

**OPINION NO. 87-096****Syllabus:**

1. Title XX of the Social Security Act, 42 U.S.C. Section 1397(a)-1397(e), provides for block grants to the states for social services which are partially allocated to county departments of human services by the Ohio Department of Human Services under R.C. 5101.462(B). A board of county commissioners is not empowered to direct the Ohio Department of Human Services to allocate those Title XX funds directly to a county children services board.
2. A board of county commissioners may, pursuant to R.C. 5101.462(H), order a transfer of Title XX funds allocated to the county department of human services by the Ohio Department of Human Services under R.C. 5101.462(B) to a county children services board provided that the county children services board is established after October 5, 1987.
3. The funds generated by a children services levy, the purpose of which was to provide sufficient funds for the support of children and the care and placement of abused and neglected children, may, pursuant to R.C. 5705.24 and R.C. 5153.35, be used by a subsequently established county children services board even though children services had been provided by the county department of human services at the time the levy was passed.

**To: John Holcomb, Butler County Prosecuting Attorney, Hamilton, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, December 16, 1987**

I have before me your request for my opinion concerning the funding of a county children services board.<sup>1</sup> Your letter indicates that the county commissioners in your county have raised several questions in regard to funding of a county children services board. Based upon conversations with a member of your staff, I have rephrased your questions as follows:

1. Is it legally possible for the county commissioners to direct the Ohio Department of Human Services to allocate social services operating (Title XX) funds directly to the county children services board rather than to the county department of human services?
2. If that is not legally possible, what other procedure for funding a county children services board through the use of Title XX funds would be legally possible?
3. May funds generated by a children's services levy passed by the voters in November, 1984, be paid to a county children services board created more than two years after passage of that levy?

Your letter and accompanying documents indicate that children services for Butler County have historically been provided through the county department of human services.<sup>2</sup> The board of county commissioners desires to transfer the responsibility for providing those services to a county children services board. Your letter states that the board of county commissioners wishes to know how a county children services board may be funded.

In order to address your questions in their proper context, it is necessary to review the statutory scheme for provision of children services at the county level. The statutory framework is set forth in R.C. Chapter 5153. Children services may be delivered by either a county children services board or a county department of human services, depending upon the arrangement in the particular county. The specific powers and duties of the entity providing children services are set forth in R.C. 5153.16-.19. R.C. 5153.16 confers authority to provide for child welfare in the county upon "[t]he county children services board or county department of human services that has

---

<sup>1</sup> Your letter indicates that the county commissioners have resolved to create an "Independent Children's Services Board" contingent upon funding legislation. R.C. Chapter 5153 uses the term "county children services board" and does not make reference to an "independent children's services board." Based upon conversations with a member of your staff, it is my understanding that your term "independent children's services board" is intended to refer to a "county children services board." For purposes of this opinion, I will use the statutory term "county children services board."

<sup>2</sup> A county department of human services may provide children services under the authority of R.C. 5153.01.

assumed the administration of child welfare...on behalf of children in the county considered by the board or department to be in need of public care or protective services." The powers of a county children services board and county department of human services are not concurrently coextensive in this regard as R.C. 5153.15 limits the provision of such services to a single agency of county government. R.C. 5153.15 provides:

The powers and duties enumerated in sections 5153.16 to 5153.19, inclusive, of the Revised Code, with respect to the care of children, needing or likely to need public care or services, shall be vested in a single agency of a county government, namely, a county department of human services or a county children services board. (Emphasis added.)

In order to determine which county agency is designated to provide children services in a particular county, it is necessary to review the history of the delivery of such services within that county in light of R.C. 5153.02, R.C. 5153.06 and R.C. 5153.07. R.C. 5153.02 provides:

In any county in which a county department of human services has been established, and in which there is no county children services board or board of trustees of a county children's home on January 1, 1946, such department shall, on such date, have all the powers and duties of a county children services board, and neither such board shall be created after such date, except as provided in division (B) of section 5153.07 of the Revised Code.

R.C. 5153.06 provides for the situation in which an established county children services board transfers its authority, through agreement, to a county department of human services. It states:

In any county in which the county children services board or the board of trustees of the county children's home, prior to January 1, 1946, entered into, or after such date enters into, an agreement with the board of county commissioners to transfer its powers and duties to a county department of human services, such agreement shall be irrevocable, except as provided in division (B) of section 5153.07 of the Revised Code, and such county children services board or the board of trustees of such home shall cease to exist. Section 329.05 of the Revised Code does not apply to this section. The custody of all wards of such board or institution shall be deemed transferred to such department. The county director of human services may thereupon appoint an advisory committee on child welfare, and may include on such committee any of the former members of such children services board, or board of trustees of the children's home, who shall serve without compensation, but shall be entitled to their necessary expenses and shall be considered employees of the county department of human services as provided by section 325.20 of the Revised Code. The tenure of office of such committee shall be determined by the rules of such department.

