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1. WELFARE PROGRAMS—SECTION 5101.02 RC—PROVISIONS AUTHORIZE AGREEMENTS BETWEEN DEPARTMENT OF PUBLIC WELFARE AND BOARDS OF COUNTY COMMISSIONERS—CREATION OF SINGLE UNIT WITHIN COUNTY TO ADMINISTER CERTAIN WELFARE PROGRAMS—EXPENDITURE OF STATE FUNDS NOT AUTHORIZED FOR ADDED COST OF ADMINISTRATION INCURRED BY COUNTY COMMISSIONERS DUE TO FUNCTIONS AND RESPONSIBILITIES TRANSFERRED TO COUNTY AUTHORITIES BY AGREEMENTS.
2. AGREEMENTS HAVE NO EFFECT ON PROVISION, SECTION 5105.12 RC THAT PAYMENTS TO RECIPIENTS UNDER AID FOR AGED PROGRAM SHALL BE MADE “BY THE TREASURER OF STATE UPON WARRANTS DRAWN BY THE AUDITOR OF STATE.”

SYLLABUS:

1. The provisions of Section 5101.02, Revised Code, authorizing agreements between the department of public welfare and boards of county commissioners for the creation of a single unit within the county for the administration of certain welfare programs, do not authorize the expenditure of state funds for the added cost of administration incurred by the county commissioners attributable to functions and responsibilities transferred to the county authorities by such agreements.

2. Such agreements have no effect on the provision in Section 5105.12, Revised Code, that payments to recipients under the aid for the aged program shall be made “by the treasurer of state upon warrants drawn by the auditor of state.”

Columbus, Ohio, December 9, 1955

Hon. Henry J. Robison, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“We would appreciate your opinion on two sections concerning the merging of public welfare services in a county department of welfare. At the last session of the Legislature the following language was incorporated in Section 5101.02 of the Revised Code.

“The director of public welfare may enter into agreements with county boards of commissioners, as provided in section 329.05 of the Revised Code, to create a single administrative unit within the county for the administration of aid for the aged, aid to the blind, aid to dependent children, aid to the permanently and totally disabled, and for the administration of poor relief.’

“The sections of the code relating to the administration of the program of Aid for the Aged by the State Department of Public Welfare were not changed. Therefore, we are submitting the following questions :

“(1) Does the State Department of Public Welfare have any legal authority for reimbursing a county department of welfare for performing such administrative responsibilities as may be provided in an agreement entered into by the state director of public welfare and a county board of commissioners?

“(2) Since Section 5105.12 in no way changes the responsibilities of the Auditor of State for the issuing of warrants, am I right in assuming that the State Auditor would continue to perform that responsibility whether or not certain administrative responsibilities were performed by a county department of welfare or by a subdivision office of the Division of Aid for the Aged of this Department?”

I have for consideration also an inquiry on this subject from the Hon. C. E. Berry, Prosecuting Attorney of Athens County, in which the following questions are presented :

“Please be advised that the Athens County Commissioners have requested me to secure the written opinion of the Attorney General’s office of the State of Ohio in regard to the interpretation of House Bill 915 passed by the 101st General Assembly and effective October 6, 1955. This bill in effect makes it permissible for the State Welfare Department through its Director to contract with Boards of County Commissioners in various counties for the administration of the County Welfare programs on a county level.

“The specific questions involved are :

“1. Does the word contract in the bill mean that the State Welfare Director contract with the County Commissioners for the administration of the Aid for the Aged including the payment of that portion of the administration based on accurate time studies from Aid for the Aged funds or shall the cost of the administration be born by the County?

“2. Does it permit the Director of the State Welfare Department to contract with County Commissioners for the issuance

of drafts through the County Auditor's office after proper certification by the County Welfare Department or shall such drafts be issued through the State Auditor's office?

"In other words, does the word contract mean contract in its entirety or just partially?"

The language quoted in your inquiry from Section 5101.02, Revised Code, was enacted therein in House Bill No. 915, 101st General Assembly, and reflects the only statutory change effected by such act.

Section 329.05, Revised Code, to which reference is made in the new enactment, reads as follows :

"The county department of welfare may administer or assist in administering any state or local public welfare activity other than those mentioned in Section 329.04 of the Revised Code, supported wholly or in part by public funds from any source provided by agreement between the board of county commissioners and the officer, department, board, or agency in which the administration of such activity is vested. Such officer, department, board, or agency may enter into such agreement and confer upon the county department of welfare, to the extent and in particulars specified in the agreement, the performance of any duties and the exercise of any powers imposed upon or vested in such officer, board, department, or agency, with respect to the administration of such activity. Such agreement shall be in the form of a resolution of the board of county commissioners, accepted in writing by the other party to the agreement, and filed in the office of the county auditor, and when so filed, shall have the effect of transferring the exercise of the powers and duties to which the agreement relates and shall exempt the other party from all further responsibility for the exercise of the powers and duties so transferred, during the life of the agreement.

"Such agreement may be revoked at the option of either party, by a resolution or order of the revoking party filed in the office of the auditor. Such revocation shall become effective at the end of the fiscal year occurring at least six months following the filing of the resolution or order. In the absence of such an express revocation so filed, the agreement shall continue indefinitely.

