

OPINION NO. 74-017

Syllabus:

A county board of mental retardation has authority to fix the salary of its administrator, within the appropriation provided by the board of county commissioners. (Opinion No. 73-077, Opinions of the Attorney General for 1973, modified)

To: Paul H. Mitrovich, Lake County Pros. Atty., Painesville, Ohio
By: William J. Brown, Attorney General, February 28, 1974

Your request for an opinion states the facts and poses the question as follows:

"On July 27, 1973 your office rendered Opinion 73-077, a copy of which is attached, and which generally states that the salary of the administrator of the Mental Retardation Program must comply with Section 143.091 of the Ohio Revised Code. Pay raises in addition to statutory limits must be approved by the County Commissioners.

"On August 1, 1973, the Senate in its Bill #31 revised Section 143.091 by excluding from that statute all positions under the Mental Retardation Children's Program thus the Civil Service pay guides as related to 143.091 has been voided and cannot be looked upon by the Mental Retardation as a mandatory Civil Service pay schedule.

* * * * *

"Therefore, the question arises:

"Whether in the absence of a statutory pay schedule and in light of Attorney General Opinion 73-077, are the county commissioners the proper authority to set salary schedules for the Mental Retardation Program established under Section 5126 and 5127 R.C. or may the Board of Mental Retardation formulate its own salary schedule without approval of the county commissioners?"

I believe that the amendment to R.C. 143.091 by the General Assembly in Amended Senate Bill No. 31, effective August 1, 1973, necessitates a reexamination of Opinion No. 73-077, Opinions of the Attorney General for 1973.

R.C. 143.091 was amended to read in part as follows (brackets indicate deletions):

"(A) All positions, offices, and employments in each county department of welfare, except positions used exclusively in the retarded children's program or in an institution operated by a county welfare department, are hereby assigned to the pay ranges established in section 143.10 of the Revised Code if the classification is enumerated in section 143.09 of the Revised Code. In accordance with procedures in section 143.101 of the Revised Code, the state employee compensation board may assign higher or lower pay ranges for such classes established by a county department of welfare, [except that such authority does not apply to the foregoing excepted positions. Boards of county commissioners may use the classifications contained in this chapter for positions used exclusively in the retarded children's program or in institutions operated by county welfare departments.] Classifications of employees not enumerated in section 143.09 of the Revised Code are assigned to the pay ranges established in section 143.10 of the Revised Code, as follows:

* * * * *
"[3029 Administrator--Mental Retardation Program 25]"
* * * * *

The language deleted from R.C. 143.091 clearly contemplated that the respective boards of county commissioners were to determine the compensation of the employees of the county boards of mental retardation. However, the amendment of R.C. 143.091 requires that sentence to be disregarded. Further, the General Assembly deleted the classification of "Administrator-Mental Retardation Program" from R.C. 143.091.

The deleted language was that expressly relied upon in my Opinion No. 73-077, *supra*, to indicate that the board of county commissioners rather than the county board of mental retardation has authority to fix the salary of the administrator of a board of mental retardation. Therefore, that conclusion must be re-examined.

However, the other conclusions of that Opinion are not affected by the amendment. The first branch of the syllabus advised that a county board of mental retardation may not contract for the services of an administrator on a yearly basis in order to circumvent the civil service statutes. Obviously this conclusion still stands. The second branch of the syllabus states, *inter alia*, that the administrator may be granted compensation in excess of that specified in R.C. 143.10 for an administrator of a board of mental retardation. The statutory language which implies that he may be paid a different salary than the specified amount was deleted from R.C. 143.091 by the amendment, but so was the specification of his salary. Therefore, the exception in R.C. 143.091 of "positions used exclusively in the retarded children's program" from the pay ranges established in

R.C. 143.09 controls. (It may be recalled from Opinion No. 73-077, supra, that this exception applies to employees of county boards of mental retardation. See also, Opinion No. 68-015, Opinions of the Attorney General for 1968, and Opinion No. 67-088, Opinions of the Attorney General for 1967). Consequently, my conclusion that the amount of the administrator's salary is discretionary still stands.

The sole question before me, then, is that of which board has discretion to determine that salary. I note that two bills are pending in the General Assembly which would vest this power in the board of mental retardation, S.B. 194 and H.B. 911. However, neither has been enacted at this time.

