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## WELFARE, COUNTY CHILD

1. BOARD MAY MAINTAIN AND OPERATE CORRECTIONAL INSTITUTION FOR DELINQUENT CHILDREN—§335.16 RC.
2. COUNTY WELFARE DEPARTMENT MAY ACQUIRE FROM A MUNICIPALITY A CORRECTIONAL INSTITUTION; SUBJECT TO APPROVAL—§335.16 RC.
3. AGREEMENT TO TRANSFER CORRECTIONAL INSTITUTION FROM MUNICIPALITY TO COUNTY PROVIDED COUNTY MAKE CERTAIN IMPROVEMENTS IS VALID—§335.16 RC.

## SYLLABUS:

1. A county child welfare board or a county welfare department exercising the authority of such board may, under the provisions of Section 335.16, Revised Code, operate and maintain a correctional institution for delinquent children.

2. Under the provisions of Section 335.16, Revised Code, a county child welfare board or county welfare department exercising the authority of such board may, subject to the approval of the board of county commissioners and the division of social administration, acquire from a municipality a correctional institution for delinquent children.

3. An agreement, made under the terms of Section 335.16, Revised Code, between (1) a county child welfare board, or a county welfare department exercising the authority of such board, and (2) a municipality to transfer from the municipality to the county a facility to be used as a correctional institution for delinquent children and providing that the county should make certain improvements to such institution,

such agreement being conditioned on the passage of a bond issue to pay the cost of such improvements, is valid.

Columbus, Ohio, July 12, 1957

Hon. John T. Corrigan, Prosecuting Attorney  
Cuyahoga County, Cleveland, Ohio

Dear Sir:

A portion of your request for my opinion reads as follows:

“Negotiations are now being held between the City of Cleveland and the Board of County Commissioners of Cuyahoga County for the transfer to the County, under a single agreement, of the following three city-owned institutions:

Blossom Hill School for Girls, located in Brecksville, Ohio, Cleveland Boys' School, at Hudson, Ohio, Cleveland City Hospital.

“Blossom Hill School for Girls and the Cleveland Boys' School are two juvenile correctional schools which have been owned and operated by the City of Cleveland for many years. City Hospital is one of the largest municipally-owned hospitals in Ohio and likewise has been owned and operated by the City of Cleveland for many years. City Hospital is a general hospital but has a number of units or pavilions which are used as follows:

Lowman Pavilion, used for the care and treatment of persons suffering from tuberculosis.

Toomey Pavilion, used for the treatment of contagious diseases, one unit of which is used for the care and treatment of children one to six years old suffering from tuberculosis.

Hamann Pavilion, used for general medical and surgical services including surgery for persons suffering from tuberculosis.

“It is proposed by the City of Cleveland that these three institutions be transferred and conveyed to the County for the purchase price of one dollar, effective January 1, 1958. The City is to continue its responsibility for retiring the outstanding bonded indebtedness on these institutions, which has already been authorized and approved by the City voters and the City council. The City will also use the proceeds of bond issues now available for the completion of an outpatient department at City Hospital, for which the City has already committed itself with architects and building contractors.

“Cuyahoga County will assume complete financial responsibility for the management, operation and maintenance of these

three institutions, and will assume the total financial responsibility for the City's indigent sick at City Hospital. It is further proposed that the County, following the transfer and as part of the consideration therefor, shall construct a new school building, at the Boys' School and new chapels at the Boys' School and Blossom Hill, estimated to cost about \$650,000. For this purpose the County must agree to submit the question of issuing bonds of the County in this amount to a vote of the electors.

"Although no funds will be needed to acquire these three institutions, approximately \$3,000,000 will be required for their annual operation. In order to finance these operating costs it will be necessary for the board of county commissioners to submit tax levies to the electors of the County as provided by R. C. 5705.191 or 5705.22, or both, 5705.20 and 5705.24.

"It is contemplated that the two juvenile correctional schools would be operated as county children's homes under the provisions of R. C. 307.02 and 335.16(J).

"With reference to the acquisition of the two juvenile correctional schools, the following questions are presented.

"1. Does the board of county commissioners have authority to acquire these institutions as county children's homes inasmuch as this county at the present time does not own or operate a county children's home?

"2. Does the board of county commissioners have authority to enter into the proposed agreement for the acquisition of these two juvenile correctional schools and bind itself to construct the new school building and two chapels conditioned upon the voters approving a bond issue to pay therefor? Otherwise stated, since under the provisions of R. C. 133.05 and R. C. 153.21 the question of issuing bonds of the county must be submitted to a vote of the electors of the county, must not the board of county commissioners first obtain the approval of the electors of the county before it would have any authority to bind itself to acquire these two facilities.

"3. Does the board of county commissioners have authority to maintain and operate juvenile correctional institutions for children?

"4. Does the children's home authorized by the statutes refer to dependent and neglected children only or do the statutes also authorize the county to maintain and operate juvenile correctional institutions for delinquent as distinguished from dependent and neglected children?

"Perhaps we should inform you that this county has already provided a detention home for the use and purposes of the Juvenile Court as provided by R. C. 2151.34 and that the board of

county commissioners have provided the county welfare department with a receiving home for dependent and neglected children.

“I should point out to you that Cuyahoga County’s financial position is such that it would not have available funds to finance the annual operating costs of these three institutions and the construction of the improvements required at the juvenile correctional institutions unless such funds could be derived from the necessary tax levies and bond issues to be approved by the voters.”

