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WELFARE, COUNTY DEPARTMENT OF—DIRECTOR—
COUNTY COMMISSIONERS—NEITHER AUTHORIZED BY
LAW TO CONTRACT WITH PERSON OR ORGANIZATION
OUTSIDE OF STAFF TO MAKE SURVEY OF WELFARE DE-
PARTMENT.

SYLLABUS:

Neither the director of the county department of welfare nor the commissioners of the county authorized by law to contract with a person or organization outside of the staff of the welfare department or of the commissioners, for the purpose of making a survey of the welfare department.

Columbus, Ohio, September 23, 1953

Hon. Richard P. Faulkner, Prosecuting Attorney
Champaign County, Urbana, Ohio

Dear Sir:

I have before me your letter, requesting my opinion and reading as follows:

“I would like your official opinion on the following question:

“The Champaign County Welfare Department is an integrated department handling the following programs: (1) the Champaign County Children’s Home; (2) poor relief; (3) aid to dependent children; (4) aid to the needy blind; (5) aid to the permanently disabled.

“The files and records of most of these programs are by statute made confidential and the contents are not to be divulged or used by any persons not connected with the administration of the various programs.

“The Board of County Commissioners would like to know whether or not it is possible for them to employ an outsider, such as a university professor who has no connection with the county administration or any other governmental unit, to make a survey of the Welfare Department having, of course, access to its records, and to pay him therefor.

“I have advised the commissioners that it was my opinion that inasmuch as the files were by statute made confidential that no person not connected with the administration thereof had any right to access to the records nor did I find any statutory provision whereby the county commissioners could pay such an outsider for such work.”

The county department of welfare when established by the county commissioners of any county pursuant to Sections 2511-1 et seq. of the General Code, is to be operated under the control and direction of the county commissioners, by a county director of welfare, who shall have full charge of the department. Provisions of Section 2511-2, General Code, give the director very broad authority in providing himself with all necessary assistants. This section reads in part as follows:

*** The director, with the approval of the board of county commissioners, shall appoint all necessary *assistants, superintendents* of institutions, if any, under the jurisdiction of the department, and *all other employees* of the department, excepting that the superintendent of each such institution shall appoint all employees therein. The assistants and other employees of the county department of welfare shall be in the classified civil service, and may not be placed in or removed to the unclassified service. *** (Emphasis added.)

It appears from your letter that in addition to this broad authority for the employment of a staff of assistants and other employees, the commissioners desire to know whether they may employ an outsider for the specific task of making a survey of the welfare department, and you raise two questions: (1) whether the director of welfare with the approval of the county commissioners has the legal authority to employ such outside help for that purpose, and (2) whether such special employe could have access to the records and files of the office which, under the law, are to be kept confidential, and not open to examination or inspection by outsiders. Obviously, if the first question is decided in the negative, it will not be necessary to give particular attention to the second.

There can be no doubt but that the director of welfare may have in his hands a large variety of responsibilities and it appears probable that a careful survey of the entire department might be productive of greater efficiency and economy. In this connection it may be noted that under Section 2511-4, General Code, such director has certain specific powers and duties, to wit: (a) aid to dependent children, (b) aid to the needy blind, (c) poor relief and burials, (d) cooperation with state and federal authorities in all matters relating to public welfare, (e) an annual account of work, and report to the county commissioners and to the state department of public welfare, (f) such other powers and duties relating to public welfare as may be imposed upon the department by law, resolution of the county commissioners, or by order of the Governor during emergencies.

In ascertaining the powers that may be exercised by a county or by any of its boards or commissions, we are not permitted to indulge, in any degree, the consideration of convenience or desirability, or even the goal of greatest efficiency. Counties are strictly creatures of the legislature, and the county commissioners and other officers of the county have only those powers which the legislature has seen fit to grant and those which are clearly implied and essential to the carrying out of the powers granted. 11 Ohio Jurisprudence, page 332. This rule is particularly emphasized in matters involving the expenditure of public money. In 11 Ohio Jurisprudence, page 573, it is said:

“The authority to act in financial transactions must be clear and distinctly granted, and if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county.”

State ex rel. Locher v. Menning, 95 Ohio St., 97. These principles are, I believe, too well settled and recognized to require extensive citation of authority.

In the case of Gorman v. Heuck, 41 Ohio App., 453, it appears that the county commissioners entered into a contract with the Cincinnati Bureau of Governmental Research, to furnish to the county (a) a study and report of all the county institutions for the benefit and use of the county commissioners, (b) to furnish for the benefit and use of the county treasurer, expert advice, and a report on the study of the “preparation and installation of a system of billing and collecting taxes,” and (c) to furnish for the use and benefit of the auditor a report on “preparation and installation of a system of billing and collecting taxes.” In consideration of these services the Bureau was to be paid the total sum of \$6500.

It was shown in the evidence presented, and the court found that the surveys and reports thus to be furnished would be of very great value to the county and its officers and that each of the proposed surveys covered matters as to which they were not personally qualified or informed. It appeared that the installation of the system recommended would result in a net saving of \$88,000 in the first year.

The court made a ruling, embodied in its syllabus, as to each of the three elements of the contract. Typical of all, I quote the paragraph regarding the survey and report for the county commissioners:

“Although county commissioners lacked technical knowledge necessary to efficiently administer their office, they could not secure outside expert advice and cause consideration therefor to be paid out of public funds.”

The court said at page 458, of the opinion :

“If, then, there be no statutory authority permitting such expenditures out of public funds, all that is contended and introduced in evidence can be but strong impelling matter for the consideration of the Legislature, but unavailing to a court limited to approval of drafts upon the treasury authorized by the statute laws of this state.”

The court discussed the proposition which was urged, that authority for this contract could be found in the implied power of the commissioners, but the court suggested that the only basis on which such claim could rest was the admitted inability of the officers to do the work themselves, and the theory of implied powers was accordingly rejected. At page 460 of the opinion, the court refers to the fact that the law gave the commissioners abundant authority to employ clerks and deputies to assist them, and said :

“Especially are we assured of our position in this matter, as full authority is given all officers to employ clerks and deputies to aid and assist them, and it is reasonable to suppose that, if they themselves do not possess the technical knowledge necessary to economically and efficiently administer their duties, they will secure among such employees and deputies technical experts, with sufficient ability to furnish the required advice and suggestions. Such consideration must have been before the Legislature.”

The motion to certify this case was denied by the Supreme Court, so that we may take it as a very clear expression of the attitude of the highest courts on the subject. And while the court appeared to be strongly impressed by the admission of the several officers that they were not personally capable of making the surveys and reports, yet the court plainly rested its decision on the lack of statutory authority to go outside of their own staffs for assistance. Therefore, I regard the decision as squarely in point on the situation which you present.

It is manifest from the provisions of Section 2511-2 supra, that the director of a county department of welfare has very ample authority to employ such regular assistants as may be necessary to accomplish all the

work of the department, including one or more who have the qualifications necessary for making the survey in question.

In view of the conclusion which I have indicated, I do not deem it necessary to discuss the question of authority to allow an outside investigator to have access to the confidential files of the department, relating to any of the matters under the control of that department.

Accordingly, it is my opinion and you are advised that neither the director of the county department of welfare nor the commissioners of the county are authorized by law to contract with a person or organization outside of the staff of the welfare department or of the commissioners, for the purpose of making a survey of the welfare department.

Respectfully,

C. WILLIAM O'NEILL
Attorney General