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1. COUNTY CHILDREN'S HOME—BOARD OF TRUSTEES—COUNTY COMMISSIONERS, BOARD OF—WHERE AGREEMENT MADE, SECTION 2511-5 G. C. TO ADMINISTER COUNTY CHILDREN'S HOME IN WHOLE OR IN PART BY COUNTY DEPARTMENT OF WELFARE, RESPONSIBILITIES OF BOARD OF TRUSTEES DEPEND UPON TERMS OF AGREEMENT.
2. CONSENT OF SUPERINTENDENT OF COUNTY HOME REQUIRED FOR INCORPORATION OF HOME INTO COUNTY DEPARTMENT OF WELFARE—RESOLUTION OF BOARD OF COUNTY COMMISSIONERS INADEQUATE.
3. DUTIES—POWERS—VESTED IN SOLDIERS' RELIEF COMMISSION—CANNOT BE EXERCISED BY COUNTY DEPARTMENT OF WELFARE.
4. IF COUNTY DEPARTMENT OF WELFARE PROPERLY ESTABLISHED BY BOARD OF COUNTY COMMISSIONERS, SUCH DEPARTMENT MAY NOT THEREAFTER BE ABOLISHED BY BOARD OF COUNTY COMMISSIONERS.

SYLLABUS:

1. If the board of trustees of a county children's home and the board of county commissioners enter into an agreement pursuant to Section 2511-5, General Code, providing for the administering by the county department of welfare of the county children's home in whole or in part, the responsibilities thereafter of the board of trustees of the children's home depend upon the terms of such agreement.
2. A county home may not be incorporated into the county department of welfare by mere resolution of the board of county commissioners without the consent thereto of the superintendent of the county home.
3. The duties enjoined upon and the powers vested in the soldiers' relief commission by law cannot be exercised by a county department of welfare.
4. If a county department of welfare is properly established by a board of county commissioners pursuant to Section 2511-1, General Code, such department may not thereafter be abolished by the board of county commissioners.

Columbus, Ohio, December 17, 1943.

Hon. Herbert R. Mooney, Director of Public Welfare,
Columbus, Ohio.

Dear Sir :

You have submitted to me the following questions which arise because of the enactment of House Bill No. 140 of the Ninety-fifth General Assembly:

1st. In the event that a Children's Home is included in a County Department of Welfare, by resolution of the Board of County Commissioners and the Board of Trustees of the Children's Home, what are the continuing responsibilities of the Board of Trustees of the Children's Home?

2nd. In the event that a County Home is incorporated in the County Department of Welfare by a resolution of the Board of County Commissioners what is the responsibility of the Director of the County Department of Welfare in relation to the County Home? What authority does the Director have over the Superintendent of the County Home, having in mind the Sections of the General Code which give the County Home Superintendent almost complete responsibility for admissions to the Home?

3rd. The law very specifically excludes the soldiers' relief program from inclusion in the County Welfare Department. In Huron County, a County Department of Public Welfare has been in operation, on a voluntary basis, for a number of years, and Soldiers' Relief has been included in that Department. In the event that the Commissioners established a department under the recently enacted law, would it be mandatory upon them to exclude Soldiers' Relief?

4th. In the event that a County Department of Welfare is established by a Board of County Commissioners and operates for a period of a year or more and then it is felt by the Board of County Commissioners that it would be preferable to return to the administration of the several programs in several offices, would it be possible for the Board of County Commissioners to pass a resolution abolishing the Department and returning the individual programs in it to the administrative officials now charged with the administration of the several programs?"

The first two questions involve the same legal principles and will be considered together.

Section 3081, General Code, provides that the board of county commissioners shall appoint five trustees of the children's home. Section 3082-1 and cognate sections of the General Code fix the powers and prescribe the duties of the trustees of a county children's home. Section 3084, General Code, prescribes that the trustees shall appoint a superintendent of the home whose powers and duties are fixed by Sections 3085 and 3086, General Code, which provide:

Section 3085:

"Subject to such rules and regulations as the trustees prescribe, the superintendent shall have entire charge and control of such home and the inmates therein.

Upon the approval of the trustees the superintendent may appoint a matron, assistant matrons, and other necessary employes whose duties shall be the care of the inmates of the home, and to direct their employment, giving suitable physical, mental and moral training to them. Under the direction of the superintendent, the matron shall have the control, general management and supervision of the household duties of the home, and the matron, assistant matrons, and other employes shall perform such other duties and receive for their services such compensation as the trustees may by by-laws from time to time direct. They may be removed by the superintendent or at the pleasure of a majority of the trustees."

