

OPINION NO. 89-108**Syllabus:**

1. R.C. 2151.421 sets forth a comprehensive scheme for the reporting of allegations of child abuse and neglect and threats of child abuse and neglect and for the investigation of such reports by public children services agencies.
2. Public children services agencies have authority to investigate all reports of known or suspected child abuse or neglect or threats of child abuse or neglect within their respective counties of jurisdiction unless there is some provision of law restricting that authority with respect to particular persons or locations.
3. The powers of the State Highway Patrol or special police officers designated by the Superintendent of the State Highway Patrol to investigate and to enforce laws on state properties and in state institutions do not restrict the authority of public children services agencies to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect pertaining to such locations.
4. Public children services agencies are authorized to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect at facilities operated by the Department of Mental Health pursuant to R.C. Chapter 5122, at facilities operated by the Department of Mental Retardation and Developmental Disabilities pursuant to R.C. Chapter 5123, and at facilities

operated by the Department of Youth Services pursuant to R.C. Chapter 5139.

5. Public children services agencies are authorized to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect at detention homes established pursuant to R.C. 2151.34, at the Ohio Veterans' Children's Home operated pursuant to R.C. Chapter 5909, and at public schools operating under standards set by the State Board of Education pursuant to R.C. Chapter 3301.

To: Roland Hairston, Director, Department of Human Services, Columbus, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, December 29, 1989

I have before me your request for an opinion concerning the authority of public children services agencies to investigate allegations of child abuse and neglect¹ in the following locations.

- (1) state-operated facilities, in particular facilities operated by:
 - (a) the Ohio Department of Mental Health pursuant to R.C. Chapter 5122;
 - (b) the Ohio Department of Mental Retardation and Developmental Disabilities pursuant to R.C. Chapter 5123;
 - (c) the Ohio Department of Youth Services pursuant to R.C. Chapter 5139;
- (2) detention homes operated by the county juvenile courts pursuant to R.C. 2151.34;
- (3) the Ohio Veterans' Children's Home, operated pursuant to R.C. Chapter 5909;
- (4) public schools operating under standards set by the State Board of Education pursuant to R.C. Chapter 3301.

You ask, if it is concluded that a public children services agency is not authorized to investigate reports of alleged child abuse or neglect in any of these locations, for information concerning the proper authority to receive and investigate reports and to take appropriate action concerning child abuse and neglect, and also for information concerning that authority's responsibility for coordinating with the public children services agency for the provision of services to the child.

Public children services agencies are children services boards and county departments of human services exercising the children services function prescribed by R.C. Chapter 5153. See R.C. 2151.011(B)(26); R.C. 5153.01-.07. Public children services agencies are given responsibilities with respect to the investigation of reports of known or suspected child abuse or neglect and reports of known or suspected threats of child abuse or neglect by R.C. 2151.421, which states in part:

(A)(1) No attorney, physician, including a hospital intern or resident, dentist, podiatrist, practitioner of a limited branch of medicine or surgery as defined in section 4731.15 of the Revised Code, registered nurse, licensed practical nurse, visiting nurse, other health care professional, licensed psychologist, licensed school psychologist, speech pathologist or audiologist, coroner, administrator or employee of a child day-care center, administrator or employee of a certified child care agency or other public or private children services agency,

¹ The General Assembly recently amended the child abuse and neglect provisions of R.C. 2151.421 so that known or suspected threats of child abuse or neglect are included as matters to be reported and investigated pursuant to R.C. 2151.421. See Am. Sub. H.B. 257, 118th Gen. A. (1989) (eff. Aug. 3, 1989). This opinion, therefore, addresses reports of such threats as well as reports of actual abuse or neglect.

school teacher, school employee, school authority, social worker, or person rendering spiritual treatment through prayer in accordance with the tenets of a well-recognized religion, who is acting in his official or professional capacity and *knows or suspects that a child under eighteen years of age or a physically or mentally handicapped child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or condition of a nature that reasonably indicates abuse or neglect of the child, shall fail to immediately report or cause reports to be made of that knowledge or suspicion to the children services board, the county department of human services exercising the children services function, or a municipal or county peace officer* in the county in which the child resides or in which the abuse or neglect is occurring or has occurred.

....
 (B) *Anyone, who knows or suspects that a child under eighteen years of age or a physically or mentally handicapped child under twenty-one years of age has suffered or faces a threat of suffering any physical or mental wound, injury, disability, or other condition of a nature that reasonably indicates abuse or neglect of the child, may report or cause reports to be made of that knowledge or suspicion to the children services board, the county department of human services exercising the children services function, or to a municipal or county peace officer.*

....
 (D) Upon the receipt of a report concerning the possible abuse or neglect of a child or the possible threat of abuse or neglect of a child, *the municipal or county peace officer who receives the report shall refer the report to the appropriate county department of human services or children services board.*

....
 (F) *The county department of human services or children services board shall investigate, within twenty-four hours, each report of known or suspected child abuse or child neglect and of a known or suspected threat of child abuse or child neglect that is referred to it under this section to determine the circumstances surrounding the injuries, abuse, or neglect or the threat of injury, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible. The investigation shall be made in cooperation with the law enforcement agency. The county department of human services or children services board shall report each case to a central registry which the state department of human services shall maintain in order to determine whether prior reports have been made in other counties concerning the child or other principals in the case. The department or board shall submit a report of its investigation, in writing to the law enforcement agency.*

The county department of human services or children services board shall make any recommendations to the county prosecutor or city director of law that it considers necessary to protect any children that are brought to its attention.

....
 (I) *Any report that is required by this section shall result in protective services and emergency supportive services being made available by the county department of human services or children services board on behalf of the children about whom the report is made, in an effort to prevent further neglect or abuse, to enhance their welfare, and, whenever possible, to preserve the family unit intact....*

(J) There shall be placed on file with the juvenile court in each county and the department of human services an initial plan of cooperation jointly prepared and subscribed to by a committee consisting of the county peace officer, all chief municipal peace officers within the county, the prosecuting attorney of the county and the director of law of each city, and the children services board or county department of human services exercising the children services function as convened by the county director of human services. The

plan shall set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities under this section and division (B) of section 2919.21, division (B)(1) of section 2919.22, division (B) of section 2919.23, and section 2919.24 of the Revised Code. The plan shall include a system for cross-referral of reported cases of abuse and neglect as necessary, and also shall include the name and title of the official directly responsible for making reports to the central registry. (Emphasis added.)

Public children services agencies are, thus, designated by statute as the recipients of reports of known or suspected child abuse or neglect or threats of such abuse or neglect and are mandated to investigate such reports. R.C. 2151.421; *see also* R.C. 5153.28 (boards of township trustees, superintendents of county homes, and other officers and employees of a county, municipal corporation, or other political subdivision of the state are required to make a report to the local public children services agency "respecting any child in the county coming to their attention, who is deemed to be in need of public care"). *See generally* R.C. 2151.03 (defining "neglected child"); R.C. 2151.031 (defining "abused child"); R.C. 2919.22 (setting forth child endangerment offenses); [1988-1989 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-34-01(A), (YYY) at 705, 707; 8 Ohio Admin. Code 5101:2-34-04. Similar language mandating investigations by public children services agencies appears in R.C. 5153.16, as follows:

The county children services board or county department of human services that has assumed the administration of child welfare, subject to the rules and standards of the department of human services, *on behalf of children in the county* considered by the board or department to be in need of public care or protective services, shall:

(A) *Make an investigation concerning any child reported to be in need of care, protection, or service....* (Emphasis added.)

The Ohio Department of Human Services has promulgated rules to implement R.C. 2151.421 and related provisions. *See* 8 Ohio Admin. Code Chapter 5101:2-34. Rule 5101:2-34-31 states expressly that "[t]he public children services agency (PCSA) shall investigate each report of alleged child abuse and neglect which is received involving a child who is at risk of being abused or neglected or has been abused or neglected in the PCSA's county of jurisdiction." Rule 5101:2-34-33(A) provides that "[a]n investigation of child abuse and neglect is required in an out-of-home care setting when the report of alleged child abuse and neglect involves: any public or nonpublic school, detention facility,...organization,...institution [or] state institution...that is responsible for the care, physical custody, or control of children." "Organization" is defined to include "any institution, public, semipublic, or private...having among its functions the furnishing of protective services or care for children." [1988-1989 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-34-01(AAAA) at 707. "Institution" is defined to include "a public...facility that engages or accepts the care, physical custody, or control of children and is licensed, regulated, approved, operated under the direction of, or otherwise certified...as a state school by the department of education; as an institution by the department of youth services, the department of mental retardation and developmental disabilities...; or as a hospital by the department of mental health [or] department of education." [1988-1989 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-34-01(LLL) at 707. "State institution" is defined to include "a facility that was established by, or operated pursuant to the authority of, the general assembly, for the care of delinquent children,...children with a mental illness, children who are mentally retarded persons, or children with a developmental disability, and that is under the management, control, or supervision of the division of correctional services of the department of youth services, the state board of education, the state department of mental health, the state department of mental retardation and developmental disabilities, or a political subdivision." [1988-1989 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-34-01(DDDDD) at 708-09; *see also* [1988-1989 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-34-01(DDDD) at 708 (defining "[o]ut-of-home care setting"). The rules of the Department of Human Services thus adopt the position that a public children services agency has the authority to investigate allegations of child abuse or neglect at certain

state-operated facilities. See generally *State ex rel. Curry v. Industrial Commission*, 58 Ohio St. 2d 268, 269, 389 N.E.2d 1126, 1128 (1979) ("[r]ules promulgated by administrative agencies are valid and enforceable unless unreasonable or in conflict with statutory enactments covering the same subject matter"); 8 Ohio Admin. Code 5101:2-34-32(C) (providing that a public children services agency shall request assistance from the court or an appropriate law enforcement agency or governmental attorney if it is refused entry into a home or out-of-home care setting for purposes of conducting an investigation).

