

OPINION NO. 1302

Syllabus:

1. Pursuant to authorization under Section 5127.01, Revised Code, a board of county commissioners may, under Sections

307.02, 5153.161 and 329.02, Revised Code, construct a training center and workshop for the mentally deficient.

2. Pursuant to Sections 307.02, 5153.161, 329.02 and 307.15, Revised Code, boards of county commissioners of any two or more counties may contract with each other, or by contract create any joint agency, for the purpose of jointly constructing and maintaining a training center and workshop for the mentally deficient of their respective counties in accordance with the standards of the commissioner of mental hygiene.

- - - - -

To: Harold E. Christman, Shelby County Pros. Atty., Sidney, Ohio
By: William B. Saxbe, Attorney General, August 18, 1964

Your request for my opinion reads as follows:

"Please be advised that the Board of County Commissioners of Shelby County, Ohio, have before them a proposal to construct a training center or workshop for the mentally deficient including schoolrooms for retarded children.

"The Board has been operating under joint agreement with the Auglaize County Council for the retarded children, and have been sending resident pupils of Shelby County to Auglaize County for these services. It appears that the present facilities have become inadequate for the number of pupils attending.

"I have been requested to secure your informal opinion as to whether or not both counties may join in constructing a new school, training center and workshop for the mentally deficient, and if so whether or not a special taxing district might be established composed of the County of Shelby and the County of Auglaize in order to levy a tax and sell bonds to finance the new facilities."

It must first be determined whether a board of county commissioners may construct a training center or workshop for the mentally deficient. It is my opinion that they may.

Section 307.02, Revised Code, authorizes a board of county commissioners to construct county buildings. That section provides in material part as follows:

"The board of county commissioners of any county, in addition to its other powers, may purchase, for cash or by installment payments, enter into lease-purchase agreements, lease with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip, and furnish a courthouse, county offices, jail, county home, juvenile court building, detention home, public market houses, county children's home, and other necessary buildings,

public stadiums, public auditorium, exhibition hall, zoological park, and related parking facilities, and sites therefor, such real estate adjoining an existing site, as is necessary for any of such purposes, including real estate necessary to afford light, air, protection from fire, suitable surroundings, ingress, and egress; such copies of any public records of such county, made or reproduced by miniature photography or microfilm, as are necessary for the protection and preservation of public records of such county.

" * * * * * " * * * * * " * * * * "

(Emphasis added)

The phrase "and other necessary buildings" was construed in Opinion No. 1909, Opinions of the Attorney General for 1938, page 299, at page 301 as follows:

"I direct your attention to the language 'and other necessary buildings' and I am of the opinion that such language confers upon the county commissioners the right to construct and purchase whatever necessary buildings are needed to carry out and fulfill the duties imposed upon the county over which the county commissioners exercise a discretion and power."

This opinion was approved by my predecessor in Opinion No. 1697, Opinions of the Attorney General for 1960, page 617. The first branch of this syllabus concludes:

"Under the provisions of Sections 307.02 and 5153.16, Revised Code, a board of county commissioners may purchase a site and construct thereon necessary buildings for a training school for retarded children."

I question the efficacy of Section 5153.16, Revised Code, in support of this conclusion. Section 5153.16, supra, upon which the above opinion was based states in material part as follows:

"The county child welfare board shall, subject to the rules, regulations, and standards of the division of social administration, have the following powers and duties on behalf of children in the county deemed by the board or department to be in need of public care or protective services:

" * * * * * " * * * * * " * * * * "

"(I) Subject to the approval of the board of county commissioners and the division, to establish and operate a training school or enter into an agreement with any municipal corporation or other political subdivision of the county respecting the operation, acquisition, or maintenance of any children's home, training school,

or other institution for the care of children maintained by such municipal corporation or political subdivision, and may, pursuant to such agreement, acquire, operate, and maintain such an institution; provided that the board may enter into an agreement with a municipal corporation, a board of education, and the board of county commissioners, or with any of them, to provide for the maintenance and operation of children's training schools; such agreement may provide for the contribution of funds by any such municipal corporation, board of education, or board of county commissioners, in such proportions and amounts as their agreements state, and for the operation and supervision of such training schools by any one of them, or by the joint action of two or more of them; provided that municipal corporations, school boards, and boards of county commissioners may expend moneys from their general funds for maintaining and operating such joint children's training schools;" (Emphasis added)

It is my opinion that the "training school" referred to in this section does not mean a training school for mentally deficient children. Under this section a county child welfare board is subjected to the rules, regulations, and standards of the division of social administration in establishing a "training school". The division of social administration has no authority or jurisdiction in the training of the mentally deficient. Its functions, powers, and duties are outlined in Section 5103.01, Revised Code, as follows:

"Except as provided by section 5101.09 of the Revised Code, the division of social administration shall have and perform all powers and duties which the department of public welfare, or any division, agency, or officer thereof, except the division of aid for the aged and the chief of the division of aid for the aged, has with respect to the furnishing of aid, support, service, or care to needy persons at public expense, including medical care as may be defined by law; services for the physically handicapped; and child-welfare services and the inspection, certification, approval, and supervision of such services or facilities; any other powers and duties that are assigned by the director of public welfare."

See also Section 5103.05, Revised Code. The legislature has nowhere "defined by law" that the division may participate in the training of the mentally deficient.

