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COUNTY DEPARTMENT OF WELFARE—DUTY OF COUNTY COMMISSIONERS TO APPROPRIATE “SUFFICIENT” FUNDS TO ALLOW DEPARTMENT OR WELFARE BOARD TO PERFORM STATUTORY FUNCTIONS—§335.35 R.C.—DETERMINATION OF AMOUNT NECESSARY WITHIN AREA OF COUNTY COMMISSIONERS’ AUTHORITY—EMPLOYMENT OF EXECUTIVE SECRETARY OF WELFARE BOARD MUST BE MADE WITHIN THE BUDGET LIMITS OF PERSONAL SERVICE ITEMS IN THE BUDGET APPROVED BY THE BUDGET COMMISSION AND APPROPRIATED BY THE BOARD OF COUNTY COMMISSIONERS—§5705.38 *et seq.* R.C.

SYLLABUS:

1. Under the provisions of Section 335.35, Revised Code, it is the duty of the board of county commissioners to appropriate funds “sufficient” to enable the county child welfare board or county department of welfare to perform its statutory functions, and the determination of what is a sufficient appropriation for such purpose is committed to the board of county commissioners.

2. A county child welfare board is authorized to fix the salary of the “executive secretary” of such board, designated as provided in Section 335.10, Revised Code, but such action must be taken within the limits of the aggregate amount allowed to such board for personal services in the budget, submitted by the board of county commissioners as the taxing authority of the county and approved by the county budget commission, and appropriated to such board by the taxing authority as provided in Section 5705.38 *et seq.*, Revised Code.

Columbus, Ohio, February 20, 1958

Hon. Richard F. Liggett, Prosecuting Attorney
Brown County, Georgetown, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"I respectfully request your opinion on the following matter which has been presented to me by the Juvenile Judge of Brown County as a member of the Brown County Child Welfare Board:

"Section 335.35 of the Ohio Revised Code provides that the county commissioners *shall* make appropriations *sufficient* to enable the county child welfare board to perform its functions and duties provided by law.

"In construing this statute one of your predecessors held in 1947 OAG No. 1815 that the duty of the county commissioners to appropriate sufficient funds to pay the salary of the executive secretary of the child welfare board and the necessary expenses of his office was mandatory.

"The Brown County Child Welfare Board submitted a budget for the year 1958, as provided by law, for their department expenses, for 1958 including the salary of the executive secretary. The county commissioners appropriated \$2000.00 less than the amount requested in the budget submitted.

"Approximately the same time the county commissioners were making their appropriations, the Child Welfare Board voted to increase the salary of the executive secretary for the year of 1958, such salary to be paid from the total appropriations for the Child Welfare Board, although the submitted budget did not request such increased salary.

"I would appreciate your opinion on the following questions:

"1. Is it the mandatory duty of the county commissioners to appropriate sufficient funds for the Child Welfare Board to pay the salary of the executive secretary and the necessary expenses of his office as stated in 1947 OAG. 1815?

"2. Inasmuch as Section 335.35 of the Ohio Revised Code states that the appropriations of the county commissioners for the Child Welfare Board be *sufficient* to enable the board to perform its functions and duties provided by law, have the county commissioners the discretion to determine what amount of funds is sufficient for the Child Welfare Board and thereby appropriate less funds than requested in the budget of the Child Welfare Board or is it the mandatory duty of the county commissioners to make such appropriation at least as great as the request of the Child Welfare Board?

"3. Is the salary of the executive secretary of the Child Welfare Board fixed by the members of the Child Welfare Board?

"4. If the salary of the executive secretary is fixed by the members of the Child Welfare Board may they fix such salary for a given year at an amount greater than such board has requested for such year?

“5. Is it the duty of the county commissioners to make an overall appropriation for the Child Welfare Board or may the county commissioners break down such appropriation into separate items such as salary of executive secretary, supplies, etc., appropriate a specific amount for each and thereby regulate and control the salary of such executive secretary?”

Section 335.35, Revised Code, to which you refer, reads in part:

“The boards of county commissioners shall levy taxes and make appropriations sufficient to enable the county child welfare board or county department of welfare to perform its functions and duties under sections 335.01 to 335.42, inclusive, of the Revised Code. * * *”

This language, as set out in the prior analogous statute, Section 3070-36, General Code, was considered in Opinion No. 1815, Opinions of the Attorney General for 1947, p. 214, and the writer's conclusion as to its mandatory nature is stated in the syllabus of that opinion as follows:

“Section 3070-36, General Code, which provides that the County Commissioners shall, pursuant to law, levy taxes and make appropriations sufficient to enable the County Child Welfare Board to perform its functions under Section 3070-1 et seq., General Code, is mandatory, and in the proper discharge of this statutory obligation sufficient funds should be appropriated to pay the salary of the executive secretary and the necessary expenses of his office.”