When a public children services agency is required to undertake an investigation in an out-of-home care setting, rules of the Ohio Department of Human Services provide for cooperation between the two entities. For example, 8 Ohio Admin. Code 5101:2-34-33 states, in part:

(B) When the PCSA [public children services agency] receives a report of out-of-home care child abuse and neglect, the PCSA shall immediately contact the out-of-home care setting administrator or designee unless named as the alleged perpetrator in the report...in order to:

- (1) Inform him of and discuss the allegations contained in the report;
- (2) Determine responsibility for informing the parents, guardian, or custodian of the alleged child victim;
- (3) Discuss what actions have been taken to protect the alleged child victim;
- (4) Inform him of the PCSA investigative activities that will follow.

....
(D) The PCSA shall have an interview with the administrator or designee of the out-of-home care setting...upon completion of the interviews with the principals of the case to discuss:

- (1) When the investigation will be completed;
- (2) What further action the PCSA plans to take;
- (3) What action the administrator or designee of the out-of-home care setting...plans to take in order to protect the alleged child victim and the other children residing at or attending the out-of-home care setting.

See also 8 Ohio Admin. Code 5101:2-34-32; 8 Ohio Admin. Code 5101:2-34-34.

R.C. 2151.421(J) requires that the county peace officer, all chief municipal peace officers within the county, the county prosecuting attorney, the law director of each city, and the public children services agency prepare and subscribe to a plan of cooperation for the execution of their respective responsibilities with respect to reports of alleged child abuse or neglect or threats of child abuse or neglect under R.C. 2151.421 and related provisions. See R.C. 2919.21(B), 2919.22(B)(1), 2919.23(B), 2919.24. 8 Ohio Admin. Code 5101:2-34-71(B) permits "any nonmandated county official, professional, agency, institution, or organization involved in the identification, reporting, treatment, or prevention of alleged child abuse or neglect" to be included as a voluntary subscriber to the county plan. 8 Ohio Admin. Code 5101:2-34-31 states expressly that "[i]nvestigations of alleged child abuse and neglect shall be performed in cooperation with the law enforcement agency of appropriate jurisdiction according to the procedures set forth in the child abuse and neglect county plan of cooperation." See also R.C. 2151.421.

You have noted that federal regulations require that there be prompt investigations of reports of known or suspected child abuse or neglect. In order to be eligible to receive federal funds for prevention and treatment programs from the National Center on Child Abuse and Neglect, Ohio must meet the following requirements, set forth in 45 C.F.R. §1340.14:

(d) *Investigations.* The State must provide for the prompt initiation of an appropriate investigation by a child protective agency or other properly constituted authority to substantiate the accuracy of all reports of known or suspected child abuse or neglect. This

investigation may include the use of reporting hotlines, contact with central registers, field investigations and interviews, home visits, consultation with other agencies, medical examinations, psychological and social evaluations, and reviews by multidisciplinary teams.

(e) *Institutional child abuse and neglect.* The State must have a statute or administrative procedure requiring that when a report of known or suspected child abuse or neglect involves the acts or omissions of the agency, institution, or facility to which the report would ordinarily be made, a different properly constituted authority must receive and investigate the report and take appropriate protective and corrective action.

Rule 5101:2-34-34 addresses the requirements set forth in 45 C.F.R. §1340.14(e), as follows:

(A) The PCSA [public children services agency] shall determine the need for a third-party investigation which minimizes the conflict of interest resulting from self-investigation. Third-party investigation procedures shall be used when an allegation of child abuse and neglect involves the following parties:

(1) Any institution, facility, or family foster home which is licensed, approved, or certified by the department [of human services] and operated or supervised by the PCSA;

(2) Any ODHS department or PCSA staff;

(3) Any authorized person who is representing the department or PCSA and who is providing services for payment or as a volunteer.

(B) The PCSA shall request that a third-party investigation be conducted by the appropriate law enforcement agency as designated in the child abuse and neglect county plan of cooperation for every report of alleged child abuse and neglect requiring a third-party investigation.

....

(E) A third-party investigation conducted by law enforcement does not relieve the PCSA of its responsibility to investigate each report of alleged child abuse and neglect.

See R.C. 2151.421(J) (providing for a child abuse and neglect county plan of cooperation); 8 Ohio Admin. Code 5101:2-34-71 to -74.

It is, accordingly, clear that the statutes and rules governing the investigation of reports of alleged child abuse or neglect serve the purpose of protecting children. See *Haag v. Cuyahoga County*, 619 F. Supp. 262, 270 (N.D. Ohio 1985), *aff'd*, 798 F.2d 1414 (6th Cir. 1986) (the purpose of R.C. 2151.421 "is to protect children from abuse and/or neglect and to eliminate the source of any such abuse"). R.C. 2151.421 establishes a framework for the prompt and thorough investigation of reports of alleged child abuse or neglect or threats of child abuse or neglect and for the provision of protective and emergency supportive services. Governmental entities are directed to cooperate to assure that these goals are achieved. See, e.g., R.C. 2151.421(J); 8 Ohio Admin. Code 5101:2-34-31 to -35.

Your questions concern instances in which allegations of child abuse or neglect involve facilities operated by public agencies other than the Ohio Department of Human Services. Your letter of request indicates that, when such allegations surface, the investigative authority of the public children services agency is frequently questioned. You are asking for an analysis of the investigative authority of public children service agencies in such circumstances.

R.C. 2151.421, quoted in part above, sets forth a comprehensive scheme for the reporting of allegations of child abuse or neglect or threats of such abuse or neglect and for the investigation of such reports. R.C. 2151.421 requires persons in certain professions, and permits all other persons, to report knowledge or suspicion of child abuse or neglect or threats of child abuse or neglect. R.C. 2151.421(A), (B). It permits such reports to be made either to a public children services agency or to a municipal or county peace officer, and provides that if a report is made to a peace officer it shall be referred to the appropriate public children services agency. R.C. 2151.421(A), (B), (D). R.C. 2151.421(F) requires a public children services agency to investigate, within twenty-four hours, each such report that is referred to it under

R.C. 2151.421, and provides that the investigation is to be made in cooperation with the law enforcement agency. R.C. 2151.421 thus appears to establish a procedure for assuring that each report of alleged child abuse or neglect or threats of child abuse or neglect is promptly investigated by a public children services agency. See *Haag v. Cuyahoga County*²; see also R.C. 5153.16(A); 8 Ohio Admin. Code 5101:2-34-32. It has been stated that the investigatory responsibility of a public children services agency under R.C. 2151.421 "may not be delegated to another agency, whether it be public or private." *Haag v. Cuyahoga County*, 619 F.Supp. at 271; accord 1979 Op. Att'y Gen. No. 79-067 at 2-223 (duties of investigation and disposition under R.C. 2151.421 "require a substantial degree of judgment and discretion in their performance" and may not be delegated by public children services agencies to other entities); see also *Brodie v. Summit County Children Services Board*, Nos. 13352, 13374 (Ct. App. Summit County Oct. 26, 1988) (1988 Ohio App. LEXIS 4264) ("[a]fter notification [of suspected abuse is made to the children services board by the police department], exclusive authority to investigate and dispose of the cases is vested in [the children services board]").³ That provision is currently codified in 8 Ohio Admin. Code 5101:2-34-03(A) and 8 Ohio Admin. Code 5101:2-34-31. R.C. 2151.421 thus requires a public children services agency to investigate each report of known or suspected child abuse or neglect or threats of such abuse or neglect. See 8 Ohio Admin. Code 5101:2-34-31, 5101:2-34-34(E), 5101:2-35-77; Op. No. 79-067. It does not exclude from that requirement reports relating to particular persons or locations. It follows that public children services agencies have authority to investigate all such reports within their respective counties of jurisdiction unless there is some provision of law restricting that authority with respect to particular persons or locations.⁴

² *Haag v. Cuyahoga County*, 619 F.Supp. 262, 281 (N.D. Ohio 1985), states:

[R.C. 2151.421] was adopted by the Ohio legislature solely for the purpose of protecting minor children from abuse and/or neglect, to prevent any further neglect or abuse of children, to enhance and protect children's welfare, and where possible, to preserve the family unit intact. Responsibility for following up on the reports of suspected abuse and/or neglect, to conduct investigations and to make recommendations to law enforcement agencies is vested exclusively in the [county] Welfare Department [now the county department of human services].

