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A JUVENILE JUDGE OF A COUNTY ADVISES AND RECOMMENDS ESTABLISHMENT OF A JUVENILE DETENTION HOME TO THE BOARD OF COUNTY COMMISSIONERS, THE BOARD HAS A MANDATORY DUTY TO PROVIDE SUCH HOME BUT IS NOT REQUIRED TO FOLLOW SPECIFIC RECOMMENDATIONS OF THE JUDGE AS TO LOCATION — §2151.34, R.C.

SYLLABUS:

1. Under the provisions of present Section 2151.34, Revised Code, where the juvenile judge of a county advises and recommends the establishment of a juvenile detention home to the board of county commissioners, the board has a mandatory duty to provide such a home within a convenient distance of the juvenile court, but is not required to follow the specific recommendations of the judge as to location of the home.

2. Where, under Section 2151.34, Revised Code, a juvenile judge of a county, on January 6, 1959, advised and recommended that a detention home be provided at a certain location, and the board has taken no action in this regard for two years, the advice and recommendation for the establishment of a detention home are still in effect, and the board, while not being required to follow the specific recommendations as to location, has a mandatory duty to provide a detention home within a convenient distance of the juvenile court.

3. In case a juvenile detention home is established, it is under the supervision of the juvenile judge who also has the sole authority to appoint necessary employees for such home; and the county, through the board of county commissioners, has a duty to provide sufficient funds for the operation of the home.

Columbus, Ohio, March 7, 1961

Hon. John G. Peterson, Prosecuting Attorney
Greene County, Xenia, Ohio

Dear Sir:

I have your request for my opinion in which you submit a question posed by the judge of the juvenile court and reading:

“I respectfully request you to obtain from the Attorney General of Ohio his formal opinion concerning the following situation:

“Early in 1950 this Court submitted to the County Commissioners advice and recommendation concerning the need for

a Detention Home where neglected, dependent, and delinquent children could be detained until final disposition by this Court. This advice and recommendation, being both oral and written, resulted in a Bond Issue in the sum of \$60,000, being submitted to a vote of the people in the Nov. election of 1950. The purpose of the bond resolution as adopted by the Commissioners stated that 'for the purpose of constructing a fireproof, addition to the present County Children's Home to provide facilities for the care of neglected, dependent, and delinquent children—' The notice of election published by the Board of Elections also stated this identical purpose. The official ballot voted by the people stated 'for the purpose of construction an addition to the Children's Home'.

"Although the bond issue passed, the lowest bids received after two separate offerings were about \$12,000, in excess of the Bond Issue. Upon further advice and recommendation from this Court to the County Commissioners, they provided the funds necessary to add to the Bond Issue and accepted the lowest bid. The new building was intentionally planned to be built at the Children's Home, because the ground was available, and all facilities already in use at the 'old building' could be used to service the 'new building', particularly food and laundry services. The building was erected and upon completion this Court began using part of said building as a Detention Home from on or about March of 1953. During such time the Child Welfare Board furnished services to such children detained in said Detention Home awaiting disposition by this Court.

"On April 15, 1958, the Child Welfare Board by its Executive Secretary notified this Court that as of July 1, 1958, it was taking over the space occupied by the Greene County Detention Home. In spite of such notice this Court continued using such Detention Home until Dec. 4, 1958. On Jan. 6, 1959, this Court submitted the following advice and recommendation to the County Commissioners:

"In accordance with R.C. 2151.34 I submit the following advice and recommendation to the County Commissioners so that they shall provide a place to be known as a detention home:

"1. That the County Commissioners shall forthwith designate the 'new building' at the County Children's Home as a detention home. The term 'new building' means the one constructed by funds from the 1950 bond issue and supplemented by funds provided by the County Commissioners, all upon the advice and recommendation of the undersigned, at that time, and which has been used by this Court as a detention home since March of 1953.

"2. That the County Commissioners shall forthwith provide

for the operation of said detention home as an agency of this Court and under the sole and exclusive jurisdiction of this Court, subject only to the duty of the County Commissioners to provide funds for the complete operation of the same as an agency of this Court.

"3. That the County Commissioners shall forthwith appropriate funds to equip, to staff, and to operate the entire 'new building' as a detention home and as an agency of this Court.

