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BILLS AND VOUCHERS OF A COUNTY DEPARTMENT OF WELFARE PERTAINING TO THE ADMINISTRATION OF THE AID TO THE NEEDY BLIND—DEPENDENT CHILDREN—DISABLED PERSONS—§§319.19, 329.01 THROUGH 329.10, 5151.01 THROUGH 5151.11, 5107.01 THROUGH 5107.16, R.C.—OAG 797—1946—OAG 2551—1947.

SYLLABUS:

Bills and vouchers of a county department of welfare pertaining to the administration of the aid to the needy blind, Sections 5151.01 through 5151.11, Revised Code, aid to dependent children, Sections 5107.01 through 5107.16, Revised Code, and aid to disabled persons. Sections 5106.01 through 5106.10, Revised Code, are not required to be filed with the county auditor pursuant to Section 319.19, Revised Code.

Columbus, Ohio, April 30, 1960

Hon. Mary Gorman, Director, Department of Public Welfare
85 South Washington Avenue, Columbus, Ohio

Dear Madam:

Your request for my opinion asks whether the provisions of Section 319.19, Revised Code, relating to the filing with the county auditor of a bill or voucher for payment of money from any fund controlled by the board of county commissioners, apply to assistance payments of county departments of welfare. In your request you state:

> "In 1946 OAG 797, the question was answered in the negative as to whether the provisions of section 319.19 R.C. applied to assistance payments of county departments of welfare.
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> "In 1947 OAG 2551, the same question was answered affirmatively, and the reason cited was an amendment made in 1947 by the General Assembly to section 329.02 R.C.
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> "The Department of Public Welfare has learned that some counties do and others do not consider that section 319.19 R.C., applies to assistance payments. Since no attempt has been made in Ohio to comply with this 1950 amendment to the Social Security Act, as interpreted in Handbook A-2331 *(supra)*, the question has not arisen before now as to the effect of 1947 OAG 2551.
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> "From a practical standpoint, the requirements of section 319.19 R. C. work inherently toward preventing prompt issu-

ance of a payment. For example, if a payment is authorized by the county welfare department and forwarded to the county auditor too late to be received for the issuing date, which is the beginning of each month, the issuance must await another month. Thus, although a county welfare department may complete its investigation and determination of an applicant and authorize a payment well within 30 days, if the authorization does not reach the county auditor as of a given fixed date (varying from the 15th to the 23rd of each month in most counties), the actual payment may not be made until sometimes 45 days later. (Although 60 rather than 30 days is considered prompt in the Aid to the Permanently and Totally Disabled program, this is because the state is required to review the medical and social data. This additional step is not required in either the Aid to the Blind or the Aid to Dependent Children program.)"

By "assistance payments" you refer to aid to the blind, aid to dependent children, and aid to the permanently and totally disabled; and your question concerns the applicability of Section 319.19, *supra,* to county payments made in such programs. Said section 319.19 reads as follows:

"A bill or voucher for payment of money from any fund controlled by the board of county commissioners must be filed with the county auditor and entered in a book for that purpose at least five days before its approval for payment by the board. When approved, the date of approval shall be entered on such book opposite the claim, and payment of such claim shall not be made until after the expiration of five days after the approval has been so entered."

In Opinion No. 797, Opinions of the Attorney General for 1946, page 170, the syllabus reads:

"When a county department of welfare has been established in any county, pursuant to Section 2511-1, General Code, vouchers for expenditures by such department do not require the approval of the county commissioners."

In construing the then existing Sections 2511-1 through 2511-11, General Code, my predecessor in Opinion No. 797, *supra,* noted that these statutes put the administration of the welfare programs directly under the department of welfare. For example, Section 2511-4, General Code, then read in part:

"The county department of welfare shall have the following powers and duties:

"(a) To be the 'county administration' for all the purposes of sections 1359-31 to 1359-45, both inclusive, of the General Code as now existing or as hereafter amended or supplemented.

