

OPINION NO. 92-029**Syllabus:**

A county children services board or a county department of human services that provides children services has no authority to expend public funds to promote the approval of a tax levy for children services. (1937 Op. Att'y Gen. No. 1245, vol. III, p. 2142; 1920 Op. Att'y Gen. No. 1532, vol. II, p. 915, approved and followed; 1979 Op. Att'y Gen. No. 79-022, distinguished.)

To: Dennis Watkins, Trumbull County Prosecuting Attorney, Lancaster, Ohio
By: Lee Fisher, Attorney General, July 21, 1992

You have requested my opinion on the following question: "Is a county department of human services or a county children services board, which administers the children services program pursuant to R.C. 5153.15 and 5153.16, authorized to use public funds to promote the approval of a children services tax levy by the electorate?"

As stated in your letter, your question arises from the conclusion reached in 1979 Op. Att'y Gen. No. 79-022 that: "[a] community mental health and mental retardation board is authorized under the terms of R.C. 340.03(I) to expend public funds to promote the approval of a tax levy by the electorate."¹ The opinion began with the well-established principle governing public entities that, "[t]he authority to act in financial transactions must be clear and distinctly granted," and that any doubt concerning the authority to expend public funds must be resolved against the expenditure. *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916). Op. No. 79-022 found the power of a community mental health and mental retardation board to expend public funds to promote the approval of a tax levy for the benefit of the board to arise from the duty imposed upon the board by former R.C. 340.03(I), *see* note 1, *supra*, to "[r]ecruit and promote local financial support for mental health and retardation programs from private and public sources." Op. No. 79-022, thus, concluded that the board's authority under former R.C. 340.03(I) was sufficient to distinguish it from the situations addressed in three prior opinions² which found no authority to exist for various public entities to expend public funds in the promotion of a ballot issue for the benefit of the entities promoting the levy.

¹ Community mental health and mental retardation boards are no longer provided for in the Revised Code. R.C. Chapter 340 now governs alcohol, drug addiction and mental health service districts. *See* 1971-1972 Ohio Laws, Part II, 1724 (Am. Sub. H.B. 494, eff. July 12, 1972) (former R.C. 340.03(I)).

² 1968 Op. Att'y Gen. No. 68-124 (syllabus) ("[a] regional water district created pursuant to [R.C. Chapter 6119] is without authority to expend public funds to conduct an educational campaign, the ultimate goal of which is to insure passage of an issue to finance by general obligation bonds, the construction of a water system to serve water to citizens of the water district"); 1937 Op. Att'y Gen. No. 1245, vol. III, p. 2142 (syllabus) ("[a] board of county commissioners, in expending public funds for advertising an election upon a question of a tax levy...is limited to the publication of a notice of such election provided by [G.C. 5625-17 (now R.C. 5705.25)], and public funds may not be expended to pay the cost of other advertisements showing the necessity of such levy"); 1920 Op. Att'y Gen. No. 1532, vol. II, p. 915 (syllabus) ("[b]oards of education are without authority to expend public

County Children Services

Pursuant to R.C. 5153.15:

The powers and duties enumerated 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.

Thus, the county agency charged with the provision of children services has those powers and duties imposed upon it by statute. *See, e.g.*, R.C. 5153.16 (general powers and duties of county agency providing children services); R.C. 5153.18 (powers and duties relative to court proceedings). *See generally* R.C. 5153.35 (levy of taxes and appropriations by county for children services); R.C. 5705.24 (county tax levy for support of children services and the care and placement of children).

No Express Statutory Authority

Examination of the statutory scheme governing the provision of children services by a county agency reveals no duty or grant of authority similar to that contained in former R.C. 340.03(I), as discussed in Op. No. 79-022, that would authorize a county agency providing children services to recruit or promote financial support for the purposes of the agency. Further, none of the agency's powers or duties, as described in R.C. Chapter 5153, contains a clear and distinct grant of authority to expend public funds to promote the approval of a tax levy for children services. Thus, a county agency that provides children services has no authority to spend public funds to promote the approval of a children services levy, even though the agency may determine that the passage of a levy for the support of children services would enhance the agency's ability to provide its services. As stated in 1937 Op. No. 1245 at 2143:

There is no question but that a reasonable expenditure of public funds to advertise the necessity of a tax levy in certain cases would be perhaps a proper and in some instances even a laudable purpose, but, as has been stated by this office, it is a lawful rather than a laudable purpose that justifies the expenditure of the taxpayers' money. The remedy in the instant case is obviously with the legislature.³ (Footnote added.)

funds in printing and mailing to each taxpayer literature and advertising matter in favor of any proposition to be voted upon by the electors at an election called by such board of education").

³ This is not to say, however, that a county children services agency may not use public funds to disseminate information about the activities of the agency. As concluded in *State ex rel. Corrigan v. Seminatore*, 66 Ohio St. 2d 459, 423 N.E.2d 105 (1981) (syllabus, paragraph four):

Unless prohibited by statute, utilization of newspaper advertisement for dissemination of information to the general public and to those directly affected by agency action is an implied power of a public agency authorized to perform specific functions and to expend monies therefor, so long as money for such purposes has been appropriated by the proper authority.

In fact, where the General Assembly has spoken on the subject of the permissibility of spending public funds to promote or oppose passage of a tax levy, it has generally prohibited such expenditure. *See, e.g.*, R.C. 505.07(B) (stating, in part: "No board of township trustees shall use public funds to support or oppose the passage of a township levy"); R.C. 3315.07(C)(1) (stating in part: "Except as otherwise provided in [R.C. 3315.07(C)(2)], no board of education shall use public funds to support or oppose the passage of a school levy").⁴

Conclusion

It is, therefore, my opinion, and you are hereby advised that, a county children services board or a county department of human services that provides children services has no authority to expend public funds to promote the approval of a tax levy for children services. (1937 Op. Att'y Gen. No. 1245, vol. III, p. 2142; 1920 Op. Att'y Gen. No. 1532, vol. II, p. 915, approved and followed; 1979 Op. Att'y Gen. No. 79-022, distinguished.)

⁴ There is significant question whether a legislative enactment authorizing the use of public funds to promote or oppose passage of a tax levy would be constitutional. *See generally* Note, *The Constitutionality of Municipal Advocacy in Statewide Referendum Campaigns*, 93 Harv. L. Rev. 535 (1980). Thus, if the statutory scheme in Op. No. 79-022 were not distinguishable from that at issue in your inquiry, the propriety of the result in that opinion would need to be reconsidered.