The question can be answered on the basis of an Opinion which dealt with a quite similar situation. In Opinion No. 1744, Opinions of the Attorney General for 1958, my predecessor stated as follows in the second branch of the syllabus:

"A county child welfare board is authorized to fix the salary of the 'executive secretary' of such board, designated as provided in Section 335.10, Revised Code, but such action must be taken within the limits of the aggregate amount allowed to such board for personal services in the budget, submitted by the board of county commissioners as the taxing authority of the county and approved by the county budget commission, and appropriated to such board by the taxing authority as provided in Section 5705.38 et seq., Revised Code."

A direct analogy with this Opinion is possible, because of the similarity of the relevant statutes. It will be recalled that the exception in R.C. 143.091 applies to "positions used exclusively * * * in an institution operated by a county welfare department" as well as employees of a county board of mental retardation. There is no express statutory authority for any board to fix the salary of the executive secretary of a county child welfare board. Opinion No. 1744, supra, at 103. Finally, R.C. 5153.35 (then R.C. 335.35) provides in part as follows:

"The boards of county commissioners shall levy taxes and make appropriations sufficient to enable the county children services board or county department of welfare to perform its functions and duties under sections 5153.01 to 5153.42, inclusive, of the Revised Code."

Similar language is found in the last paragraph of R.C. 5126.03, concerning the county board of mental retardation, which reads as follows:

"The board of county commissioners shall levy taxes and make appropriations sufficient to enable the county board of mental retardation to perform its functions and duties as provided by this section."

Because the statutes are closely analogous, my predecessor's reasoning and conclusion apply in the instant case. Therefore, I take the liberty of quoting at length from his Opinion No. 1744, supra, at 102-104, as follows:

"This provision [R.C. 5153.35, analogous to last paragraph of R.C. 5126.03] for appropriation of funds is in harmony, of course, with the requirements of the county budget laws, Section 5705.27, et seq., Revised Code. It is to be noted that the board, or department, here involved is a county agency, and that the board of county commissioners is the taxing authority of the county. As such, this latter board is required, under Section 5705.38, et seq., Revised Code, to appropriate funds "based on the revised tax budget and estimate of resources." The budget thus referred to is that submitted by the taxing authority to the county budget commission and approved by that agency. Sections 5705.28 and 5705.32, Revised Code.

"As to the preparation of this budget, Section 5705.28, Revised Code, provides in part:

"* * * The taxing authority shall include in its budget of expenditures the full amounts requested by district authorities, not to exceed the amount authorized by law, if such authorities may fix the amount of revenue they are to receive from the subdivision. * * *" (Emphasis added.)

"I find nothing in the statutes which authorizes the child welfare board, or the county department of welfare, to "fix the amount of revenue they are to receive from the subdivision." i.e., from the county; and this being so, we must conclude that the aggregate amount so allocated, and later appropriated by the taxing authority, if the budget be approved by the budget commission, is discretionary with the board of county commissioners, even though the board be under a statutory duty to provide a "sufficient" amount. Section 335.35, Revised Code [now R.C. 5153.11].

"Returning now to the question of the salary of the executive secretary, we may first note that Section 5705.29, Revised Code, provides, as to the contents of the budget, that it "shall present * * * a statement of the necessary current operating expenses * * * classified as to personal services and other expenses." There is no requirement in this section, nor in Section 5705.28, Revised Code, relative to budget requirement reports of subordinate agencies of the subdivision, that amounts for "personal services" be shown in any detail whatever, and certainly no requirement to show the compensation of individual employees.

"In this situation, the board of county commissioners, as the taxing authority, being without voice in the matter except as to approval of the aggregate amount allowed for personal services, we must conclude that the subordinate agency, the board, or department, as the case may be, may fix the compensation of its individual employees, as a power implied in the authority to appoint them, within the limits of the aggregate personal service allowance in the budget. Specifically, in your own case, I conclude that the child welfare

board may fix the salary of the executive secretary, but that this must be done within the limits of the aggregate amount allowed for personal services in the budget. It is to be seen, therefore, that although the board of county commissioners may not fix such salary, its action may well have the practical effect of limiting the action of the child welfare board in doing so." (Emphasis added.)

My predecessor's reasoning applies equally well to the salary of the administrator of a board of mental retardation. I conclude, then, that Amended Senate Bill No. 31 has empowered the board of mental retardation to fix the salary of its administrator, within the budget limitations imposed by the appropriation to the board by the board of county commissioners. This conclusion requires a modification of my Opinion No. 73-077, to the extent it is inconsistent.

In specific answer to your question, it is my opinion and you are so advised that a county board of mental retardation has authority to fix the salary of its administrator, within the appropriation provided by the board of county commissioners. (Opinion No. 73-077, Opinions of the Attorney General for 1973, modified)