"This advice and recommendation shall be placed upon the Journal of this Court, and a copy shall be furnished to the County Commissioners, and the Child Welfare Board.

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"The two questions I would like answered are as follows:

"1. As provided by R.C. 2151.34 do the County Commissioners have a mandatory duty to comply with the specific advice and recommendation of the Judge, or do they have the sole discretion as to what is provided as a Detention Home and where it is located?

"2. Pursuant to the advice and recommendation submitted to the Greene County Commissioners on Jan. 6, 1959, as herein set forth, and also on the basis of the facts as set forth herein, do such Commissioners have the mandatory duty to comply therewith?"

In 1950, when the first advice and recommendation of the juvenile judge was made, Section 1639-22, General Code (now Section 2151.34, Revised Code), provided:

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"Upon the advice and recommendation of the judge of the court exercising the powers and jurisdiction conferred in this chapter, the county commissioners *shall provide*, by purchase or lease or otherwise, a place to be known as a detention home within the convenient distance of the court, not used for the confinement of adult persons charged with criminal offenses, where delinquent, dependent or neglected children may be detained until final disposition, which home shall be maintained as provided in this act, *or shall provide* funds for the boarding of such children temporarily in private homes. * * *" (Emphasis added)

The juvenile judge having advised and recommended that a detention home be provided, the board of county commissioners had a clear mandatory duty to provide such a home "within a convenient distance of the court." Apparently, the board started to comply with this duty but did not complete the job. Although charges of the juvenile court were held

in the "new building" from March, 1953, to December, 1958, it appears that the juvenile court did not supervise the care of these children. I reach this conclusion from the statement that the child welfare board furnished services to the children detained in the home. Under the clear provisions of Section 1639.22, *supra*, the juvenile court had the duty of operating a detention home, said section providing:

"In case a detention home is established as an agency of the court it shall be furnished and carried on, as far as possible, as a family home in charge of a superintendent or matron. The judge may appoint a superintendent, a matron, and other necessary employees for such home in the same manner as is provided for the appointment of other employees of the court, their salaries to be fixed and paid in the same manner as the salaries of other employees. The necessary expenses incurred in maintaining such detention home shall be paid by the county.

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The facts as given do not state whether a superintendent or matron was appointed to supervise the children placed in the "new building." It is certain that a juvenile detention home could not and should not have been maintained without such supervision (Opinion No. 2804, Opinions of the Attorney General for 1938, page 1525, at 1528). In any event, the fact that the children were provided services by the child welfare board clearly shows that the statute, as to operation of a juvenile detention home, was not complied with.

If a detention home had been established and operated according to law, then the child welfare board would certainly have been powerless to furnish services to inmates, and later to appropriate the home to its own use. In view of the failure to comply with the terms of the statute, however, I am constrained to conclude that a juvenile detention home was not provided by the board of county commissioners in accordance with the 1950 advice and recommendation.

In support of the above conclusion is the fact that, after December 4, 1958, the building in question was not used by the juvenile court, and that the juvenile judge saw fit to submit a second advice and recommendation on January 6, 1959. With this in mind, I will consider the specific questions asked.

The language of former Section 1639-22, General Code, referred to earlier in this opinion, was changed in the code revision of 1953 to read:

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“Upon the advice and recommendation of the judge, the county commissioners *shall provide*, by purchase, or lease, or otherwise, a place to be known as a detention home within a convenient distance of the juvenile court, not used for the confinement of adult persons charged with criminal offenses, where delinquent, dependent, or neglected children may be detained until final disposition. Such home shall be maintained as provided in sections 2151.01 to 2151.54, inclusive, of the Revised Code, *or shall provide* funds for the boarding of such children temporarily in private homes. * * *” (Emphasis added)

In the 1953 code revision the section was changed to Section 2151.34, Revised Code. The section remained as amended in 1953 until November 2, 1959, when the pertinent language was changed to read :

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“Upon the advice and recommendation of the judge, the board of county commissioners *shall provide*, by purchase, lease, construction, or otherwise, a place to be known as a detention home, which shall be within a convenient distance of the juvenile court, and not used for the confinement of adult persons charged with criminal offenses, where delinquent, dependent, neglected children, or juvenile traffic offenders may be detained until final disposition. * * *” (Emphasis added)

