

**OPINION NO. 83-014**

**Syllabus:**

Absent specific provision to the contrary, whatever funds are appropriated to the Department of Youth Services for the purpose of

March 1983

granting state subsidies to counties under R.C. 5139.34 are to be allocated pursuant to R.C. 5139.34(B) as follows: (1) assuming that there are sufficient funds, each county shall receive a basic annual grant of \$50,000; (2) any remaining funds shall be distributed on the basis of population as provided in R.C. 5139.34(B)(2).

**To: James E. Rogers, Ph.D., Director, Department of Youth Services, Columbus, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, March 25, 1983**

I have before me your request for my opinion concerning the program of subsidies to the various counties which the Department of Youth Services administers to aid in the support of prevention, diversion and rehabilitation programs for children who are delinquent or unruly or at risk of becoming delinquent or unruly. Your question is as follows:

If there is a percentage cut in the availability of appropriated funds for the Youth Services subsidy, must this Department allocate that cut to all counties proportionately or would each county still be eligible for the basic Fifty Thousand Dollar grant, assuming sufficient funds are available to fund this portion of the subsidy?

The subsidy about which you are concerned is governed by R.C. 5139.34, which states, in relevant part, as follows:

(A) Funds may be appropriated to the department of youth services for the purpose of granting state subsidies to counties to aid in the support of prevention, diversion, diagnosis, counseling, treatment, and rehabilitation programs and for foster care facilities for alleged or adjudicated unruly and delinquent children, or children at risk of becoming unruly or delinquent children. . . .

(B) The department of youth services shall apply the following formula to determine the amount each county is to receive annually pursuant to this section, subject to the appropriation for this purpose to the department made by the general assembly:

(1) Each county shall receive a basic annual grant of fifty thousand dollars.

(2) The sum of the basic annual grants provided under division (B)(1) of this section then shall be subtracted from the total amount of funds appropriated to the department of youth services for the purpose of the grants described in division (A) of this section to determine the remaining portion of the funds appropriated. The remaining portion of the funds appropriated then shall be distributed on a per capita basis to each county that has a population of more than twenty-five thousand for that portion of the population of the county that exceeds twenty-five thousand.

R.C. 5139.34(A) makes it clear that appropriation of funds to the Department for this purpose is discretionary, and R.C. 5139.34(B) indicates that provision of the subsidies outlined therein is "subject to the appropriation for this purpose to the department made by the general assembly."

R.C. 5139.34(B)(1) states that "[e]ach county shall receive a basic annual grant of fifty thousand dollars." R.C. 5139.34(B)(2) provides that any funds in addition to those needed to satisfy R.C. 5139.34(B)(1) which are appropriated to the Department for grants under R.C. 5139.34 shall be distributed on a per capita basis to each county with a population in excess of 25,000 for that portion of the population which exceeds 25,000. The word "shall," used in a statute, is ordinarily construed to be mandatory. See, e.g., Dorrian v. Scioto Conservancy District, 27 Ohio St. 2d 102, 271 N.E.2d 834 (1971). Thus, R.C. 5139.34 is reasonably read to require that each county receive a basic annual grant of fifty thousand dollars, assuming that enough money is appropriated by the General Assembly to satisfy this amount. Such a construction is consistent with R.C. 5139.34(B)(2), which provides for the distribution of any remaining funds.

You have asked whether, if there were a percentage cut in the availability of appropriated funds for the Youth Services subsidy, that cut should be allocated to all counties proportionately or should be applied to amounts in excess of the \$50,000 basic annual grants. It is impossible for me to provide a definite answer to that question without having an opportunity to review the action which brings about the cut in appropriated funds, since that action may specify how it is to be applied to such a situation. Assuming, however, that the action serves only to reduce the total amount of funds appropriated to the Department of Youth Services for the purpose of subsidies under R.C. 5139.34, the remaining appropriated funds should be allocated as specified in R.C. 5139.34(B)—that is, each county should receive a basic annual grant of \$50,000 and any excess funds should be distributed as provided in R.C. 5139.34(B)(2).

It is, therefore, my opinion, and you are advised, that, absent specific provision to the contrary, whatever funds are appropriated to the Department of Youth Services for the purpose of granting state subsidies to counties under R.C. 5139.34 are to be allocated pursuant to R.C. 5139.34(B) as follows: (1) assuming that there are sufficient funds, each county shall receive a basic annual grant of \$50,000; (2) any remaining funds shall be distributed on the basis of population as provided in R.C. 5139.34(B)(2).