The duty and authority to establish training centers for the mentally deficient is explicitly placed upon the commissioner of mental hygiene by Section 5127.01, Revised Code, which provides in material part as follows:

"The commissioner of mental hygiene, with

the approval of the director of mental hygiene and correction, shall establish in any county or district a training center or workshop for the special training of mentally deficient persons, including those who have been adjudged by the proper authorities to be ineligible for enrollment in public schools under sections 3317.01 to 3317.15, inclusive, 3321.01, and 3323.01 of the Revised Code, and who are determined by the division of mental hygiene to be capable of profiting by specialized training. Special attention shall be given to the establishment of a training program for the mentally deficient for the purpose of enabling them to become accepted by society and to find employment in the structure of society to the extent that they may be fitted therefor. The commissioner shall be the final authority in determining the nature and degree of mental deficiency, decide all questions relative or incident to the establishment and operation of each training center or workshop, determine what constitutes special training, promulgate all rules and regulations, subject to sections 119.01 to 119.13, inclusive, of the Revised Code, governing the approval of mentally deficient persons for such training, determine or approve all forms used in the operation of programs undertaken under this section, and approve the current operating costs of such programs."

Section 5127.04, Revised Code, defines the duties of a county child welfare board in this area.

"The county child welfare board which during the school year has administered and supervised, pursuant to the provisions of section 5127.01 of the Revised Code, a training center for the mentally deficient shall prepare a statement for each person under twenty-one years of age who has received such training, such statement to show the name of the person, the name of the school district in which the person is a school resident, the name of the board providing the training, and the number of months the person received training. Not later than the thirtieth day of June the board shall forward a certified copy of such statement to the clerk of the board of education of the school district in which the person is a school resident and shall forward a certified copy of such statement to the commissioner of mental hygiene. Within thirty days after the receipt of such statement the board of education shall pay to the county child welfare board submitting the statement an amount equal to the computed amount of tuition that would be due the school district receiving the statement if a nonresident pupil attended the schools of such district for the same period of time that the mentally de-

ficiant person attended the training center, such amount to be computed in the manner, prescribed by section 3317.08 of the Revised Code."

In addition, Section 5153.161, Revised Code, states that a county child welfare board has the mandatory duty subject to the rules, regulations, and standards of the commissioner of mental hygiene to administer and supervise training centers and workshops for the mentally deficient, to provide such facilities as are necessary, and to provide such funds as are necessary for the operation of the training centers and workshops. That section provides in material part as follows:

"The county child welfare board, subject to the rules, regulations, and standards of the commissioner of mental hygiene shall:

"(A) Administer and supervise sections 5127.01 to 5127.04, inclusive, of the Revised Code, and exercise such powers and duties as prescribed by the commissioner;

"(B) Submit an annual report of its work and expenditures, pursuant to section 5127.01 of the Revised Code, to the commissioner and to the board of county commissioners at the close of the fiscal year and at such other times as may be requested;

"(C) Employ such personnel and provide such facilities, transportation, and equipment as are necessary;

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

Section 329.02, Revised Code, is also relevant to a determination of your questions. Its essential provisions are as follows:

"Under the control and direction of the board of county commissioners, the county director of welfare shall have full charge of the county department of welfare. * * *"

(Emphasis added)

Therefore, it is my opinion that pursuant to Sections 5127.01, 307.02, 5153.161, and 329.02, Revised Code, a board of county commissioners has authority to construct a training center or workshop for the mentally deficient since these structures are "necessary buildings" as these terms are used in Section 307.02, Revised Code, and as these terms are defined in Opinion No. 1909, Opinions of the Attorney General for 1938, page 299, 301, supra, which defines "necessary buildings" as follows:

"I direct your attention to the language 'and other necessary buildings' and I am of the opinion that such language confers upon

the county commissioners the right to construct and purchase whatever necessary buildings are needed to carry out and fulfill the duties imposed upon the county over which the county commissioners exercise a discretion and power."

Section 5153.161, Revised Code, makes it a mandatory duty of a county to provide training centers and workshops for the mentally deficient pursuant to rules, regulations, and standards of the commissioner of mental hygiene. And Section 329.02, Revised Code, provides that a board of county commissioners has a discretion and power over this mandatory duty. It is obvious that these factors meet the requirements of Opinion No. 1909, supra, and therefore a board of county commissioners has the authority to construct a training center and workshop subject to authorization of the commissioner of mental hygiene. See Opinions No. 2962 and 2997, Opinions of the Attorney General for 1962.

Having determined that a board of county commissioners may construct a training center and workshop for mentally deficient children, it remains to be ascertained whether two counties may join in such a venture. It is my opinion that they may pursuant to Section 307.15, Revised Code, which provides in material part as follows:

"* * * * *"

"The boards of county commissioners of any two or more counties may contract with each other or by contract create any joint agency to exercise any power, perform any function, or render any service which any board of county commissioners may exercise, perform, or render."

Also, Section 5153.161, Revised Code, supra, states in pertinent part:

"Any county child welfare board may enter into a contract with another such board of another county to provide the training center and workshop facilities authorized in sections 5127.01 to 5127.04, inclusive, of the Revised Code, upon such terms as may be agreeable."

Thus, upon examination of these sections, it is obvious that boards of county commissioners not only have the power to construct training centers and workshops for the mentally deficient, but also to contract with each other to jointly construct and maintain such facilities.

In regard to your second question concerning the creation of a special taxing district for the purpose of financing such an operation, I find no authority in the Code which would sanction such a district. The funds for constructing and maintaining such facilities will have to be supplied from the participating counties in an amount agreed upon.

Therefore, it is my opinion and you are accordingly ad-

vised that:

1. Pursuant to authorization under Section 5127.01, Revised Code, a board of county commissioners may, under Sections 307.02, 5153.161 and 329.02, Revised Code, construct a training center and workshop for the mentally deficient.

2. Pursuant to Sections 307.02, 5153.161, 329.02 and 307.15, Revised Code, boards of county commissioners of any two or more counties may contract with each other; or by contract create any joint agency, for the purpose of jointly constructing and maintaining a training center and workshop for the mentally deficient of their respective counties in accordance with the standards of the commissioner of mental hygiene.