

SYLLABUS:

The board of county commissioners may transfer the present county children's home to a different site without the approval of the county child welfare board, so long as there is no abandonment of the operation of a county children's home.

Columbus, Ohio, October 28, 1963

Hon. Lynn B. Griffith, Jr.
Prosecuting Attorney
Trumbull County
Warren, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The County Commissioners of Trumbull County are desirous of selling the property on which the Trumbull County Children's Home now stands. If and when such a sale is completed, the County Commissioners then contemplate the transfer of the Children's Home to another county-owned building.

"Your opinion is respectfully requested as to the following question:

"Can the sale of the Children's Home be effected under the provisions of Ohio Revised Code Sections 307.09 and 307.10, without the approval of the Child Welfare Board, or would such a transfer of location require the approval of the Child Welfare Board before a sale of the first property could be made, in accordance with Section 5153.29 of the Ohio Revised Code?"

Most of Section 307.09, Revised Code, deals with leases; the pertinent language reads as follows:

"If the interests of the county so require, the board of county commissioners may sell any real estate belonging to the county and not needed for public use * * *. In case of the sale of such real estate not used for county purposes, * * * all or such part of the proceeds thereof as the board designates may be placed by the board in a separate fund to be used only for construction, equipment, furnishing, maintenance, or repair of the county buildings and the

acquisition of sites therefor.”

Section 307.10, Revised Code, reads in pertinent part as follows:

“No sale of real estate, * * * as provided in section 307.09 of the Revised Code shall be made unless it is authorized by a resolution adopted by a majority of the board of county commissioners. * * *”

Section 5153.29, Revised Code, reads as follows:

“The *board of county commissioners* of any county having a county children’s home, *may, upon the recommendation of the county child welfare board* or county department of welfare *and with the approval of the division of social administration*, abandon the use of such home and proceed to sell or lease the site, building, furniture, and equipment of such home in the manner most advantageous to the county, or it may use the home for other necessary and proper purposes. The net proceeds of any such sale or lease shall be paid into the county treasury.”

(Emphasis added)

I have found no reported cases, involving any of these three statutes, which give any assistance in construing the language.

Section 5153.29, *supra*, speaks only of an abandonment of a county children’s home, and “abandon”, as there used, connotes more than a mere change of location of the home. It goes beyond and connotes the cessation of the whole activity of having such a home in operation. I conclude that the section is not involved in the problem at hand.

In order to interpret the other two sections, it is well to note the effect of Sections 5153.16 and 5153.21, Revised Code. The first section authorizes the county child welfare board “to acquire and operate a county children’s home”, and the second section authorizes the board of county commissioners to establish such a home (“may establish”) after a county child welfare board has so recommended.

It seems proper to infer from all of the language that the board of county commissioners is the controlling body; i.e., that the county child welfare board has no real authority except in the situation of a proposed abandonment, and even then only in conjunction with

the division of social administration (of the department of public welfare).

It is therefore my opinion, and you are so advised, that the board of county commissioners may transfer the present county children's home to a different site without the approval of the county child welfare board, so long as there is no abandonment of the operation of a county children's home.

Respectfully,
WILLIAM B. SAXBE
Attorney General