

OPINION NO. 68-170

Syllabus:

The County Board of Mental Retardation, with the concurrence of the Commissioner of Mental Hygiene, has the authority to operate a workshop for the mentally deficient pursuant to Chapters 5126 and 5127, Revised Code.

To: J. Warren Bettis, Columbiana County Pros. Atty., Lisbon, Ohio
By: William B. Saxbe, Attorney General, December 19, 1968

Your recent request for my opinion reads as follows:

"There has been organized in our county a Board of Mental Retardation in accordance with Revised Code Section 5126.01.

"Our Board of Mental Retardation has been advised by the State Health Department that we must incorporate a non-profit corporation to operate our workshop for the mentally retarded. Their demands are claimed to be mandatory.

"Our County Board of Mental Retardation is at the present time operating the school for the mentally retarded as well as the workshop and all parties in this county appear to be satisfied with the Board of Mental Retardation operating both agencies. The board's thinking is that to incur the expense of incorporation and the creation of another agency to operate the workshop only, is not only a duplication of work but completely unnecessary in the eyes of the law.

"The next to the last paragraph in Revised Code Section 5126.03 reads as follows: 'Any county board of mental retardation may enter into a contract with another such board of another county or with a public or nonprofit agency or organization of the same or another county, to provide the training center, workshop facilities and services authorized in section 5127.01 of the Revised Code, upon such terms as may be agreeable.' This appears to the board to be permissive rather than mandatory of the use of the word may in the statute.

"My question, therefore, is:

"1. Is it mandatory that the Board of Mental Retardation or other individuals incorporate a nonprofit corporation to operate the workshop in order to receive funds from the State assuming all other requirements are met."

The powers and duties of a County Board of Mental Retardation are set out in Section 5126.03, Revised Code, which provides in pertinent part:

"The county board of mental retardation, subject to the rules, regulations, and standards of the commissioner of mental hygiene shall:

"(A) Administer and supervise sections 5127.01 to 5127.04, inclusive, of the Revised Code and exercise such powers and duties as prescribed by the commissioner;

"* * * * *"

"(C) Employ such personnel and provide such services, facilities, transportation, and equipment as are necessary;

"* * * * *"

"Any county board of mental retardation may enter into a contract with another such board of another county or with a public or nonprofit agency or organization of the same or another county to provide the training center, workshop facilities and services authorized in section 5127.01 of the Revised Code, upon such terms as may be agreeable.

"* * * * *"

Clearly the statute provides for the administration and supervision of Sections 5127.01 to 5127.04, inclusive, Revised Code, as the primary responsibility of the County Board of Mental Retardation. The board has authority in subsection (C) as quoted above to operate a training center or workshop as provided in Section 5127.01, Revised Code.

However, Section 5127.01, Revised Code, places the ultimate authority for the operation of such a training center with the commissioner of mental hygiene by providing in part:

"* * * The commissioner of mental hygiene shall * * * decide all questions relative or incident to the establishment and operation of each training center or workshop, * * *"

I find no authority for an intervention by the State Department of Health with respect to the operation of a workshop facility pursuant to Sections 5127.01 to 5127.04, inclusive, of the Revised Code.

Therefore, it is my opinion and you are hereby advised that the County Board of Mental Retardation, with the concurrence of the Commissioner of Mental Hygiene, has the authority to operate a workshop for the mentally deficient pursuant to Chapters 5126 and 5127, Revised Code.