In 1947, Sections 2511-2, 2511-3 and 2511-4, General Code, were amended (Senate Bill No. 241 of the 97th General Assembly). In considering the effect of these amendments, the then attorney general held in the syllabus of Opinion No. 2551, Opinions of the Attorney General for 1947, page 648:

> "By reason of the provisions of Senate Bill No. 241, enacted by the 97th General Assembly, amending Sections 2511-2, 2511-3 and 2511-4, General Code, complete control of the county department of welfare is vested in the county commissioners, and vouchers for expenditures in said department must be approved by said commissioners, as provided by Section 2572, General Code."

In distinguishing Opinion No. 797, *supra,* Opinion No. 2551, *supra,* states, beginning on page 649:

> "When the opinion referred to was written, the statutes very definitely placed the control of the county department of welfare in the director, and, as was suggested there, the powers of the county commissioners appeared to be limited to the creation of the department, the appointment of a director, the appropriation of the necessary funds for operation, and general oversight.
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> "The changes made by the General Assembly at its recent session seem very clearly to have been intended to take this control out of the hands of the director and to put it in the hands of the county commissioners. The intention of the General Assembly to make a radical change in this control appears quite clearly on comparison of the former statutes with the recent amendments. The act by which these changes were accomplished was Senate Bill No. 241. This act amended Sections 2511-2, 2511-3 and 2511-4, and repealed Section 2511-6, General Code.
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> "The opening sentence of Section 2511-2 prior to amendment, read as follows:
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> > " 'Under the direction of the board of county commissioners, the county director of welfare shall have full charge and control of the county department of welfare.'
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> "As amended, this sentence reads:
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> > " 'Under the control and direction of the board of county commissioners, the county director of welfare shall have full charge of the county department of welfare.'
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> "Section 2511-3, General Code, provided that the salary of the county director was to be fixed by the board of county commissioners, but that the compensation of all his assistants

and employees was to be fixed by the *county director*. This latter provision was changed to read as follows:

> " 'The compensation of all assistants and employees within or under the jurisdiction of the county department of welfare shall *likewise be fixed by the board of county commissioners*.' (Emphasis added.)"

The conclusion of Opinion No. 2551, *supra,* at page 651, states:

> "Accordingly, since the entire control of a county department of public welfare is, under the terms of Sections 2511-2, 2511-3 and 2511-4, General Code, reserved to the county commissioners, it is my opinion that all vouchers for expenditures in said department must be approved by the board of county commissioners under the provisions of Section 2572 of the General Code."
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> (Section 2572, General Code, is now Section 319.19, Revised Code.) (Parenthetical matter added by writer)

Sections 2511-1 through 2511-11, General Code, are now Sections 329.01 through 329.10, Revised Code. Section 329.01, Revised Code, creates a department of welfare in each county. Section 329.02, Revised Code, provides for a director of welfare, reading in part:

> "Under the control and direction of the board of county commissioners, the county director of welfare shall have full charge of the county department of welfare. * * * The director, with the approval of the board of county commissioners, shall appoint all necessary assistants, superintendents of institutions under the jurisdiction of the department, and all other employees of the department, excepting that the superintendent of each such institution shall appoint all employees therein. * * *"

Section 329.04, Revised Code, relating to the powers and duties of the county department of welfare, reads:

> "The county department of welfare shall have, exercise, and perform, under the control and direction of the board of county commissioners, the following powers and duties:
>
> "(A) To be the 'county administration' for all the purposes of sections 5107.01 to 5107.16, inclusive, of the Revised Code.
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> "(B) To administer aid to the needy blind as provided in sections 333.01 to 333.11, inclusive, of the Revised Code.
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> "(C) To administer poor relief and burials insofar as the administration of such relief and burials was, prior to September 12, 1947, imposed upon the board.

"(D) To co-operate with state and federal authorities in any matter relating to public welfare and to act as the agent of such authorities.

"(E) To submit an annual account of its work and expenses to the board and to the department of public welfare at the close of each fiscal year.

"(F) To exercise such powers and duties relating to public welfare imposed upon the county department of welfare by law, by resolution of the board, or by order of the governor, when authorized by law, to meet emergencies during war or peace. The board may designate the county department of welfare to exercise and perform any additional welfare powers and duties which the board has."

