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1. CHILD WELFARE BOARD—MAY ESTABLISH AND MAINTAIN DAY CARE CENTERS FOR CHILDREN OF WORKING MOTHERS.
2. SUCH CENTERS MAY EXTEND SERVICES ONLY TO CHILDREN IN NEED OF PROTECTIVE CARE—MOTHERS COMPELLED TO WORK BY REASON OF FINANCIAL NECESSITY AND WHO ARE NOT FINANCIALLY ABLE TO PROVIDE PRIVATE CARE FOR CHILDREN.
3. “NEEDY CHILDREN” AND “NEEDY CHILD”—CHILDREN LESS THAN EIGHTEEN YEARS OF AGE—DEPRIVED OF PARENTAL SUPPORT OR CARE—SECTION 1359-31 ET SEQ., G. C.—CHILDREN IN NEED OF PUBLIC CARE OR PROTECTIVE SERVICES—SECTION 3070-17 G. C.—PERSONS UNDER TWENTY-ONE YEARS OF AGE—OBJECTS OF PUBLIC CHARITY—SOCIAL AND ECONOMIC STATUS DOES NOT ENABLE THEM TO BE PROPERLY MAINTAINED BY PRIVATE RESOURCES.

#### SYLLABUS:

1. A Child Welfare Board may establish and maintain Day Care Centers for children of working mothers.

2. These Day Care Centers may extend their services only to children in need of protective care whose mothers are compelled to work by reason of financial necessity and whose mothers are not financially able to provide private care for their children.

3. The words “needy children” and “needy child” appearing in Section 1359-31, et seq., General Code, mean children less than eighteen years of age residing in the state of Ohio who have been deprived of parental support or care by reason of death, continued absence from the home, or physical or mental incapacity of a parent, and the words “children \* \* \* in need of public care or protective services,” as they appear in Section 3070-17, General Code, mean persons under twenty-one years of age who are the objects of public charity in that their social and economic status does not enable them to be properly maintained by private resources.

Columbus, Ohio, March 2, 1946

Hon. Frank T. Cullitan, Prosecuting Attorney  
Cleveland, Ohio

Dear Sir:

This will acknowledge receipt of your request for my opinion, which reads as follows:

“The Board of County Commissioners of Cuyahoga County has under consideration the matter of the establishment by the County Child Welfare Board of Day Care Centers for children of working mothers.

The Child Welfare Act, effective January 1, 1946, gives very broad powers and duties to the Child Welfare Board for and on behalf of children in the county deemed by the board to be in need of public care or protective services. The statutes in chapter 24b of the General Code relate to aid for dependent children and provide for assistance to needy children. The problem arises as to whether the public aid or assistance to children is limited to cases where public assistance is a matter of necessity. Or may such public assistance be given in cases where the working mother has the means to pay for such day care?

Inasmuch as the subject matter is of general application throughout the state of Ohio, I am submitting for your consideration and opinion the following questions:

1. May a Child Welfare Board with the approval of the Board of County Commissioners establish and maintain Day Care Centers for children of working mothers?
2. If the answer to the first question is in the affirmative, may such Day Care Centers serve the children of working mothers irrespective of ability to pay, or are such services limited to needy cases?
3. What is meant by the words ‘needy’ children, ‘needy’ child, as they appear in said chapter 24b of the General Code and children ‘in need’ of public care or protective services as they appear in Section 3070-17 G. C. of the Child Welfare Act.”

Section 1359-31 et seq. of the General Code (referred to in your letter as “chapter 24b”,) contain the provisions for aid to dependent children. Enacted in their original form in 1936, these sections were de-

signed to bring the plan of the state of Ohio for aid to dependent children into conformance with the requirements of Title IV of the Act of Congress of the United States, approved August 14, 1935, known as the "Social Security Act" in order to obtain the federal aid provided by that Act. To achieve this end it was necessary to repeal the then existing Sections 1683-2 to 1683-10, inclusive, of the General Code. These sections were referred to as the Mother's Pension provisions and provided, under certain conditions, for allowances based upon the number of children a mother was compelled to support by reason of the death, disability or absence of her husband. Section 1359-32, General Code, in its original form and as amended in 1941, in setting forth the conditions precedent to the granting of aid, broadened the field of those eligible to receive benefits by including children living with their father, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle or aunt, as well as children living with their mother. This was necessary in order to establish uniformity with the "Social Security Act" of 1935 and to meet the requirements of its definition of the term "dependent child." 9A F. C. A., Title 42, Par. 606(a.)