Section 3086:

"The superintendent may suspend temporarily a matron, assistant matron, or teacher, notice of which must be immediately given to the board of trustees for their approval or disapproval, but, if in their judgment it is for the best interest of the home and of the county, the trustees may dispense with a superintendent and authorize the matron to assume entire charge of the home and its management."

In general, it may be said that the power to admit children to a children's home is in the board of trustees and all such children are under the sole and exclusive guardianship and control of such trustees. The trustees are authorized to place the children in foster homes (Section 3095, General Code) and in private families (Section 3100, General Code). Other sections provide for written agreements for the education and care of such children.

In other words, it is clear that while the county commissioners appoint the trustees of a county children's home, the care, education, custody and

control of the children who are inmates thereof are in the board of trustees, as is also the general supervision of the home.

Section 2523, General Code, provides:

“The county commissioners shall appoint a superintendent who shall reside in some apartment of the infirmary or other buildings contiguous thereto, and shall receive such compensation for his services as they may determine. The superintendent and matron shall each be allowed their actual necessary expenses incurred in the discharge of their official duties. The superintendent shall perform such duties as the commissioners impose upon him, and be governed in all respects by their rules and regulations. He shall not be removed by them except for good and sufficient cause. The commissioners may by resolution provide for the appointment by the superintendent of an assistant superintendent who shall perform such duties at the infirmary or elsewhere as may be prescribed by such superintendent. The commissioners shall not appoint one of their own number superintendent, nor shall any commissioner be eligible to any other office in the infirmary or receive any compensation as physician, or otherwise, directly or indirectly, wherein the appointing power is vested in such board.”

Section 2526, General Code, provides that the superintendent shall require the inmates of the home to perform such reasonable and moderate labor without compensation as is suited to their age and bodily strength.

The superintendent has the sole and exclusive power to admit persons to the county home. See Section 2544, General Code.

It is therefore clear that although the county commissioners have power to prescribe rules and regulations for the conduct of the county home, the administration thereof is vested in the superintendent.

House Bill No. 140 of the Ninety-fifth General Assembly, which has been codified as Sections 2511-1 to 2511-11, inclusive, General Code, provides for the establishment of a county department of welfare, which, when established, shall be governed by the provisions of the act. Sections 2511-4 and 2511-5, General Code, respectively provide:

Section 2511-4:

“The county department of welfare shall have the following powers and duties:

(a) To be the ‘county administration’ for all the purposes

of sections 1359-31 to 1359-45, both inclusive, of the General Code as now existing or as hereafter amended or supplemented.

(b) To administer aid to the needy blind as provided by sections 2965 to 2970, both inclusive, of the General Code, as now existing or as hereafter amended or supplemented.

(c) To administer poor relief and burials in so far as the administration of such relief and burials was heretofore imposed upon the board of county commissioners.

(d) To cooperate with state and federal authorities in any matter relating to public welfare and to act as the agent of such authorities if and to the extent and in the manner designated.

(e) To submit an annual account of its work and expenses to the county commissioners and to the state department of public welfare at the close of each fiscal year.

(f) To exercise such powers and duties relating to public welfare as may be imposed upon the department by law, by resolution of the county commissioners, or by order of the governor when authorized by law to meet emergencies during war or peace. The county commissioners shall have authority to designate the county department of welfare to exercise and perform any additional welfare powers and duties which the commissioners may have, except as provided in this act."

Section 2511-5:

"The county department of welfare shall also have authority to administer or assist in administering any other state or local public welfare activity supported wholly or in part by public funds from any source if and to the extent so provided by agreement between the county commissioners and the officer, department, board or agency in which the administration of such activity is vested by law. Every such other officer, department, board or agency is hereby authorized to enter into such agreement and thereby to confer upon the county department of welfare to the extent and in particulars therein specified, the performance of any or all duties and the exercise of any or all powers imposed upon or vested in such officer, board, department or agency by law, with respect to the administration of such activity. Such agreement shall be in the form of a resolution of the county commissioners accepted in writing by the other party thereto and filed in the office of the county auditor; and when so filed, shall have the effect of transferring the exercise of the powers and duties to which the same relates and shall exempt the other party from all further responsibility for the exercise of the powers and duties so transferred, during the life of the agreement.

Such agreement may be revoked at the option of either party thereto by a resolution or order of the revoking party filed in the office of the county auditor. Such revocation shall become effective at the end of the fiscal year occurring at least six months following the filing of the resolution or order. In the absence of such an express revocation so filed, such agreement shall continue indefinitely.

The provisions of this act shall not be applicable to permit a county department of welfare to manage or control county or district tuberculosis or other hospitals, humane societies, detention homes, jails or probation departments of courts, or soldiers' relief commissions."

