

Note from the Attorney General's Office:

1946 Op. Att'y Gen. No. 46-1168 was modified by 1967 Op. Att'y Gen. No. 67-109.

1168

CHILD WELFARE BOARDS, COUNTY :

1. NOT EMPOWERED TO PURCHASE REAL ESTATE AND BUILDINGS THEREON FOR RECEIVING HOME, USE, TEMPORARY CARE OF CHILDREN—SECTION 3070-1 ET SEQ., G. C.
2. NOT EMPOWERED TO ERECT NEW BUILDINGS ON COUNTY CHILDREN'S HOME GROUNDS OR TO ENLARGE OR REPAIR EXISTING BUILDINGS.

SYLLABUS :

1. County child welfare boards are not empowered by Section 3070-1 et seq., General Code, to purchase real estate and buildings thereon to be used as a receiving home for the temporary care of children.
2. County child welfare boards are not empowered by Section 3070-1 et seq., General Code, to erect new buildings on county children's home grounds or to enlarge and repair existing buildings thereon.

Columbus, Ohio, August 23, 1946

Hon. Paul V. Waddell, Prosecuting Attorney
St. Clairsville, Ohio

Dear Sir :

This will acknowledge receipt of your letter requesting my opinion on the questions whether or not the Belmont county child welfare board is empowered by Section 3070-1 et seq., General Code, first, to purchase real estate for the purpose of using the buildings thereon as a receiving home for children, and, second, to erect new buildings and additions to buildings on the premises now owned by Belmont county and used as a county children's home, and also to alter and repair existing buildings.

The Belmont county child welfare board is a creature of statute, and, as was said in Opinions of the Attorney General for 1939, at page 1134, probably no principle of public law is better settled in this state than that statutory boards have such powers, and only such powers, as are expressly conferred upon them by law, or are implied as being necessary to carry into effect the powers expressly granted, and also that when

any question of power is to be determined which involves the expenditure of public money, any doubt as to the legality and propriety of the expenditure must be resolved against the existence of the power.

The child welfare law, Section 3070-1 et seq., General Code, does not in terms empower child welfare boards to purchase real estate for any purpose, nor does it in terms empower them to erect new buildings or additions on county owned property used as a county children's home, or to alter or repair existing buildings thereon. It is therefore evident that if child welfare boards have any such powers, it must be implied as being necessary to carry into effect the other powers expressly conferred upon them by the child welfare law.

In my opinion, and in view of the statutory law governing the purchase of real estate, and the erection thereon of buildings and additions and their alteration and repair by county commissioners, such implied power does not exist. Section 2433, General Code, expressly empowers the county commissioners

“to purchase, * * * construct, enlarge, improve, rebuild, equip and furnish a * * * county children's home and other necessary buildings, and sites therefor * * *,”

and elaborate and special provisions are made in the county building laws prescribing the procedure to be observed and followed by the commissioners in the erection, alteration and repair of county buildings, and also for the erection of additions thereto. These statutes are quite lengthy and for that reason will not be quoted in this opinion. See Sections 2333 to 2342, General Code; and particularly Sections 2343 to 2366-2, General Code. And in addition to these building laws, provision is also made by the Uniform Tax Levy Law, Section 5625-1 et seq., General Code, and by the Uniform Bond Act, Section 2293-1 et seq., General Code, whereby the county commissioners may levy taxes and issue bonds for the purpose of financing the cost of such public improvements.

While it is true, as stated in your letter, that Section 3070-17 empowers child welfare boards

“to establish, maintain and operate a receiving home for the temporary care of children,”

and that Section 3070-35 provides that child welfare boards

“may acquire such property and equipment and purchase such supplies and services as may be necessary for the proper conduct of its work including the ownership, operation and maintenance of motor vehicles,”

it is my opinion, as already indicated, that these provisions are not intended to empower child welfare boards to purchase real estate, or to erect new buildings and additions on the county owned children's home grounds, or to make repairs and alterations in existing buildings. In reaching this conclusion, I have also taken into consideration the fact that county child welfare boards, unlike the county commissioners, have no authority to levy taxes, or to borrow money, or to issue bonds for any of the purposes involved in the questions you have submitted, and also by the further fact that so far as real estate is concerned, the authority conferred upon child welfare boards by Section 3070-31, General Code, extends only to its acquisition by bequests, donations and gifts.

I have not overlooked Section 3070-36, General Code, which provides that the county commissioners shall pursuant to law levy taxes and make appropriations sufficient to enable child welfare boards to perform their functions and duties. For reasons above stated, it is my opinion that the functions and duties of child welfare boards do not include either the purchase by them of real estate, or the erection, enlargement and repair of buildings on the county children's home grounds.

You are therefore advised that:

1. County child welfare boards are not empowered by Section 3070-1 et seq., General Code, to purchase real estate and buildings thereon to be used as a receiving home for the temporary care of children.
2. County child welfare boards are not empowered by Section 3070-1 et seq., General Code, to erect new buildings on county children's home grounds or to enlarge and repair existing buildings thereon.

Respectfully,

HUGH S. JENKINS,
Attorney General.