R.C. 5153.07(B) provides for the situation in which a county department of human services has undertaken the performance of children services, but the board of county commissioners

desires to transfer the performance of those services to a newly created county children services board. R.C. 5153.07(B) provides:

In any county where the board of county commissioners have established a county department of human services, and such department is performing the duties of a county children services board by agreement, or otherwise, such board of county commissioners, may, by a resolution, revoke such agreement, powers and duties and establish a county children services board of five to fifteen members, in the manner provided in section 5153.08 of the Revised Code. Such board shall have all of the powers and duties given to county children services boards under sections 5153.01 to 5153.42 of the Revised Code. Section 329.05 of the Revised Code does not apply to this division.

Your letter indicates that children services are presently provided in Butler County by the county department of human services. However, the board of county commissioners wishes to establish a county children services board in accordance with R.C. 5153.07(B).

Turning now to your specific questions, according to the materials provided along with your request, Title XX funds are presently being used by the Butler County Department of Human Services to provide children services.<sup>3</sup> You ask whether it is legally possible for the board of county commissioners to direct the Ohio Department of Human Services (ODHS) to allocate Title XX funds directly to a county children services board rather than to the county department of human services.

---

<sup>3</sup> Title XX of the Social Security Act, 42 U.S.C. §§1397a-1397e, provides for block grants to states for social services. Title XX includes among its purposes consolidating Federal assistance to States for social services into a single grant, increasing State flexibility in using social service grants, and encouraging each state to furnish services directed at the goal, set forth in §1397(a), of "preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitation or reuniting families." Under Title XX §1397(a), payment is made to states for:

services which are directed at the goals set forth in section 1397 of this title include, but are not limited to, child care services, protective services for children and adults, services for children and adults in foster care, services related to the management and maintenance of the home, day care services for adults, transportation services, family planning services, training and related services, employment services, information, referral, and counseling services, the preparation and delivery of meals, health support services and appropriate combinations of services designed to meet the special needs of children, the aged, the mentally retarded, the blind, the emotionally disturbed, the physically handicapped, and alcoholics and drug addicts.

R.C. 5101.46-.464 govern state administration of the program for the provision of social services authorized by Title XX of the Social Security Act. R.C. 5101.46 designates ODHS, as well as the Ohio Department of Mental Health and the Ohio Department of Mental Retardation and Developmental Disabilities, as the state agencies that administer Title XX programs. R.C. 5101.46 allows ODHS to assign its administrative responsibilities under the Title XX program to county departments of human services.<sup>4</sup> It directs ODHS to prepare a comprehensive social services program plan that meets all the requirements of applicable state and federal statutes and regulations. ODHS's authority to administer Title XX funding, set forth under R.C. 5101.46, is complemented by R.C. 329.04. That section empowers the county department of human services, under control and direction of the county commissioners, to perform duties "relative to the provision of public social services, including services authorized under Title IV-A, Title IV-D, and Title XX of the 'Social Security Act,' 49 Stat. 620 (1935), 42 U.S.C. 301, as amended." The statutory scheme thus expressly provides, in R.C. 329.04, that the county commissioners may exercise control over the county department of human services in the performance of its duties relative to the provision of social services authorized under Title XX. It does not, however, expressly empower the board of county commissioners to control or direct ODHS in regard to the allocation of Title XX funds.

The manner in which Title XX funds are to be allocated to counties by ODHS is established by R.C. 5101.462. That statute was recently amended. Am. Sub. H.B. 231, 117th Gen. A. (1987) (eff. Oct. 5, 1987). Pursuant to R.C. 5101.462(B), as amended, Title XX funds are to be allocated by ODHS to county departments of human services, as follows:

All federal funds received under Title XX of the "Social Security Act," 88 Stat. 2337, 42 U.S.C. 1397, as amended, shall be appropriated to the departments of human services, mental health, and mental retardation and developmental disabilities in the following manner:

- (1) department of human services, seventy-two and one-half per cent;
- (2) department of mental health, twelve and ninety-three one hundredths per cent; and
- (3) department of mental retardation and developmental disabilities, fourteen and fifty-seven one hundredths per cent.