Section 1359-31, et seq., does not contemplate, however, a broad and general type of child welfare activity. These sections are concerned with the administration of certain benefits to a definite class of children. This class is limited to children residing in the state of Ohio who have been deprived of parental support or care by reason of a parent's death, his continued absence from the home, for a period to be determined by the state department of public welfare and defined by its regulations, or his physical or mental incapacity, and who are living with one of the relatives enumerated in Section 1359-32, General Code, in a home maintained by that relative.

From this it can be seen that if I am to find authority in law for the child welfare service outlined in your inquiry, I must look beyond Section 1359-31, et seq.

In an opinion I rendered on February 27 of this year (Opinion No. 761,) I analyzed the scope and extent of Sections 3070-1 to 3070-36, General Code, commonly referred to as the Child Welfare Act. The purpose of this act is stated in Section 3070-1, as follows:

"The purpose of Sections 3070-1 to 3070-35, inclusive, is to supplement, expand, modernize and integrate child welfare

services and the care and placement of children in the several counties of the state, and to this end this act shall be liberally construed.”

Section 3070-2, General Code, defines “child” as meaning “any person under twenty-one years of age.” Section 3070-17, General Code, assigns to the child welfare board “powers and duties for and on behalf of children in the county deemed by the board to be *in need of public care or protective services*” and reads in part as follows:

“(d) To provide care of all kinds which the board may deem to be for the best interests of any child whom the board may find to be *in need of public care or service*. \* \* \*”

(Emphasis added.)

Unlike Section 1359-32, General Code, which limits aid to a child “deprived of parental support or care,” Section 3070-17 General Code, conditions the exercise of powers by the child welfare board only in respect to its finding that a child is “in need of public care or protective services.” Such a determination is essential to the validity of the exercise by the child welfare board of any of the powers conferred upon it. It is, of course, incumbent upon the board to make this determination. To find that a child is in need of public care or service in a case where a working mother is possessed of ample means to provide the necessary care for her child without public assistance, would, in my judgment, be an abuse of the discretion conferred upon the board by the statute.

In other words, not every child whose mother is working can be held to be “in need of public care or protective services.” All of these children may be in need of care, but those children whose parents have the means to provide such care are not the subjects of public welfare.

On the other hand, it appears to me that the board might very properly determine that a child who is of sufficient maturity to care for himself is not in need of public care or service notwithstanding the fact that the mother of such child is compelled to work by reason of financial necessity and is not able to provide private care for her child. To provide day care accommodations for such a child would in my opinion be an abuse of discretion which would render illegal any action of the board.

The primary obligation to provide for the care and support of a child rests with its parents and not with government. When, however, a

child is deprived of the support of his parents and has not arrived at a state of maturity which enables him to care for himself, he becomes an object of public charity. In that case an expenditure of funds by the state for the support of that child would be an expenditure of public funds for a public purpose.

The child of a mother who is working and can pay for the care of her child is not an object of public charity. If the state were to assume the obligation of caring for that child during the day, then every mother, rich or poor, working or not working, would be entitled to demand the same facilities for her children.

But when a mother must work in order to support herself and care for her child and when her earnings and savings do not permit her to obtain necessary and suitable private care for her child during the hours she must be absent from home, her child, during the hours its mother is away, is "in need of public care or protective services." In such a case the child welfare board under Section 3070-17, General Code, may provide for the care of that child in a day care center.

This action on the part of the child welfare board is not required by law to be contingent upon the approval of the Board of County Commissioners. As is the case with all powers and duties delegated to the child welfare board under Section 3070-17, General Code, its activity in regard to the subject of your inquiry is subject to the rules, regulations and standards of the Division of Social Administration of the State Department of Public Welfare.

It is therefore my opinion, in specific answer to your inquiry, that:

1. A Child Welfare Board may establish and maintain Day Care Centers for children of working mothers.

2. These Day Care Centers may extend their services only to children in need of protective care whose mothers are compelled to work by reason of financial necessity and whose mothers are not financially able to provide private care for their children.

3. The words "needy children" and "needy child" appearing in Section 1359-31, et seq., General Code, mean children less than eighteen years of age residing in the state of Ohio who have been deprived of parental support or care by reason of death, continued absence from the

home, or physical or mental incapacity of a parent, and the words "children \* \* \* in need of public care or protective services," as they appear in Section 3070-17, General Code, mean persons under twenty-one years of age who are the objects of public charity in that their social and economic status does not enable them to be properly maintained by private resources.

Respectfully,

HUGH S. JENKINS,  
Attorney General.