

OPINION NO. 83-065

Syllabus:

The Ohio Veterans' Children's Home is not subject to regulation by the Ohio Department of Public Welfare pursuant to R.C. Chapter 5103. (1982 Op. Att'y Gen. No. 82-023, overruled.)

December 1983

To: James M. York, Superintendent, Ohio Veterans' Children's Home, Xenia, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, November 7, 1983

I have before me your letter requesting my consideration of the conclusion reached by my predecessor in 1982 Op. Att'y Gen. No. 82-023--namely, that the Ohio Veterans' Children's Home (OVCH) is an institution or association which is subject to regulation by the Ohio Department of Public Welfare pursuant to R.C. Chapter 5103.

The OVCH was created pursuant to R.C. 5909.01 to "care for and educate children of deceased and disabled veterans and children of Ohio residents who are unable to provide support and education for their children." It is under the charge of a board of trustees, R.C. 5909.02, which is directed by statute to "establish and maintain schools for such literary, technical, industrial, art, and other education of all pupils therein as is practicable," R.C. 5909.06. R.C. Chapter 5909, which governs the creation and operation of the OVCH, is silent with respect to the relationship between the OVCH and the Ohio Department of Public Welfare, except to state that "[t]he board [of trustees] shall govern, conduct, and care for such home, the property, and the children therein as provided in the laws governing the department of public welfare so far as they are not inconsistent with the laws governing such home." R.C. 5909.02. As my predecessor stated in Op. No. 82-023, at 2-70, "[t]his section, however, concerns only the authority of the board over the children and property under its control and does not deal with the issue of regulation of the OVCH by the Ohio Department of Public Welfare."

The authority of the Department of Public Welfare to regulate various bodies which care for children is derived from R.C. Chapter 5103. R.C. 5103.03 states, in pertinent part:

The department of public welfare shall make such rules as are necessary for the adequate and competent management of institutions or associations as defined in section 5103.02 of the Revised Code. Except for those institutions under the control of the department of youth services, places of detention for children established and maintained pursuant to sections 2151.34 to 2151.3415 of the Revised Code, and child day-care centers subject to Chapter 5104. of the Revised Code, the department of public welfare shall annually pass upon the fitness of every benevolent or correctional institution, corporation, and association, public or private, that receives, or desires to receive and care for children, or places children in private homes. . . .

When the department of public welfare 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 department.

. . . .

No person shall receive children or receive or solicit money on behalf of such an institution, corporation, or association, not so certified or whose certificate has been revoked. (Emphasis added.)

See also, e.g., R.C. 5103.05 (providing, with R.C. 5103.01, that the Department of Public Welfare shall "investigate by correspondence and inspection the system, condition, and management of the public, private, benevolent, and correctional institutions of the state and county, and municipal jails, workhouses, infirmaries, and children's homes as well as all institutions which receive and care for children"); 7 Ohio Admin. Code Chapter 5101:2-9 (governing certification of child care institutions).

R.C. 5103.02 defines the terms "institution" and "association" as follows:

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

"Institution" or "association" includes any incorporated or unincorporated organization, society, association, or agency, public or private, which receives or cares for children for two or more consecutive weeks; any individual who, for hire, gain, or reward, receives or cares for children for two or more consecutive weeks, unless he is related to them by blood or marriage; and any individual not in the regular employ of a court, or of an institution or association certified in accordance with section 5103.03 of the Revised Code, who in any manner becomes a party to the placing of children in foster homes, unless he is related to such children by blood or marriage, or is the appointed guardian of such children; 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, the department of youth services, the department of mental health, or the department of mental retardation and developmental disabilities, 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.
(Emphasis added.)

In Op. No. 82-023, my predecessor concluded, at 2-71: "The OVCH clearly falls within the definition of 'institution' or 'association' found in R.C. 5103.02 due to the fact that it is a public agency 'which receives or cares for children for two or more consecutive weeks.' Consequently, the OVCH is an institution subject to the regulatory power of the Department of Public Welfare unless it is otherwise exempted from such regulation." My predecessor found that the OVCH was not exempted from such regulation.