A like view was expressed, as to a somewhat similar office, in Opinion No. 2247, Opinions of the Attorney General for 1934, p. 115, as follows:

“It is the duty of a board of county commissioners to appropriate from county funds the full amount of compensation for the superintendent and matron of a children's home as fixed by the board of trustees of the home.”

In that opinion the writer quoted from former Section 3084, General Code, as follows:

“The board of trustees shall designate a suitable person to act as superintendent of the home, who shall also be clerk of such board, and who shall receive for his services such compensation as the board of trustees designates at the time of his appointment. * * *”

Effective January 1, 1946, however, the child welfare laws were extensively revised and recodified. House Bill No. 418, 96th General Assembly, 121 Ohio Laws, 528. By this enactment provision was made for the establishment of a county child welfare board, or a county department of welfare, in the discretion of the county commissioners. Such board, or department, depending upon which was established, was given extensive control over county child welfare functions, and generally speaking, succeeded to the powers of the agency formerly known as the trustees of the children's home.

In this revision, former Section 3084, General Code, was repealed, and no provision in the new act can be said to be substantially analagous thereto.

Because we are here concerned with the "executive secretary" of the board, or department, as the case may be, we may note the provision for his appointment in Section 335.10, Revised Code, as follows:

"The county child welfare board or the county department of welfare, which performs the duties and exercises the powers set forth in sections 335.16 to 335.19, inclusive, of the Revised Code, shall designate an executive officer known as the 'executive secretary,' who shall not be in the classified civil service. The county welfare director may serve as such executive secretary, and it shall not be incompatible for such executive secretary and the superintendent of the children's home to be one and the same person.

"The board or department shall, from time to time, inquire into community conditions affecting the welfare of children and study the work of the board or department and its relation to the work of other organizations whose functions are related to child welfare. The board or department may, after consultation with the executive secretary, adopt rules and regulations of general application, not inconsistent with law or with the rules and regulations of the division of social administration."

As to his powers, we may note these provisions in Section 335.11, Revised Code:

"The executive secretary shall administer the work of the county child welfare board or county department of welfare, subject to the rules and regulations of such board or department. With the approval of the board or department, such secretary shall appoint all other employees except the superintendent of any institution maintained by the board or department. Such superintendent shall appoint all employees in any such institution.

‘Upon the advice of one or more reputable practicing physicians, the executive secretary may consent to such medical, dental, and surgical care, including surgery and the administration of anesthetics, inoculations, and immunizations, or other care as appears to be necessary for any child who is a ward of such board or department. The executive secretary may also consent to the enlistment of such ward into the armed forces of the United States.’

Here it will be seen that the appointing authority is given no *express* authority to fix this officer’s compensation, nor, indeed, does this section make any provision for such compensation. In the absence of any statutory provision therefor a public officer has no valid claim to compensation from public funds. 32 Ohio Jurisprudence, 1011. It is plain, however, that this officer was intended to be compensated, for in Section 335.35, Revised Code, we find this provision :

“The boards of county commissioners shall levy taxes and make appropriations sufficient to enable the county child welfare board or county department of welfare to perform its functions and duties under sections 335.01 to 335.42, inclusive, of the Revised Code.

*“In addition to making the usual appropriations, there may be allowed annually to the executive secretary an amount not to exceed one-half his official salary to provide for necessary expenses which are incurred by him or his staff in the performance of official duties. Upon the order of the executive secretary, the county auditor shall draw his warrant on the county treasurer payable to the executive secretary or such other person as the order designates, for such amount as the order requires, not exceeding the amount provided for in this section, and to be paid out of the general fund of the county. * * *”* (Emphasis added)

This provision for appropriation of funds is in harmony, of course, with the requirements of the county budget laws, Section 5705.27, *et seq.*, Revised Code. It is to be noted that the board, or department, here involved is a county agency, and that the board of county commissioners is the taxing authority of the county. As such, this latter board is required, under Section 5705.38, *et seq.*, Revised Code, to appropriate funds “based on the revised tax budget and estimate of resources.” The budget thus referred to is that submitted by the taxing authority to the county budget commission and approved by that agency. Sections 5705.28 and 5705.32, Revised Code.