Of the amount appropriated to the department of human services, the director of human services shall allocate to county departments of human services:

All federal funds received under division (B)(1) of this section, except those required for state

---

<sup>4</sup> R.C. 5101.46 provides:

(A) The departments of human services, mental health, and mental retardation and developmental disabilities shall administer the program for the provision of social services authorized by Title XX of the "Social Security Act," 88 Stat. 2337, 42 U.S.C. 1397, as amended. Departments may assign their administrative responsibilities to their respective county departments of human services.

administration under division (C) of this section and two per cent for the training of employees of county departments of human services, providers of services under contract with county departments of human services or with community mental health boards or county boards of mental retardation and developmental disabilities, and county children services boards who are directly engaged in providing services under the program. Within the federal funds allocated to a county, twenty per cent shall be used to provide children's day-care services. A county department may spend more than twenty per cent of its allocation of Title XX funds to provide children's day-care services.

There is no express provision within R.C. 5101.462(B) authorizing the board of county commissioners to direct ODHS in its allocation of Title XX funds. To the contrary, the express language of that statute confers authority upon ODHS to allocate those funds without direction by a board of county commissioners.

As a creature of statute, a board of county commissioners may exercise only those powers expressly conferred by statute or necessarily implied therefrom. State ex rel. Shriver v. Board of Commissioners, 148 Ohio St. 277, 74 N.E.2d 248 (1947). State ex rel. Clarke v. Cook, 103 Ohio St. 465, 134 N.E. 166 (1921). I find no express authority which empowers a board of county commissioners to direct ODHS with respect to allocation of Title XX funds. Neither do I discern any basis on which such authority may be implied. To the contrary, R.C. 5101.462(B) grants authority to allocate those funds solely to ODHS, and the language of that statute in no way suggests that the authority of ODHS is subject to direction by the board of county commissioners.

In addition to the absence of any statutory language that expressly or impliedly authorizes a board of county commissioners to direct ODHS in its allocation of Title XX funds, I note that in the recent amendment to R.C. 5101.462, the General Assembly added division (H) to that section. Division (H) provides:

If, on the effective date of this amendment, the children services functions of a county are being performed by the county department of human services, and after the effective date of this amendment, the county establishes a county children services board, the board of county commissioners may, by resolution adopted by a majority of the members of the board, direct the county department of human services to transfer to the county children services board a portion of the funds allocated to the county department of human services under division (B) of this section or received by that department from funds appropriated by the state for county administration. The amounts transferred shall be the amount determined by the county commissioners to be necessary for providing children services. On receipt of the direction, the county department of human services shall make the transfer required by this division. A transfer of funds pursuant to this division shall not affect the amount of any funds allocated to the county by the state department of human services pursuant to division (B) of this section.

The obvious purpose of enacting R.C. 5101.462(H) was to provide a mechanism through which Title XX funds, allocated to the

county department of human services by ODHS under division (B), could be transferred to a county children services board. If, prior to the amendment of R.C. 5101.462, the General Assembly had considered that a board of county commissioners possessed the implied authority to direct ODHS to allocate Title XX funds to a county children services board, then the amendment would have been unnecessary. However, it is a longstanding principle of statutory construction that an amendment of an existing statute is presumed to have meaning and substantive purpose. Clark v. Clark, 165 Ohio St. 457, 136 N.E.2d 52 (1956); Leader v. Glander, 149 Ohio St. 1, 77 N.E.2d 69 (1948). I therefore conclude that because the General Assembly has provided a specific mechanism whereby a board of county commissioners may direct a transfer of Title XX funds from a county department of human services to a county children services board under R.C. 5101.462(H), there is no express or implied authority by which a board of county commissioners may direct ODHS to allocate Title XX funds directly to a county children services board. Your first question must therefore be answered in the negative.

In your second question you ask: What other procedure for funding a county children services board through the use of Title XX funds would be legally possible? My answer to your second question follows from my analysis of your first question. R.C. 5101.462(H) authorizes a board of county commissioners to order the transfer of Title XX funds from the county department of human services to the county children services board, provided that the children services board is established after October 5, 1987, the effective date of the amendment. Therefore, I conclude that, for the purpose of funding a county children services board, a board of county commissioners may, pursuant to R.C. 5101.462(H), order a transfer of Title XX funds allocated to the county department of human services by ODHS under R.C. 5101.462(B) to a county children services board established after October 5, 1987.