In another opinion I considered your questions relative to the transfer of the hospital and in this opinion I will consider your four enumerated questions relative to the transfer of the two correctional schools.

Your first, third, and fourth questions may be considered together, and the answer to the third will be condition the answers to all the rest.

The powers of county government with regard to child welfare are provided by Chapter 335., Revised Code. Such powers are exercised through the agency of a county child welfare board or through a county welfare department exercising the powers of such a board. The powers and duties of a county child welfare board are set forth in Section 335.16, Revised Code, the pertinent portion of which reads as follows :

“The county child welfare board shall, subject to the rules, regulations, and standards of the division of social administration, have the following powers and duties on behalf of children in the county *deemed* by the board or department to be in need of public care or protective *services* :

“(C) To accept custody of children committed to the board by a court exercising juvenile jurisdiction.

“(D) To provide care of all kinds which the board deems for the best interests of any child the board finds in need of public care or service ; provided that such care shall be provided by the board by its own means or through other available resources, in such child’s own home, in the home of a relative, or in a certified foster home, receiving home, school, hospital, convalescent home, or other institution, public or private, within or outside the county or state ;

“(I) *Subject to the approval of the board of county commissioners and the division, to establish and operate a training school or enter into an agreement with any municipal corporation or other political subdivision of the county respecting the operation, acquisition, or maintenance of any children’s home, training school, or other institution for the care of children maintained by such municipal corporation or political subdivision,*

*and may, pursuant to such agreement, acquire, operate, and maintain such an institution; provided that the board may enter into an agreement with a municipal corporation, a board of education, and the board of county commissioners, or with any of them, to provide for the maintenance and operation of children's training schools; such agreement may provide for the contribution of funds by any such municipal corporation, board of education, or board of county commissioners, in such proportions and amounts as their agreements state, and for the operation and supervision of such training schools by any one of them, or by the joint action of two or more of them; provided that municipal corporations, school boards, and boards of county commissioners may expend moneys from their general funds for maintaining and operating such joint children's training schools;*

“(L) To co-operate with, make its services available to, and act as the agent of persons, courts, the department of public welfare, and other organizations within and outside the state, in matters relating to the welfare of children.” (Emphasis added.)

Section 335.54, Revised Code, reads:

“Sections 335.01 to 335.34, inclusive, of the Revised Code shall be liberally construed to supplement, expand, modernize, and integrate child welfare services and the care and placement of children in the several counties of this state.”

Section 2151.35, Revised Code, a section of the juvenile court act, provides in pertinent part as follows:

“If the court finds that the child is *delinquent, neglected, or dependent*, it may by order entered proceed as follows:

“(B) Commit the child temporarily or permanently to the division of social administration of the department of public welfare, *or to a county department of welfare which has assumed the administration of child welfare, county child welfare board, or certified organization*, or to any institution, or to any agency in Ohio or in another state authorized and qualified to provide or secure the care, treatment, or placement required in the particular case; \* \* \*” (Emphasis added.)

Section 335.16, *supra*, authorizes the county child welfare board to provide for the welfare of children found to be in need of public care or protective service. Delinquent children are in need of public care. Their welfare is promoted by caring for them in correctional schools where they may be trained to assume their social responsibilities. In my opinion that statute in itself confers the power to maintain and operate correctional

institutions for children, and correctional schools are among the "other institutions for the care of children" which the board is authorized to acquire under the terms of Section 335.16 (I), *supra*.

Section 2151.35, *supra*, also clearly indicates that such institutions may be maintained by a county. The juvenile court may commit to the custody of the county child welfare board, not only neglected or dependent children, but also delinquent children. In what way could the board assume the custody of delinquent children if the county had no power to establish proper institutions for their care?

You have asked in your fourth question whether the statutes authorize a county to maintain and operate correctional institutions for delinquents separate from the county children's home for dependent and neglected children. Section 335.16 (D), *supra*, empowers the county child welfare board to provide care of all kinds. In my opinion such care may be provided in a separate institution or in an adjunct to the county children's home. The board would probably find it best to care for delinquent children separately from neglected or dependent children.

The answer to your first question is contained in what has already been said. These correctional schools may be acquired by the county child welfare board, subject to the approval of the board of county commissioners and the division of social administration.

With regard to your second enumerated question, I see no impediment to the conditional agreement proposed. Such an agreement will remain conditional and will not bind the county to the expenditure of money until the condition is met. No certificate of availability of funds as prescribed by Section 5705.41, Revised Code, is necessary until there is an absolute, non-conditional contract to expend funds. Since the occurrence of the condition will also operate to make funds available, the certificate can then be issued and attached as required by the statute.

It is my opinion, and you are advised that:

1. A county child welfare board or a county welfare department exercising the authority of such board may, under the provisions of Section 335.16, Revised Code, operate and maintain a correctional institution for delinquent children.

2. Under the provisions of Section 335.16, Revised Code, a county child welfare board or county welfare department exercising the authority

of such board may, subject to the approval of the board of county commissioners and the division of social administration, acquire from a municipality a correctional institution for delinquent children.

3. An agreement, made under the terms of Section 335.16, Revised Code, between (1) a county child welfare board, or a county welfare department exercising the authority of such board, and (2) a municipality to transfer from the municipality to the county a facility to be used as a correctional institution for delinquent children and providing that the county should make certain improvements to such institution, such agreement being conditioned on the passage of a bond issue to pay the cost of such improvements, is valid.

Respectfully,  
WILLIAM SAXBE  
Attorney General