On the basis of facts currently before me, I am constrained to disagree with this conclusion. R.C. 5103.02 expressly excludes from the coverage of R.C. 5103.03 to 5103.19 "any organization, society, association, school, agency. . . licensed, regulated, approved, operated under the direction of, or otherwise certified by the department of education." While my predecessor stated that the OVCH did not come within this exemption, it is my understanding that the OVCH's school is, in fact, chartered by the State Department of Education as a Special Purpose School. See generally R.C. 3301.107, 3301.16; [1982-1983 Monthly Record] Ohio Admin. Code 3301-35-05 at 749-50 ("[a] special purpose school may be established provided it complies with minimum standards specified in rules 3301-35-01 to 3301-35-03 of the Administrative Code with the following modifications: . . . (E) A school provided by a state institution may be chartered in accordance with minimum standards specified in rules 3301-35-01 to 3301-35-03 of the Administrative Code subject to such exceptions as may be approved by the state board of education on the basis of recommendations by the superintendent of public instruction"). Pursuant to such charter, the State Department of Education periodically reviews the OVCH's school to determine that it satisfies applicable requirements. See generally [1982-1983 Monthly Record] Ohio Admin. Code 3301-35-07 at 750 ("[a] school shall be evaluated at least once every five years to determine compliance with rules 3301-35-01 to 3301-35-06 of the Administrative Code"). Further, R.C. 3323.091(A) expressly states that "the board of trustees of the Ohio veterans' children's home shall establish and maintain special education programs for handicapped children in institutions under [its] jurisdiction according to standards adopted by the state board of education," and authorizes the OVCH to apply for unit funding for such programs. See generally R.C. 3317.024 (providing for the distribution of certain moneys "to institutions providing special education programs under [R.C. 3323.091] which are under the supervision of the division of special education of the state department of education and meet such standards and rules for such programs as are established by the state board of education including certification of all professional staff involved in such programs").

It is my judgment that the existence of such charter and the maintenance of such special education programs create a relationship between the OVCH and the State Department of Education under which the OVCH is "licensed, regulated,

approved, operated under the direction of, or otherwise certified by the department of education" within the meaning of the exception set forth in R.C. 5103.02. R.C. 5103.02 does not expressly mention the chartering of the educational facilities of an institution as a Special Purpose School or the establishment of special education programs under standards adopted by the State Board of Education, but I believe that the exemption established by R.C. 5103.02 is broad enough to encompass such arrangements. As discussed above, the State Department of Education regulates and approves the operations of the OVCH's school as a chartered Special Purpose School and establishes standards for the OVCH's special education programs. See generally R.C. Chapter 3321 (providing for compulsory school attendance).

I conclude, therefore, that the OVCH is "licensed, regulated, approved, operated under the direction of, or otherwise certified by the Department of Education" so that, pursuant to R.C. 5103.02, it "shall not be considered as being within the purview of" R.C. 5103.03 to 5103.19. As a result, the OVCH is not subject to regulation by the Ohio Department of Public Welfare under those provisions.¹ See generally 7 Ohio Admin. Code 5101:2-3-01(N) (defining "[i]nstitution," for provisions including those governing certification of child care institutions, as excluding "facilities whose primary purpose is education, and which meet the standards for residential schools established by the state department of education").

It is, therefore, my opinion, and you are hereby advised, that the Ohio Veterans' Children's Home is not subject to regulation by the Ohio Department of Public Welfare pursuant to R.C. Chapter 5103. (1982 Op. Att'y Gen. No. 82-023, overruled.)

¹ 1982 Op. Att'y Gen. No. 82-023 concluded that the OVCH was subject to regulation by the Ohio Department of Public Welfare pursuant to R.C. Chapter 5103. I note that R.C. 5103.03 through R.C. 5103.19 are the only provisions of that chapter setting forth standards for such regulation. R.C. 5103.01 provides generally that "[a]ll powers and duties assigned by law to the division of social administrative shall be exercised by the department of public welfare." R.C. 5103.02 contains definitions of "institution" and "association." R.C. 5103.20-.28 constitute the Interstate Compact on Placement of Children. R.C. 5103.30-.34 relate to the regulation of adult foster care facilities. R.C. 5103.99 sets forth penalties for violations of various provisions of R.C. Chapter 5103.