

OPINION NO. 67-047**Syllabus:**

A child welfare board, in the conduct of an investigation may, where necessary, provide that a psychological examination be given to determine the eligibility of an individual for the training programs established pursuant to Sections 5127.01 to 5127.04, inclusive, Revised Code, or Section 5153.16, Revised Code.

To: James V. Barbuto, Summit County Pros. Atty., Akron, Ohio
By: William B. Saxbe, Attorney General, May 25, 1967

Your request for my opinion reads as follows:

"Child Welfare Boards have the responsibility for training mentally retarded individuals.

"May they order, and spend public funds to pay for psychological examinations of individuals not enrolled in their program at the time of examination?

"They believe that it is necessary to have a recent psychological examination to determine if the individual qualifies according to standards set by the Bureau of Mental Retardation of the Department of Mental Hygiene and Correction. It is therefore possible that the Child Welfare Board would purchase psychological testing for an individual who has never been in the program and might not qualify."

The County Child Welfare Board has the duty to cooperate in the establishment of and the administration of the training programs under the supervision of the Department of Mental Hygiene and Correction, Division of Mental Hygiene, which provides training for mentally retarded individuals below school age, beyond school age, or legally excluded from the public schools (by action of the board of education pursuant to Section 3321.05, Revised Code).

Sections 5127.01 through 5127.04, inclusive, of the Ohio Revised Code, provide the fundamental program for administration by the Child Welfare Board and their duty to administer this program is set out in Section 5153.161, Revised Code, which is entitled "Additional duties of board" and 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 sections 5127.01 to 5127.04, 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, transportation, 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 5127.04, inclusive, of the Revised Code, upon such terms as may be agreeable."

It is noted that these duties are in addition to those prescribed by Section 5153.16, Revised Code, which provides in part:

"The county child welfare board shall, subject to the rules, regulations, and standards of the division of social administration, have the following powers and duties on behalf of children in the county deemed by the board or department to be in need of public care or protective services:

"(A) To make an investigation concerning any child reported to be in need of care, protection, or service;

* * * * *

"(I) Subject to the approval of the board of county commissioners and the division, to establish and operate a training school or enter into an agreement with any municipal corporation or other political subdivision of the county respecting the operation, acquisition, or maintenance of any children's home, training school, or other institution for the care of children maintained by such municipal corporation or political subdivision, and may, pursuant to such agreement, acquire, operate, and maintain such an institution; provided that the board may enter into an agreement with a municipal corporation, a board of education, and the board of county commissioners, or with any of them, to provide for the maintenance and operation of children's training schools; such agreement may provide for the contribution of funds by any such municipal corporation, board of education, or board of county commissioners, in such proportions and amounts as their agreements state, and for the operation and supervision of such training schools by any one of them, or by the joint action of two or more of them; provided that municipal corporations, school boards, and boards of county commissioners may expend moneys from their gen-

eral funds for maintaining and operating such joint children's training schools;"

It is apparent that the authority to investigate must include the administration of a psychological test if it would seem to be warranted. It is a well-established rule of law that where there is a specific authority or duty to perform, the agency so charged has the implied authority to take other actions which may be essential to completely discharge the powers, duties and obligations conferred upon it by law.

Section 5127.01, Revised Code, provides that the Division of Mental Hygiene shall formulate rules to be followed by the county child welfare boards in their administration of the training centers and that the Division of Mental Hygiene shall be the final authority as to who may be capable of benefiting from the training provided.

The Rules and Regulations established by the Division of Mental Hygiene pursuant to its duty under Section 5127.01, supra, provide for submission by the County Child Welfare Board of evidence of the eligibility for enrollment of the mentally retarded into the training program. A psychological evaluation which was made within twelve months prior to admission is one of the requirements. (Rules MHh 1-05 and 1-06 of the Division of Mental Hygiene.)

The Child Welfare Board has the duty to investigate concerning children reported to be in need of service. In the event that it would seem advisable to determine the eligibility of a child for the training programs established pursuant to Section 5127.01, et seq., Revised Code, or in accordance with Section 5153.16 (I), supra, where the applicant for admission had not previously received the necessary psychological evaluation, the board would have authority to have the test run as a necessary part of the investigation concerning such child.

It is therefore my opinion and you are hereby advised that a child welfare board, in the conduct of an investigation may, where necessary, provide that a psychological examination be given to determine the eligibility of an individual for the training programs established pursuant to Sections 5127.01 to 5127.04, inclusive, Revised Code, or Section 5153.16, Revised Code.