questions relative or incident to the establishment and operation of each training center," determine the curriculum, promulgate regulations governing admission, approve all forms used in the operation of the training program and approve the current operating costs of the program. This later language, therefore, appears to imply that the commissioner merely acts in a supervisory capacity in the establishment and operation of a training center. Further, the language of Section 5127.03, Revised Code, that the division of mental hygiene shall present a voucher to the auditor of state "in favor of the agency providing the specialized training" appears to imply that a training center is not necessarily operated by the commissioner.

Chapter 5127., Revised Code, is, of course, not clear as to what organization is to provide the training which the commissioner is to supervise. Regarding the payment of state funds, however, Section 5127.03, *supra*, definitely implies that the county welfare board or a public children's agency are each such an organization. Also, a county child welfare board, being a public children's agency, would be such an organization. I am unable, however, to find any provision or implication that a private organization is such an organization.

Section 5127.03, *supra*, provides that certification is made by the county welfare board or a public children's agency. The data to be furnished includes the names of those receiving training, the costs, etc., but no mention of the agency providing the training. The later references of the section to "agency providing the specialized training" and "local agency" can only refer to the organization making the certification since the certification does not require a listing of any other agencies furnishing training. If the voucher were to be made out to any organization other

than that making the certification, the legislature would certainly have required that the name of such other organization be included in the certification. If not so included, how would the division ascertain what organization should receive the state funds? I must conclude, therefore, that under Section 5127.03, Revised Code, state funds may be paid by the auditor of state only to the child welfare board or public children's agency making the certification required by such section.

Returning to your inquiry, you state on page 2:

"It would appear that the language of the Opinion could be so interpreted that even if all employees, etc., receiving public funds were paid directly by the County Treasurer, it would still be illegal to delegate to private organizations the day-to-day operations of these classes. It is our hope that you can review this Opinion in light of the needs of these children and their schools."

In this regard I might note that if the personnel of such training center, established pursuant to Section 5127.01, Revised Code, were to be paid by the county treasurer, they would be, in fact, county employees hired by the county through the county welfare board, county child welfare board or other public children's agency. While there is no authority to pay state money to private agencies which would, in turn, employ personnel for such training centers, there is no statutory prohibition against the county, through the medium of its county child welfare board or analogous body, employing personnel to operate such a training center. Such personnel would then be county employees but could still work in close cooperation with members of a private agency interested in promoting the same goal.

In conclusion, I might add that I am aware of the need for the proper training of mentally deficient children and feel that these children are entitled to training just as are other children. Regarding public training of these children, however, I am bound to interpret the law as enacted by the legislature. The legislature has provided that the state may establish training centers, and that some public agencies may operate training centers and receive state funds for such operation. The legislature has, however, *not* provided that private agencies may receive state funds for operating such training centers. Until such provision is made, therefore, such private organizations may not receive such funds, and the state program

for the training of mentally deficient children should be carried out by those public agencies authorized to do so.

It is, therefore, my opinion and you are accordingly advised, as follows :

1. A county child welfare board or a county welfare board in counties without a county child welfare board may operate a training center under the direction and supervision of the commissioner of mental hygiene pursuant to Section 5127.01, Revised Code, and may receive state funds pursuant to Section 5127.03, Revised Code, for the costs of such operation.

2. A private association, incorporated or unincorporated, may not operate a training center established pursuant to Section 5127.01, Revised Code, and may not receive state funds pursuant to Section 5127.03, Revised Code, for the costs of operation, but members of any such association may be employed by the county child welfare board to operate a training center pursuant to Section 5127.01, Revised Code, for which the county child welfare board may receive state funds pursuant to Section 5127.03, Revised Code.

Respectfully,
MARK MCELROY
Attorney General