

1990

WELFARE, CHILD—WELFARE BOARD, EXECUTIVE SECRETARY, §2111.05 R.C. TRUSTEE OF FUNDS OF WARDS—DISPOSITION OF FUNDS ONLY AS AUTHORIZED OR APPROVED BY PROBATE COURT—FUNDS OF WARD OF BOARD, HELD BY COUNTY TREASURER TO BE PAID TO LEGAL GUARDIAN OR IF LESS THAN ONE THOUSAND DOLLARS, TO EXECUTIVE SECRETARY OF WELFARE BOARD, §5153.18 R.C.

SYLLABUS:

1. A child welfare board when its executive secretary has been duly designated by the probate court under Section 2111.05, Revised Code and Section 5153.18, Revised Code, as trustee of funds of one of its wards, is not empowered to make disposition of said funds except as authorized or approved by the probate court who has jurisdiction in the matter.

2. Funds of a ward of a child welfare board held in the custody of the county treasurer should be paid over to the legal guardian of such ward, or if not more than \$1,000.00 in amount, should be paid over to the executive secretary of a child welfare board duly designated by the probate court as trustee, and the disposition of such funds by the guardian or trustee is subject to the authorization and approval of the probate court.

Columbus, Ohio, April 25, 1958

Hon. Stanley N. Husted, Prosecuting Attorney
Clark County, Springfield, Ohio

Dear Sir:

Your request for my opinion is as follows:

“A child was made the ward of the Juvenile Court of Clark County, Ohio, and at said time was receiving benefits under the Social Security Act, and said checks were paid to the Juvenile Court. The Juvenile Court turned said checks over to the Clark County Treasurer to be applied to the Children’s Home fund, in as much as this child had been placed under the care and custody of the authorities at the Clark County Children’s Home.

“The Clark County Child Welfare Board, unless one of its wards is living with a relative, places any child’s Social Security benefits in an individual bank account in the name of the secretary of the Child Welfare Board, as custodian of such child. These funds are then held for the benefit of each child, and are turned over to said child upon his reaching the age of twenty-one. This

procedure is followed in each instance where the Social Security checks are made payable to the Clark County Child Welfare Board or one of its officers for the benefit of such child.

“The question is, whether or not, the money as paid over by the Juvenile Court, under the pertinent facts as stated to the County Treasurer can be recovered by the Child Welfare Board so that said money can be deposited into this child’s account and the benefits from Social Security processed the same as they are in other similar cases where the check from Social Security is made payable to the Child Welfare Board?”

Following this request, at my suggestion, you inquired of the Social Security Administration as to its position on the question raised, since federal funds are involved. The manager of the Springfield District Office, Social Security Administration, answered your inquiry in part as follows:

“We will rely on the judgment of the payee as to whether conservation of the benefits or their expenditure for current needs or wants is the more desirable. Either method constitutes valid use of the benefits.”

Thereafter you extended your request for my opinion as follows:

“In my request for an opinion, will you also consider this question: as to whether or not, the Child Welfare Board has the power to determine whether or not Social Security benefits payable to a child under the Board’s jurisdiction shall be deposited in an account, later to be turned over to said child after he arrives at the age of twenty-one years, or before arriving at such age, or whether such money should be paid into the treasury of Clark County, Ohio for the purpose of defraying some of the expenses incurred in the care and keep of said child?”

The two questions raised by your request will be considered in inverse order.

The Clark County Child Welfare Board to which you refer was created and exists under the provisions of Section 5153.07 to 5153.20, Revised Code. Section 5153.18, Revised Code provides in part as follows:

“(A) The county child welfare board or county department of welfare shall have the capacity possessed by natural persons to institute proceedings in any court.

“(C) When appointed by the probate court, in lieu of guardian, in accordance with Section 2111.05, of the Revised Code:

“(1) The executive secretary may act as trustee of the estate of any ward, provided such an estate does not exceed one thousand dollars in value.

“(2) The executive secretary may also act as trustee, on behalf of any ward, of periodic payments of not more than twenty-five dollars per week of which such ward is entitled as a claimant pursuant to the terms of any insurance policy, annuity, pension, benefit, or allowance, governmental or private.