Paragraphs a, b, c, d and e of Section 2511-4, General Code, do not authorize the county department of welfare to exercise any powers or functions with respect to either the county children's home or the county home. Paragraph f authorizes the county department of welfare to perform such welfare powers and duties as are possessed by the county commissioners, as the commissioners may determine, except as otherwise provided in the act. This provision would appear to authorize the commissioners to designate the county department of welfare as the agency which should appoint the board of trustees of the county children's home and the superintendent of the county home and which should prescribe the rules and regulations for the government of the county home and perform other functions with respect thereto now possessed by the commissioners. It does not, however, authorize the commissioners to designate the county department of welfare as the agency to operate, conduct and manage the county children's home and the county home.

Section 2511-5, General Code, does authorize the county department of welfare to administer any state or local public welfare activity to the extent provided by an agreement between the county commissioners and the officer, department, board or agency in which the administration of such activity is vested by law. I believe that this provision would authorize an agreement between the board of trustees of a county children's home and the county commissioners providing that the administration of the county children's home should be in the county department of welfare. A similar agreement could be entered into between the county commissioners and the superintendent of the county home. I believe, however, that the county commissioners by mere resolution could not incorporate the county children's home and the county home into the county department of welfare without the respective consents of the board of trustees of the children's home and the superintendent of the county home. The last paragraph of Section 2511-2, General Code, provides:

"The county commissioners, except as provided in this act, may provide by resolution for the coordination of the operations of the county department of welfare and those of any county institution whose board or managing officer is appointed by them."

This language authorizes the county commissioners to require the board of trustees of the children's home and the superintendent of the county home to coordinate the operations of their respective institutions with the operations of the county department of welfare, but it would seem to support the conclusion I have reached, namely, that these institutions could not be incorporated into the county department of welfare except by agreement between the county commissioners and the persons charged by law with the operation of such institutions.

From what has been said and because of the provisions of Section 2511-5, it is obvious that the answer to your first question depends upon the terms of the agreement between the county commissioners and the board of trustees of the children's home. The authority of the county department of welfare with respect to the children's home would be "to the extent * * * provided by agreement between the county commissioners" and the board of trustees of the children's home. It seems to me that the board of trustees of the children's home might agree that the county department of welfare exercise all of the powers of the board. However, I do not believe that the board of trustees should be abolished, because it is expressly provided in Section 2511-5, General Code, that the agreement may be revoked at the option of either party thereto in the manner prescribed in this section.

Your second question assumes that the county home can be incorporated into the county department of welfare by a resolution of the board of county commissioners without any acceptance thereof by the superintendent of the county home. For the reasons heretofore stated, I believe that the county commissioners can not so incorporate the county home into the county department of welfare and that any such action would be void. Since your question is based upon the assumption that the county commissioners have such power, it is therefore unnecessary to answer your second question.

You inquire in your third question whether in the event the commissioners of Huron County establish a county department of welfare pursuant to the provisions of House Bill No. 140 of the Ninety-fifth General Assembly, it would be mandatory upon the commissioners to exclude soldiers' relief from the jurisdiction of the county department of welfare.

Section 2511-5, General Code, provides in part :

“The provisions of this act shall not be applicable to permit a county department of welfare to manage or control county or district tuberculosis or other hospitals, humane societies, detention homes, jails or probation departments of courts, or soldiers’ relief commissions.”

Section 2511-1, General Code, provides in part :

“The county commissioners of any county may by a resolution which has been unanimously adopted, establish a county department of welfare which, when so established, shall be governed by the provisions of this act.”

The law merely authorizes the county commissioners to establish the county department of welfare and does not require them to include within or exclude from the jurisdiction of the department any particular welfare activity. However, in view of the language heretofore quoted from Section 2511-5, General Code, it is clear that the county department of welfare could not perform the function now vested in the soldiers’ relief commission.

I come now to your fourth question wherein you inquire whether, in the event a county department of welfare is established by a board of county commissioners, the board may thereafter abolish such department and again vest in the various officials the powers which they had possessed prior to the establishment of the county department of welfare. No provision of the act authorizes the county commissioners to abolish a county department of welfare. They are clearly authorized to establish the department, but, for all that appears in the law, when once established, it must continue indefinitely.

It is a well settled principle of law that administrative and executive officers have such powers only as are expressly granted to them by law and such implied powers as may be necessary to carry out those expressly granted. If this principle is applicable to your question, and I see no reason why it is not, it follows and I am therefore of the opinion that the county commissioners have no power to abolish a county department of welfare after it has been once properly established.

Respectfully,

THOMAS J. HERBERT,
Attorney General.