

2787

A COUNTY CHILD WELFARE BOARD OPERATING A TRAINING CENTER OR WORKSHOP FOR MENTALLY DEFICIENT PERSONS IS WITHOUT AUTHORITY TO REQUIRE THAT PERSONS TWENTY-ONE YEARS OF AGE PAY TUITION— §§5127.01 to 5127.05, 5153.161 R.C.

SYLLABUS:

A county child welfare board operating a training center or workshop for mentally deficient persons pursuant to Chapter 5127., and Section 5153.161, Revised Code, is without authority to require that persons over twenty-one years of age pay tuition as a condition of enrollment in such center or workshop.

Columbus, Ohio, January 27, 1962

Hon. Earl W. Allison, Prosecuting Attorney
Franklin County, Columbus 15, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“As you know, a recent session of the General Assembly passed Substitute House Bill 778 placing total responsibility on the child welfare boards for the administration of training programs or workshops for mentally retarded persons. Its effective date was October 27, 1961.

“Prior to Substitute House Bill 778, Section 5127.01 of the Revised Code provided for only children under twenty-one years of age as eligible to enroll in the training programs. However, paragraph ‘B’ of Section 5127.01, Revised Code, as amended, provides for persons twenty-one years of age and over may now enroll in the training centers or workshops so provided.

“Since persons twenty-one years of age or over are no longer of school age, the Franklin County Child Welfare Board now proposes to require the payment of tuition as a condition of enrollment by parents and legal guardians of persons twenty-one years of age and over who wish to enroll in these training programs. The question has been raised as to whether the proposed requirement of tuition is permitted by Sections 5127.01 to 5127.05, inclusive, Revised Code and Sections 5153.01 to 5153.53, inclusive, Revised Code.

“Because this question is one which may well affect other counties throughout the state and is, therefore, of state-wide interest, I re-

spectfully request your opinion as to whether the Franklin County Child Welfare Board may require the payment of tuition as a condition of enrollment by parents or legal guardians of persons twenty-one years of age and over.”

Section 5127.01, Revised Code, reads as follows:

“The commissioner of mental hygiene, with the approval of the director of mental hygiene and correction, shall establish in any county or district a training center or workshop for the special training of mentally deficient persons, including those who have been adjudged by the proper authorities to be ineligible for enrollment in public schools under sections 3317.01 to 3317.15, inclusive, 3321.01, and 3323.01 of the Revised Code, and who are determined by the division of mental hygiene to be capable of profiting by specialized training. Special attention shall be given to the establishment of a training program for the mentally deficient for the purpose of enabling them to become accepted by society and to find employment in the structure of society to the extent that they may be fitted therefor. The commissioner shall be the final authority in determining the nature and degree of mental deficiency, decide all questions relative or incident to the establishment and operation of each training center or workshop, determine what constitutes special training, promulgate all rules and regulations, subject to section 119.01 to 119.13, inclusive, of the Revised Code, governing the approval of mentally deficient persons for such training, determine or approve all forms used in the operation of programs undertaken under this section, and approve the current operating costs of such programs.

“As used in sections 5127.01 to 5127.05, inclusive, of the Revised Code, a ‘mentally deficient person’ means:

“(A) A person who has been determined by the proper authorities to be ineligible for enrollment in a public school because of mental deficiency of such nature and to such degree that the person is incapable of profiting substantially by any educational program which should be provided by such public school;

“(B) If not of school age, a person who has been determined by the proper authorities to be unemployable because of mental deficiency to such nature and to such degree that special training is necessary. The nature and degree of mental deficiency shall be determined in the manner prescribed by the commissioner.

“As used in sections 5127.01 to 5127.05, inclusive, of the Revised Code ‘county child welfare board’ includes the county department of welfare which has assumed the administration of child welfare in accordance with the provisions of Chapter 5153. of the Revised Code.”

Section 5127.03, Revised Code, reads as follows:

"On the thirtieth day of June of each year, the county child welfare board shall certify to the commissioner of mental hygiene:

"(A) The names and residences of the persons enrolled in the training center and workshop pursuant to section 5127.01 of the Revised Code;

"(B) The period of time each deficient person was enrolled;

"(C) An itemized report of expenditures which have been approved by the commissioner;

"(D) The net per capita cost for operating such training center and workshop.

