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COUNTY CHILD WELFARE BOARD—HAS AUTHORITY TO OPERATE TRAINING CLASSES FOR MENTALLY DEFICIENT CHILDREN—WITHOUT AUTHORITY TO ACCEPT STATE FUNDS FOR MAINTENANCE OF TRAINING CLASSES FOR MENTALLY DEFICIENT CHILDREN WHERE SUCH CLASSES ARE OPERATED BY PRIVATE AGENCY. SECTIONS 5127.03, 5153.16, R.C.

SYLLABUS:

1. A county child welfare board has the authority to operate training classes for mentally deficient children as established by the division of mental hygiene pursuant to Chapter 5127., Revised Code, regardless of whether or not such children are wards under the care and responsibility of the board.
2. Although pursuant to Chapter 5127., and 5153., Revised Code, a county child welfare board may supervise classes for mentally deficient children, no statutory authority exists for the supervision of classes established by private agencies.
3. Pursuant to the provisions of Sections 5127.03 and 5153.16, Revised Code, a county child welfare board may request funds to meet its share of the costs of maintaining classes for mentally deficient children.
4. A county child welfare board is without authority to enter into a contract whereby the responsibility for the training of mentally deficient children is transferred to a private agency.
5. A county child welfare board may not accept state funds provided under Section 5127.03, Revised Code, or other sections, for the maintenance of training classes for mentally deficient children where such classes are operated by a private agency.

Columbus, Ohio, December 4, 1959

Hon. William H. Irwin, Prosecuting Attorney
Belmont County, St. Clairsville, Ohio

Dear Sir :

I have before me your request for my opinion in which you ask :

- “I. Does the County Child Welfare Board have authority and responsibility of establishing, organizing and operating training classes for mentally deficient children of Belmont County when the Board does not have wards under its care and responsibility that might be eligible for said training classes?
- “II. Does the County Child Welfare Board have responsibility of supervising training classes for mentally deficient children when the classes have been established by a private organization, approved by the State Division of Mental Hygiene, and the County Child Welfare Board does not have child-wards enrolled in said classes?
- “III. Does the County Child Welfare Board have responsibility of requesting public funds of the Board of County Commissioners, through the regular annual budgetary request, to be used for the operation of training classes for mentally deficient children, when the Board does not have wards that might be eligible for enrollment in said training classes?
- “IV. May the County Child Welfare Board enter into a contract or agreement with a private organization proposing to transfer the responsibility of organization, operation, supervision and financing of training classes for mentally deficient children to the private organization?
- “V. May the County Child Welfare Board accept State funds as reimbursement towards the cost of operation of training classes for mentally deficient children when said classes are established and operated by a private organization and said funds are intended for the use of the private organization in the operation of future training classes, and are to be expended upon the direction of the private organization?”

The law pertaining to the above questions is contained in Chapter 5127., and 5153., Revised Code. Chapter 5127., is concerned with training centers initiated by a state agency. Chapter 5153., deals with the county child welfare board generally.

The powers and duties of a county welfare board are found for the most part in Section 5153.16, Revised Code, which provides in part:

“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:

“(A) To make an investigation concerning any child reported to be in need of care, protection, or service;

“(B) To enter into agreements with the parent, guardian, or other person having legal custody of any child, or with the division, another department, or department of mental hygiene and correction, or any certified organization within or outside the county, or any agency or institution outside the state, having legal custody of any child, with respect to the custody, care, or placement of any such child, or with respect to any matter, in the interests of such child, provided the permanent custody of a child shall not be transferred by a parent to the board or department without the consent of the juvenile court;

“* * *

“(D) To provide care of all kinds which the board deems for the best interests of any child the board finds in need of public care or service; provided that such care shall be provided by the board by its own means or through other available resources, in such child’s own home, in the home of a relative, or in a certified foster home, receiving home, school, hospital, convalescent home, or other institution, public or private, within or outside the county or state;

“* * *

“(G) To provide temporary emergency care for any child deemed by the board to be in need of such care, without agreement or commitment;

“* * *

(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, train-

ing 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; provide 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 the general funds for maintaining and operating such joint children's training schools;

“* * *

“* * *

“(L) To co-operate with, make its services available to, and act as the agent of persons, courts, the department of public welfare, and other organizations within and outside the state, in matters relating to the welfare of children;

“* * *

It will be observed that paragraph (I) authorizes the county child welfare board to establish and operate a training school or to enter into agreements with other public agencies to provide for maintenance and operation of children's training schools. It is further provided that such agreement may provide for the contribution of funds by any or all of such agencies, in the proportions and amounts agreed upon, and for the operation and supervision of such training schools.

