

2666.

CHILD WELFARE BOARD—ACCOUNTS FOR SERVICES OR MATERIALS—SALARIES—AUTHORITY COUNTY COMMISSIONERS—INVESTIGATIONS—STATUS AND DUTY OF COUNTY AUDITOR.

SYLLABUS:

1. *Accounts for the rendition of services or for the furnishing of materials to a Child Welfare Board must be certified to the county auditor by the Board. Salaries, however, may be certified by the chief executive officer of a Child Welfare Board if the authority so to do is conferred upon the said officer by the Board.*

2. *The county commissioners have no authority to pass upon claims for such services or materials.*

3. *A county auditor has no general duty to conduct an independent investigation as to all claims certified to him by a Child Welfare Board. A county auditor has a duty to refuse to issue a warrant for the payment of any claim which is not legal on its face and an implied duty to investigate any claims which he has reason to believe are not legal charges against the county.*

COLUMBUS, OHIO, July 6, 1938.

HON. FRANK T. CULLITAN, *Prosecuting Attorney, Cleveland, Ohio.*

DEAR SIR: I am in receipt of your request for my opinion which reads as follows:

"In Cuyahoga County a Child Welfare Board exists under Section 3092 of the General Code. It has been the practice for the Director-Superintendent appointed under Section 3084 to certify to the correctness of the pay roll and bills incurred. These are sent directly to the Auditor who in turn has issued a warrant on the County Treasurer for payment.

Several questions have arisen recently on which your opinion is respectfully requested.

1st: In view of the provisions of the new Juvenile Court Code in Sections 1629-34, General Code and 1639-57, G. C., has anyone authority to certify said bills excepting the Judge of the Court?

2nd: Is there any duty upon the County Commissioners to pass upon the bills and claims of such board?

3rd: Is it the duty of the County Auditor to make an independent investigation of the statements submitted by such Child Welfare Board:

- (a) As to the existence of such child on the respective dates alleged;
- (b) As to the existence of the boarding mother or institution on such dates;
- (c) As to the existence of fact and duration of such boarding;
- (d) As to the existence and correctness of the address of the boarding mother and of such children;
- (e) As to the correctness of the rate to be charged for each;
- (f) As to whether other expenses alleged to have been incurred were so incurred.

In other words, how much of an investigation is the Auditor required to make as to the correctness of bills before issuing warrants?

4th: Is it the duty of the County Auditor to discover whether the Board has entered into a contract for the care of the neglected or dependent or crippled child, or to make inquiry as to whether such child has been properly committed by a competent and legal authority?"

I shall endeavor to answer your questions in the order stated in your inquiry.

In your first question you are concerned with the right of the Director-Superintendent, appointed by the County Child Welfare Board pursuant to Section 3092 of the General Code, to make a certification as to the correctness of the payroll and other bills incurred by such Child Welfare Board.

It should be noted that Section 3092, General Code, only pertains to counties which do not have county children's homes and the portion of this section which relates to the creation of a County Child Welfare Board reads as follows:

"* * * Provided that in each case such dependent or neglected children shall be duly committed to the aforesaid institution or association or placed in the care of a private family by the juvenile court as provided by law; or with the approval of the division of charities, department of public welfare, when in the judgment of the county commissioners the best interests of the dependent and neglected wards of the county will be sub-

served thereby, they may appoint a county child welfare board of five members to serve without compensation, such appointments to be subject, as far as applicable, to the provisions of Sections 3081 and 3082 of the General Code. Such board shall have the same powers and duties relative to dependent and neglected children as are now given to trustees of county children's homes, so far as applicable, particularly relating to the appointment of visitors for the finding and supervision of family homes for such children."

Inasmuch as Sections 1639-34 and 1639-37, General Code, referred to in your communication pertain only to children whose cases are handled by the Juvenile Court, it is first necessary to inquire whether the boundaries of the powers of such a County Child Welfare Board are coextensive with the scope and jurisdiction of the Juvenile Court, in so far as the question of the placing and providing for of delinquent children is concerned.

Section 3089 of the General Code provides in part as follows:

"The board of trustees of the home shall receive for care and treatment children under the age of eighteen years, who have resided in the county not less than one year, and such other children under such age from other counties in the state where there is no home, as the trustees of such home and the persons or authority having the custody and control of such children, by contract agreed upon, who are, in the opinion of the trustees, suitable children for acceptance by reason of orphanage, abandonment or neglect by parents or inability of parents to provide for them; provided that the juvenile court of the county may at any time commit a child to the board of trustees when in the opinion of the judge it should be so committed."

You will notice that the board of trustees of a County Children's Home may receive children without commitment by the Juvenile Court. Inasmuch as Section 3092, General Code, provides that a County Child Welfare Board, in counties wherein no County Children's Home is maintained, shall have the same power relative to dependent and neglected children as the trustees of County Children's Homes, it is my opinion that such a board has authority to accept under its control the same classes of children as may be accepted by a County Children's Home and since the jurisdiction of the board and the Juvenile Court would only be concurrent in relation to children committed by the court, it is my opinion that the provisions of the new Juvenile Court Code, Sections 1639-1

to 1639-61 are not inconsistent with the provisions hereinabove cited pertaining to a Child Welfare Board.

We find in Section 3082-1 the following provision as to the payment of accounts by boards of trustees of County Children's Home:

"Such board of trustees shall hold a meeting once each month at which time they shall examine all accounts presented for payment and order the payment of such accounts as a majority of the members may approve."