³ It has been stated, in various analyses of R.C. 2151.421, that public children services agencies have exclusive authority to conduct investigations and make recommendations to law enforcement agencies. See, e.g., *Haag v. Cuyahoga County*, 619 F.Supp. 262, 281 (N.D. Ohio 1985) (quoted in note 2, *supra*); *Brodie v. Summit County Children Services Board*, Nos. 13352, 13374 (Ct. App. Summit County Oct. 26, 1988) (1988 Ohio App. LEXIS 4264) (citing 1979 Op. Att'y Gen. No. 79-067); 1979 Op. Att'y Gen. No. 79-067 at 2-223 ("the duties set forth in R.C. 2151.421 are imposed exclusively on children services boards and county welfare departments"). In each instance, such statement addresses only authority granted to public children services agencies by R.C. 2151.421. See R.C. 2151.421(F) (the public children services agency "shall investigate...each report of known or suspected child abuse or child neglect and of a known or suspected threat of child abuse or child neglect that is referred to it under this section...The investigation shall be made in cooperation with the law enforcement agency"). In no case is the language used to indicate that the existence of such authority on the part of a public children services agency in any way restricts the responsibility of other entities to exercise authority granted to them by other statutes. See generally 8 Ohio Admin. Code 5101:2-34-15.

⁴ You have not raised any questions concerning determinations as to which public children services agency is to investigate a particular report of alleged child abuse or neglect, and I am not considering any such questions. R.C. 5153.16 provides that a public children services agency shall act "on

You have asked, first, whether a public children services agency has authority to investigate reports of child abuse or neglect at various state-operated facilities. You have indicated that the argument has been made that a public children services agency does not have such authority because the State Highway Patrol has authority to make investigations at such facilities. R.C. 5503.02 grants the following power to the State Highway Patrol: "The superintendent [of the State Highway Patrol] or any patrolman may enforce the criminal laws on all state properties and state institutions, owned or leased by the state...." It should, however, be noted that the Patrol's authority in this regard is discretionary. The use of the word "may" in connection with the enforcement of criminal laws on state properties and in state institutions contrasts with the use of "shall" elsewhere in R.C. 5503.02. See 1977 Op. Att'y Gen. No. 77-070. See generally *State ex rel. City of Niles v. Bernard*, 53 Ohio St. 2d 31, 372 N.E.2d 339 (1978). It follows that the State Highway Patrol is authorized, but not mandated, to enforce the criminal laws on state properties. It is, further, clear that the State Highway Patrol's authority to enforce criminal laws on state properties is not exclusive. R.C. 5503.02 states expressly: "The powers and duties conferred on the patrol are supplementary to, and in no way a limitation on, the powers and duties of sheriffs or other peace officers of the state." One of my predecessors recognized the concurrent authority of various law enforcement agencies in 1963 Op. Att'y Gen. No. 113, p. 194 (syllabus, paragraph 3), as follows:

The Ohio State Highway Patrol, the Franklin County Sheriff's Department, and the Columbus City Police Department have concurrent jurisdiction for the preservation of peace at the Ohio State Fairgrounds throughout the entire year and each of these organizations has equal duty to respond to requests for police protection at the fairgrounds.

See 1971 Op. Att'y Gen. No. 71-053 (letter from the State Highway Patrol acknowledges that, when the Patrol undertakes an investigation, there may be a concurrent investigation by another agency). See generally *In re Sulzmann*, 125 Ohio St. 594, 183 N.E. 531 (1932). It is, thus, clear that the fact that the State Highway Patrol is authorized to enforce criminal laws on state properties does not, in itself, restrict the authority of a public children services agency to investigate reports of child abuse or neglect or threats of child abuse or neglect at state facilities.

It should be noted, further, that the State Highway Patrol has not been given authority under R.C. 2151.421 to investigate reports submitted pursuant to that provision. Rather, as discussed above, R.C. 2151.421 imposes upon public children services agencies the duty of investigating such reports, in cooperation with a municipal or county law enforcement agency. See R.C. 2151.421(F). It appears that the State Highway Patrol may, pursuant to its authority under R.C. 5503.02, investigate and enforce criminal aspects of child abuse that come to its attention. See note 3, *supra*. The State Highway Patrol's authority extends, however, only to the enforcement of criminal laws. In contrast, the authority and responsibility of a public children services agency include both attention to criminal matters and responsibility for the well-being of children regardless of whether the commission of a crime can be established. See R.C. 2151.421(E); R.C. 2151.421(F) (providing that the public children services agency shall make an investigation in cooperation with the law enforcement agency, shall submit a report of its investigation to the law enforcement agency, and shall "make any recommendations to the county prosecutor or city director of law that it considers necessary to protect any children that are brought to its attention"); R.C. 2151.421(I) (providing that any report required by R.C. 2151.421 "shall result in protective services and emergency supportive services being made available" by the public children services agency). While the authority of the State Highway Patrol and that of a public children services agency with respect to the investigation of alleged child abuse or neglect may overlap, they are by no means identical, and there is no basis for concluding that the existence of one

behalf of children in the county." 8 Ohio Admin. Code 5101:2-34-35 sets forth standards for determining which agency should act when more than one county is involved.

restricts the authority of the other. For example, if a public children services agency were to lose its capacity to investigate a report of child abuse or neglect merely because the Patrol had the authority to make an investigation, the agency's capacity to provide protective services and emergency supportive services would suffer, since the agency would be unable to pursue the investigation necessary to determine which services would be most beneficial.

R.C. 5503.02(F) provides that the "governor may order the state highway patrol to undertake major criminal investigations that involve state property interests." If such an order is issued, the State Highway Patrol is required to undertake an appropriate investigation. It does not appear likely that alleged child abuse or neglect would involve state property interests so as to come within R.C. 5503.02(F). If, however, it did, the investigation would extend only to the criminal aspect of the matter and would not serve the function of protecting the well-being of children. It would, therefore, be inconsistent with the statutory scheme to conclude that such an investigation should take the place of an investigation by a public children services agency under R.C. 2151.421.

Pursuant to R.C. 5503.09, the Superintendent of the State Highway Patrol, with the approval of the Director of Highway Safety, may designate persons "to be special police officers to preserve the peace and enforce the laws of this state" on state properties and institutions to which they are assigned. The Superintendent and Director thus have discretion to determine whether special police officers serve particular state facilities. If special police officers are so assigned, they have general law enforcement powers. Such police officers are not, however, granted authority under R.C. 2151.421. There is no basis for concluding that the existence of such a police investigatory force should restrict the functions of a public children services agency under R.C. 2151.421.

As discussed above, the statutory scheme providing for investigations by public children services agencies is comprehensive and includes the function of providing for the well-being of children in the State of Ohio. I conclude that the powers of the State Highway Patrol or special police officers designated by the Superintendent of the State Highway Patrol to investigate and to enforce laws on state properties and in state institutions do not restrict the authority of public children services agencies to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect pertaining to such locations.

