

**Note from the Attorney General's Office:**

1964 Op. Att'y Gen. No. 64-1492 was questioned  
by 1987 Op. Att'y Gen. No. 87-082.

**OPINION NO. 1492**

**Syllabus:**

1. A child welfare board may not be sued for injuries to

children placed by the board in foster homes and child welfare receiving homes, injured through the negligence of the foster parents or the staff of the receiving home.

2. A child welfare board is not liable to third persons for personal injuries or property damage caused by children under the jurisdiction of the child welfare board who are placed in foster homes or child welfare receiving homes.

3. Operators of a foster home in which children under the jurisdiction of a county child welfare board are placed pursuant to Section 5153.16, Revised Code, are not immune from suit for injuries to such children.

---

To: James W. Freeman, Coshocton County Pros. Atty., Coshocton, Ohio  
By: William B. Saxbe, Attorney General, October 29, 1964

I am in receipt of your request for my opinion on several questions which may be summarized as follows:

1. Is a child welfare board liable for injuries to children in foster homes or in a child welfare receiving home occasioned by the negligence of the foster parents or members of the staff of the receiving home?

2. Is a child welfare board liable for damage to the property of others caused by children in a foster home or in a child welfare receiving home?

3. Are foster parents or members of the staff of a child welfare receiving home liable for injuries to children in their care occasioned by their negligence?

The rule generally, and in Ohio, is that the state may not be sued without its consent. Raudabaugh v. The State of Ohio, 96 Ohio St., 513. This immunity from suit extends to political subdivisions of the state as well. See The Board of County Commissioners of Portage County v. Gates, 83 Ohio St., 19, 30; Dunn v. Brown County Agricultural Society, 46 Ohio St., 93. It is likewise the law that officers of a political subdivision cannot, by virtue of their office, be sued except as provided by Constitution or statute. Dall v. Cuyahoga County Building Commission, 14 O.N.P. (N.S.) 209; Jenifer v. Hamilton County, 13 O. Dec. Rep., 116.

The answer to questions one and two, then, is that neither a child welfare board nor a member of the board, by virtue of his office, is liable under the circumstances outlined, unless liability attaches by statute.

The authority of a child welfare board to provide care for children through foster homes or a child welfare receiving home is found in Section 5153.16, Revised Code, which reads 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:

\* \* \* \* \*

"(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;

"(H) To find foster homes, within or outside the county, for the care of children, including handicapped children from other counties attending special schools in the county;

\* \* \* \* \*

"(J) To acquire and operate a county children's home or to establish, maintain, and operate a receiving home for the temporary care of children, or procure foster homes for this purpose;

\* \* \* \* \*

Neither this section nor any other section of the Revised Code, places liability upon the county or the county child welfare board for negligence in the operation of a foster home or a receiving home. In the absence of such a statute, I must conclude that there is no liability, and my answer to both question one and question two is, accordingly, no.

The answer to your third question is more difficult. It is stated as a general proposition of law that a public officer who exceeds his lawful powers acts not as an agent of government but as a private person. State, ex rel. Garrett v. Van Horne, 7 Ohio St., 327. Thus a public officer charged with ministerial duties who exceeds them to commit a tort is liable for its consequences. Wrightsel v. Fee, 76 Ohio St., 529, 535. It has been further determined--The American Guaranty Co. v. McNiece, 111 Ohio St., 532--that a public officer is answerable to persons unlawfully injured by the nonfeasance, misfeasance

or malfeasance perpetrated by such officer, either by virtue of his office or under color of his office.

The members of the staff of a child welfare receiving hospital are presumably employees of the county and as such they may be liable for their torts under the general rules set forth above. A categorical answer to their liability may not be given, however, for it depends upon the nature of the duties of the officer or employee; the character of the alleged wrong and the nature of the injuries sustained. See generally 43 Am. Jur. 91, Public Officers, Section 279.

The precise relationship between the county and operators of a foster home to whom the care of children under the jurisdiction of the county child welfare board has been given, is not clear. It appears, however, that foster parents act as independent contractors and not as agents of the county in carrying out their responsibilities under this kind of arrangement. Accordingly, I am persuaded that the immunity of a county from suit does not extend to operators of a foster home. The question of the liability of foster parents for injuries to children in their care must be determined under the general law of torts.

In specific answer to your questions, then, it is my opinion and you are advised that:

1. A child welfare board may not be sued for injuries to children placed by the board in foster homes and child welfare receiving homes, injured through the negligence of the foster parents or the staff of the receiving home.
2. A child welfare board is not liable to third persons for personal injuries or property damage caused by children under the jurisdiction of the child welfare board who are placed in foster homes or child welfare receiving homes.
3. Operators of a foster home in which children under the jurisdiction of a county child welfare board are placed pursuant to Section 5153.16, Revised Code, are not immune from suit for injuries to such children.