"This section does not permit a county department of welfare to manage or control county or district tuberculosis or other hospitals, humane societies, detention homes, jails or probation departments of courts, or soldiers' relief commissions."

The provision in this section for revocation of a cooperative agreement made thereunder "at the end of a fiscal year" is indicative of some of the

difficulties encountered when a statute relating to purely local agencies is incorporated in one relating to state agencies, the fiscal year for local subdivisions being coincident with the calendar year whereas that of the state extends from July 1 to June 30. See Section 115.08, Revised Code. That Section 329.05, Revised Code, was drafted solely with reference to county agencies is apparent from the title of House Bill No. 140, 95th General Assembly, in which such section was enacted. Such title is as follows:

“AN ACT To provide for the consolidation of county welfare activities.”

It is to be observed that no provision is made, either in the newly enacted provision noted above in Section 5101.02, Revised Code, or in Section 329.05, Revised Code, incorporated therein by reference, to any transfer of funds or revenues or division of fiscal responsibilities. This, of course, was not necessary in the case of transfers of responsibility relating solely to “county welfare activities,” for all such activities are agencies of the same subdivision, i.e., the county, and all receive appropriations of funds by action of the same taxing authority. See Section 5705.38, Revised Code.

In a somewhat similar statute, Section 307.14, et seq., Revised Code, relating to cooperative agreements between *different* subdivisions, and involving *separate* taxing authorities, this fiscal problem was recognized and provided for. In this connection Section 307.16, Revised Code, provides:

“Every agreement entered into under sections 307.14 to 307.19, inclusive, of the Revised Code, shall provide, either in specific terms or by prescribing a method for determining the amounts, for any payments to be made by the contracting subdivision into the county treasury, in consideration of the performance of the agreement. In cases where it is deemed practicable, the agreement may provide that payment shall be made by the retention in the treasury of the amounts due from taxes collected for the contracting subdivision and the county auditor and county treasurer shall be governed by any such provision in settling the accounts for such taxes.”

Section 307.18, Revised Code, provides:

“Any agreement entered into under sections 307.14 to 307.19, inclusive, of the Revised Code, may provide for the transfer to the board of county commissioners of any property, real or personal, used or useful, in the performance of functions or the rendering of services under such agreement. Such transfer may include the proceeds of bonds issued or to be issued by the con-

tracting subdivision, appropriate to the powers, functions, or services under the agreement, such proceeds to be expended by the board subject to the same conditions as would govern the contracting subdivision. Such transfer may convey the absolute title to such property, subject, in the case of the disposal or encumbrance of such real property by the board, to the consent of the legislative authority of the contracting subdivision; or may convey its use only, or any estate or title less than absolute; may limit the power of the board to dispose of such property; and may provide for its return, disposition, division, or distribution, in the event of the rescission or expiration of the agreement."

Nothing comparable to these provisions is found in any of the permanent legislation here pertinent, nor do I find anything in the general appropriation act for the current biennium, Amended House Bill No. 929, 101st General Assembly, which would authorize the expenditure of state funds by the department of public welfare to meet the cost of administration incurred by the county authorities under a cooperative agreement of the sort here in contemplation. Such statutory authorization would appear to be necessary in view of the limitation on the expenditure of state funds as set out in Article II, Section 22, Ohio Constitution. For these reasons I conclude that under existing legislation county authorities may not be reimbursed from state funds to meet the cost of administrative functions which became their responsibility under such agreements.

As to the method of payment to recipients under the Aid for the Aged program, your attention is invited to the following provision in Section 5105.12, Revised Code:

"Aid payable under sections 5105.01 to 5105.29, inclusive, of the Revised Code, shall be paid monthly by the treasurer of state upon warrants drawn by the auditor of state. Warrants shall be delivered to the recipient to whom payable, or his duly qualified guardian, by the division of aid for the aged in such manner as the division may prescribe except that warrants for the payment of medical, dental, optometrical, or hospital care shall be, at the option of the division, made payable to, and delivered directly to, either the recipient or persons or agencies furnishing such care."

It is here quite plainly provided that payments are to be made from the state treasury by the state auditor, and it is equally clear that it would be wholly beyond the power of the department of public welfare to provide for a transfer to the county authorities, under the statutes here in question, of responsibilities other than those reposed by law in the department itself.

No such agreement, therefore, would have any effect on the provisions of Section 5105.12, supra.

Accordingly, in specific answer to the inquiries here considered, I am of the opinion that:

1. The provisions of Section 5101.02, Revised Code, authorizing agreements between the department of public welfare and boards of county commissioners for the creation of a single unit within the county for the administration of certain welfare programs, do not authorize the expenditure of state funds for the added cost of administration incurred by the county commissioners attributable to functions and responsibilities transferred to the county authorities by such agreements.

2. Such agreements have no effect on the provision in Section 5105.12, Revised Code, that payments to recipients under the aid for the aged program shall be made "by the treasurer of state upon warrants drawn by the auditor of state."

Respectfully,

C. WILLIAM O'NEILL

Attorney General