It will be noted that Section 329.04, *supra,* gives the department of welfare authority to "exercise, and perform, under the control and direction of the board of county commissioners" the specified powers and duties. This section was formerly Section 2511-4, General Code, and when considered in Opinion No. 2551, *supra,* stated that "the board of county commissioners *may designate* the county department of welfare to have, exercise and perform under its control and direction" the specified powers and duties. (Emphasis added.) This change in Section 329.04, *supra,* was made by Amended House Bill No. 560 of the 102nd General Assembly, effective January 1, 1959. The effect of the change was to definitely give the department the powers and duties listed in the section where under the former section the department had such powers and duties only when the board of county commissioners so designated.

Under the present law, therefore, each county has a department of welfare and each department has a director (Section 329.01, Revised Code). Section 329.04, Revised Code, gives the department certain powers and duties. One of these duties is to administer aid to the needy blind as provided in Sections 333.01 through 333.11, Revised Code—now Sections 5151.01 through 5151.11, Revised Code. Another duty of the board is to be the "county administrator for all the purposes of Sections 5107.01 through 5107.16, Revised Code, the aid to dependent children sections. While Section 329.04, *supra,* does not refer specifically to the administration of Sections 5106.01 through 5106.10, Revised Code, the aid to disabled persons sections, the board is authorized to co-operate with state and federal authorities in any matter relating to public welfare and to act as the agent of such authorities.

In view of the changes in Sections 329.01 and 329.04, *supra,* since the issuance of Opinion No. 2551, *supra,* it may well be argued that the conclusion of that opinion is no longer applicable. Where the county commissioners formerly had the discretion of creating or not creating a department of welfare, each county now has such a department by specific statutory designation. Where the county commissioners formerly had the power to *designate* the duties of the department, the department now has these duties specified by statute. The county commissioners still set the salaries of employees of the department (Section 329.03, Revised Code), but otherwise appear to act mainly in a general overseeing category so far as the aid programs here in question are concerned.

Also to be considered in the determination of the county commissioner's control of the aid funds is the role of the state department of welfare in these programs. The state department's control in this regard is rather extensive and does include the power to determine how expenditures should be made in these programs.

Section 5151.07, Revised Code, governing aid to the blind, reads in part:

> "* * * The department of public welfare is hereby designated as the state agency for supervision of aid to the blind. Such department may apply for federal assistance in accordance with title X of said act and is empowered to direct the expenditure of all state and federal money provided for carrying out the purposes of title X of said act.
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> "* * *
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> "The department may make all reasonable rules and regulations for the administration of aid to the blind, *which rules and regulations are binding upon the several counties.* * * *"
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> (Emphasis added)
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> (Said act as used above refers to the Social Security Act)

Section 5151.10, Revised Code, reads in part as follows:

> "There may be appropriated out of any moneys in the state treasury to the credit of the general revenue fund and not otherwise appropriated, each fiscal year, a sum sufficient to make reimbursements, as provided in this section, to each county for payments under sections 5151.01 to 5151.11, inclusive, of the Revised Code. Such appropriations shall be as follows:
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> "(A) Within funds available, each county shall be reimbursed for each monthly payment made by the county to a blind

person according to rules and regulations of statewide application established by the director of public welfare.

"(B) Each county shall be reimbursed for payments for medical, dental, optometrical, hospital, or necessary nursing and convalescent care, and medical supplies and drugs, required because of illness or disability of a recipient, which are made under sections 5151.01 to 5151.10, inclusive, of the Revised Code, *in accordance with schedules adopted by the department of public welfare.*

(Emphasis added)

In the aid to dependent children program, Section 5107.02, Revised Code, reads in part as follows:

"The department of public welfare shall administer sections 5107.01 to 5107.16, inclusive of the Revised Code. The department may:

* * *".