There is a general principle that "[t]he state is not bound by the terms of a general statute, unless it be so expressly enacted." *State ex rel. Nixon v. Merrell*, 126 Ohio St. 239, 185 N.E. 56 (1933) (syllabus, paragraph 1). "The general business of the legislative power is to establish laws for individuals, not for the state. When its rights are to be transferred or affected, the intention must be plainly expressed or necessarily implied...." *State ex rel. Attorney-General v. Cincinnati Central Railway Co.*, 37 Ohio St. 157, 176 (1881). It may be argued from that principle that state facilities are not subject to investigation by a public children services agency pursuant to R.C. 2151.421. This argument has been applied as such matters as the jurisdiction of a local board of health over state facilities. *See, e.g.*, 1956 Op. Att'y Gen. No. 7436, p. 819 (concluding that a general health district has jurisdiction over buildings and property in its territory, including county and municipal property, but that only the State Department of Health has jurisdiction over property belonging to the state, and that a general health district has no power over state property located in its district except to carry out orders of the State Department of Health); accord 1943 Op. Att'y Gen. No. 5882, p. 123; 1940 Op. Att'y Gen. No. 1921, vol. I, p. 222; 1933 Op. Att'y Gen. No. 1355, vol. II, p. 1214; *see also* 1953 Op. Att'y Gen. No. 2768, p. 279. It does, however, appear that the language of R.C. 2151.421 is so inclusive as to cover all reports of child abuse or neglect or threatened child abuse or neglect, wherever the site of abuse or neglect may be, unless there is statutory indication in a particular case that a certain location is excluded. *See generally State ex rel. Nixon v. Merrell*, 1954 Op. Att'y Gen. No. 3700, p. 181 at 183-84 (modified on other grounds in 1956 Op. Att'y Gen. No. 6401, p. 278) (finding that an operation conducted by a state agency that otherwise meets the requirements of a food service operation is subject to state provisions governing food service operations, and gathering the intent that it be so subject from the entire enactment dealing with food service operations); *cf.* 1962 Op. Att'y Gen. No. 2781, p. 70 (finding that the state is not subject to provisions relating to the

custody and sale of dangerous drugs). R.C. 2151.421 requires that all persons holding certain professions report alleged child abuse or neglect that comes to their attention. Those professions include persons who are employed by various state entities — e.g., physicians, nurses, other health care professionals, psychologists, and social workers — thus supporting the conclusion that the scheme for reporting and investigating set forth in R.C. 2151.421 does not simply exclude all state entities. See also 8 Ohio Admin. Code 5101:2-34-04. The conclusion that children throughout the state are entitled to protection from abuse or neglect pursuant to the provisions of R.C. 2151.421 is clearly implied in the statutory scheme. There is no general provision requiring a state agency to make investigations of alleged child abuse or neglect on state properties or in state institutions. Rather, R.C. 2151.421 provides that local public children services agencies have the responsibility of investigating reports of child abuse or neglect, and that responsibility appears to include reports relating to state properties or facilities, unless there is a statutory basis for excluding particular properties or facilities from the general scheme. It should, further, be noted that the conclusion that the state is exempt from the terms of a general statute has been supported by the argument that "it must be assumed that the state will ever be ready and willing to act justly toward its citizens in the absence of statutes or the intervention of courts." *State ex rel. Parrott v. Board of Public Works*, 36 Ohio St. 409, 415 (1881); see 1953 Op. No. 2768 at 285 (justifying the conclusion that the state is not subject to regulation by local boards of health with the statement: "I should think it could be assumed that the division of parks will take prompt steps to correct any unsanitary conditions with respect to its own activities which the local board of health may bring to its attention").

It might be argued generally that, absent express statutory provision, state facilities are not subject to local regulation and, therefore, public children services agencies have no authority to investigate activities involving any state facilities. See generally *Cuyahoga Metropolitan Housing Authority v. City of Cleveland*, 342 F.Supp. 250 (N.D. Ohio 1972), *aff'd*, 474 F.2d 1102 (6th Cir. 1973). It does not, however, appear that investigation of alleged child abuse or neglect by a public children services agency is unauthorized local regulation, since it is mandated by the General Assembly as part of a statewide scheme for providing for the welfare of children. Even if the investigation were viewed as local regulation, the applicable rule for determining the interaction between the interests of a state facility and those of a public children services agency would appear to be that set forth in *Brownfield v. State*, 63 Ohio St. 2d 282, 285, 407 N.E.2d 1365, 1367 (1980), *overruled, in part, on other grounds in Racing Guild of Ohio v. Ohio State Racing Commission*, 28 Ohio St. 3d 317, 503 N.E.2d 1025 (1986): "[T]he correct approach in these cases where conflicting interests of governmental entities appear would be in each instance to weigh the general public purposes to be served by the exercise of each power, and to resolve the impasse in favor of that power which will serve the needs of the greater number of our citizens." See *City of East Cleveland v. Board of County Commissioners*, 69 Ohio St. 2d 23, 430 N.E.2d 456 (1982) (applying the *Brownfield* case to local building and fire code provisions, as well as to zoning); 1988 Op. Att'y Gen. No. 88-042. There is a definite interest in having allegations of child abuse or neglect promptly investigated by an entity that is able to provide protective services; the statutory mandate given to public children services agencies is clear. A state facility may also have an interest in conducting its own investigation. There may be problems of inconvenience, duplication of efforts, and interference with normal living patterns of persons whose testimony is required when several investigations are ongoing at the same time. It does, however, appear unlikely that such problems would be found sufficient to outweigh the mandate that the public children services agency carry out its investigation as required by law. *Brownfield* requires that, before the balancing test may be applied, a reasonable attempt should be made to harmonize the interests of the two entities. See, e.g., 8 Ohio Admin. Code 5101:2-34-32 to 5101:2-34-34. See generally 1984 Op. Att'y Gen. No. 84-007; 1983 Op. Att'y Gen. No. 83-005. An analysis of the argument that state facilities are not subject to local regulation thus leads to the conclusion that the state facility and the local body should make reasonable efforts to coordinate their interests. See, e.g., 1986 Op. Att'y Gen. No. 86-026 (finding that the Adjutant General must make a reasonable attempt to comply with local zoning, building, and fire codes); 1985 Op. Att'y Gen. No. 85-098; Op. No. 83-005. See generally 1953 Op. No. 2768.

Rather than adopting an analysis that focuses on potential conflict in the relationship between state facilities and public children services agencies, it appears to be more appropriate to view the interaction as the provision by the public children services agency of a service — that is, investigation of alleged child abuse or neglect or threats of child abuse or neglect and provision of protective services and emergency supportive services — to all children within the county that it serves. There is no basis for excluding state facilities in general from the provision of such service. *See generally* Op. No. 88-042 (syllabus, paragraph 2) ("[a]n institution of the Department of Youth Services that is located within a township that provides fire and rescue services throughout its territory is entitled to receive such services"); 1987 Op. Att'y Gen. No. 87-040; 1940 Op. No. 1921.

I turn now to the question whether a public children services agency has authority to investigate reports of alleged child abuse or neglect at the various sites that you have listed. You have inquired first about facilities operated by the Ohio Department of Mental Health pursuant to R.C. Chapter 5122.

R.C. Chapter 5122 governs the hospitalization of mentally ill persons. For purposes of R.C. Chapter 5122 and R.C. Chapter 5119, "[h]ospital" includes "any institution, hospital, or other place established, controlled, or supervised by the department [of mental health] under [R.C. Chapter 5119]." R.C. 5122.01(F). The Director of Mental Health is authorized to adopt rules "for the proper execution of the powers and duties of the department with respect to the institutions under its control," R.C. 5119.01(A), and "for the nonpartisan management of the institutions under its control," R.C. 5119.01(B).

With respect to the rights of minors hospitalized pursuant to R.C. Chapter 5122, R.C. 5122.39 states, in part:

(A) Mentally ill minors shall remain under the natural guardianship of their parents, notwithstanding hospitalization pursuant to this chapter, unless parental rights have been terminated pursuant to a court finding that the minor is neglected or dependent. Where a mentally ill minor is found to be dependent or neglected, the county children services board or the county department of human services which has assumed the administration of child welfare in the county of residence has final guardianship authority and responsibility.

It is, thus, clear that the fact that a minor has been hospitalized pursuant to R.C. Chapter 5122 does not terminate all authority of the public children services agency with respect to that minor.

R.C. 5122.29(B)(2) states: "A person who is committed, voluntarily or involuntarily, shall be given reasonable protection from assault or battery by any other person." R.C. 5119.81 provides for the establishment, at each institution and branch institution under the control of the Department of Mental Health, of a citizen's advisory board, which receives notice of alleged incidents of resident or staff abuse. R.C. 5119.82. The citizen's advisory board is given advisory, reporting, and reviewing responsibilities, but it has no investigative powers. *See* R.C. 5119.82. The managing officer of an institution governed by the Department of Mental Health is required to make a special report to the Department within twenty-four hours of "an accident or injury or peculiar death of a patient..., giving the circumstances as fully as possible." R.C. 5119.43.

There is, in addition, a Legal Rights Service:

created and established to protect and advocate the rights of mentally ill persons and persons with developmental disabilities, to receive and act upon complaints concerning institutional and hospital practices and conditions of institutions for the mentally retarded and hospitals for the mentally ill, and to assure that all persons detained, hospitalized, discharged, or institutionalized, and all persons whose detention, hospitalization, discharge or institutionalization is sought or has been sought under [R.C. Chapter 5123 (Department of Mental Retardation and Developmental Disabilities) or R.C. Chapter 5122] are fully informed of their rights and adequately represented by counsel in

proceedings under [R.C. Chapter 5123 or R.C. Chapter 5122] and in any proceedings to secure the rights of such persons.