"The division of mental hygiene, upon receipt and approval of the report provided in this section, shall present a voucher to the auditor of state in favor of the agency providing the specialized training in an amount not to exceed three hundred dollars per year for each mentally deficient person under twenty-one years of age who is enrolled in such training center and workshop. Upon presentation of such voucher, the auditor of state, if satisfied as to the correctness of the voucher, shall draw a warrant on the treasurer of state in the amount of the voucher."

Thus, the commissioner of mental hygiene, with the approval of the director of mental hygiene, is authorized to establish in any county or district a training center or workshop for the special training of mentally deficient persons. While this language implies that such a center or workshop would be a state facility run by employees of the commissioner, later language in the section indicates that the commissioner merely acts in a supervisory capacity in the establishment and operation of a training center or workshop. Further, Section 5153.161, Revised Code, indicates that the county child welfare board is the agency authorized to operate the training center or workshop. That section reads as follows:

"The county child welfare board, subject to the rules, regulations, and standards of the commissioner of mental hygiene shall:

"(A) Administer and supervise the provisions of sections 5127.01 to 5127.05, inclusive, of the Revised Code, and exercise such powers and duties as prescribed by the commissioner;

"(B) Submit an annual report of its work and expenditures, pursuant to section 5127.01 of the Revised Code, to the commissioner and to the board of county commissioners at the close of the fiscal year and at such other times as may be requested;

"(C) Employ such personnel and provide such facilities and equipment as are necessary;

“(D) Provide such funds as are necessary for the operation of training centers and workshops.

“Any county child welfare board may enter into a contract with another such board of another county to provide the training center and workshop facilities authorized in sections 5127.01 to 5127.05, inclusive, of the Revised Code, upon such terms as may be agreeable.”

Under said Section 5153.161 the county child welfare board is to provide such funds as are necessary for the operation of training centers and workshops. In turn, the board is entitled under Section 5127.03, *supra*, to an amount from the state not to exceed three hundred dollars per year for each mentally deficient person under twenty-one years of age who is enrolled in the training center or workshop. Also, under Section 5127.04, Revised Code, the board is entitled to certain tuition payments from boards of education for the training of persons under twenty-one years of age. Said Section 5127.04 reads as follows:

“The county child welfare board which during the school year has administered and supervised, pursuant to the provisions of section 5127.01 of the Revised Code, a training center for the mentally deficient shall prepare a statement for each person under twenty-one years of age who has received such training, such statement to show the name of the person, the name of the school district in which the person is a school resident, the name of the board providing the training, and the number of months the person received training. Not later than the thirtieth day of June the board shall forward a certified copy of such statement to the clerk of the board of education of the school district in which the person is a school resident and shall forward a certified copy of such statement to the commissioner of mental hygiene. Within thirty days after the receipt of such statement the board of education shall pay to the county child welfare board submitting the statement an amount equal to the computed amount of tuition that would be due the school district receiving the statement if a nonresident pupil attended the schools of such district for the same period of time that the mentally deficient person attended the training center, such amount to be computed in the manner prescribed by section 3317.08 of the Revised Code.”

It will be noted that under the definition of “mentally deficient person,” as found in Section 5127.01, *supra*, training centers and workshops are not limited to persons of school age, and are presumably open to persons of any age who otherwise qualify. (Previous to October 26, 1961, such schools were for only mentally deficient youth under twenty-one years of age—125 Ohio Laws, 876).

I have found no provision of law which would authorize a county child welfare board to charge tuition for any of the persons attending the training center or workshop. On the contrary, as noted, Section 5153.161, *supra*, states that the board shall provide such funds as are necessary for operation, and it appears inherent in the provisions of law herein discussed that the schools are open to all persons who qualify for training.

It is true that the child welfare board is paid by the state for only those trainees under twenty-one years of age, and that a certain amount is reimbursed by boards of education for such trainee under that age. These facts, however, do not amount to a grant of power to the board to charge tuition for persons over twenty-one years of age, and in the absence of a specific grant of such power, I must conclude that such tuition charges may not be made.

To conclude, it is my opinion and you are advised that a county child welfare board operating a training center or workshop for mentally deficient persons pursuant to Chapter 5127., and Section 5153.161, Revised Code, is without authority to require that persons over twenty-one years of age pay tuition as a condition of enrollment in such center or workshop.

Respectfully,
MARK McELROY
Attorney General