

OPINION NO. 68-015

Syllabus:

1. Amended Senate Bill No. 169 requires the creation of, appointment of members to, and the organization of, a county board of mental retardation in Darke County, notwithstanding the fact that the county department of welfare is administering Sections 5127.01 to 5127.04, inclusive, of the Revised Code under an agreement previously entered into with the county child welfare board pursuant to the provisions of Section 5153.06, Revised Code.
2. An agreement entered into by the county child welfare board and the county department of welfare pursuant to authority granted in Section 5153.06, Revised Code, so far as it relates to the transfer of the child welfare board's powers and duties regarding the administration and supervision of Sections 5127.01 to 5127.04, inclusive, Revised Code, is terminated upon the effective date of the repeal of the statute, Section 5153.161 ~~5153.16.17~~, Revised Code, under which the transferred powers and duties were vested in the county child welfare board.
3. Monies received from a tax levied pursuant to Section 5705.19 (L), Revised Code, for the maintenance and operation of schools, training centers or workshops for mentally retarded persons must be appropriated to the use of the Darke County Board of Mental Retardation.

To: John F. Marchal, Darke County Pros. Atty., Greenville, Ohio
By: William B. Saxbe, Attorney General, January 23, 1968

Your request for my opinion states that the Darke County child welfare board entered into an agreement with the county department of welfare in January of 1967 whereby the child welfare board transferred its powers and duties to the county department of welfare. By this, I assume that the transfer was effected under the provisions of Section 5153.06, Revised Code, and that the powers and duties transferred were those

specified in Sections 5153.16 and 5153.161 ~~5153.16.17~~, Revised Code. In light of the recent enactment of Amended Senate Bill No. 169 (132 v S. 169), effective October 25, 1967, you pose the following questions:

"(1) Since the County Department of Welfare of Darke County, Ohio, is now administering Sections 5127.01 to 5127.04 of the Ohio Revised Code under an agreement heretofore entered into by the Department and the former County Child Welfare Board which existed in this County under the provisions of Section 5153.06 of the Ohio Revised Code, does Amended Senate Bill No. 169 require the appointment of a County Board of Mental Retardation irrespective of this situation?

"(2) In the event that your answer to question (1) is in the affirmative, does the provision in Amended Senate Bill No. 169 requiring that moneys received from levies be appropriated to the County Board of Mental Retardation (Section L, 5705.19) apply to our situation in Darke County, Ohio, where the County Welfare Department is supervising and administering Sections 5127.01 to 5127.04 of the Ohio Revised Code?

"(3) In the event that your answers to questions (1) and (2) are both in the affirmative, what then would be the status of the County Welfare Department of Darke County, Ohio, as it relates to the agreement heretofore entered into wherein the County Child Welfare Board transferred its power and duties to the Welfare Department which Department is now performing said functions and duties?"

In considering your first question, recently enacted Section 5126.01, Revised Code, provides in pertinent part:

"There is hereby created in each county a county board of mental retardation consisting of seven members, five of whom shall be appointed by the board of county commissioners of the county, and the other two shall be the probate judge of the county or his delegate and one other person appointed by him. Each member shall be a resident of the county. Of the five members appointed by the board of county commissioners, at least one shall be a parent of a mentally retarded person and four shall be persons interested or knowledgeable in the problems of mental retardation and other allied fields. * * *"

and Section 5126.02, Revised Code, states:

"Each county board of mental retardation shall organize itself annually no later than the fifteenth day of January of each year and shall elect its officers, which shall include

a chairman, vice-chairman, and recording secretary. * * *"

Section 5126.03, Revised Code, states what powers and duties the county board of mental retardation shall have and perform and Section 5126.04, Revised Code, provides that:

"The county board of mental retardation shall appoint an administrator or executive secretary who shall administer the work of the board of mental retardation, subject to the regulations of such board."

An examination of the above-quoted statutes leaves no room for doubt. The General Assembly, by the enactment of Amended Senate Bill No. 169, required a board of mental retardation in each county. It left no alternative, the failure to amend or repeal Section 5153.06, Revised Code, regarding previously executed agreements, notwithstanding. The seven members of the board are mandated by the General Assembly to organize themselves and elect officers no later than the fifteenth day of January.

Therefore, in answer to your first question, Amended Senate Bill No. 169 requires the creation of, appointment of members to, and the organization of, a county board of mental retardation in Darke County, notwithstanding the fact that the county department of welfare is administering Sections 5127.01 to 5127.04, inclusive, of the Revised Code under an agreement previously entered into with the county child welfare board pursuant to the provisions of Section 5153.06, Revised Code.

