

**OPINION NO. 67-109****Syllabus:**

1. Real property acquired by a county child welfare board without authority at law and in contravention to Opinion No. 1168, Opinions of the Attorney General for 1946, and Opinion No. 1464, Opinions of the Attorney General for 1960, must be transferred to the board of county commissioners.

2. A county child welfare board has no authority to transfer real property acquired pursuant to Section 5153.30, Revised Code, and used exclusively for the training of mentally deficient persons to the newly created county board of mental retardation.

3. A county child welfare board has no authority to transfer personal property, facilities or equipment acquired pursuant to Sections 5153.30, 5153.31 and 5153.34, Revised Code, and used exclusively for the training of mentally de-

ficient persons to the newly created county board of mental retardation.

4. A county board of mental retardation may enter into a contract with the county child welfare board having real and personal property used exclusively in the training of mentally deficient persons, to provide the training center, workshop facilities and services authorized in Section 5127.01, Revised Code, upon such terms as may be agreeable.

**To: Harry Friberg, Lucas County Pros. Atty., Toledo, Ohio**  
**By: William B. Saxbe, Attorney General, November 20, 1967**

Your request for my opinion states that the Lucas County Child Welfare Board has acquired real estate and personal property which it uses exclusively in its retarded persons' program and in light of the recently enacted Amended Senate Bill No. 169 (132 v S 169) you ask whether this property, real and personal, should be transferred to the Board of County Commissioners or if it should be retained by the Child Welfare Board with an agreement executed by the Child Welfare Board and the County Board of Mental Retardation authorizing the use by the latter board.

Inasmuch as your question involves real estate and personal property, a brief review of the statutes and opinions pertaining to county child welfare boards is in order.

Section 5153.16, Revised Code, which is analogous to former Section 335.16, Revised Code, formerly Section 3070-17, General Code, sets forth the powers and duties of the county child welfare boards. Under these sections, it has been held that county child welfare boards have no authority to purchase real estate or to build buildings or to enlarge existing structures, that authority being vested in the boards of county commissioners. See Opinion No. 1168, Opinions of the Attorney General for 1946, page 628, which was approved in Opinion No. 5019, Opinions of the Attorney General for 1955, page 108, and Opinion No. 1464, Opinions of the Attorney General for 1960, page 408. An examination of Chapter 5153, Revised Code, reveals that no express authority to purchase land or build buildings has been granted to the county child welfare boards subsequent to the 1960 opinion.

However, it must be noted that Section 5153.30, Revised Code, does authorize county child welfare boards to accept and receive bequests, donations, and gifts of real and personal property.

In regard to the personal property and county child welfare boards, Section 5153.31, Revised Code, provides:

"All personal property, records, files, and other documents and papers belonging to or in the possession of any agency or institution, the powers and duties of which are transferred by sections 5153.01 to 5153.42, inclusive, of the Revised Code, to the county child welfare board or county department of welfare, the proceeds of all tax levies in process of collection, the unexpended balances of all current appropriations for the use of such agencies and institutions, and the custody of all

wards of such agencies and institutions shall be deemed transferred to the board or department."

And Section 5153.34, Revised Code, provides:

"The county child welfare board or county department of welfare may acquire such property and equipment and purchase such supplies and services as are necessary for the proper conduct of its work, including the ownership, operation, and maintenance of motor vehicles. Neither the director nor an employee of the board or department shall sell or supply any article to the board or department, or to any institution maintained by such board or department, or be personally interested in any contract made by the board or department."

In 1961, by the enactment of Amended Substitute House Bill No. 778 (129 v 1614) the administration and supervision of Sections 5127.01 through 5127.04, Revised Code, pertaining to the establishment, maintenance and operation of workshops and training centers for the mentally deficient, was vested in the county child welfare boards. See Section 5153.161 ~~5153.16.17~~, Revised Code. However, these additional powers and duties of the child welfare boards continued only until the effective date of Amended Senate Bill No. 169 (132 v S 169) which repealed Section 5153.161 ~~5153.16.17~~, *supra*, and at the same time created the county boards of mental retardation and placed upon them the power and duty of administering Sections 5127.01 through 5127.04, *supra*.

The county child welfare boards and the newly created county boards of mental retardation are creatures of statute and, as such, have only the powers expressly granted by statute or necessarily implied therefrom.

Section 5126.03, Revised Code, relating to the powers and duties of the county boards of mental retardation, provides:

"The county board of mental retardation, 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 services, facilities, transportation, and equipment as are necessary;

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

"Any county board of mental retardation may enter into a contract with another such board of

another county or with a public or nonprofit agency or organization of the same or another county, to provide the training center, workshop facilities and services authorized in section 5127.01 of the Revised Code, upon such terms as may be agreeable.

"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."  
(Emphasis added)

As can be observed from a reading of subsections (C) and (D) and the following paragraph, the General Assembly expressly granted only limited powers to the county boards of mental retardation. I find no express language in the statutes authorizing the county child welfare board to transfer or the county board of mental retardation to receive property owned by the county child welfare board which is used exclusively for the training of mentally deficient persons.

Furthermore, in the light of the express grants of authority to county child welfare boards by Sections 5153.30 and 5153.34, both *supra*, and the failure to expressly grant similar authority to county boards of mental retardation, the failure to effect a transfer by operation of law similar to that effected upon the creation of county child welfare boards (Section 5153.31, *supra*), the express grant of authority to a county board of mental retardation to "enter into a contract \* \* \* with a public \* \* \* agency or organization of the same \* \* \* county, to provide the training center, workshop facilities and services authorized in section 5127.01 of the Revised Code, upon such terms as may be agreeable" (Section 5126.03, *supra*), the express transfer of tax levy proceeds by the amendment of subsection (L) of Section 5705.19, Revised Code, contained in Amended Senate Bill No. 169, and the lack of the express authority of county child welfare boards to transfer their property used exclusively for the training of mentally deficient persons, I am led to the conclusion that such authority to transfer any or all of the county child welfare board's property to the newly created county board of mental retardation cannot be necessarily implied from the provisions of Sections 5126.01 through 5126.04, Revised Code.

Therefore it is my opinion and you are hereby advised that:

1. Real property acquired by a county child welfare board without authority at law and in contravention to Opinion No. 1168, Opinions of the Attorney General for 1946, and Opinion No. 1464, Opinions of the Attorney General for 1960, must be transferred to the board of county commissioners.
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contract with the county child welfare board having real and personal property used exclusively in the training of mentally deficient persons, to provide the training center, workshop facilities and services authorized in Section 5127.01, Revised Code, upon such terms as may be agreeable.