

OPINION NO. 89-053**Syllabus:**

The Children's Trust Fund Board does not have the authority to prohibit schools or school districts which allow corporal punishment from receiving funds from the children's trust fund.

**To: Paul H. Jones, State Representative, Chairman, Children's Trust Fund Board,
Columbus, Ohio**

By: Anthony J. Celebrezze, Jr., Attorney General, July 25, 1989

I have before me your request for my opinion regarding the policy of the Children's Trust Fund Board to prohibit schools or school districts allowing corporal punishment from receiving funds from the children's trust fund. You ask whether the Children's Trust Fund Board has the authority to prohibit schools or school districts which allow corporal punishment from receiving funds from the children's trust fund.

The Children's Trust Fund Board [hereinafter "the board"], created by R.C. 3109.15, is charged with the responsibility of allocating the moneys of the children's trust fund.¹ R.C. 3109.17. As a "creature of statute," the Children's Trust Fund Board has only the authority expressly granted by statute and that authority which is necessarily implied therefrom. *Verberg v. Board of Education*, 135 Ohio St. 246, 20 N.E.2d 368 (1939); *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 115 N.E. 571 (1916); see also 1973 Op. Att'y Gen. No. 73-057.

R.C. 3109.17 sets forth the powers and the duties of the Children's Trust Fund Board. That statute provides, in pertinent part, as follows:

(A) Each year, beginning within one year after the appointment of its first members, the children's trust fund board shall develop a state plan for the allocation of funds in the children's trust fund. The plan shall ensure that equal opportunity exists for the establishment of child abuse and child neglect prevention programs and the use of moneys from the fund to provide assistance in all geographic areas of this state and to provide assistance to members of all social and economic groups of this state....

(B) In developing and carrying out a plan, the children's trust fund board shall, in accordance with Chapter 119. of the Revised Code, do all of the following:

...
(3) *Make grants to public or private agencies or schools for the purpose of child abuse and child neglect prevention programs.* The board may consider factors such as need, geographic location, diversity, coordination with or improvement of existing services, maintenance of local funding efforts, and extensive use of volunteers. Children's trust fund moneys shall be allocated among all counties according to a formula based on the ratio of the number of

¹ The children's trust fund was established by R.C. 3109.14. This statute mandates the collection of special fees for copies of birth and death records and for the filing of petitions for divorce or dissolution decrees. These fees are forwarded to the treasurer of state who deposits such fees in the state treasury to the credit of the children's trust fund.

children under the age of eighteen in the county to the number of children under the age of eighteen in the state, as shown in the most recent federal decennial census of population; provided, that each county receiving trust fund moneys shall receive a minimum of ten thousand dollars per funding year. (Emphasis added.)

Thus, the general purpose of the Children's Trust Fund Board is to allocate the funds from the children's trust fund for the purpose of establishing child abuse and child neglect prevention programs in a way which ensures an equal opportunity for such programs among members of all social and economic groups of the state and in all geographic areas of the state. R.C. 3109.17(A).

To carry out its stated purpose, the Children's Trust Fund Board is required, *inter alia*, to "make grants to public or private agencies or schools for the purpose of child abuse and child neglect prevention programs." R.C. 3109.17(B)(3) (emphasis added). In making such grants, the board is given discretion to consider "need, geographic location, diversity, coordination with or improvement of existing services, maintenance of local funding efforts, and extensive use of volunteers." R.C. 3109.17(B)(3).

While the board is expressly authorized to consider those particular factors in awarding grants to public and private agencies and schools, there is no express authority for the board to prohibit schools and school districts which allow corporal punishment from receiving children's trust fund moneys. Because there is no such express statutory authority, my inquiry now turns to whether the board has the *implied* authority to prohibit schools or school districts allowing corporal punishment from receiving funds from the children's trust fund.

The legislature has the sole authority to enact laws; boards and commissions have no authority to add to or subtract from a legislative enactment. *State ex rel. Foster v. Evatt*, 144 Ohio St. 65, 56 N.E.2d 265 (1944). This follows from the principle that the legislature cannot delegate the power to declare policy; it can only permit the exercise of discretion in the administration of the policy it has itself declared. *Belden v. The Union Central Life Insurance Co.*, 143 Ohio St. 329, 55 N.E.2d 629 (1944). Thus, the Children's Trust Fund Board has the implied power to use its discretion in the administration of R.C. 3109.17, but has no authority to alter the policy underlying the statutes which establish and control the board. Any action taken by the board is limited by the purposes for which the board was created. Therefore, whether the board has the implied power to implement a policy which prohibits schools and school districts allowing corporal punishment from receiving money from the children's trust fund depends upon whether that policy implements the legislature's objective.