“(3) *Such secretary shall administer all trusteeships in accordance with the laws relating to fiduciaries.*

“The funds of any such trusteeship shall not be mingled with other moneys of the board or department or of the county. The cost of any such trusteeship shall be paid out of the funds of the trust, but no fee shall be allowed to the executive secretary as such trustee. At least once a year, or more often if required by the probate court, the executive secretary shall make a complete report and accounting to the board or to the department as to the disposition of all trust funds administered by him during the year.” (Emphasis added)

Further, Section 5153.19, Revised Code is as follows:

“The county child welfare board or county department of welfare shall, before entering into any agreement obligating the board or department with respect to the care of any child, determine the *ability of the child*, parent, guardian, or other person to pay for the cost of such care, having due regard for other dependents. Such determination shall, if accepted by the parent, guardian, or other person be made a part of such agreement.

If the executive secretary has been appointed in lieu of a guardian and is acting as trustee of the estate of the child such determination shall be subject to the approval of the probate court.” (Emphasis added)

Section 2111.05, Revised Code, referred to in Section 5153.18, *supra*, reads in pertinent part as follows:

“If the estate is one of one thousand dollars or less and the ward is a minor, the court may, without the appointment of a guardian by the court or the giving of bond, authorize the deposit thereof in a depository authorized to receive fiduciary funds payable to the guardian when appointed or to the ward when he attains majority, or the court may authorize the delivery thereof to the natural guardian of the minor, to the person by whom the minor is obtained, to the executive secretary who is responsible for the administration of child welfare services in the county, or to the minor himself.”

From a consideration of the above cited sections of the Revised Code it is apparent that the probate court may authorize the delivery or payment of funds of not more than \$1,000.00, of a minor ward of a child welfare board, to the executive secretary of a child welfare board as trustee of the estate of such ward. Likewise it is apparent from said sections that such executive secretary shall administer all such funds in accordance with the laws relating to fiduciaries, and the disposition of any such funds held by the executive secretary as trustee shall be subject to the approval of the probate court. The child welfare board may determine the ability of the child to pay for the cost of the care given by such child welfare board in accordance with Section 5153.19, Revised Code, but if the executive secretary is acting as trustee of the estate of the child, such determinations shall be subject to the approval of the probate court. I conclude therefore and you are advised that a child welfare board through its executive secretary, in the handling of funds of one of its wards is subject to the jurisdiction of the probate court and must handle said funds in accordance with the laws relating to fiduciaries and is not empowered to determine whether or not Social Security benefits payable to a child under its jurisdiction shall be deposited in an account for said child or used to defray expenses incurred in the care and keep of said child without the approval and authorization of the probate court.

Having determined this question, I now consider the question raised in your first letter in the light of this determination.

Under the facts as stated it appears that the funds placed in the county treasury, and which were received as Social Security Survivorship Insurance checks for the use of the ward who is under the custody and care of the child welfare board, are now being held by such county treasurer as custodian of said funds. It would appear that if said funds are \$1,000.00 or less that the probate court could designate the executive secretary of the child welfare board as trustee to receive said funds. Said trustee would then handle said funds and dispose of same as a fiduciary under the jurisdiction of the probate court. If said funds being held by the county treasurer as custodian are more than \$1,000.00, then the executive secretary of the child welfare board, legally appointed as guardian by the probate court, or any other person legally appointed as guardian of the child, would be entitled to receive the funds from the custodian and make disposition thereof as any fiduciary under the jurisdiction and with the approval of the probate court.

The matter of disposition of the funds as to payment of any claim that the county has against the estate of the ward and the matter of retention and saving of said funds for the ward until majority would be a matter for determination by the guardian or trustee with the approval and authorization of the probate court. I conclude and you are advised :

(1) A child welfare board when its executive secretary has been duly designated by the probate court under Section 2111.05, Revised Code and Section 5153.18, Revised Code, as trustee of funds of one of its wards, is not empowered to make disposition of said funds except as authorized or approved by the probate court who has jurisdiction in the matter.

(2) Funds of a ward of a child welfare board held in the custody of the county treasurer should be paid over to the legal guardian of such ward, or if not more than \$1,000.00 in amount, should be paid over to the executive secretary of a child welfare board duly designated by the probate court as trustee, and the disposition of such funds by the guardian or trustee is subject to the authorization and approval of the probate court.

Respectfully,

WILLIAM SAXBE

Attorney General