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CHILD WELFARE BOARD—NO AUTHORITY TO EXPEND FUNDS APPROPRIATED TO USE OF BOARD TO DEFRAY EXPENSE OF PRELIMINARY SURVEYS AND PLANS FOR BOND ISSUE—SUBMISSION OF QUESTION TO ELECTORATE—ERECTION OF RECEIVING HOME—TEMPORARY CARE OF CHILDREN—SECTION 335.16 RC—BOARD OF COUNTY COMMISSIONERS MAY PAY PRELIMINARY EXPENSES TO DETERMINE FEASIBILITY TO PROCEED WITH SUBMISSION OF BOND ISSUE—SECTION 153.21 ET SEQ., RC.

SYLLABUS:

A child welfare board is without authority, under the provisions of Section 335.16, Revised Code, to expend funds appropriated to the use of such board to defray the expense of preliminary surveys and plans in preparation for the submission to the electorate of the question of a bond issue to erect a receiving home for the temporary care of children; but the board of county commissioners, proceeding under the provisions of Section 153.21, et seq., Revised Code, may properly pay such preliminary expenses as are reasonably necessary to enable them to determine whether to proceed with the submission of a bond issue for such purpose.

Columbus, Ohio, March 29, 1955

Hon James W. Dinsmore, Prosecuting Attorney
Geauga County, Chardon, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Reference is made to Ohio Rev. Code Sec. 335.16 subsection (J) which reads as follows:

‘To acquire and operate a county children’s home or to establish, maintain, and operate a receiving home for the temporary care of children, or procure foster homes for this purpose;’

“Further reference is made to the annotations construing said section and subsection which seem to say in gist that county child welfare boards are not empowered to purchase real estate and buildings thereon to be used as a receiving home for the temporary care of children, nor to erect new buildings on county children’s

home grounds or to enlarge and repair existing buildings thereon. 1946 OAG No. 1168.

“The specific question now is: Can child welfare funds be used to pay part of or at least guarantee an architect his fee for drawing preliminary sketches and working plans and giving architects assistance in preparing for and passing a bond issue for a Receiving Home?”

The provision quoted in your inquiry from paragraph (J) of Section 335.16, Revised Code, is merely a restatement, without substantive change, of that formerly set out in Section 3070-17, General Code, and which was in effect at the time that Opinion No. 1168, Opinions of the Attorney General for 1946, page 628, was written. The syllabus of that opinion is as follows:

“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.”

The writer of the 1946 opinion first pointed out that the county commissioners, under the provisions of Section 2433, General Code, now Section 307.02, Revised Code, were *expressly* authorized “to purchase, * * * construct, enlarge, improve, rebuild, equip and furnish a * * * county children’s home and other necessary buildings, * * *. The writer then went on to say, pages 629, 630:

“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.”

I am in accord with the reasoning and conclusions in this opinion and because there has not since been any pertinent change in the statutory provisions there under consideration I am impelled to regard such opinion as a proper statement of the law under existing statutes.

Your specific question concerns a proposed expenditure of “child welfare funds” to meet certain expense in the drafting of sketches, working plans, etc., “in preparing for and passing a bond issue for a receiving home.”

I assume, first, that by “child welfare funds” you refer to funds appropriated by the county commissioners for the use of the child welfare board; and, second, that that board, rather than the county commissioners, proposes to make the expenditures for these preliminary expenses.

Because mention is made of a proposed bond issue, I must assume that it is intended to proceed under the provisions of Section 153.21, Revised Code, which reads as follows:

“When the board of county commissioners has determined to erect a courthouse or other county building at a cost to exceed twenty-five thousand dollars, it shall submit the question of issuing bonds of the county therefor to a vote of the electors of such county. If the question is determined in the affirmative, within thirty days thereafter, the board may apply to the judge of the court of common pleas of the county who may appoint four suitable and competent freehold electors of the county, who shall, together with the board, constitute a building commission and

serve until the courthouse or other county building is completed. Not more than two of such appointees shall be of the same political party."

Here it is to be noted that the initial step involved is one by which "*the board of county commissioners has determined*" the propriety of proceeding to erect the building concerned. Because a duty is thus placed on the commissioners to make such determination before proceeding with the matter, it would follow that such reasonable expenses as are involved in order to make an intelligent determination might properly be paid by the commissioners under a power *necessarily* implied from the authority expressly conferred on them in this regard. There being no special provision for the payment of such expense from any special fund it necessarily follows that the commissioners would have resort to the county general fund in meeting these expenditures.

No such mandate, or authorization, is given, however, to the child welfare board so that no authority on the part of that board to expend "child welfare funds" for such a purpose could be implied. In any event, the power of the child welfare board to expend funds for such a purpose is, at best, subject to serious doubt, and any such doubt in the case of a statutory agency must be resolved against the supposed grant of power. See *State, ex rel. Bentley v. Pierce*, 96 Ohio St., 44.

Accordingly, in specific answer to your inquiry, it is my opinion that a child welfare board is without authority, under the provisions of Section 335.16, Revised Code, to expend funds appropriated to the use of such board to defray the expense of preliminary surveys and plans in preparation for the submission to the electorate of the question of a bond issue to erect a receiving home for the temporary care of children; but the board of county commissioners, proceeding under the provisions of Section 153.21, et seq., Revised Code, may properly pay such preliminary expenses as are reasonably necessary to enable them to determine whether to proceed with the submission of a bond issue for such purpose.

Respectfully,

C. WILLIAM O'NEILL
Attorney General