Although the general purpose of the board has been discussed above, it is important to scrutinize R.C. 3109.17 in order to determine the legislative intent in enacting this statute. R.C. 3109.17 enumerates the specific and mandatory functions of the board. R.C. 3109.17(B)(1)-(10). From a reading of these subsections, it can be determined that the responsibilities of the board are to develop a plan allocating moneys of the children's trust fund, to coordinate within the state the efforts of groups concerned with children and child abuse and neglect, and to provide statewide education to develop an awareness of the problems of families and children. It is not the responsibility of the board to define "child abuse" or "child neglect;" nor is it the responsibility of the board to directly provide services for abused or neglected children.²

² The legislature has otherwise provided for these services. For example, R.C. 2151.42 provides for the investigation by the county department of human services or the children's services board of reports of known or suspected child abuse; R.C. 5153.16 grants to the same entities the power to provide care for any child who is deemed to be in need of public care or service; and R.C. 2151.353 grants to the juvenile court several options for disposition of cases in which a child is adjudged abused, neglected or dependent.

R.C. 3109.13 broadly defines "child abuse and child neglect prevention programs" as "programs designed to prevent child abuse and child neglect...."³ Therefore, under R.C. 3109.17(B)(3), the board is required to "make grants to public or private agencies or *schools* for the purpose of [programs designed to prevent child abuse and child neglect.]" (Emphasis added.)

With respect to grants to schools, the inquiry is narrowed to whether the board's policy against corporal punishment implements the statutory mandate to make grants for the purpose of programs designed to prevent child abuse and child neglect. Although you do not specify the reasoning behind the board's policy, the only apparent connection between the board's policy regarding corporal punishment and the statutes governing the children's trust fund board is the idea that "corporal punishment" is, or may be, considered "child abuse." With this in mind, I now turn to an examination of the concepts of corporal punishment and child abuse.

I note that the term "child abuse" is not defined in R.C. Chapter 3109. In fact, I am not aware that the term "child abuse" *per se* is defined anywhere in the Revised Code.⁴ However, the term "abused child" is defined by R.C. 2151.031:

As used in this chapter, an "abused child" includes any child who:
 (A) Is the victim of "sexual activity" as defined under Chapter 2907. of the Revised Code, where such activity would constitute an offense under that chapter, except that the court need not find that any person has been convicted of the offense in order to find that the child is an abused child;

³ R.C. 3109.13 reads as follows:

As used in sections 3109.13 to 3109.18 of the Revised Code, "child abuse and child neglect prevention programs" means programs designed to prevent child abuse and child neglect, including, but not limited to, any of the following:

(A) Community-based public awareness programs that pertain to child abuse or child neglect;

(B) Community-based educational programs that pertain to prenatal care, perinatal bonding, child development, basic child care, care of children with special needs, or coping with family stress;

(C) Community-based programs that relate to care and treatment in child abuse or child neglect crisis situations; aid to parents who potentially may abuse or neglect their children; child abuse or child neglect counseling; support groups for parents who potentially may abuse or neglect their children, and support groups for their children; or early identification of families in which there is a potential for child abuse or child neglect;

(D) Programs that train and place volunteers in programs that pertain to child abuse or child neglect;

(E) Programs that may develop and make available to boards of education curricula and educational materials on basic child care and parenting skills, or programs that would provide both teacher and volunteer training programs.

⁴ I note, however, that "child abuse" is defined by "The Child Abuse Prevention and Treatment Act" at 42 U.S.C. §5106(g). This definition, which by reference incorporates the regulations of the Secretary of Health and Human Services promulgated under the statute, provides that child abuse includes physical injury indicating harm or a substantial risk of harm to the child's health or welfare. Under this definition, it appears that corporal punishment which does not harm the child's health or welfare and which does not present a substantial risk of harm to the child's health or welfare would not be "child abuse." 45 CFR § 1340.2(d) (1987).

