

OPINION 68-093

Syllabus:

The fiscal officer of a county board of mental retardation is the auditor of the county within which the county board of mental retardation is located.

To: David D. Dowd, Jr., Stark County Pros. Atty., Canton, Ohio
By: William B. Saxbe, Attorney General, June 7, 1968

Your request for my opinion states that county boards of mental retardation, created by Amended Senate Bill No. 169, effective October 25, 1967, receive funds derived from taxes levied pursuant to division (L) of Section 5705.19, Revised Code, and are authorized to expend funds pursuant to the authority granted by Sections 5126.03 and 5126.04 of the Revised Code and you ask:

"* * * who is to be the fiscal officer for the newly created County Board of Mental Retardation within the meaning of Sections 5126.01 -- 5126.04, inclusive, of the Revised Code of Ohio."

An examination of Sections 5126.01 through 5126.04, Revised Code, and Sections 5127.01 through 5127.04, Revised Code, which were enacted and amended, respectively, by Amended Senate Bill No. 169 (132 v S. 169), effective October 25, 1967, reveals that the legislature did not specifically designate who is to act as the fiscal officer for a county board of mental retardation.

Section 5126.03, Revised Code, provides in pertinent part:

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

" * * * * *"

"(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.

" * * * * *"

"The board of county commissioners shall levy taxes and make appropriations sufficient to enable the county board of mental retardation to perform its functions and duties as provided by this section."

As can be seen from the above, the county board of mental retardation must submit an annual report of its work and expenditures to the board of county commissioners and the board of county commissioners must provide sufficient funds so as to enable the board of mental retardation to perform its functions and duties.

Section 5705.01, Revised Code, reads in pertinent part:

"As used in sections 5705.01 to 5705.47, inclusive, of the Revised Code:

" * * * * *

"(D) 'Fiscal officer' in the case of a county, means the county auditor; in the case of a municipal corporation, the city auditor or village clerk, or such officer as, by virtue of the charter, has the duties and functions of the city auditor or village clerk, except that in the case of a municipal university the board of directors of which have assumed, in the manner provided by law, the custody and control of the funds of the university, the chief accounting officer of the university shall perform, with respect to such funds, the duties vested in the fiscal officer of the subdivision by sections 5705.41 and 5705.44 of the Revised Code; in the case of a school district, the clerk of the board of education; in the case of a township, the township clerk; in the case of a children's home district, tuberculosis hospital district, county school district, general health district, metropolitan park district, or county library district, the county auditor of the county designated by law to act as the auditor of the district; and in all other cases, the officer responsible for keeping the appropriation accounts and drawing warrants for the expenditure of the moneys of the district or taxing unit.

" * * * * *

"(H) 'Taxing unit' means any subdivision or other governmental district having authority to levy taxes on the property in such district, or issue bonds which constitute a charge against the property of such district, including conservancy districts, metropolitan park districts, sanitary districts, road districts, and other districts.

"(I) 'District authority' means any board of directors, trustees, commissioners, or other officers controlling a district institution or activity which derives its income or funds from two or more

subdivisions, such as the county school board, the trustees of district tuberculosis hospitals and district children's homes, the district board of health, and other such boards."

Considering that a county board of mental retardation has no independent tax levying authority and is dependent upon only the subdivision (county) within which it was created for revenues, it does not fit within the above quoted definitions of "Taxing unit" or "District authority" in divisions (H) and (I) of Section 5705.01, supra. Furthermore, since the county board of mental retardation was not specifically assigned a fiscal officer either by Amended Senate Bill No. 169, supra, or by division (D) of Section 5705.01, supra, and since it is a board of the county within which it is located, the fiscal officer of which is the county auditor, it is my opinion and you are hereby advised that the fiscal officer of a county board of mental retardation is the auditor of the county within which the county board of mental retardation is located.