Inasmuch as the answer to the third numbered question will have a bearing on the answer to your second numbered question, I will now consider the status of the agreement as it is affected by Amended Senate Bill No. 169. As I observed in Opinion No. 67-088, Opinions of the Attorney General for 1967, the administration and supervision of Sections 5127.01 to 5127.04, inclusive, of the Revised Code was vested in the county child welfare board by the enactment of Section 5153.161 ~~5153.16.17~~, Revised Code, in 1961 (129 v 1614), which supplemented the powers and duties vested in the county child welfare boards by Section 5153.16, Revised Code. Possessing the supplementary powers and duties relative to Sections 5127.01 to 5127.04, inclusive, supra, the county child welfare board was in a position to enter into agreement with the county department of welfare pursuant to Section 5153.06, supra, regarding their exercise and fulfillment. However, by the passage of Amended Senate Bill No. 169, particularly the enactment of Section 5126.03 (A), Revised Code, and the repeal of Section 5153.161 ~~5153.16.17~~, supra, the county child welfare board's powers and duties relative to Sections 5127.01 to 5127.04, inclusive, supra, and hence any agreements pertaining thereto, were terminated. As of October 25, 1967, the subject matter of the agreement as well as the authority to make the agreement became vested in the county board of mental retardation. This agreement so far as it relates to the transfer of powers and duties under Section 5153.16, supra, remains unimpaired.

Therefore, in answer to your third numbered question, an agreement entered into by the county child welfare board and

the county department of welfare pursuant to authority granted in Section 5153.06, Revised Code, so far as it relates to the transfer of the child welfare board's powers and duties regarding the administration and supervision of Sections 5127.01 to 5127.04, inclusive, Revised Code, is terminated upon the effective date of the repeal of the statute, Section 5153.161 ~~5153.16.17~~, Revised Code, under which the transferred powers and duties were vested in the county child welfare board.

In considering your second numbered question, relative to the tax levy, by subsequent correspondence you furnished a copy of the resolution of necessity which reads in pertinent part:

"Resolved, by the Board of County Commissioners of Darke County, Ohio, two-thirds or more of the members elected thereto concurring, that it is necessary to levy a tax in excess of the ten-mill limitation to supplement such general fund appropriations for the purpose of providing an adequate amount for the support of child welfare services, to wit: for the maintenance and operation of schools, training centers or workshops for mentally retarded persons, for a period of five (5) years on the taxable property in said Darke County, Ohio; and be it further

" * * * * * * * * * * * * * * *"

"Resolved, that this resolution is hereby adopted under the provisions of Section 5705.19 of the Revised Code of Ohio and that this is a renewal of an existing levy of 2/10 of a mill."

The resolution further states that the proposed renewal was to be presented to the electorate at the general election held on November 2, 1965.

Section 5705.19, Revised Code, as amended in Amended Senate Bill 169, reads in pertinent part:

"The taxing authority of any subdivision at any time prior to the fifteenth day of September, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

" * * * * * * * * * * * * * * *"

"(L) For the maintenance and operation of schools, training centers, workshops, clinics, and residential facilities for mentally retarded persons. Money received from levies enacted or renewed prior to the effective date of this section shall be appropriated to the use of the county board of mental retardation established

under section 5126.01 of the Revised Code. Revenue from a tax levy passed or renewed after October 25, 1965 shall not be expended until the budget for the operation of schools, training centers, workshops, clinics, and residential facilities for mentally retarded persons for that calendar year has been submitted to and approved by the board of county commissioners. Thereafter, surplus funds from the tax levy not used for operating purposes may be dispensed by the * * * county board of mental retardation after approval by the board of county commissioners for the replacement of necessary equipment, or for acquiring, constructing, or improving schools, training centers, workshops, clinics, and residential facilities for the mentally retarded." (Underscoring indicates amendments)

Giving effect to the language of the amendment to subsection (L) of Section 5705.19, Revised Code, and my conclusion that the agreement between the county child welfare board and the county department so far as it relates to the transfer of powers and duties formerly vested in the child welfare board pursuant to now repealed Section 5153.161 5153.16.17, supra, is terminated, monies received from a tax levied pursuant to Section 5705.19 (L), Revised Code, for the maintenance and operation of schools, training centers or workshops for mentally retarded persons must be appropriated to the use of the Darke County Board of Mental Retardation.