

409

1. CHILD WELFARE BOARD, COUNTY—AUTHORIZED TO ACCEPT DONATIONS OF FUNDS FOR RECREATIONAL FACILITIES—PREMISES, CHILDREN'S HOME—PROVISO, APPROVAL BY DIVISION OF SOCIAL ADMINISTRATION, STATE DEPARTMENT OF PUBLIC WELFARE.
2. CIVIC GROUPS—FUNDS RAISED TO PROVIDE PLAY GROUND AND RECREATIONAL FACILITIES ON CHILDREN'S HOME PREMISES—COUNTY CHILD WELFARE BOARD MAY NOT ACCEPT FUNDS FOR USE OF CHILDREN OF GENERAL PUBLIC.
3. FUNDS RAISED BY CIVIC GROUPS—MAY BE DONATED TO AND ACCEPTED BY COUNTY CHILD WELFARE BOARD—USE, CHILDREN WHO ARE VISITORS TO HOME—DONORS SHOULD STIPULATE USE AND PURPOSE OF DONATION FOR SPECIFIC RECREATIONAL FACILITIES INTENDED—CONDITIONS AND LIMITATIONS MUST BE APPROVED BY DIVISION OF SOCIAL ADMINISTRATION OF DEPARTMENT OF PUBLIC WELFARE—COUNTY CHILD WELFARE BOARD UNDER NO OBLIGATION FOR FUTURE UPKEEP OR MAINTENANCE FROM FUNDS APPROPRIATED FROM ANY GENERAL OR SPECIFIC TAX LEVY.

SYLLABUS:

1. A County Child Welfare Board is authorized to accept donations of funds for recreational facilities to be established upon premises of a Children's Home under Section 3070-1 General Code, provided, such facilities to be established and maintained thereon be approved by the Division of Social Administration of the State Department of Public Welfare.

2. Where interested civic groups have raised funds for the purpose of providing a play ground and recreational facilities on a Children's Home premises for use of children occupying the Home and for use of children of the general public, such funds may not be accepted and used by a County Child Welfare Board for the establishment of such facilities for the use of children of the general public.

3. Funds raised by interested civic groups may be donated to and accepted by a County Child Welfare Board for the establishment of recreational facilities on a Children's Home and for use of children who are visitors to the Home provided, the donors, prior to or at the time of the donation stipulate the use and purpose of the donation to be for the specific recreational facilities intended, conditioned upon the privilege of the joint use of such facilities by children who shall be determined to be visitors to such Home and provided that the facilities and conditions and limitations as to such use are approved by the Division of Social Administration of the Department of Public Welfare of the State of Ohio and provided further that the County Child Welfare Board would be under no obligation for future upkeep or maintenance of such facilities from any funds appropriated from any general or special tax levy.

Columbus, Ohio, April 21, 1949

Hon. Kenneth J. Nordstrom, Prosecuting Attorney
Ashland County, Ashland, Ohio

Dear Sir:

This will acknowledge receipt of your recent request for my opinion reading as follows:

"The local newspaper and other interested civic groups, including the PTA, have raised funds for the purpose of providing a play ground on the Children's Home premises and to equip it with a skating rink, basket ball court and other recreational facilities for the use of the children occupying the Children's Home and for the use of the children of the general public.

"My question is whether or not the same project could legally be put into effect through an offer by the same public spirited group to the Ashland County Child Welfare Board to donate the same facilities for the use and benefit of the Children's Home. The Child Welfare Board would in turn, upon acceptance of this offer, adopt a regulation to the effect that such recreational facilities would be open for the use of guests of the Children's Home, including children of the general public, at such hours and under such conditions as would be established by the Superintendent of the Home. The plan would further provide that the group interested in this plan would donate the entire funds necessary for the construction and equipment of these facilities and also provide funds in future years for their maintenance and supervision. Liability insurance would be provided as a part of the plan."

State concern for the care and welfare of children is expressed in Section 1359-31 General Code, et seq., which provides for aid to dependent

children, and in the broad comprehensive general laws on the subject of child welfare contained in Sections 3070-1 to 3070-36 General Code, inclusive, effective January 1, 1946. Section 3070-1 General Code discloses the purpose of the act 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, which defines the various terms used in the act includes the word “division” as meaning the division of social administration of the state department of public welfare and the word “board” as meaning a county child welfare board.

Section 3070-31 General Code reads:

“The board or department may accept and receive bequests, donations and gifts of funds or property, real or personal, for child care and services provided that the facilities or services to be established or maintained through any such gift shall be subject to the approval of the division.”

A basic principle of our jurisprudence is that public funds may not be expended for a private purpose.

