

OPINION NO. 75-072**Syllabus:**

Absent a gross abuse of discretion, the placing of a child by the Ohio Youth Commission, pursuant to R.C. Chapter 5139, in an apartment, living alone, would be a permissible exercise of the Commission's obligations.

To: William K. Willis, Director, Ohio Youth Commission, Columbus, Ohio
By: William J. Brown, Attorney General, October 16, 1975

I have before me your request for my opinion concerning the discretion of the Ohio Youth Commission in the placement of children. Specifically you ask:

"May the Ohio Youth Commission make an independent placement of a child under its control and supervision who is under 18 years of age; that is, may the Ohio Youth Commission place such child in a setting, e.g., an apartment, living alone, and still be within the scope and intent of the statutes granting its authority and powers?"

From telephone conversations with your office subsequent to your request it was determined that the situation you refer to involves a young woman, age 17 1/2, who has graduated from high school, found gainful employment, and had previously been placed in a "group home", pursuant to R.C. 5139.06(G). While she was living in that facility, it was determined that her training and rehabilitation could best be advanced by placing her in the living environment described in your inquiry. This was done after she had successfully completed a 5 month program which the group home provided. I understand that the young lady, while she does live independently, has not yet been discharged or released from the supervision of the Youth Commission. This is, she still reports to a youth counselor, her conduct to some degree is still subject to certain rules, restrictions and supervision, and she is still encouraged to seek advice and support from the Youth Commission. She visits the group home three times weekly for discussions, and the youth counselor calls her daily and visits her apartment once each week. You are concerned with the possibility that under these circumstances the Youth Commission may not be meeting its obligation toward the child.

Pursuant to R.C. 5139.04, the Youth Commission is the designated custodian of all children who are committed to its care. As such the Commission has a duty of care, protection and support, the violation of which could subject the Commission to the criminal sanctions of R.C. 2919.22. However, from the aforementioned facts it appears that the Youth Commission is adequately insuring that the child under its control is being provided with adequate care, protection and support, thus fulfilling the Commission's obligations as custodian of the child.

The Youth Commission, however, is more than just a custodian of children. The authority of the Commission in administering to children under its control is established in R.C. 5139.01 *et seq.* Specifically, R.C. 5139.06(B) authorizes the Commission, with regard to a child under its control, to "order his release or parole under such supervision and conditions as it believes conducive to law-abiding conduct. . . ."

Little authority exists directly bearing on whether a program of placing a child in an apartment living situation would be permissible under the language of this statute. It is, however, long and well established that a public officer must exercise his good faith discretion in the carrying out of his duties. It is further well established that, in the absence of fraud or gross abuse of discretion, courts will not interfere with decisions of public officials which are so rendered. See Barrett v. Crist, 5 Ohio App. 2d 239 (1964). See also, State ex rel. Harrison v. Perry, 113 Ohio St. 641 (1925); Kosch v. Miller, 104 Ohio St. 281 (1922).

With specific regard to the case at hand, it seems clear that the Youth Commission is fulfilling its obligations to the child under R.C. 5139.06(B) in setting conditions for release and providing supervision. In situations such as this, where the Commission has been granted by statute broad discretion in establishing a rehabilitation program, precedent indicates that a court would be most reluctant to interfere with a program of the Commission unless it found clear and gross abuse of discretion. From the facts that you have provided it appears that there is no abuse of discretion present in this case.

In specific answer to your request it is my opinion, and you are so advised that absent a gross abuse of discretion, the placing of a child by the Ohio Youth Commission, pursuant to R.C. Chapter 5139, in an apartment, living alone, would be a permissible exercise of the Commission's obligations.