

OPINION NO. 66-173

Syllabus:

1. There is no statutory authority to submit a proposed district levy to the voters of such district for the purpose of building a district detention home pursuant to Section 2151.34 et seq., Revised Code, either before or after the formation of a district board of trustees.

2. Until the juvenile judge or juvenile judges advise and recommend the establishment of a county or a district de-

tention home, pursuant to Section 2151.34, Revised Code, there is no legal authority to levy a tax for that purpose. There is no statutory authority for a tax levy in the alternative. Sections 5705.19, 5705.25, Revised Code.

3. If a district detention home is established pursuant to Section 2151.34, Revised Code, the board of county commissioners of each participating county shall provide for its proportionate share of the costs of establishing, maintaining, and supporting the detention home.

To: Robert O. Stout, Marion County Pros. Atty., Marion, Ohio

By: William B. Saxbe, Attorney General, October 28, 1966

Your letter requesting my opinion asks the following questions:

"1 - May the interested counties submit a district building levy to the voters without first forming a District Detention Home Board as described by Section 2151.34 et seq.?"

"2 - May a county submit a building levy to the electorate in alternative form, so that if a District Detention Home Organization is not formed, that nevertheless, if the levy is successful, the funds may be used for a single county detention facility? Conversely, if the levy is submitted and passed as a single county Detention Home issue may it thereafter be used for a District Detention Home?"

"3 - If the district is formed, must the levy be passed in each county, or is it's adoption dependent on a majority vote of the district as a whole?"

Chapter 2151, Revised Code, pertains to the establishment and jurisdiction of juvenile courts.

Section 2151.01, Revised Code, provides in part:

"(A) As used in the Revised Code, 'juvenile judge' or 'juvenile court' means the judge or the court exercising the powers and jurisdiction conferred in sections 2151.01 to 2151.54, inclusive, of the Revised Code.

" * * * * * "

One of the powers of a juvenile judge, pursuant to Section 2151.34, Revised Code, is to advise and recommend that a detention home be established.

Section 2151.34, Revised Code, provides in part:

" * * * * * "

"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, * * * where delinquent, dependent, neglected 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 such 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 such counties, where delinquent, dependent, neglected children, or juvenile traffic offenders may be detained until final disposition, by using a site or buildings already established in one such county, or by providing for the purchase of a site and the erection of the necessary buildings thereon. Such county or district detention home shall be maintained as provided in sections 2151.01 to 2151.54, inclusive, of the Revised Code. * * *

"* * * * * * * *"

The power to establish a detention home is within the exclusive discretion of the juvenile judge or judges. Upon the advice and recommendation of the juvenile judge, the board of county commissioners for the county wherein the juvenile court is located shall establish a county detention home. Upon the joint advice and recommendation of two or more juvenile judges of two or more adjoining or neighboring counties, the boards of county commissioners for the counties wherein said juvenile courts are located shall establish a district detention home. The county or district detention home is established as an agency of said court or courts, although the cost of its establishment, maintenance, and support shall be borne by the board or boards of county commissioners, as the case may be.

Upon the single or joint advice and recommendation of the juvenile judge or judges, the board or boards of county commissioners are under a mandatory obligation to establish, maintain, and support the detention home. In State, ex rel. Ray, v. South (1964), 176 Ohio St. 241, the fifth branch of the syllabus states:

"Section 2151.34, Revised Code, which requires that, '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,' is mandatory, and a writ of mandamus will issue to compel the board to exercise its discretion in making provision for such home."

The Supreme Court, in State, ex rel. Ray, v. South, supra, by its opinion, makes it clear that it is the plain duty of the board or boards of county commissioners to provide a detention home. The providing of such detention home is not depen-

dent upon the passage of any particular tax levy to be submitted to the voters. This is true whether a county or a district detention home is established. The apportionment of costs to each participating county for a district detention home is provided for by Section 2151.3412, Revised Code. Each county shall provide its share from its own county funds.

A juvenile detention home may not be established pursuant to Section 2151.34, Revised Code, except upon the advice and recommendation of the juvenile judge, or in the case of a district detention home, upon the joint advice and recommendation of all the juvenile judges within said district. There is no basis on which to make a tax levy until after such discretion is exercised, at which point in time the determination will have been made as to whether a county or a district detention home will be provided. If it is determined to establish a district detention home, there is no statutory authority for a district levy; each participating county is required to provide its proportionate share of the costs, by levies in the individual counties or from other funds available to each such county.

In answer to your specific questions, it is my opinion, and you are advised, that:

1. There is no statutory authority to submit a proposed district levy to the voters of such district for the purpose of building a district detention home pursuant to Section 2151.34 et seq., Revised Code, either before or after the formation of a district board of trustees.

2. Until the juvenile judge or juvenile judges advise and recommend the establishment of a county or a district detention home, pursuant to Section 2151.34, Revised Code, there is no legal authority to levy a tax for that purpose. There is no statutory authority for a tax levy in the alternative. Sections 5705.19, 5705.25, Revised Code.

3. If a district detention home is established pursuant to Section 2151.34, Revised Code, the board of county commissioners of each participating county shall provide for its proportionate share of the costs of establishing, maintaining, and supporting the detention home.