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CHILD WELFARE BOARD, COUNTY—SECTION 3070-36 G. C. PROVIDES COUNTY COMMISSIONERS SHALL MAKE SUFFICIENT APPROPRIATIONS FOR BOARD TO PERFORM FUNCTIONS UNDER SECTION 3070-1 ET SEQ., G. C.—MANDATORY SUFFICIENT FUNDS SHOULD BE APPROPRIATED TO PAY SALARY OF EXECUTIVE SECRETARY AND NECESSARY EXPENSES OF OFFICE.

## SYLLABUS:

Section 3070-36, General Code, which provides that the County Commissioners shall, pursuant to law, levy taxes and make appropriations sufficient to enable the County Child Welfare Board to perform its functions under Section 3070-1 et seq., General Code, is mandatory, and in the proper discharge of this statutory obligation sufficient funds should be appropriated to pay the salary of the executive secretary and the necessary expenses of his office.

Columbus, Ohio, April 25, 1947

Hon. Carl Abaecherli, Prosecuting Attorney, Warren County  
Lebanon, Ohio

Dear Sir:

This will acknowledge receipt of your letter relating to the duty of the county commissioner of Warren County to appropriate sufficient funds to pay the salary and necessary office expenses of the executive secretary of the county child welfare board for the last nine months of the fiscal year 1947. Your letter reads as follows:

“Our Warren County Child Welfare Board, which as you know, was organized early in 1946 under the provisions of General Code Section 3070-2, -36, has requested that I obtain your opinion as to the following situation:

Effective May 2, 1946, said board in accordance with Section 3070-12, appointed an executive secretary, and our Board of County Commissioners proceeded to approve and allow the vouchers for the payment of the salary of said executive secretary for the balance of the year 1946, as well as an allowance for the necessary mileage of said executive secretary incurred in the performance of his duties, and for the necessary supplies of his office and clerical help. According to information received from the office of our County Auditor, this money was paid from a fund

known as the 'Department of Welfare' fund classified by the State Bureau of Inspection and Supervision of Public Offices as No. 7-G-1.

According to additional information furnished me, our Board of County Commissioners appropriated only sufficient funds for said executive secretary's office for the first three months of the year 1947.

I have been further informed that said Child Welfare Board duly prepared and filed its budgetary request for the year 1947 as required by law, but that the Board of County Commissioners—on the theory that first, it was not necessary to go to the expense of maintaining such an executive secretary, since they felt that the duties of such office could be combined with some other office, and second, that they had no funds available to pay the expenses of maintaining such an office, since the one mill levy submitted to the voters during the last election to cover current operating expenses failed to carry—did not appropriate funds for the balance of the year.

The County Child Welfare Board informs me that it is their judgment that it is absolutely necessary for them to have an executive secretary in order to carry out the functions and duties of the board as provided by law.

They have therefore requested that I obtain from you answers to the following questions:

1. Under the law of Ohio, is it mandatory upon the Board of County Commissioners under Section 3070-36 to provide funds for paying the salary and expenses of an executive secretary of a County Child Welfare Board?
2. If such an appropriation is mandatory upon the Board of County Commissioners, from what county fund or funds are they to obtain the money to pay such expenses?

Since the Child Welfare Board wishes to determine the legal status of its executive secretary, and out of what moneys he may be paid for his services at as early a date as possible, shall greatly appreciate hearing from you in the near future."

As indicated in your letter, Warren County does not have a department of welfare established under Section 2511-1, General Code, but the powers and duties enumerated in the county child welfare law with respect to the care of children needing or likely to need public care or services, is vested in a county child welfare board under Section 3070-1

et seq., General Code. That being the case, the child welfare board is not only authorized, but is required by Section 3070-12, General Code, to designate an executive officer to be known as the executive secretary, and there is no provision in the law to the effect that this power of appointment may only be exercised with the consent of the county commissioners. In other words, it is not for the county commissioners to say that an executive secretary is not needed in your county, or that the duties which the law imposes upon the executive secretary shall be discharged by some other person or officer. Section 3070-12, so far as pertinent to your case, reads as follows:

“The board, or the department which performs the duties and exercises the powers set forth in Sections 3070-17 to 3070-20, inclusive, of the General Code, shall designate an executive officer known as the executive secretary, who shall not be in the classified service.”