R.C. 5123.60(A). Within the Legal Rights Service is the Ombudsman Section, which is responsible for "receiving complaints and conducting investigations for the purposes of resolving and mediating complaints from mentally retarded, developmentally disabled, or mentally ill persons, their relatives, their guardians, and interested citizens, public officials, and governmental agencies or any deficiencies which come to its attention concerning any activity, practice, policy, or procedure it determines is adversely affecting or may adversely affect the health, safety, welfare, and civil or human rights of any mentally retarded, developmentally disabled, or mentally ill persons." R.C. 5123.601(B). R.C. 5123.604 provides that the Department of Mental Health "shall notify the ombudsman section of all major unusual incidents or life-threatening situations, as defined in rules adopted by the department, involving mentally ill persons within forty-eight hours after receipt of the report of the incident or situation."

The Ombudsman Section is given certain responsibilities to make referrals in instances in which immediate threats to health and safety or violations of law may be involved. R.C. 5123.601(B) provides that there shall be procedures requiring the Ombudsman Section to:

(3) Immediately refer a complaint made under this section to the department of mental retardation and developmental disabilities and to any other appropriate governmental agency, whenever the complaint involves an immediate and substantial threat to the health or safety of a mentally retarded or developmentally disabled person, or to the department of mental health and to any other appropriate governmental agency, whenever the complaint involves an immediate and substantial threat to the health or safety of a mentally ill person. The department or an agency designated by the department shall report its findings and actions no later than forty-eight hours following its receipt of the complaint.

(4) Within seven days after identifying a deficiency in the treatment of a mentally retarded, developmentally disabled, or mentally ill person that pertains to misconduct, breach of duty, or noncompliance with state or federal laws, local ordinances, or rules or regulations adopted under those laws or ordinances that are administered by a governmental agency, refer the matter in writing to the appropriate state agency. The state agency shall report on its actions and findings within seven days of receiving the matter.

R.C. 5123.601 also requires the referral of information indicating the commission of a crime:

Whenever information is disclosed indicating the commission of a crime or a violation of standards of professional conduct, the legal rights service shall, within seven days of receiving the complaint or identifying the information during its investigation, refer the matter to the attorney general, county prosecutor, other law enforcement official, or regulatory board, as appropriate, to investigate the crime or violation.

R.C. 5123.601(E).

It is, however, clear that the existence of the Legal Rights Service and Ombudsman Section do not restrict the responsibilities of public children services agencies with respect to the investigation of reports of child abuse, even when those reports relate to facilities operated by the Department of Mental Health. R.C. 5123.604 states expressly that nothing in R.C. 5123.60, 5123.601, 5123.602, or 5123.604 "shall preclude any department or board, its contract agencies, a community residential facility, or other governmental entity from carrying out its responsibility as prescribed by law."

R.C. 5119.24 expressly authorizes the Department of Mental Health to "make such investigations as are necessary in the performance of its duties." See

also R.C. 5119.02(H) ("[i]n addition to the powers expressly conferred, the department of mental health shall have all powers and authority necessary for the full and efficient exercise of the executive, administrative, and fiscal supervision over the state institutions described in this section [i.e., all state institutions for the care and treatment of mentally ill persons]"). Institutions under the jurisdiction of the Department of Mental Health may, upon the recommendation of the Director of Mental Health, designate special policemen, who have authority, subject to the rules of the Department, to "protect the property of such institutions and the persons and property of patients in the institutions...and enforce the laws of the state and rules of the department for the preservation of good order." R.C. 5119.14. The Department "may appoint and commission any competent agency or person to serve without compensation, as a special agent, investigator, or representative to perform a designated duty for the department." R.C. 5119.24.

It is, thus, clear that procedures have been established by which the Department of Mental Health may receive reports pertaining to alleged child abuse or neglect, investigate those reports, and take steps to see that laws dealing with such matters are enforced. There is, however, no statutory indication that the existence of such procedures restricts the power of a public children services agency with respect to the investigation of a report of alleged child abuse or neglect or threats of child abuse or neglect under R.C. 2151.421. It appears, instead, that the Department of Mental Health and the appropriate public children services agency have concurrent authority to conduct investigations of alleged child abuse or neglect or threats of such abuse or neglect involving facilities that are operated by the Department of Mental Health under R.C. Chapter 5122, with the public children services agency proceeding under R.C. 2151.421 and the Department proceeding under R.C. Chapters 5119 and 5122. See note 3, *supra*. It would be appropriate for the public children services agency and the Department to coordinate their efforts and to cooperate in carrying out their respective activities. See generally, e.g., Op. No. 84-007. There is, however, no statutory basis for concluding that a public children services agency may not investigate a report of alleged child abuse or neglect simply because the report relates to activities at facilities that are operated by the Department of Mental Health. I conclude, accordingly, that public children services agencies are authorized to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect at facilities operated by the Department of Mental Health pursuant to R.C. Chapter 5122. This conclusion is consistent with rules adopted by the Ohio Department of Human Services. See [1988-1989 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-34-01(LLL), (DDDDD) at 707, 708-09; 8 Ohio Admin. Code 5101:2-34-33. It is supported by the fact that certain persons who may work at facilities operated by the Department of Mental Health are required by R.C. 2151.421 to submit reports of known or suspected child abuse or neglect or threats of child abuse or neglect.

You have inquired about the authority of a public children services agency to investigate reports of alleged child abuse or neglect at facilities operated by the Ohio Department of Mental Retardation and Developmental Disabilities pursuant to R.C. Chapter 5123. Pursuant to R.C. 5123.03(A), the Department of Mental Retardation and Developmental Disabilities is responsible for maintaining, operating, managing, and governing state institutions for the care, treatment, and training of the mentally retarded. The Director of Mental Retardation and Developmental Disabilities is authorized to adopt rules for the proper execution of the powers and duties of the Department and for the nonpartisan management of the institutions under the jurisdiction of the Department. R.C. 5123.04(A), (B).

The Director of Mental Retardation and Developmental Disabilities, or a person designated by him, is required to "[v]isit each institution regularly...to investigate complaints made by any resident or by any person on behalf of a resident." R.C. 5123.04(E). The Director is further authorized to adopt rules "establishing procedures for the filing and resolution of complaints involving any of the programs or services operated pursuant to statutes, rules, or policies of the department." R.C. 5123.04(J).

R.C. 5123.93 governs the guardianship of mentally retarded minors and provides in part that, if a mentally retarded minor has been found to be dependent, abused, or neglected, the county children services board having permanent custody under R.C. Chapter 2151 "shall have the same authority and responsibility it would

have if the child were not mentally retarded and were not institutionalized." It is, thus, apparent that the fact that a minor is institutionalized pursuant to R.C. Chapter 5123 does not restrict the authority and responsibility of a public children services agency with respect to that minor.

R.C. 5123.62 sets forth the rights of mentally retarded persons and developmentally disabled persons, including "[t]he right to be free from emotional, psychological, and physical abuse." R.C. 5123.62(O). R.C. 5123.64 authorizes a mentally retarded or developmentally disabled person who believes that his rights have been violated to bring the violation to the attention of the provider, to report the violation to the Department of Mental Retardation and Developmental Disabilities, the Ombudsman Section of the Legal Rights Service, or the appropriate county board of mental retardation and developmental disabilities, or to take other appropriate action, including the filing of a legal action.

Like institutions and branch institutions under the control of the Department of Mental Health, each institution and branch institution under the control of the Department of Mental Retardation and Developmental Disabilities has a citizen's advisory board, which is to be notified of any alleged incident of abuse to a resident or staff member. R.C. 5123.092; R.C. 5123.093. The citizen's advisory boards are authorized to perform reviewing, reporting, and advisory functions, but they have no investigative authority. *See* R.C. 5123.093. The managing officer of an institution governed by the Department of Mental Retardation and Developmental Disabilities is required, in case of "an accident or injury or peculiar death of a resident," to make a special report to the Department "within twenty-four hours thereafter, giving the circumstances as fully as possible." R.C. 5123.31.

The Legal Rights Service and its Ombudsman Section have the same duties with respect to mentally retarded persons and persons with developmental disabilities that they have with respect to mentally ill persons. R.C. 5123.60; R.C. 5123.601-603. The Department of Mental Retardation and Developmental Disabilities is required to "immediately notify the ombudsman section of all investigations of major unusual incidents or life-threatening situations, as defined in rules adopted by the department, involving mentally retarded and developmentally disabled persons," and to furnish copies of relevant reports within forty-eight hours after receipt. R.C. 5123.604. Other state agencies, including specifically the Department of Human Services, are required to notify the Department of Mental Retardation and Developmental Disabilities of information concerning abuse, neglect, or life-threatening situations involving mentally retarded or developmentally disabled persons. R.C. 5123.604. As discussed above, R.C. 5123.604 provides that the existence and operations of the Legal Rights Service and its Ombudsman Section do not "preclude any...governmental entity from carrying out its responsibility as prescribed by law."