Paragraph (B) further authorizes agreements to be entered into by the board with the parents or guardian or other person having the legal custody of any child “with respect to the custody, care, or placement of any such child, or with respect to any matter, in the interest of such child.”

Although the board is empowered to make investigations relative to any child deemed by the board to be in need of public care or protective services, and to provide services for such children as the board deems to be in need, it appears that in the usual case the children in the physical custody of the board are so placed either by agreement with the parents or guardian or by commitment by the juvenile court.

Under Section 5153.16, *supra*, it is clearly the duty of the board "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."

Under Section 5153.16, *supra*, it is clearly the duty of the board "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 need of public care or service."

In the absence of the board finding "children in need of care or service," there is a serious question as to the establishment of training centers as provided for in Chapter 5153., Revised Code.

The responsibilities and the authority of the child welfare board under Chapter 5127., Revised Code, appear to be more determinative of the questions at hand.

Section 5127.01, Revised Code, provides in part :

"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 for the special training of mentally deficient youths under twenty-one years of age, 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, 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 youth 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 5127.02, Revised Code, provides :

"Upon petition to *the county child welfare board* or a public children's agency in any county by the parents or guardians of eight or more mentally deficient youth of similar handicap, under

twenty-one years of age, who are ineligible for enrollment in public school because of age or mental deficiency, the board shall forward such petition to the commissioner of mental hygiene. The commissioner shall take such action and make such order as he deems necessary for the special training of the mentally deficient youths, to the extent that funds are available." (Emphasis added)

Section 5127.03, Revised Code, reads in part as follows:

"On the thirtieth day of June of each year, *the county welfare board* or a public children's agency shall certify to the commissioner of mental hygiene:

"(A) The names and residences of the persons receiving training pursuant to section 5127.01 of the Revised Code;

"(B) The period of time each deficient youth received such training;

"(C) An itemized report of expenditures which have been approved by the commissioner for providing such training;

"(D) The net per capita cost for providing such training.

"The division of mental hygiene, upon receipt and approval of the report provided in this section, shall present a voucher to the auditor of state in favor of *the agency providing the specialized training* in an amount equal to the net cost of said training. The local agency shall bear the portion of the cost of such training as is determined by the commissioner, and the net cost to the state of said training shall not exceed three hundred dollars per year for each mentally deficient youth so trained. * * *." (Emphasis added)

Pursuant to the provisions of Chapter 5127., Revised Code, it appears to be clear that the county child welfare board may supervise a training center for retarded children, which center was established by the division of mental hygiene. The board, or a public agency, is the body through which parents may petition for the establishment of a center. Section 5127.03, Revised Code, clearly provides for reports by the board on the operations of such a center. It then provides for the payment of a subsidy by the state to the public agency providing such training. The balance of the cost of such training would then be borne by the agency.

Reading the provisions of Chapter 5127., Revised Code, together, it is plain that the county child welfare board is a public agency within the purview of the chapter. Therefore, not only does the board have the authority to maintain such a center once it has been established, the board would also be the recipient of the state funds available for such purpose in

the amounts determined pursuant to said Chapter 5127., Revised Code. Moreover, such a training center would qualify for the additional needed moneys which may be provided by the board of county commissioners under Section 5153.16, Revised Code, noted above.

You will note that Section 5127.03, Revised Code, provides that state payments may be made only to a "public agency" and not to a private organization which may be providing the form of training here under consideration.

The basic question remaining is whether the board of county commissioners may by agreement delegate the maintenance of a training center to a private organization. As noted above, even if such delegation were possible, Section 5127.03, Revised Code, limits state payments to a "public agency" providing training.

I have been unable to find any statutory authority which would permit an agreement such as here in question. Neither Chapter 5127., or 5153., Revised Code, provide the necessary authority. In fact, division (I) of Section 5127.16, Revised Code, limits an agreement relating to training schools to those established by other political subdivisions.

Expenditure of public moneys may only be made under authority of law. In the absence of such authority a county child welfare board may not enter into an agreement whereby public moneys may be paid to a private organization for the purposes in question. (32 Ohio Jurisprudence, Section 11, page 734).

Accordingly, answering your specific questions, it is my opinion and you are advised:

1. A county child welfare board has the authority to operate training classes for mentally deficient children as established by the division of mental hygiene pursuant to Chapter 5127., Revised Code, regardless of whether or not such children are wards under the care and responsibility of the board.

2. Although pursuant to Chapter 5127., and 5153., Revised Code, a county child welfare board may supervise classes for mentally deficient children, no statutory authority exists for the supervision of classes established by private agencies.

3. Pursuant to the provisions of Sections 5127.03 and 5153.16, Revised Code, a county child welfare board may request funds to meet its share of the costs of maintaining classes for mentally deficient children.

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Respectfully,

MARK McELROY
Attorney General