An examination of the county child welfare act, Section 3070-1 et seq., General Code, will disclose that the executive secretary is a very important officer in county child welfare work, and one whose services cannot be dispensed with if the purpose of the law is to be accomplished, because, to quote from Section 3070-2, General Code, he is “the person charged with the responsibility of administering the powers and duties of this act,” and, further, under Section 3070-13, General Code, it is expressly provided that “The executive secretary shall administer the work of the board,” subject to its rules and regulations. He not only must be consulted by the child welfare board before it adopts rules and regulations of general application, but is also charged with responsibility in appointing employees of the board. See, Sections 3070-12 and 3070-13, General Code. It appears therefore that it is the mandatory duty of the county child welfare board to appoint an executive secretary, not only because Section 3070-12 in express terms requires that the board “shall” do so, but also because such designation is the performance of an act which the public interest requires, if the child welfare work is to be carried on in your county. See, 37 O. Jur., page 319 et seq., Section 26 et seq., under the heading “Mandatory and Directory Acts.”

Inasmuch as the county child welfare board is required to designate an executive secretary whose services may not be dispensed with, but are necessary in order that the board may perform its functions and duties under the law, it is my opinion that his salary and necessary expenses of

his office incurred in administering the work of the board, must be provided for by the county commissioners. In this connection, Section 3070-36, General Code, is peculiarly applicable. It reads as follows:

“The boards of county commissioners of the several counties shall, pursuant to law, levy taxes and make appropriations sufficient to enable the board to perform its functions and duties hereunder.”

It will be noted that the section just quoted is mandatory in character, in that it not only provides that the county commissioners “shall”, pursuant to law, levy taxes and make appropriations to enable the board to perform its functions and duties, but also that the levies and appropriations shall be “sufficient” for that purpose. See, 37 O. Jur., supra. The following quotation from 61 C. J., page 557, relating to the duty of taxing authorities to levy taxes when required to do so by statute, is also pertinent:

“Except where the language of the statute is merely permissive, the action of the local authorities in this particular is not generally discretionary, but is an imperative duty, and it is the duty of the proper officers or board to levy a tax for the purposes authorized by statute, where required by public interests or by individual rights.”

Your letter states that the county child welfare board submitted its budget to the county commissioners for the fiscal year 1947, but that the commissioners only appropriated enough money to pay the salary of the executive secretary for the first three months of that year.

For the purpose of this opinion I am assuming that the salary of the executive secretary for the first three months of 1947 was paid, the same as his 1946 salary, from a fund set up in the county commissioners' appropriation measure under the following classification:

“DEPARTMENT OF WELFARE

7 g 1 — Salary director”

By adopting their appropriation measure in the form just indicated for the year 1947, it is quite evident that the county commissioners used an old form which had not been revised or supplemented up to that time by the Bureau of Inspection and Supervision of Public Offices for the use of counties having a child welfare board, and as a result the commis-

sioners erroneously appropriated money for the salary of an officer which Warren county did not have. That is to say, a department of welfare not having been established in your county under Section 2511-1, General Code, the county has no officer known either as director or county director of welfare. The appropriation should have been made for the salary of the executive secretary of the county child welfare board.

Your letter does not state whether or not there is any unexpended money in the 7 g 1 fund at this time that might be transferred and appropriated by the county commissioners for the executive secretary's salary for the remaining nine months of the present fiscal year, but if there is any money in that fund, the commissioners should make the necessary transfer and appropriation. If this can not be done because of the non-existence of money in that fund, then it is my opinion that any unencumbered money in the county general fund may be appropriated, since that fund under the budget law is an operating fund from which current expenses of the county may be paid. Sections 5625-5 and 5625-10, General Code.

In the event sufficient unencumbered money can not be obtained from the general fund, the county commissioners may be in position to take advantage of the fund transfer laws, Sections 5625-13 and 5624-13a et seq., General Code. In this connection your attention is directed to paragraphs b, c, and d of Section 5625-13, under which, subject to the terms and under the conditions prescribed by those paragraphs, transfer may be made of funds not needed for certain specified purposes, to the general fund, and thereby become subject to appropriation for current expenses. In case your county commissioners are unable to take advantage of Section 5625-13, then resort may be had to Section 5625-13a et seq., General Code, which makes provision for transfers from one fund to another, in addition to those specially authorized by Section 5625-13.

You are therefore advised in answer to your first question, that Section 3070-36, General Code, which provides that the county commissioners shall, pursuant to law, levy taxes and make appropriations sufficient to enable the county child welfare board to perform its functions under Section 3070-1 et seq., General Code, is mandatory, and that in the proper discharge of this statutory obligation sufficient funds should be appropriated to pay the salary of the executive secretary of the Warren county child welfare board for the fiscal year 1947.

Your second question as to the proper fund from which the salary of the executive secretary for the last nine months of the fiscal year 1947 may be paid, can not be specifically answered for want of knowledge as to the actual condition of the several county funds, but in this connection I have endeavored to point out possible ways for raising the necessary money to pay the executive secretary if the commissioners are in position to invoke the provisions of Section 5625-13, or of Section 5625-13a et seq., General Code, governing the transfer of money from one fund to another fund of the same subdivision.

Respectfully,

HUGH S. JENKINS,  
Attorney General.