Your final question asks: May funds generated by a children services levy passed by the voters in November, 1984, be paid to a county children services board created after passage of that levy? Materials provided with your letter indicate that in 1984 the Butler County Board of County Commissioners resolved that it was necessary "to levy a tax in excess of the ten-mill limitation to supplement general fund appropriations for the purpose of providing sufficient funds for the support of children's services and the care and placement of children at a rate not exceeding .80 mill for a period of five years, to wit: the tax years 1984, 1985, 1986, 1987, and 1988." (Butler County, Ohio, Resolution 84-8-839, August 20, 1984).<sup>5</sup> Pursuant to that resolution, the November 6, 1984, general election ballot for Butler County included a proposed tax levy with the following language:

An additional tax for the benefit of the Butler County, Ohio, for the purpose of providing sufficient funds for the support of children's services and the care and placement of abused and neglected children.... (Emphasis added.)

As previously noted, the Butler County Department of Human Services was providing children services at the time of the

---

<sup>5</sup> R.C. 5705.25 mandates that the ballot language must state the purpose for which the proposed tax is to be levied, as specified in the taxing authority's resolution.

passage of the levy and was the recipient of levy funds during the levy's initial years. Therefore, this is not a situation in which the proceeds of the levy were accumulated during the life of the levy for expenditures at a later date. Cf. 1966 Op. Att'y Gen. No. 144 at 2-288. The situation posed by your question is one in which revenues derived from the children services levy would be appropriated to a county children services board that did not exist when the levy was passed by the voters.

Article XII, §5, of the Ohio Constitution provides that "every law imposing a tax shall state distinctly, the object of the same to which only it shall be applied." It is well established that the board of county commissioners has no legal authority to appropriate tax funds derived from a special tax levy for any purpose other than that for which such special taxes were levied, except as may be specifically provided by statute. 1933 Op. Att'y Gen. No. 972, p. 936. R.C. 5705.10 describes the manner in which revenues derived from tax levies are to be distributed. It states, in relevant part: "All revenues derived from a special levy shall be credited to a special fund for the purpose for which the levy was made."

There are two statutes which authorize a board of county commissioners to place a tax levy for children services before the voters. R.C. 5705.24 specifically authorizes the board to propose a levy for children services, and enumerates the purposes for which funds generated by such a levy may be used. R.C. 5153.35 confers general authority upon a board of county commissioners to appropriate funds and levy taxes for the provision of children services.

R.C. 5705.24 provides, in part, that:

The board of county commissioners of any county, at any time and in any year, after providing the normal and customary percentage of the total general fund appropriations for the support of children services and the care and placement of children, by vote of two-thirds of all the members of said board may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide an adequate amount for the support of such children services, and that it is necessary to levy a tax in excess of the ten-mill limitation to supplement such general fund appropriations for such purpose. Taxes from a levy imposed under this section may be expended for any operating or capital improvement expenditure necessary for the support of children services and the care and placement of children.

R.C. 5705.24 also requires that the resolution of the county commissioners, declaring the necessity for a tax levy for children services, shall conform to the requirements of R.C. 5705.19.

R.C. 5705.19 mandates that the taxing authority's resolution proposing a tax levy must specify the purpose or purposes for which the revenue derived from the tax shall be applied. R.C. 5705.19 also provides that the taxing authority's resolution must be confined to the purpose or purposes specified by statute. R.C. 5705.25(A) requires that the ballot language placing the question of the tax levy before the voters must set forth the purpose of the additional tax, as stated in the taxing authority's resolution. Thus, the purpose



of the tax levy, as set forth in the resolution and ballot language, may not be broader than the purpose or purposes authorized by R.C. 5705.24.

The ballot language in question stated that the levy was a tax for the purpose of "providing sufficient funds for the support of children's services and the care and placement of abused and neglected children." As my predecessor noted in reference to a levy submitted to the voters pursuant to a different statute, "the ballot shall state the statutory purpose of the proposal, but need not state the specific anticipated use of the proceeds of that levy." 1976 Op. Att'y Gen. No. 76-032.<sup>6</sup> The ballot language thus parrots the language of the resolution and constitutes notice to the public of the purpose for which funds generated by the levy would be used. As use of the funds for a county children services board would be a use for "the support of children's services and the care and placement of abused and neglected children," I conclude that moneys generated by the levy could properly be appropriated to a county children services board to be used for those purposes. As there is no limitation in either the resolution or the ballot language requiring that those services be performed only by the county department of human services, I see no reason why levy funds cannot be devoted to the support of children services even though a different agency is designated during the life of the levy to deliver those services within the particular county. In this regard, I have already noted that the statutory scheme under which children services are provided contemplates that such services may be provided by either the county department of human services or the county children services board. See R.C. 5153.15 ("[t]he powers and duties in [R.C. 5153.16-.19]...with respect to the care of children, needing or likely to need public care or services, shall be vested in a single agency of county government, namely, a county department of human services or a county children services board"). Within this statutory framework, therefore, I find that where the stated purpose of a levy is to provide "sufficient funds for the support of children's services and the care and placement of abused and neglected children," funds generated by that levy may be used by whichever agency is designated to deliver such services in the particular county.

