

506

SYLLABUS:

1. Inmates or wards of a county children's home cannot be compensated for duties and chores performed from funds provided under Sections 5153.26 or 5153.35, Revised Code.

2. Presentation of a voucher or warrant by a county employee to procure payment for services rendered by inmates or wards of a county children's home would be a violation of Section 2911.02, Revised Code.

Columbus, Ohio, September 6, 1963

Hon. John S. Ballard
Prosecuting Attorney
Summit County
Akron, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"1. Is it permitted to employ inmates and wards of the Child Welfare Board in performance of chores and duties within their capabilities such as in car washing and cleaning and lawn work in and about the premises of the home, considering that some of these children will be

under the normal age of regular employment in commerce and industry?

"2. Must such children be registered under State Civil Service processes, reported for Workmens Compensation and for P E R S deductions and contributions? should their earnings be reported for Income Tax purposes?"

"3. What funds may be used for payments of such services? We have in mind sections 5153.35 and 5153.26, R. C. but wonder if they are proper funds and how control of distribution may be insured.

"4. Assuming that no private profit has accrued to county employees, has the mere preparation of vouchers and warrants in one persons name for distribution to a list of wards and inmates constituted a violation of law or a criminal act. We have in mind 2911.02 RC."

Powers and duties of county officers are discussed in 14 Ohio Jurisprudence 2d, page 238, Section 52. This section states:

"It has been said that all the governmental powers with which county officers are entrusted are the powers of the state, and all the duties with which they are charged are the duties of the state. Such officers as members of boards of county commissioners, county auditors, and treasurers are mere state agencies, and not legal or corporate personages. Since county offices are created by the legislature, the determination of the powers and duties of the incumbents of these offices is likewise wholly a matter for the legislature. In other words, county officials have only such powers and duties as are expressly given them by statute, or as are naturally and necessarily implied from the language of the statute. The county has no board vested with legislative powers; its officials must follow the procedure established by statute, and be guided in the administration of their duties only by legislative provisions. Acts of county officers which exceed the limits of their powers are void."

The Supreme Court of Ohio stated in *State ex rel. Hoel v. Goubeaux*, 110 Ohio St., 287, at page 288: "Now the creation of county officers is a legislative act; conferring power upon them is also a legislative act. *They have no powers save and except such as are clearly conferred by statute.*"

(Emphasis added)

Before inmates and wards of a county home could be paid

for chores and duties performed, express or necessarily implied statutory authority must be found. The establishment and operation of children's homes is authorized pursuant to the provisions of Chapter 5153, Revised Code. There is no provision in Chapter 5153, Revised Code, specifically authorizing the employment of inmates or wards by the child welfare board.

Inmates or wards can be required to perform services pursuant to the provisions of Section 5153.25, Revised Code, which states:

"The superintendent of the county children's home may provide and carry on, in connection with a children's home, such industrial, agricultural, and other pursuits for the children in such home as are deemed expedient by the county child welfare board or county department of welfare. Any products of such pursuits not needed to maintain the home may be sold, and all receipts from such sales shall be paid into the county treasury."

This section specifically requires all proceeds to be paid into the county treasury.

I conclude from the foregoing that inmates or wards of a county children's home cannot be compensated for performing chores and duties such as car washing and lawn work.

Section 2911.02, Revised Code, states:

"No person, knowing it to be false or fraudulent in whole or in part, shall make, present for payment, or certify as correct to the general assembly, either house thereof, or a committee thereof, or the auditor of state, other state officer, or board thereof, or the county auditor, board of county commissioners, or other officers of a county, or the auditor or other accounting officer of a municipal corporation, or the board of township trustees or other township officer, a claim, bill, note, bond, account, payroll, or other evidence of indebtedness, for procuring its allowance or an order for the payment thereof out of the treasury of the state, or of such county, township, or municipal corporation, or knowing it to be false and fraudulent in whole or in part, receive payment thereon from the treasurer of state, or a county treasurer, township clerk, or treasurer of a municipal corporation.

"Whoever violates this section shall be imprisoned not less than one nor more than ten years, if the payment is fraudulent to the amount of sixty dollars or more.

“If it is fraudulent to an amount less than sixty dollars, such person shall be fined not more than three hundred dollars or imprisoned not more than ninety days, or both.”

The presentment of vouchers in one person's name for payment of work performed by various individuals, then disbursement of such funds to those individuals, as outlined in question four of your request, would in my opinion be a violation of Section 2911.02, Revised Code.

Accordingly, it is my opinion and you are advised that:

(1) Inmates or wards of a county children's home cannot be compensated for duties and chores performed from funds provided under Sections 5153.26 or 5153.35, Revised Code.

(2) Presentation of a voucher or warrant by a county employee to procure payment for services rendered by inmates or wards of a county children's home would be a violation of Section 2911.02, Revised Code.

Respectfully,
WILLIAM B. SAXBE
Attorney General