R.C. 5123.14 expressly authorizes the Department of Mental Retardation and Developmental Disabilities to "make such investigations as are necessary in the performance of its duties." *See also* R.C. 5123.03(G) ("[i]n addition to the powers expressly conferred, [the department of mental retardation and developmental disabilities shall] have the authority necessary for the full and efficient exercise of the executive, administrative, and fiscal supervision over the state institutions described in this section"). Like institutions under the jurisdiction of the Department of Mental Health, institutions under the jurisdiction of the Department of Mental Retardation and Developmental Disabilities may, upon the recommendation of the Director, designate special policemen to "enforce the laws of the state and rules of the department for the preservation of good order." R.C. 5123.13. The Department may appoint and commission agencies or persons to serve, without compensation, as special agents, investigators, or representatives to perform designated duties for the Department. R.C. 5123.15.

R.C. 5123.61 establishes a statutory scheme for the reporting and investigation of allegations of abuse or neglect of mentally retarded or

developmentally disabled adults.⁵ It imposes upon persons holding certain positions or professions who have "reason to believe that a mentally retarded or developmentally disabled adult has suffered any wound, injury, disability, or condition of such a nature as to reasonably indicate abuse or neglect of that adult" the duty of immediately reporting such information, or causing reports to be made, "to a law enforcement agency or to the county board of mental retardation and developmental disabilities, except that if the report concerns a resident of a facility operated by the department of mental retardation and developmental disabilities the report shall be made either to a law enforcement agency or to the department." R.C. 5123.61(B). R.C. 5123.61(D) permits any person to make such a report, and R.C. 5123.61(G) states, in part: "A law enforcement agency shall investigate each report of abuse or neglect made under this section. In addition, the department [of mental retardation and developmental disabilities], in cooperation with law enforcement officials, shall investigate each report regarding a resident of a facility operated by the department to determine the circumstances surrounding the injury, the cause of the injury, and the person responsible." R.C. 5123.61(G) provides that, if the adult who is the subject of such a report is not a resident of a facility operated by the Department of Mental Retardation and Developmental Disabilities, the county board of mental retardation and developmental disabilities shall review the report in accordance with R.C. 5126.30-.33 and the law enforcement agency shall make a written report of its findings to the county board. Under 5126.31, a county board of mental retardation and developmental disabilities that reviews a report of abuse or neglect of a mentally retarded or developmentally disabled adult is required to give the adult written and oral notice of the purpose of the review, visit the adult, consult with persons who have information about the alleged abuse or neglect, cooperate with and report to the law enforcement agency, determine whether the adult needs services, and arrange for the provision of services if the adult consents to receive them. *See also* R.C. 5126.32-.33.

The procedure for reporting and investigation set forth in R.C. 5123.61 and related provisions relates to a certain category of adults, and is separate from the procedure established in R.C. 2151.421. It should, however, be noted that the two types of procedures may overlap in certain instances. R.C. 2151.421 includes as persons who may be victims of child abuse or neglect "a child under eighteen years of age or a physically or mentally handicapped child under twenty-one years of age." *See, e.g.*, R.C. 2919.22 (offenses of child endangerment extend to children under age eighteen and mentally or physically handicapped children under age twenty-one). R.C. 5123.61 defines a "mentally retarded or developmentally disabled adult" as "a person who is eighteen years of age or older and who is mentally retarded...or developmentally disabled." Mentally retarded or developmentally disabled persons between the ages of eighteen and twenty-one are, thus, covered by both the provisions governing reporting and investigation of child abuse or neglect and those governing reporting and investigation of abuse or neglect of mentally retarded or developmentally disabled adults. I am aware of no basis for excluding incidents involving such individuals from either statutory scheme. *See* 8 Ohio Admin. Code 5101:2-34-15 (when a public children services agency receives a report, or is involved in an investigation, of alleged child abuse or neglect of a mentally retarded or developmentally disabled person aged eighteen to twenty-one years, the agency shall make a report in accordance with R.C. 5123.61; the mandate to make such a report "does not relieve the [agency] of its primary mandate to conduct an investigation of alleged abuse or neglect involving any person who is less than eighteen years of age or any physically or mentally handicapped person who is less than twenty-one years of age pursuant to [R.C. 2151.421]"). It would, however, appear to be appropriate for the various investigative bodies to coordinate their activities to the greatest extent possible, both for the convenience of all persons involved and to avoid duplication of efforts. *See, e.g.*, Op. No. 84-007.

It is evident that the Department of Mental Retardation and Developmental Disabilities has investigatory powers and duties that may address some of the same

⁵ Each county department of human services is responsible for investigating reports of alleged abuse, neglect, or exploitation of adults who are not mentally retarded or developmentally disabled. R.C. 5101.61-.62; R.C. 5126.31.

subjects that a public children services agency investigates under R.C. 2151.421. There is, however, no statutory indication that the existence of such powers and duties restricts the authority of a public children services agency to carry out investigations under R.C. 2151.421. It appears, instead, that concurrent investigatory authority exists in certain instances, and that efforts should be made to coordinate activities in such instances. I conclude, accordingly, that public children services agencies are authorized to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect at facilities operated by the Department of Mental Retardation and Developmental Disabilities pursuant to R.C. Chapter 5123. This conclusion is consistent with rules adopted by the Ohio Department of Human Services. See [1988-1989 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-34-01(LL), (DDDD) at 707, 708-09; 8 Ohio Admin. Code 5101:2-34-33. It is supported by the fact that certain persons who may work at facilities operated by the Department of Mental Retardation and Developmental Disabilities are required by R.C. 2151.421 to submit reports of known or suspected child abuse or neglect or threats of child abuse or neglect.

I consider now whether a public children services agency has authority to investigate reports of alleged child abuse or neglect or threats of such abuse or neglect at facilities operated by the Ohio Department of Youth Services pursuant to R.C. Chapter 5139. The Department of Youth Services is given authority to "control and manage all state institutions or facilities established or created for the training or rehabilitation of delinquent children committed to the department, except where the control and management of an institution or facility is vested by law in another agency." R.C. 5139.03; *accora* R.C. 5139.13(A). When a child is permanently committed to the Department of Youth Services, the Department has "[l]egal custody" of that child, defined as:

a legal status wherein the department has the following rights and responsibilities: the right to have physical possession of the child; the right and duty to train, protect, and control him; the responsibility to provide him with food, clothing, shelter, education, and medical care; and the right to determine where and with whom he shall live, subject to the minimum periods of institutional care prescribed in [R.C. 2151.355]; provided, that these rights and responsibilities are exercised subject to the powers, rights, duties, and responsibilities of the guardian of the person of the child, and subject to any residual parental rights and responsibilities.

R.C. 5139.01(A)(3). The Department may not retain control of an individual committed to it after that individual attains the age of twenty-one years. R.C. 5139.05; R.C. 5139.10; *see also* R.C. 5139.24. The Director of Youth Services is authorized to adopt rules governing the organization and operation of the Department, the conduct of its officers and employees, the performance of its business, the use of its records and property, and the administration of R.C. Chapter 5139. R.C. 5139.01; R.C. 5139.04.

The Department of Youth Services does not have express authority to investigate allegations of child abuse or neglect or threats of child abuse or neglect at facilities that it operates, but it does have general authority to do the acts that are "necessary or desirable" to carry out R.C. Chapter 5139. R.C. 5139.04(K). The Department's obligation to protect children that are in its legal custody, R.C. 5139.01(A)(3), and its authority to control and manage facilities for delinquent children, R.C. 5139.03; R.C. 5139.13, provide authority for the Department to conduct investigations of alleged child abuse or neglect or threats of child abuse or neglect at its facilities. Such authority does not, however, appear to restrict the authority of a public children services agency to carry out its statutory mandate to investigate all reports of alleged child abuse or neglect. Rather, the general authority of public children services agencies, discussed above, permits them to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect at facilities operated by the Department of Youth Services. It thus appears that concurrent authority for investigation exists, and that efforts should be made to coordinate such investigations. I conclude, in response to your question, that public children services agencies are authorized to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect at facilities operated by the

Department of Youth Services pursuant to R.C. Chapter 5139. This conclusion is consistent with rules adopted by the Department of Human Services. See [1988-1989 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-34-01(LLL), (DDDDD) at 707, 708-09; 8 Ohio Admin. Code 5101:2-34-33. It is supported by the fact that certain persons who may work at facilities operated by the Department of Youth Services are required by R.C. 2151.421 to submit reports of known or suspected child abuse or neglect or threats of child abuse or neglect.

