

OPINION NO. 66-112**Syllabus:**

1. Subsequent to the forming of a joint board of county commissioners and the organization of a district for the establishment and support of a detention home, such relationship cannot be terminated at the will of one of the counties.

2. When the joint board has been duly formed and has thereafter proceeded with the duties imposed on it by the statute, a county cannot withdraw on the basis of a subsequent determination that it does not have the finances to proceed.

3. The only basis upon which a county may withdraw from such arrangement is provided for in Section 2151.3413, Revised Code.

4. There is nothing to preclude a juvenile court judge from being appointed a member of a board of trustees of a district detention home, if it is physically possible for one person to discharge the duties of both positions.

5. The pro rata share to be contributed by each county should be based on the total of its general duplicate of real and public utility property, plus its general duplicate of personal property, plus its duplicate of classified intangible property.

To: Robert C. Stout, Marion County Pros. Atty., Marion, Ohio
By: William B. Saxbe, Attorney General, June 23, 1966

Your request for my opinion reads substantially as follows:

"1. If a ~~District~~ Detention Organization is created, can a county withdraw at its pleasure before the actual acquisition and construction of the Detention Home, or can the withdrawal be only after the construction has been accomplished as indicated by Section 2151.3413?

"2. If a District Detention Board is organized and any one county would thereafter find that it does not have the finances to proceed, can any such county withdraw or does the county which entered the organization become obligated by virtue of the fact that a majority of the counties in the district has provided the necessary funds? In other words, is participation a matter for each county to decide, or is a county obligated by virtue of majority action within the district?

"3. Section 2151.343 provides that all appointments to the Board of Trustees shall be made from persons who are recommended and approved by the Juvenile Court Judge. Does this preclude the Board of County Commissioners from appointing the Juvenile Judge himself to such Board provided, of course, that the Juvenile Judge requests such appointment?

4. Section 2151.3412 provides that the cost of a site and construction shall be paid by the counties comprising the district, in proportion to the taxable property of each county, as shown by its tax duplicate. Does this section refer to the tax valuation of both real and personal property or only real property? Any levy voted by the participating counties could, of course, be on real property only. Would, therefore, the cost be apportioned on the basis of real property only?"

Answers to your first two questions are contained in the first branch of the syllabus of Brissel et al., County Commissioners et al. v. The State, ex rel., McCammon, 87 Ohio St., 154, which reads:

"Section 3148, General Code, provides for the creation of a specific subdivision of the state, and the formation therein, of a joint board for the purpose of establishing and maintaining a district hospital for the care and treatment of persons suffering from tuberculosis. And when the joint board provided for in that section has been duly formed in accordance therewith and has thereafter proceeded with the performance of the duties imposed on it by the statute, each of the counties whose commissioners have joined in the formation of such joint board, has obligations in connection with the matter, which are fixed and defined by the statute and which cannot be terminated at the will of such county."

An examination of the enabling legislation regarding district tuberculosis hospitals as considered in

Brissel reveals that its substantial provisions are identical to Sections 2151.34, Revised Code, et seq., and the case is therefore directly in point; further it has been neither reversed nor modified.

With respect to your third question, it appears that there is no statutory admonition precluding a juvenile court judge from being a member of a board of trustees of a district detention home. Further, it would not appear that the two positions are incompatible because one is subordinate to or in any way a check upon the other. The only question remaining is, therefore, one of fact as to whether it is physically possible for one person to discharge the duties of both positions. This would be a matter for determination by the joint board of county commissioners.

Your final question deals with what constitutes a county's tax duplicate. Section 319.28, Revised Code, provides for a general tax list and general duplicate of real and public utility property. Section 319.29, Revised Code, provides for a general personal property tax list and duplicate, and Section 319.34, Revised Code, provides for a classified intangible tax list and duplicate.

As you point out, Section 5705.49, Revised Code, restricts a subdivison's power to tax to the levying of taxes on general tax lists and duplicates and precludes the levying of taxes on the classified tax list and duplicate. However, I consider that this has no bearing on the yardstick identified by the legislature as a measurement of the proportionate share to be paid by each county, "* * * as shown by its tax duplicate" Section 2151.3412, Revised Code.

It may be advanced that the word "duplicate" in Section 2131.3412, supra, is couched in the singular, rather than being plural. However, Section 1.10 Revised Code, provides in pertinent part:

"As used in the Revised Code, unless the context otherwise requires:

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"(C) Words in the plural number include the singular number, and words in the singular number include the plural number."

It is, therefore, my opinion and you are hereby advised:

1. Subsequent to the forming of a joint board of county commissioners and the organization of a district for the establishment and support of a detention home such relationship cannot be terminated at the will of one of the counties.
2. When the joint board has been duly formed and has thereafter proceeded with the duties imposed on it by the statute, a county cannot withdraw on the basis of a subsequent determination that it does not have the finances to proceed.
3. The only basis upon which a county may withdraw from such arrangement is provided for in Section 2151.3413, Revised Code.

4. There is nothing to preclude a juvenile court judge from being appointed a member of a board of trustees of a district detention home if it is physically possible for one person to discharge the duties of both positions.

5. The pro rata share to be contributed by each county should be based on the total of its general duplicate of real and public utility property, plus its general duplicate of personal property, plus its duplicate of classified intangible property.