

**OPINION NO. 68-094****Syllabus:**

1. Section 2101.11, Revised Code, permits but does not require the board of county commissioners to approve a budget for the probate court which exceeds the amount collected in the preceeding year by that court.

2. Section 2151.10, Revised Code, imposes an absolute duty upon the board of county commissioners to appropriate an amount equal to that which is reasonably requested by a juvenile court judge, and that duty is unaffected by the availability or unavailability of unanticipated or unappropriated funds.

3. The board of county commissioners is not authorized to dictate to the juvenile court the monthly or daily amount that will be expended for the support, care and maintenance of any child under the juvenile court's control.

---

**To: Neil M. Laughlin, Licking County Pros. Atty., Newark, Ohio**  
**By: William B. Saxbe, Attorney General, June 11, 1968**

Your request for my opinion raises the following questions:

1. May the board of county commissioners approve a budget for the probate court under Section 2101.11, Revised Code, which exceeds the amount collected in the preceding calendar year by the court?

Section 2101.11, Revised Code, provides in part, as follows:

"Such appointees shall receive such compensation and expenses as the judge deter-

mines, and shall serve during the pleasure of the judge. The compensation of such appointee shall be paid in semimonthly installments by the county treasurer from the county treasury, upon the warrants of the county auditor, certified to by the judge. The board of county commissioners shall appropriate such sum of money each year as will meet all the administrative expense of the court which the judge deems necessary for the operation of the court, including the salaries of such appointees as the judge determines. The total compensation paid to the appointees in any calendar year shall not exceed the total fees earned by the court during the preceding calendar year, unless approved by the board."

The limitation in that section that the total compensation paid to appointees in any calendar year shall not exceed the amount collected during the past year is not absolute. If the limitation were absolute, the last clause of the second paragraph of Section 2101.11, supra, "unless approved by the board", would have no meaning. Therefore, if the request for compensation of appointees submitted by the probate court judge is reasonable and if it does not exceed the total fees collected by the court during the previous year, the board of county commissioners must appropriate an amount equal to such request. If the request is for an amount more than that sum collected during the previous year, the board may appropriate an amount equal to such request. It will be noted, however, that the limitation regarding the fees collected during the previous year applies only to the appropriation for the compensation to be paid to the appointees. There is no limitation on the appropriation for reasonable administrative expenses.

2. Does Section 2151.10, Revised Code, require the board of county commissioners to appropriate funds from the general fund of the county not previously anticipated or appropriated in its annual budget to meet the needs of the requested budget of the juvenile court?

Section 2151.10, Revised Code, provides:

"The board of county commissioners shall appropriate such sum of money each year as will meet all the administrative expense of the juvenile court, including reasonable expenses of the juvenile judge and such officers and employees as he may designate in attending conferences at which juvenile or welfare problems are discussed, and such sum each year as will provide for the maintenance and operation of the detention home, the care, maintenance, education, and support of neglected, dependent, and delinquent children, other than children entitled to aid under sections 5107.01 to 5107.16, inclusive, of the Revised Code, and for necessary orthopedic, surgical, and medical treatment, and special care as may be ordered by the court for any neglected, dependent, or delinquent children. All

disbursements from such appropriations shall be upon specifically itemized vouchers, certified to by the judge."

State ex rel. Moorehead v. Reed, et al., 177 Ohio St. 4 (1964), was a mandamus action brought by a juvenile court judge to compel the board of county commissioners to appropriate funds requested under the predecessor to Section 2151.10, supra. At page 6 of that case the court noted that respondent had urged that there were "no unappropriated funds out of which the additional funds could be appropriated, and that to comply with the relator's request would work an undue hardship and burden on other officers and agencies." The court held that such facts did not excuse the respondent board from fulfilling its mandatory duty. "The hardship, if any, visited upon the operation of other county officers through lack of funds resulting from the appropriation of the amounts requested by the probate judge for the operation of his offices, is a matter over which this court has no control, but is wholly within the province of the General Assembly." State ex rel. Moorehead v. Reed et al., supra, page 7.

Therefore, it is my opinion that the board of county commissioners has an absolute duty to appropriate an amount equal to a reasonable request by a juvenile court judge pursuant to Section 2151.10, supra, and that such duty is unaffected by the availability of unanticipated or unappropriated funds.

3. Can the board of county commissioners dictate to the juvenile court the monthly amount or daily amount that will be expended as to the support, care and maintenance of any child under the juvenile court's control?

In answer to your third question, I know of no provision authorizing the board of county commissioners to dictate to the juvenile court the monthly or daily amount that will be expended for the support, care and maintenance of any child under the juvenile court's control. Indeed, such action by the board would be contrary to the provisions of Section 2151.10, supra, and to my answer to your second question.

4. If the juvenile court has absolute control over expenditures relative to said children, what must the board of county commissioners do in order to provide the funds when all tax funds have been appropriated?

In view of the answer given to your second question and the holding in State ex rel. Moorehead v. Reed et al., supra, the county commissioners are clearly required to appropriate an amount equal to that requested by a juvenile court judge pursuant to Section 2151.10, supra. In the Moorehead case, supra, it was held that a writ of mandamus would issue to require the commissioners to make the requested appropriation. Therefore, the appropriation should be made pursuant to the judges request even though there are presently no unappropriated funds. The method by which funds may be made available to satisfy such appropriation is for administrative determination and any answer by me to your question would be improper and an usurpation of the commissioners function.