Cleveland vs. Ruple, 130 O. S. 465; 5 O. O. 69;
 State ex rel v. Edmondson, 89 O. S. 351;
 Lucas County v. State, 75 O. S. 114;
 Board of Education v. State, 51 O. S. 531;
 Ferrie v. Sweeney, et al. 34 O. S. 272; N. E. (2nd) 128.

This principle would prohibit the use of any of the facilities of a children’s home by children of the general public where such facilities are in any manner constructed or provided by public funds. An essential condition of the exercise of powers by the child welfare board with respect to a child is that it must determine that any such child is “in need of public care or protective services,” as set forth in Section 3070-17 General Code. (1946 Attorney General Opinion No. 769.)

Public funds are moneys belonging to the state or to political subdivisions thereof, including municipal corporations (32 O. Jur. 714.) The term “public money” as used in Section 286, G. C. relating to the recovery of public money illegally expended, includes “all money received or col-

lected under color of office, whether in accordance with or under authority of any law, ordinance or order, or otherwise." As pointed out in an opinion rendered in 1922 Opinions of the Attorney General by the then Attorney General in Vol. 1, page 496, it would be difficult to construe the terminology used in this statute to include a gift or gratuity.

By the terms of Section 3070-31 General Code, as above quoted it is contemplated that donations of funds may be made to and received by a county child welfare board, conditioned, however, upon the approval of the facilities or services to be established or maintained by such donation by the Division of Social Administration of the State Department of Public Welfare. By the wording of the condition contained in this Section it appears that such donations may be conditioned or restricted in such manner as may be approved by said Division. Under former Section 3083, General Code, bequests to a county children's home could be accepted by the trustees thereof and used "for the best interests of the institution consistent with the provisions and conditions of such bequest." In 1943 Opinions of the Attorney General Opinion No. 6169, based on said Section, it was stated in the first branch of the syllabus as follows:

"Where a bequest is made to a 'county children's home', with no conditions or restrictions attached thereto, the trustees of such county children's home are entitled to receive and administer the proceeds of such bequest, and if the same have been received by the county commissioners of said county, said commissioners are authorized to transfer and turn over such proceeds to such trustees."

From the foregoing Statutes and authorities it appears that a donation of the funds raised by your local civic groups if given to the County Child Welfare Board without any stipulation as to a condition precedent to its use would prevent the Board from permitting children of the general public to avail themselves of the benefit of any of the facilities or services established or maintained from such fund. The powers and duties of a child welfare board being limited to those which are necessarily exercised "for and on behalf of children in the county deemed by the board *to be in need of public care or protective services.*" 1946 Opinions of the Attorney General No. 769 supra at page 136.

On the other hand, in my opinion, there could be no objection to a donation of funds for the purposes proposed if located on premises acquired or donated by the donors or other private parties, provided, the donors,

prior to or at the time of making the donation, stipulated the use and purpose of the donation to be for the specific recreational facilities intended, conditioned upon the privilege of the joint use of such facilities by children of the general public and provided that the facilities and conditions and limitations to their use meets the approval of the Division of Social Administration of the Department of Public Welfare of the State of Ohio, and provided further that the Child Welfare Board would be under no obligation for future upkeep or maintenance of such facilities. The difficult problem presented is the use of the premises presently belonging to the county and under the control of the Child Welfare Board by the children of the general public. Under authority of Sections 3070-24 and 3070-12 the board is empowered to adopt rules and regulations for the conduct of children's homes and the superintendent is charged with their control, management and operation in accordance with such rules and regulations. Such regulations could not operate to affect matters beyond the scope of the authority of the board.

Inherent in the power of control, management and operation of such homes is the power to determine who shall be determined to be visitors to such home and to regulate their conduct and hours of visitation thereto. It is, therefore, my opinion that if the proposed facilities are to be established upon premises now under the control of the Child Welfare Board, the board would be limited in making such premises available to children of the general public to only such children as may be properly classified as visitors to the home within the board's definition of persons determined to be visitors.

In specific answer to your question, therefore, it is my opinion that funds raised by private donations for the purpose of providing a play ground on the premises of the Children's Home and equipping the same with a skating rink, basketball court and other recreational facilities may be donated to your county Child Welfare Board and such facilities used by the children occupying the Home as well as such children of the general public as may be determined to be visitors to such Home, provided, the donors prior or at the time of such donation stipulated the use and purpose of the donation to be for the specific recreational facilities intended, conditioned upon the privilege of the joint use of such facilities by children of the general public who may be determined to be visitors to such Home and provided that the facilities and conditions and limitations as to their use

are approved by the Division of Social Administration of the Department of Public Welfare of the State of Ohio and provided further that the County Child Welfare Board would be under no obligation for future upkeep or maintenance of such facilities from any funds appropriated from any general or special tax levy.

Respectfully yours,

HERBERT S. DUFFY,
Attorney General.