You have asked also whether public children services agencies have authority to investigate allegations of child abuse and neglect at the Ohio Veterans' Children's Home (OVCH), operated pursuant to R.C. Chapter 5909. The OVCH has been created by the General Assembly to "care for and educate children of deceased and disabled veterans and children of Ohio residents who are unable to provide support and education for their children." R.C. 5909.01. The OVCH is governed by a board of trustees that selects and employs a superintendent and other employees. R.C. 5909.02-.03. The OVCH is responsible for providing for the education of the children who reside there, see R.C. 5909.01, .06-.08, .12, and it operates a school that has been chartered by the Department of Education as a special purpose school, see R.C. 3301.07; R.C. 3301.16; 3 Ohio Admin. Code 3301-35-05; 1983 Op. Att'y Gen. No. 83-065. Because of the statutory scheme governing its existence and operation, the OVCH is a unique entity that has been given a great deal of autonomy. See, e.g., 1987 Op. Att'y Gen. No. 87-080 at 2-530 (concluding that "the OVCH is exempt from regulation by the Department of Human Services"); Op. No. 83-065. The OVCH clearly has authority to undertake investigations of child abuse or neglect or threats of child abuse or neglect at its facilities. See R.C. 5909.01-.03, .05. It does not, however, appear that the OVCH is excluded from the provisions of R.C. 2151.421 mandating that a public children services agency investigate all reports of child abuse or neglect or threats of child abuse or neglect.

In Op. No. 87-080 I concluded that the OVCH was exempt from regulation by the Department of Human Services⁶ on the basis of the following language, appearing in R.C. 5909.02: "The board [of trustees of the OVCH] shall govern, conduct, and care for such home, the property, and the children therein as provided in the laws governing the department of human services so far as they are not inconsistent with the laws governing such home." I found that this language indicated a legislative intent to exempt OVCH from regulation by the Department of Human Services. I do not, however, find that this exemption extends to the provisions of R.C. 2151.421. As discussed above, R.C. 2151.421 sets forth a comprehensive scheme for the reporting of allegations of child abuse and neglect and threats of child abuse and neglect and for the investigation of such reports by public children services agencies. The Ohio Department of Human Services has certain responsibilities under the statutory scheme relating to child abuse and neglect. See, e.g., R.C. 2151.421(F) (requiring the Ohio Department of Human Services to maintain a central registry of reports of child abuse or neglect or threats of child abuse or neglect); R.C. 2151.421(I) (authorizing the Ohio Department of Human Services to adopt rules to aid in the implementation of R.C. 2151.421). Those responsibilities do not, however, constitute regulation of the OVCH or any other organization that provides care to children. Rather, R.C. 2151.421 and rules adopted by the Department of Human Services to implement R.C. 2151.421 impose upon certain individuals the duty of reporting alleged child abuse or neglect or threats of child abuse or neglect and upon local public children services agencies the duty of investigating such reports. Regardless of the extent to which the OVCH is subject to regulation by the Ohio Department of Human Services, it has employees who are required to make reports pursuant to R.C. 2151.421 and it is subject to the investigation of such reports pursuant to R.C. 2151.421.

It appears, therefore, that a public children services agency and the OVCH have concurrent authority to conduct investigations of alleged child abuse or neglect

⁶ I reached the same conclusion in 1983 Op. Att'y Gen. No. 83-065 on the basis of a somewhat different analysis. I affirm the conclusion reached in Op. No. 83-065, as clarified by the analysis set forth in 1987 Op. Att'y Gen. No. 87-080.

or threats of child abuse or neglect involving the OVCH, with the public children services agency proceeding under R.C. 2151.421 and the OVCH proceeding under R.C. Chapter 5909. *See* note 3, *supra*. It is appropriate for the agency and the OVCH to coordinate their efforts, *see, e.g.*, Op. No. 84-007, and certain procedures implementing such coordination are set forth in rules of the Department of Human Services. *See, e.g.*, 8 Ohio Admin. Code 5101:2-34-32 to 5101:2-34-34. Through cooperation, the agency and the OVCH may minimize the stress and confusion that may result from concurrent investigations. *See, e.g.*, 8 Ohio Admin. Code 5101:2-34-32(G) (providing that, in an investigation, a public children services agency will not interview an alleged child victim who has previously been interviewed if additional interviewing is deemed to be detrimental to the child). *See generally* 8 Ohio Admin. Code 5101:2-34-35 (establishing procedures for investigations involving more than one public children services agency). I find, however, no statutory basis for concluding that a public children services agency lacks authority to investigate a report of alleged child abuse or neglect simply because the report relates to the OVCH or one of its residents. I conclude, therefore, that a public children services agency is authorized to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect at the OVCH. This conclusion is consistent with rules adopted by the Ohio Department of Human Services. *See* [1988-1989 Monthly Record, vol. 1] Ohio Admin. Code 5101:2-34-01(LL), (AAAA) at 707; 8 Ohio Admin. Code 5101:2-34-33. It is supported by the fact that certain persons who may work at the OVCH are required by R.C. 2151.421 to submit reports of known or suspected child abuse or neglect or threats of child abuse or neglect.

Your next question is whether public children services boards are authorized to investigate allegations of child abuse or neglect at detention homes operated by the county juvenile courts pursuant to R.C. 2151.34. R.C. 2151.34 provides for the establishment of detention homes, as follows:

Upon the advice and recommendation of the judge, the board of county commissioners shall provide, by purchase, lease, construction, or otherwise, a place to be known as a detention home, which shall be within a convenient distance of the juvenile court...and in which delinquent, unruly, dependent, neglected, abused children, or juvenile traffic offenders may be detained until final disposition. Upon the joint advice and recommendation of the juvenile judges of two or more adjoining or neighboring counties, the boards of county commissioners of the counties shall form themselves into a joint board, and proceed to organize a district for the establishment and support of a detention home for the use of the juvenile courts of those counties, in which delinquent, unruly, dependent, neglected, and abused children, or juvenile traffic offenders may be detained until final disposition, by using a site or buildings already established in one of the counties, or by providing for the purchase of a site and the erection of the necessary buildings thereon.

The county or district detention home shall be maintained as provided in sections 2151.01 to 2151.54 of the Revised Code....

If a detention home is established as an agency of the court, or a district detention home is established by the courts of several counties as provided in this section, it shall be furnished and carried on, as far as possible, as a family home in charge of a superintendent or matron in a non-punitive neutral atmosphere.

Financial assistance for the construction or operation of such detention homes may be obtained from the Department of Youth Services, *see* R.C. 2151.3416; R.C. 5139.271; R.C. 5139.281, and the Department may inspect any detention home for which it has provided financial assistance, *see* R.C. 5139.31.

R.C. 2151.34 provides that a county or district detention home established pursuant to its provisions shall be maintained as provided in R.C. 2151.01-.54. Those provisions contain no language directly addressing the matter of alleged child abuse or neglect in a county or district detention home; they do, however, include R.C. 2151.421, which imposes upon the public children services board the obligation of investigating all reports of alleged child abuse or neglect or threats of child abuse or

neglect. Nothing in the provisions governing county and district detention homes suggests that such homes should be excluded from investigations under R.C. 2151.421.

It might be argued that, because county and district detention homes are established upon the advice and recommendation of judges and are described as agencies of the court, *see* R.C. 2151.34, they are part of the judicial branch of government and it would be inappropriate for them to be subject to investigations under R.C. 2151.421. It is clearly established that the legislative and executive branches of government may not impinge upon the exercise by the courts of their judicial functions. *See, e.g., State ex rel. Johnston v. Taulbee*, 66 Ohio St. 2d 417, 423 N.E.2d 80 (1981); *State ex rel. Finley v. Pfeiffer*, 163 Ohio St. 149, 126 N.E.2d 57 (1955). It does not, however, appear that investigations concerning alleged abuse or neglect of a child or threats of abuse or neglect of a child would constitute such impingement, even if the child resided at a detention home established under R.C. 2151.34. *See generally In re Metzenbaum*, 26 Ohio Misc. 47, 265 N.E.2d 345 (C.P. Cuyahoga County 1970); *City of Dayton v. Strausbaugh*, 10 Ohio Misc. 2d 29, 462 N.E.2d 462 (Dayton Mun. Ct. 1984). The statutory scheme indicates that public children services agencies are to investigate all reports of alleged child abuse or neglect or threats of child abuse or neglect, and legislative enactments are presumed constitutional. *See State v. Stambaugh*, 34 Ohio St. 3d 34, 517 N.E.2d 526 (1987); 1984 Op. Att'y Gen. No. 84-077 at 2-253 n. 1. The purposes of R.C. Chapter 2151 are consistent with the conclusion that investigation by a public children services agency is appropriate even at a county or district detention home. R.C. 2151.01(A) states as one of the purposes of R.C. Chapter 2151: "To provide for the care, protection, and mental and physical development of children subject to [R.C. Chapter 2151]." The language of R.C. 2151.421 is comprehensive, stating that a public children services agency "shall investigate...each report of known or suspected child abuse or child neglect and of a known or suspected threat of child abuse or child neglect that is referred to it" under R.C. 2151.421. R.C. 2151.421(F). There is no statutory basis for excluding reports that pertain in any way to county or district detention homes. *See generally* Op. No. 84-077. I conclude, therefore, that public children services agencies are authorized to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect at detention homes established pursuant to R.C. 2151.34. This conclusion is consistent with rules adopted by the Ohio Department of Human Services. *See* 8 Ohio Admin. Code 5101:2-34-33. It is supported by the fact that certain persons who may work at detention homes are required by R.C. 2151.421 to submit reports of known or suspected child abuse or neglect or threats of child abuse or neglect.