"(E) Provide, by rules and regulations or otherwise, for putting into effect such methods of administration and procedure as are found by the administration or the department to be necessary to the efficient operation of said plan *in the respective counties;*

(Emphasis added)

Section 5107.06, Revised Code, reads in part as follows:

"All amounts received by the state from the federal government under The Social Security Act, or any act of the congress of the United States amendatory thereof or in substitution therefor, for aid to dependent children, and shall be paid into the state treasury to the credit of a special trust fund to be designated by such name as the auditor of state may prescribe. The amounts paid into such special trust fund from the federal government shall be opportioned to each county according to rules and regulations of state-wide application established by the director of public welfare.

Section 5107.09, Revised Code, requires that:

"The board of county commissioners of each county shall include in the annual tax budget and transfer from the general fund to a special fund for aid to needy children and for defraying the expenses of administering sections 5107.01 to 5107.16, inclusive, of the Revised Code, within the county, an amount not less than the computed yield of a levy of fifteen one hundredths of one mill on each dollar of the general tax list of the county. All amounts paid into the treasury of any county from county, state, and federal funds pursuant to such sections shall be credited to the special fund therein, created pursuant to this section, and shall be appropriated for carrying out sections 5107.01 to 5107.16, inclusive of the Revised Code, including *the necessary cost of administration as approved by the department of public welfare.*

"The county auditor shall issue warrants upon the county treasurer for the payment of the amounts which have been certified by the county administration to be due and payable under such sections.

"If the board fails to comply with this section, the department shall request the attorney general to institute proceedings in mandamus or otherwise for the enforcement thereof, and the attorney general shall bring such proceedings."

(Emphasis added)

In the aid to the permanently and totally disabled program, Section 5106.03, Revised Code, reads in part:

"The amount of aid payable to or on behalf of any person shall be determined in accordance with the rules and regulations, standards of assistance, and administrative maximums *established by the director of public welfare.* * * *." (Emphasis added)

Section 5106.08, Revised Code, reads in part as follows:

"The state department of public welfare is hereby designated as the state agency for the supervision of aid to the permanently and totally disabled and is empowered to direct the expenditure of all state and federal moneys provided for carrying out the purposes of Title 42 U. S. Code, chapter 7, and of sections 5106.01 to 5106.10, inclusive, of the Revised Code.

"The state department of public welfare shall have the following powers and duties:

"(A) To make reasonable rules for the administration of aid to the permanently and totally disabled, including procedures for determining disability, *which shall be binding upon the several counties*;

(Emphasis added)

Section 5106.10, Revised Code, reads in part as follows:

"There is hereby authorized to be appropriated each fiscal year out of any moneys in the state treasury to the credit of the general revenue fund, and not otherwise appropriated, a sum sufficient to make reimbursements, as provided in this section, to each county, for payments under sections 5106.01 to 5106.10, inclusive, of the Revised Code. Such reimbursement shall be as follows:

"(A) One-half of the difference between the total of the assistance grants and the cost of administration under sections 5106.01 to 5106.09, inclusive, of the Revised Code, and the amount of federal reimbursement earned on such grants.

"(C) Federal payments to the state, for aid to the totally and permanently disabled udner any law of the United States, *shall be apportioned ot each county according to rules and regulations of statewide application established by the director of public welfare.*

"(D) The difference between the cost of medical, dental, optometrical, or hospital care provided in accordance with schedules adopted by the department of public welfare and the amount of federal reimbursement." (Emphasis added)

In view of the role of the county department of welfare in the aid to the needy blind, aid to dependent children, and aid to the disabled programs, and in view of the strict control of the state department of welfare over the administration of the programs, I conclude that county funds for such programs are not funds controlled by the board of county commissioners within the purview of Section 319.19, Revised Code.

Accordingly, it is my opinion and you are advised that bills and vouchers of a county department of welfare pertaining to the administration of the aid to the needy blind, Sections 5151.01 through 5151.11, Revised Code, aid to dependent children, Sections 5107.01 through 5107.16, Revised Code, and aid to disabled persons, Sections 5106.01 through 5106.10, Revised Code, are not required to be filed with the county auditor pursuant to Section 319.19, Revised Code.

Respectfully,

MARK MCELROY
Attorney General