(B) Is endangered as defined in section 2919.22 of the Revised Code, except that the court need not find that any person has been convicted under that section in order to find that the child is an abused child;

(C) Exhibits evidence of any physical or mental injury or death, inflicted other than by accidental means, or an injury or death which is at variance with the history given of it. Except as provided in division (D) of this section, a child exhibiting evidence of corporal punishment or other physical disciplinary measure by a parent, guardian, custodian, person having custody or control, or person in loco parentis of a child is not an abused child under this division if the measure is not prohibited under section 2919.22 of the Revised Code.⁵

(D) Because of the acts or omissions of his parents, guardian, or custodian, suffers physical or mental injury that harms or threatens the child's health or welfare. (Footnote added.)

Under well-accepted doctrines of statutory construction, the definition of "abused child" found in R.C. 2151.031 may be referred to in order to determine the meaning of "child abuse" in R.C. 3109.17.

In Ohio and elsewhere the generally accepted rule is that statutes relating to the same matter or subject, although passed at different times and making no reference to each other, are *in pari materia* and should be read together to ascertain and effectuate if possible the legislative intent.

State ex rel. Pratt v. Weygant, 164 Ohio St. 463, 466, 132 N.E.2d 191, 194 (1956). This doctrine is supported by the judicially recognized presumption that "[t]he legislature is presumed to be cognizant of all prior sections of the Code." *Tonsic v. Holub*, 13 Ohio App. 2d 195, 197, 235 N.E.2d 239, 241 (1968); see also *Bobb v. Marchant*, 14 Ohio St. 3d 1, 469 N.E.2d 847 (1984). Statutes also are considered *in pari materia* if they relate to similar subjects. *State ex rel. Mentor Lagoons Inc. v. Brick*, 166 Ohio St. 385, 142 N.E.2d 851 (1957).

While R.C. Chapter 2151 is the law governing juvenile court and R.C. Chapter 3109 is part of the domestic law of the state, it is evident that the common object underlying both R.C. 3109.17 and R.C. 2151.031 is the prevention of child abuse. It is appropriate to consider the two sections together for the purpose of discovering the legislature's intent in enacting R.C. 3109.17.

For purposes of this opinion, the most striking portion of the definition of "abused child" in R.C. 2151.031 is the express exclusion of certain types of corporal punishment. The logical inference is that the legislature does not consider corporal punishment, which is not excessive and does not create a substantial risk of serious physical harm to the child, to be "child abuse." Perhaps more significant, the legislature has expressly authorized schools to employ corporal punishment as a means of discipline.

Except as otherwise provided by rule of the board of education adopted pursuant to section 3313.20 of the Revised Code or of the governing body of the private school, a person employed or engaged as a teacher, principal, or administrator in a school, whether public or private, may inflict or cause to be inflicted, reasonable corporal punishment upon a pupil attending such school whenever such punishment is reasonably necessary in order to preserve discipline while such pupil is subject to school authority.

R.C. 3319.41(A).

⁵ R.C. 2919.22(B)(3) prohibits the administration of corporal punishment which is "excessive under the circumstances and creates a substantial risk of serious physical harm to the child...."

The legislature has thus determined that corporal punishment, where reasonable under the circumstances and where it does not create a substantial risk of harm to the child, is not "child abuse" and may be administered in schools unless the local board of education has ruled otherwise. R.C. 2151.031; R.C. 2919.22; R.C. 3319.41(A). It therefore can be inferred that by enacting R.C. 3109.17, which has as its objective the prevention of child abuse and neglect, the legislature did not seek to prevent the administration of corporal punishment.

In light of these determinations, I find that the policy of the board to prohibit schools and school districts which allow corporal punishment from receiving funds of the children's trust fund does not meet the test of implementing the policy of the legislature. Although the board's reasons for the policy may be well-intentioned, it cannot promulgate rules which add to its delegated powers "no matter how laudable or sensible the ends sought to be accomplished." *Carroll v. Dept. of Administrative Services*, 10 Ohio App. 3d 108, 110 (1983).

Accordingly, it is my opinion and you are hereby advised, that the Children's Trust Fund Board does not have the authority to prohibit schools or school districts which allow corporal punishment from receiving funds from the children's trust fund.