I turn now to the question whether public children services agencies are authorized to investigate allegations of child abuse and neglect at public schools operating under standards set by the State Board of Education pursuant to R.C. Chapter 3301. R.C. 3301.07 provides that the State Board of Education "shall exercise under the acts of the general assembly general supervision of the system of public education in the state." The State Board of Education is authorized to formulate and prescribe minimum standards to be applied to elementary and secondary schools in the state, and to adopt rules necessary to carry out its functions. R.C. 3301.07; *see also* R.C. 3301.16. Each board of education is authorized to "make such rules as are necessary for its government and the government of its employees, pupils of its schools, and all other persons entering upon its school grounds or premises." R.C. 3313.20.

The comprehensive language of R.C. 2151.421(F), mandating the investigation of "each report of known or suspected child abuse or child neglect and of a known or suspected threat of child abuse or child neglect," indicates that a public children services agency may investigate such a report when it relates to activities at a public school. The fact that school teachers, employees, authorities, and psychologists are expressly listed in R.C. 2151.421(A) as persons who are required to report indications of abuse or neglect or threats of abuse or neglect provides support for the conclusion that schools are settings in which allegations of abuse or neglect or threats of abuse or neglect may be investigated. *See also* 8 Ohio Admin. Code 5101:2-34-04.

In 1982 Op. Att'y Gen. No. 82-029, my immediate predecessor was faced with the question whether a school board may regulate the manner in which an investigator from a county children services board may question a student during

school hours on matters relating to alleged abuse of the student. Op. No. 82-029 apparently found the authority of such a person to carry out an investigation at the school so clear that it required no analysis. See Op. No. 82-029 at 2-84 (stating that R.C. 2151.421 "requires that a county children services board, or a county board of welfare exercising the children services function, investigate all reports of child abuse or neglect"); accord *Brodie v. Summit County Children Services Board*. The opinion went on to consider the extent to which a board of education's broad power under R.C. 3313.20 to make rules governing the schools permits it to regulate investigations that are conducted pursuant to R.C. 2151.421. The question under consideration in Op. No. 82-029 was phrased as follows:

May the county department of welfare or the children's services board charged with investigating reports of alleged child abuse and neglect pursuant to Ohio Revised Code Section 2151.421, speak with an alleged abused child alone and on school property without first obtaining parental consent, or may a school board, pursuant to its general powers to make reasonable regulations, regulate to require parental consent or the presence of a principal or other school official during any questioning of a student during school hours by a children's services worker investigating a report of an alleged abuse of such child in accordance with Revised Code Section 2151.421?

Op. No. 82-029 at 2-84.

Op. No. 82-029 contains the following analysis:

One might question the wisdom of a rule requiring an investigator from the county children services board to either obtain the consent of a parent or permit a school official to be present during the interview before allowing the investigator to talk with an allegedly abused child on school property. Such a rule does not appear, however, to violate any provision of state law.

....

R.C. 2151.421 requires a county children services board, or the county department of welfare performing the children services function, to begin an investigation within twenty-four hours of receiving a report of suspected abuse or neglect. It further makes the unauthorized dissemination of a report of abuse or neglect a misdemeanor of the fourth degree. A board of education's rule requiring parental consent or the presence of a school official at any interview conducted on school property does not appear to necessarily conflict with either of the above provisions. Again there may be some question as to the reasonableness of a rule which may make it more difficult for a county children services board or county board of public welfare to investigate suspected abuse or neglect. The reasonableness of such rules is, however, a question of fact which can only be resolved by a court of law. Thus, while I personally may have some doubts as to the reasonableness of such a rule, I am constrained to conclude that a board of education has the authority to adopt such rules.

Therefore, it is my opinion, and you are advised, that a board of education may require by rule, adopted pursuant to R.C. 3313.20, that an investigator from a county children services board obtain parental consent or permit a school official to be present before allowing such investigator to interview a child on school property in the course of an investigation required to be conducted under R.C. 2151.421. The reasonableness of any such rule is, however, subject to judicial review.

Op. No. 82-029 at 2-85 to -86.

The reservations expressed in Op. No. 82-029 with respect to the reasonableness of rules that affect the investigatory activities of public children services boards emphasize the need for cooperation among various governmental bodies in order to permit investigations of alleged child abuse or neglect to be carried out in a prompt and efficient manner that will serve to protect the children

of the state without providing unnecessary disruption of other activities. *See generally* Op. No. 85-098. It is, however, clear that public children services agencies are authorized to investigate reports of alleged child abuse or neglect at public schools operating under standards set by the State Board of Education pursuant to R.C. Chapter 3301.

Since this opinion concludes that a public children services agency is authorized to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect at the state-operated facilities discussed herein, at detention homes, and at public schools, it is unnecessary to address your question concerning an alternate authority with such power. It is, however, appropriate to stress that, even though the statutory scheme grants authority to a public children services agency to conduct such investigations, it places a burden of cooperation upon both the agency and the public facility at which the investigation is carried out. In conducting an investigation of alleged child abuse or neglect or threats of child abuse or neglect at a public facility, a public children services agency is required to contact a representative of the facility and to inform him of the actions that it has taken and that it proposes to take. *See* 8 Ohio Admin. Code 5101:2-34-33. Such contact provides an opportunity for the agency to coordinate its efforts with those of the facility, and for the two entities to cooperate so that the agency performs its duties with minimal disruption of normal activities at the facility. The various public entities discussed in this opinion have authority to regulate activities at their facilities. They may not, however, regulate in such manner as to unreasonably restrict a public children services agency from carrying out its duties. *See generally* 1988 Op. Att'y Gen. No. 88-015 at 2-59 ("whether a particular rule is unreasonable or an abuse of discretion is a question of fact which only a court is competent to determine"). The public entities must remain accessible to the public children services agencies, as those agencies perform their statutory duties. *See, e.g.,* 8 Ohio Admin. Code 5101:2-34-32(C); Op. No. 82-029. A determination of the most efficient and appropriate manner of conducting an investigation must be made on a case-by-case basis, but should be made with respect for the rights and duties of the other persons and entities that may be affected. *See generally, e.g., State ex rel. Krakowski v. Stokes*, 16 Ohio App. 3d 62, 66, 474 N.E.2d 695, 699-70 (Cuyahoga County 1984) ("[t]he administrative judge and the clerk of court should work together in order that each may efficiently carry out his duties"; they "should rise above their differences, however engendered, and should be motivated [to act] in the interest of the public"); 1987 Op. Att'y Gen. No. 87-039 at 2-264 ("[p]ersons involved in the controversy should, thus, weigh the interests on both sides and seek a workable arrangement"); 1986 Op. Att'y Gen. No. 86-057 at 2-317 (the township trustees and township clerk "should work together to establish a system which permits the township books to be maintained safely and made available to the public, while allowing both the board of trustees and the clerk to perform their duties in an efficient manner").

For the reasons set forth above, it is my opinion, and you are hereby advised, as follows:

1. R.C. 2151.421 sets forth a comprehensive scheme for the reporting of allegations of child abuse and neglect and threats of child abuse and neglect and for the investigation of such reports by public children services agencies.
2. Public children services agencies have authority to investigate all reports of known or suspected child abuse or neglect or threats of child abuse or neglect within their respective counties of jurisdiction unless there is some provision of law restricting that authority with respect to particular persons or locations.
3. The powers of the State Highway Patrol or special police officers designated by the Superintendent of the State Highway Patrol to investigate and to enforce laws on state properties and in state institutions do not restrict the authority of public children services agencies to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect pertaining to such locations.

4. Public children services agencies are authorized to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect at facilities operated by the Department of Mental Health pursuant to R.C. Chapter 5122, at facilities operated by the Department of Mental Retardation and Developmental Disabilities pursuant to R.C. Chapter 5123, and at facilities operated by the Department of Youth Services pursuant to R.C. Chapter 5139.
5. Public children services agencies are authorized to investigate reports of alleged child abuse or neglect or threats of child abuse or neglect at detention homes established pursuant to R.C. 2151.34, at the Ohio Veterans' Children's Home operated pursuant to R.C. Chapter 5909, and at public schools operating under standards set by the State Board of Education pursuant to R.C. Chapter 3301.