Thus, as of January 6, 1959, upon the advice and recommendation of the judge, the board of county commissioners had a mandatory duty to provide a detention home. I believe it is clear that, in view of the use of the word “shall,” this was a mandatory duty (See Opinion No. 2803, Opinions of the Attorney General for 1938, page 1515; Opinion No. 2804, Opinions of the Attorney General for 1938, page 1525; Opinion No. 1231, Opinions of the Attorney General for 1949, page 855). I believe it equally clear that if the board of county commissioners determined to provide a detention home, it was not required to follow the specific recommendation of the judge as to location, the statute requiring only that the home be located “within a convenient distance of the juvenile court.” It appears, however, that, to date, the board of county commissioners has not complied with the January 6, 1959 recommendation.

As I see the present situation, therefore, the 1959 recommendation for a detention home is still pending and Section 2151.34, Revised Code, as amended effective November 2, 1959, governs the duty of the board of county commisioners. Under the existing pertinent provision, set forth above, the board of county commisioners, upon the advice and recom-

mentation of the juvenile judge, is required to provide a detention home, "which shall be within a convenient distance of the juvenile court." Thus, while the board may consider the recommendations of the juvenile judge in providing a home, it is under no duty to comply with the specific recommendation as to location.

Once the juvenile detention home is established, however, its operation is strictly under the control of the juvenile court and the necessary expenses incident thereto must be paid by the county. In this regard, Section 2151.34, Revised Code, provides:

"* * * * *"

"In case a detention home is established as an agency of the court, or a district detention home is established by the courts of several counties as hereinbefore provided, it shall be furnished and carried on, as far as possible, as a family home in charge of a superintendent or matron in a non-punitive neutral atmosphere. *The judge, or the directing board of a district detention home, may appoint a superintendent, a matron, and other necessary employees for such home and fix their salaries.* During the school year, when possible, a comparable educational program with competent and trained staff shall be provided for those children of school age. A sufficient number of trained recreational personnel shall be included among the staff to assure wholesome and a profitable leisure-time activities. Medical and mental health services shall be made available to insure the courts all possible treatment facilities shall be given to those children placed under their care. In the case of a county detention home, such salaries shall be paid in the same manner as is provided by section 2151.13 of the Revised Code for other employees of the court, and the necessary expenses incurred in maintaining such detention home *shall be paid by the county.* * * *"

(Emphasis added)

Referring to employees of the juvenile court, Section 2151.13, Revised Code, provides:

"* * * * *"

"The compensation and expenses of all employees and the salary and expenses of the judge shall be paid in semimonthly installments by the county treasurer from the money appropriated for the operation of the court, upon the warrant of the county auditor, certified to by the judge.

"* * * * *"

As the taxing authority of the county the board of county commissioners is required to pass an annual appropriation measure and must provide

funds necessary to operate the various functions of government. (Section 5705.38, Revised Code.) Since Section 2151.34, *supra*, very clearly provides that necessary expenses incident to the operation of a detention home *shall be paid by the county*, the board of county commissioners has a duty to appropriate the necessary funds.

Coming to your specific questions, therefore, it is my opinion and you are advised:

1. Under the provisions of present section 2151.34, Revised Code, where the juvenile judge of a county advises and recommends the establishment of a juvenile detention home to the board of county commissioners, the board has a mandatory duty to provide such a home within a convenient distance of the juvenile court, but is not required to follow the specific recommendations of the judge as to location of the home.

2. Where, under Section 2151.34, Revised Code, a juvenile judge of a county, on January 6, 1959, advised and recommended that a detention home be provided at a certain location, and the board has taken no action in this regard for two years, the advice and recommendation for the establishment of a detention home are still in effect, and the board, while not being required to follow the specific recommendations as to location, has a mandatory duty to provide a detention home within a convenient distance of the juvenile court.

3. In case a juvenile detention home is established, it is under the supervision of the juvenile judge who also has the sole authority to appoint necessary employees for such home; and the county, through the board of county commissioners, has a duty to provide sufficient funds for the operation of the home.

Respectfully,
MARK MCELROY
Attorney General