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A COUNTY CHILD WELFARE BOARD DOES NOT HAVE A MANDATORY DUTY TO PROVIDE TRANSPORTATION FOR THE MENTALLY DEFICIENT PERSON, BUT MAY DO SO IF DEEMED NECESSARY—§§5127.01, R.C., 5153.161, Revised Code.

SYLLABUS:

A county child welfare board does not have a mandatory duty under Section 5127.01, Revised Code, to provide transportation for mentally deficient persons, but under Section 5153.161, Revised Code, the board may provide such transportation as it deems necessary.

Columbus, Ohio, August 18, 1962

Hon. Thomas A. Beil, Prosecuting Attorney
Mahoning County, Youngstown, Ohio

Dear Sir:

Your request for my opinion reads as follows:

“Re: Revised Code 5127.01—Training Centers and Workshops for Mentally Deficient.

“We have been requested by the Mahoning County Board of Child Welfare to seek your opinion on the following:

‘The Mahoning County Board of Child Welfare would like to have your opinion on Section 5127.01-B which applies to mentally retarded people over 21 years of age. Briefly, under this section, is it mandatory that The Board of Child Welfare furnish transportation to these retarded people over 21 years of age?’

‘This is a very important matter because as you know the New Act just specifies more than 21 years old with no age limitation.’

“We would appreciate your consideration.”

I assume that the “New Act” referred to in your request is Amended Substitute House Bill No. 778, which was enacted by the 104th General Assembly in 1961. Under this bill, Sections 5127.01 to 5127.03, inclusive, and Section 5153.11, Revised Code, were amended, and Sections 5127.04 and 5153.161, Revised Code, were enacted.

Section 5127.01, Revised Code, provides as follows :

“The commissioner of mental hygiene, with the approval of the director of mental hygiene and correction, shall establish in any county or district a training center or workshop for the special training of mentally deficient persons, including those who have been adjudged by the proper authorities to be ineligible for enrollment in public schools under sections 3317.01 to 3317.15, inclusive, 3321.01, and 3323.01 of the Revised Code, and who are determined by the division of mental hygiene to be capable of profiting by specialized training. Special attention shall be given to the establishment of a training program for the mentally deficient for the purpose of enabling them to become accepted by society and to find employment in the structure of society to the extent that they may be fitted therefor. The commission shall be the final authority in determining the nature and degree of mental deficiency, decide all questions relative or incident to the establishment and operation of each training center or workshop, determine what constitutes special training, promulgate all rules and regulations, subject to sections 119.01 to 119.13, inclusive, of the Revised Code, governing the approval of mentally deficient persons for such training, determine or approve all forms used in the operation of programs undertaken under this section, and approve the current operating costs of such programs.

“As used in sections 5127.01 to 5127.05, inclusive, of the Revised Code, a ‘mentally deficient person’ means:

“(A) A person who has been determined by the proper authorities to be ineligible for enrollment in a public school because of mental deficiency of such nature and to such degree that the person is incapable of profiting substantially by any educational program which should be provided by such public school;

(B) If not of school age, a person who has been determined by the proper authorities to be unemployable because of mental deficiency to such nature and to such degree that special training is necessary. The nature and degree of mental deficiency shall be determined in the manner prescribed by the commissioner.

“As used in sections 5127.01 to 5127.05, inclusive, of the Revised Code ‘county child welfare board’ includes the county department of welfare which has assumed the administration of child welfare in accordance with the provisions of Chapter 5153. of the Revised Code.”

There is no express provision in Section 5127.01, *supra*, which requires a county child welfare board to furnish transportation to anyone whether over or under 21 years of age. Under Section 5153.161, Revised Code, however, the county child welfare board has the duty to ad-

minister and supervise the provisions of Section 5127.01, *supra*, and to “employ personnel and provide such facilities and equipment as are necessary.” In order to properly administer and supervise the training center for mentally deficient persons provided for in Section 5127.01, *supra*, a county child welfare board might well decide that it is necessary to provide transportation for the mentally deficient of all ages in connection with the operation of the training center. A decision to provide such transportation would, in my opinion, be within the board’s authority under Section 5153.161, *supra*. Although it would be within the child welfare board’s authority to provide transportation for mentally deficient persons in connection with the operation of a training center, it is not a mandatory duty that the board do so.

In answer to your specific question, therefore, it is my opinion and you are advised that a county child welfare board does not have a mandatory duty under Section 5127.01, Revised Code, to provide transportation for mentally deficient persons, but under Section 5153.161, Revised Code, the board may provide such transportation as it deems necessary.

Respectfully,
MARK McELROY
Attorney General