

OPINION NO. 73-014

Syllabus:

1. A county board of mental retardation has a duty under R.C. 5126.03 to provide mentally retarded persons with necessary transportation without cost to and from facilities operated by such board within the county.

2. A county board of mental retardation is not entitled to receive special state reimbursement for transportation costs of trainable mentally retarded children of school age to and from facilities operated by such board.

To: Kenneth D. Gaver, Director, Dept. of Mental Health and Mental Retardation,
Columbus, Ohio

By: William J. Brown, Attorney General, March 6, 1973

Your request for my opinion reads in part as follows:

Ohio Revised Code Section 3327.01 now authorizes that in all city, exempted village, and local school districts the State Board of Education shall provide transportation to and from school or special education classes for educable mentally retarded children.

Chapters 5126 and 5127, Revised Code, provide for county boards of mental retardation to administer and supervise programs and services for the special training of mentally retarded persons, including those who have been adjudged to be ineligible for enrollment in public schools under Chapter 3317 and Sections 3321.01 and 3323.01, Revised Code.

Your Opinion No. 72-022 of March 29, 1972, advises that a community program for the trainable mentally retarded is considered a state-operated program and free public education.

I now request your Opinion in the following instance:

May a county board of mental retardation receive special state reimbursement for transportation costs of

trainable mentally retarded children of school age to and from facilities operated by a county board of mental retardation?

The powers and duties of a county board of mental retardation are prescribed by R.C. 5126.03, which reads in part as follows:

The county board of mental retardation, subject to the rules, regulations, and standards of the chief of the division of mental retardation and developmental disabilities shall:

* * * * *

(C) Employ such personnel and provide such services, facilities, transportation, and equipment as are necessary;

* * * * *

The board of county commissioners shall levy taxes and make appropriations sufficient to enable the county board of mental retardation to perform its functions and duties as provided by this section.

This Section, which was originally enacted in 1967 by Amended Senate Bill No. 169, is analogous to a former Section of the Revised Code, R.C. 5153.161, which was repealed by the same Act. Under R.C. 5153.161, the county child welfare board had the powers and duties now assigned to the county board of mental retardation. One of my predecessors, in Opinion No. 1306, Opinions of the Attorney General for 1964, concluded that a county child welfare board had a duty to provide mentally retarded persons with free transportation to training schools established within the county. See also Opinion No. 70-121, Opinions of the Attorney General for 1970. Since the language of former R.C. 5153.161 is now contained in R.C. 5126.03, which applies to county boards of mental retardation, I must conclude that a county board of mental retardation has a duty under R.C. 5126.03 to provide mentally retarded persons with necessary transportation without cost to, and from facilities operated by, such board within the county.

You ask, however, whether a county board of mental retardation is entitled to be specially reimbursed for such transportation costs by the state. General provision for state reimbursement of the expenditures of a county board of mental retardation is made by R.C. 5127.03. Such reimbursement is based upon the number of persons enrolled in the county programs, and it appears to have no relation to transportation costs. A county board of mental retardation is also entitled to receive appropriations from a board of county commissioners as provided by R.C. 5126.03. Since neither of these Sections refers specifically to special reimbursement for transportation costs, it appears that no special, additional reimbursement exists for the sole purpose of defraying transportation costs, but that such costs must be paid from the funds provided under R.C. 5126.03 and 5127.03.

It has been suggested that R.C. 3327.01, which provides generally for the transportation of pupils by boards of education, implies a special state reimbursement to a county board of mental retardation for transporting trainable mentally retarded children to facilities established under R.C. Chapter 5127. R.C. 3327.01 reads, in pertinent part, as follows:

* * * In all city, exempted village, and local school districts the board shall provide transportation to and from school or special education classes for educable mentally retarded children in accordance with standards adopted by the state board of education.
(Emphasis added.)

This Section must, however, be distinguished from the instant situation because it requires a board of education to provide transportation to school or special education classes for educable mentally retarded children. Your question concerns the transportation, by a county board of mental retardation, of trainable mentally retarded children, including many who are ineligible for enrollment in public schools, to special training facilities. R.C. 3327.01 makes no provision for such transportation, probably because such duty has been assigned to the county board of mental retardation by R.C. 5126.03. I must conclude, therefore, that the Revised Code does not provide for special state reimbursement to a county board of mental retardation for transportation costs of trainable mentally retarded children of school age to and from facilities operated by such board. Compare Opinion No. 72-049, Opinions of the Attorney General for 1972, which held that there was no provision in R.C. Chapter 3317 for reimbursement of the costs of transportation of educable mentally retarded children incurred by a joint vocational school district.

In specific answer to your question it is my opinion, and you are so advised, that:

1. A county board of mental retardation has a duty under R.C. 5126.03 to provide mentally retarded persons with necessary transportation without cost to and from facilities operated by such board within the county.
2. A county board of mental retardation is not entitled to receive special state reimbursement for transportation costs of trainable mentally retarded children of school age to and from facilities operated by such board.