

Note from the Attorney General's Office:

1962 Op. Att'y Gen. No. 62-3335 was overruled by
1997 Op. Att'y Gen. No. 97-001.

3335

AN EXECUTIVE OFFICER OF A COUNTY CHILD WELFARE BOARD SHOULD BE PAID OUT OF THE GENERAL FUND AND NOT FROM A SPECIAL LEVY FOR THE EDUCATION OF RETARDED CHILDREN—§5153.10, R.C., OPINION 1744, OAG, 1958.

SYLLABUS:

All of the salary of the executive officer of a county child welfare board, appointed pursuant to Section 5153.10, Revised Code, should be paid out of the county general fund, and funds of a special levy imposed for the education and training of retarded children may not be used for that purpose even though part of the duties of the executive secretary may be with the retarded children program.

Columbus, Ohio, October 11, 1962

Honorable Robert Webb, Prosecuting Attorney
Ashtabula County, Jefferson, Ohio

Dear Sir:

Your request for my opinion reads:

"In 1960 a levy was passed in Ashtabula County to provide for the training and education of mentally retarded children. The funds derived from this levy are being administered by the Child Welfare Board through the Executive Secretary and the Advisory Council as provided in 5153.11 of the Revised Code.

"At this time, the Executive Secretary is being paid from general funds appropriated for the use of the Child Welfare Board. However, it is deemed advisable to pay the salary of the Executive Secretary from both the General Fund for Child Welfare Services and from funds from the levy for the Retarded Children's Program.

"1. May the salary of the Executive Secretary, under Chapter 5153 of the Revised Code be paid proportionately from the General Fund appropriated for Child Welfare Services and from the funds of a levy proposed for the education and training of retarded children?

"2. May the Executive Secretary, under Chapter 5153 of the Revised Code, who is being paid a salary from the general funds appropriated for Child Welfare services, be paid additional compensation from the funds of the levy imposed for the education and training of retarded children?"

The position of executive secretary to a child welfare board is authorized under Section 5153.10, Revised Code, reading in part:

"The county child welfare board or the county department of welfare, which performs the duties and exercises the powers set forth in sections 5153.16 to 5153.19, inclusive, of the Revised Code, shall designate an executive officer known as the 'executive secretary,' who shall not be in the classified civil service. * * *

"* * * * * * * *"

It should be observed that neither the sentence quoted nor any other statutory provision of which I am aware explicitly authorizes a salary for the executive secretary, and the absence of such explicit authority makes

questionable the right of the person holding this position to any compensation. My predecessor discussed the point in Opinion No. 1744, Opinions of the Attorney General for 1958, page 98, as follows (at page 102):

“* * * * * * * *”

“Here it will be seen that the appointing authority is given no *express* authority to fix this officer’s compensation, nor, indeed, does this section make any provision for such compensation. In the absence of any statutory provision therefor a public officer has no valid claim to compensation from public funds. 32 Ohio Jurisprudence, 1011. It is plain, however, that this officer was intended to be compensated, for in Section 335.35, Revised Code, we find this provision:

“The boards of county commissioners shall levy taxes and make appropriations sufficient to enable the county child welfare board or county department of welfare to perform its functions and duties under sections 335.01 to 335.42, inclusive, of the Revised Code.

*“In addition to making the usual appropriations, there may be allowed annually to the executive secretary an amount not to exceed one-half his official salary to provide for necessary expenses which are incurred by him or his staff in the performance of official duties. Upon the order of the executive secretary, the county auditor shall draw his warrant on the county treasurer payable to the executive secretary or such other persons as the order designates, for such amount as the order requires, not exceeding the amount provided for in this section, and to be paid out of the general fund of the county. * * *”*

“* * * * * * * *”

(Emphasis added.)

Though Section 335.35, *supra*, is now Section 5153.35, Revised Code, the section number having been changed in 1957 (127 Ohio Laws 1012, 1028), the substance of the law was not changed. Accordingly, I see no reason to question my predecessor’s opinion that the executive secretary is entitled to be paid for his efforts.

This leaves the question of determining out of which fund the executive secretary should be paid. In this regard, the syllabus of Opinion No. 4150, Opinions of the Attorney General for 1935, page 424, reads:

“The salary of a payroll clerk in the office of the county surveyor must be paid from the general fund of the county and there is no authority in law for the payment of any portion of such salary from the county road and bridge fund.”

The question presented in that opinion was whether the salary of the payroll clerk in the county surveyor's office could be paid from the county road and bridge fund (which had been raised from a special tax levy), or whether it had to be paid completely from the county general fund. The only statute in point, Section 2981, General Code, provided that employees of officers such as the county surveyor should be paid from the county treasury. The Attorney General ruled that the words "county treasury" undoubtedly meant "the general fund" as no other fund was mentioned in the statute. Thus, the absence of specific authority for the payment of a salary, in whole or in part, from a special fund, is cogent evidence of legislative intention that the salary be paid, if at all, from the general fund.

In the situation presented here it should be emphasized also that Section 5153.35, Revised Code, specifically provides that the expenses of an executive secretary are to be paid out of the general fund of the county. Therefore, these expenses would have to be paid from the general fund, no matter what activity caused these expenses. It appears reasonable to conclude, therefore, that the executive secretary's salary must also be paid out of the general fund of the county.

Accordingly, it is my opinion and you are advised that all of the salary of the executive officer of a county child welfare board, appointed pursuant to Section 5153.10, Revised Code, should be paid out of the county general fund, and funds of a special levy imposed for the education and training of retarded children may not be used for that purpose even though part of the duties of the executive secretary may be with the retarded children program.

Respectfully,
MARK McELROY
Attorney General