In addition, I find express support for this conclusion in R.C. 5153.35. Under that section, the board of county commissioners has authority to levy taxes and make appropriations sufficient to enable a children services board to perform its functions and duties. R.C. 5153.35 specifically authorizes the board of county commissioners to levy taxes and make appropriations for "the county children services board or county human services," to perform its functions and duties under R.C. 5153.01-.42. (Emphasis added.) At the time of the 1984 Butler County resolution and tax levy on children services, R.C. 5153.35 specifically provided, in pertinent part, that:

---

<sup>6</sup> From the facts at hand it appears that your question does not concern the proper fund to which revenue derived from the levy should be credited. It is apparently the intention of the county commissioners to use the same funds already segregated by the levy for children's services, and that the commissioners seek merely to distribute those segregated funds to a different children services entity. This is not a transfer of funds subject to R.C. 5705.14.

The boards of county commissioners shall levy taxes and make appropriations sufficient to enable the county children services board or county department of welfare to perform its functions and duties under section 5153.01 to 5153.42 inclusive of the Revised Code.<sup>7</sup>

R.C. 5153.35 has recently been amended to include the following additional provisions:

If the board of county commissioners levies a tax for children services and the children services functions are transferred from a county children services board to the department of human services, or from the department of human services [sic],<sup>8</sup> or from the department of human services to a county children services board, the levy shall continue in effect for the period for which it was approved by the electors for the use by the agency that provides children services pursuant to the transfer.

Am. Sub. H.B. 231, 117th Gen. A. (1987) (eff. Oct. 5, 1987).

The language of this amendment to R.C. 5153.35 expressly authorizes a levy for children services, passed in 1984, to continue in effect even after the transfer of responsibilities for children services from one agency to another. The levy continues in effect for the use of the agency that has assumed the responsibility for providing children services. It is the obvious intent of the amendment to permit the use of funds from a children services levy by an agency providing children services, irrespective of whether or not it was the agency providing the services at the time of the levy. At the time of the 1984 children services levy, the board of county commissioners had the authority to levy taxes for the use of either agency providing children services. I therefore conclude that the recent amendment to R.C. 5153.35 provides additional express authority to a board of county commissioners to permit the board to appropriate funds generated by the children services levy to a county children services board created after passage of the levy.

Accordingly it is my opinion, and you are hereby advised that:

1. Title XX of the Social Security Act, 42 U.S.C. Section 1397(a)-1397(e), provides for block grants to the states for social services which are partially allocated to county departments of

---

<sup>7</sup> The term "county department of welfare" was replaced by the term "county department of human services" by amendment making the replacement term uniform throughout the Revised Code. 1985-1986 Ohio Laws, Part II, 1396, Am. H.B. 428 (1986) (eff. Dec. 23, 1986).

<sup>8</sup> The amendment repeats the phrase "or from the department of human services" interposed between the two phrases referring to functions transferred "from a county children services board to the department of human services" and "or from the department of human services to a county children services board." The repetition appears to be an error.

human services by the Ohio Department of Human Services under R.C. 5101.462(B). A board of county commissioners is not empowered to direct the Ohio Department of Human Services to allocate those Title XX funds directly to a county children services board.

2. A board of county commissioners may, pursuant to R.C. 5101.462(H), order a transfer of Title XX funds allocated to the county department of human services by the Ohio Department of Human Services under R.C. 5101.462(B) to a county children services board provided that the county children services board is established after October 5, 1987.
3. The funds generated by a children services levy, the purpose of which was to provide sufficient funds for the support of children and the care and placement of abused and neglected children, may, pursuant to R.C. 5705.24 and R.C. 5153.35, be used by a subsequently established county children services board even though children services had been provided by the county department of human services at the time the levy was passed.