As to the preparation of this budget, Section 5705.28, Revised Code, provides in part:

“On or before the fifteenth day of July in each year, the taxing authority of each subdivision or other taxing unit shall adopt a tax budget for the next succeeding fiscal year. To assist in its preparation, the head of each department, board, commission, and district authority entitled to participate in any appropriation or revenue of a subdivision shall file with the taxing authority, or in the case of a municipal corporation, with its chief executive officer, before the first day of June in each year, an estimate of contemplated revenue and expenditures for the ensuing fiscal year, in such form as is prescribed by the taxing authority of the subdivision or by the bureau of supervision and inspection of public offices. The taxing authority shall include in its budget of expenditures the full amounts requested by district authorities, not to exceed the amount authorized by law, *if such authorities may fix the amount of revenue they are to receive from the subdivision. * * **” (Emphasis added)

I find nothing in the statutes which authorizes the child welfare board, or the county department of welfare, to “fix the amount of revenue they are to receive from the subdivision.” *i.e.*, from the county; and this being so, we must conclude that the *aggregate* amount so allocated, and later appropriated by the taxing authority, if the budget be approved by the budget commission, is discretionary with the board of county commissioners, even though that board be under a statutory duty to provide a “sufficient” amount. Section 335.35, Revised Code.

Returning now to the question of the salary of the executive secretary, we may first note that Section 5705.29, Revised Code, provides, as to the contents of the budget, that it “shall present * * * a statement of the necessary current operating expenses * * * classified as to personal services and other expenses.” There is no requirement in this section, nor in Section 5705.28, Revised Code, relative to budget requirement reports of subordinate agencies of the subdivision, that amounts for “personal services” be shown in any detail whatever, and certainly no requirement to show the compensation of individual employees.

In this situation, the board of county commissioners, as the taxing authority, being without voice in the matter except as to approval of the aggregate amount allowed for personal services, we must conclude that the subordinate agency, the board, or department, as the case may be, may fix the compensation of its individual employees, as a power implied in

the authority to appoint them, *within the limits of the aggregate personal service allowance in the budget*. Specifically, in your own case, I conclude that the child welfare board may fix the salary of the executive secretary, but that this must be done within the limits of the aggregate amount allowed for personal services in the budget. It is to be seen, therefore, that although the board of county commissioners may not fix such salary, its action may well have the practical effect of limiting the action of the child welfare board in doing so.

As to your fourth question, I assume that the amount requested for the officer's salary was included in the subdivision's budget as a part of the *aggregate* of personal services requested by the child welfare board, approved by the taxing authority, and by the budget commission. Because in Section 5705.38, Revised Code, it is required that appropriation measures shall be "based on the revised tax budget" it is clear that such appropriations should not exceed, *in the aggregate*, the amounts set out in such approved budget except as provided in Section 5705.40, Revised Code. This section reads in part:

"* * * The annual appropriation measure, or an amendment or supplement thereto, may contain an appropriation for contingencies not to exceed three per cent of the total appropriation for current expenses. By a two-thirds vote of all members of the taxing authority of a subdivision or taxing unit, expenditures may be authorized in pursuance of such contingency appropriation for any lawful purpose for which public funds may be expended, if such purpose could not have reasonably been foreseen at the time of the adoption of the appropriation measure."

As hereinbefore indicated, however, the child welfare board may increase the salary of the executive secretary at any time, provided this can be done within the aggregate of funds for personal services appropriated for the use of such board.

As indicated in the 1947 opinion, *supra*, however, the board of county commissioners is under a mandatory duty to provide the child welfare board with funds for personal services, including the salary of the executive director, and, as provided in Section 335.35, Revised Code, such appropriations must be "sufficient to enable the county child welfare board or county department of welfare to perform its functions."

What is "sufficient" for this purpose is, of course, a question of fact which is committed in the first instance to the discretion of the board of

county commissioners, and absent a showing of abuse of such discretion their decision could not be successfully challenged. Present a showing of such abuse of discretion, of course, I do not doubt the propriety of judicial action to compel a "sufficient" provision of funds. Quite clearly the determination of such a question of fact is beyond the scope of my office, and I thus express no opinion on whether the appropriation you describe is "sufficient."

In sum, it is my opinion :

1. Under the provisions of Section 335.35, Revised Code, it is the duty of the board of county commissioners to appropriate funds "sufficient" to enable the county child welfare board or county department of welfare to perform its statutory functions, and the determination of what is a sufficient appropriation for such purpose is committed to the board of county commissioners.

2. A county child welfare board is authorized to fix the salary of the "executive secretary" of such board, designated as provided in Section 335.10, Revised Code, but such action must be taken within the limits of the aggregate amount allowed to such board for personal services in the budget, submitted by the board of county commissioners as the taxing authority of the county and approved by the county budget commission, and appropriated to such board by the taxing authority as provided in Section 5705.38, *et seq.*, Revised Code.

Respectfully,

WILLIAM SAXBE

Attorney General