As pointed out above, by reason of the provisions of Section 3092, General Code, Child Welfare Boards in counties where there are no County Children's Homes have similar powers as boards of trustees "so far as applicable." It is my opinion that it is the duty of the Child Welfare Board to approve accounts in the manner provided by Section 3082-1 and since there is an express statutory provision in this regard, such board can not delegate its duties to the Director-Superintendent. I am not of the opinion, however, that it is necessary for the board to approve payroll vouchers, for Section 3082-1 relates to accounts and this word is not ordinarily used to include wages and, therefore, inasmuch as there is no express duty imposed upon the Child Welfare Board to approve payrolls, I am of the opinion that the board may delegate such power to its chief executive officer.

In your second question you inquire as to the duties of the county commissioners in connection with the bills and claims of such board. Section 2460 of the General Code provides as follows in regard to the authority of county commissioners to pass upon claims:

"No claims against the county shall be paid otherwise than upon the allowance of the county commissioners, upon the warrant of the county auditor, *except in those cases in which the amount due is fixed by law, or is authorized to be fixed by some other person or tribunal,* in which case it shall be paid upon the warrant of the county auditor, upon the proper certificate of the person or tribunal allowing the claim." (Italics the writer's.)

The Supreme Court of Ohio held in the case of *Appraisal Co. vs. Commissioners*, 92 O.S. 179 that if a board of real estate assessors had contracted for certain services, the county commissioners had no duty or authority to pass upon the claim based upon such a contract.

The following quotation from 11 O. J., Page 587 is, in my opinion, an accurate restatement of the law on the subject.

"The grant of power to county commissioners to pass upon claims is somewhat narrow, despite its general character. Gen-

erally speaking, the duty of the commissioners is limited to determining whether the services or materials which form the basis of the claim have actually been rendered or furnished, and, if so, the amount due therefor. They have no authority to intervene if the amount due is fixed by law, or if, under the law, the claim is to be fixed by some other person or tribunal, and a warrant for its payment issued upon the certificate of such person or tribunal."

In reading all of the statutory provisions relative to Child Welfare Boards, some of which are above quoted, I am impelled to the conclusion that the board has the power and duty to certify warrants for the payment of expenses incurred by the board in the administration of the duties which are conferred upon it.

In your next question you inquire as to the duties of the county auditor in connection with the statements submitted by a Child Welfare Board. Section 2570 provides as follows relative to the duty of the county auditor to issue warrants:

"Except moneys due the state which shall be paid out upon the warrant of the auditor of state, the county auditor shall issue warrants on the county treasurer for all moneys payable from such treasury, upon presentation of the proper order or voucher therefor, and keep a record of all such warrants showing the number, date of issue, amount for which drawn, in whose favor, for what purpose and on what fund. He shall not issue a warrant for the payment of any claim against the county, unless allowed by the county commissioners, except where the amount due is fixed by law or is allowed by an officer or tribunal authorized by law so to do."

Where the amount of the charges is fixed by law or another body, the auditor's functions in carrying out the provisions of Section 2570, supra, are ministerial in nature and not discretionary. *State vs. Goubeau*, 110 O. S. 287, *Burnett vs. Auditor*, 12 Ohio 54, 58:

In regard to the auditor's authority in connection with the performance of the duties imposed upon him by Section 2570, it is stated in 11 O. J., page 388:

"* * * Nor has he authority to refuse to issue a warrant merely because he disagrees with the officer or board making the allowance.

This does not mean that the auditor is not called upon to exercise good faith and a reasonable degree of prudence and

judgment in determining whether or not it is his legal duty to issue his warrant in any given case. He may properly refuse to issue his warrant if it appears that by mistake or fraud an amount has been allowed in excess of the sum lawfully due, or if the order was wholly unauthorized, or was based on an illegal contract, or if the officer making it acted without authority, or exceeded the legal bounds of his discretion."

I know of no provision requiring that the auditor conduct private investigations as to all the warrants presented to him. If he has facts within his knowledge which show that the payment of the claim would be illegal, it is his duty to refuse to issue the warrant therefor. However, in the absence of any such knowledge and without any circumstances which might apprise him of the likelihood that the claim is illegal, it is my opinion that the county auditor does not have the duty to make extensive investigations as to each warrant issued.

Your last question also concerns the duty of the county auditor in connection with the payment of claims certified by the Child Welfare Board, but I believe my answer to the third question is dispositive of the fourth question as well.

Respectfully,

HERBERT S. DUFFY,

Attorney General.

2667.

APPROVAL—LEASE, STATE OF OHIO, THROUGH DIRECTOR, DEPARTMENT OF PUBLIC WORKS, WITH RAVENNA AERIE No. 2164 FRATERNAL ORDER OF EAGLES, TERM SIX MONTHS, MONTHLY RENTAL \$25.00, THREE ROOMS, GROUND FLOOR, EAGLES BUILDING, 145 NORTH CHESTNUT STREET, RAVENNA, OHIO, FOR USE, DIVISION OF AID FOR THE AGED, DEPARTMENT OF PUBLIC WELFARE.

COLUMBUS, Ohio, July 6, 1938.

HON. CARL G. WAHL, *Director, Department of Public Works, Columbus, Ohio.*

DEAR SIR: You have submitted for my examination and approval a certain lease executed by Ravenna Aerie No. 2164 of the Fraternal Order