

**OPINION NO. 85-031****Syllabus:**

A county board of mental retardation and developmental disabilities has authority to give money received pursuant to a testamentary bequest to a nonprofit foundation established to aid the mentally retarded, provided that the gift to the nonprofit foundation bears restrictions designed to assure that the money is used in furtherance of the board's statutory purposes, and further provided that the gift complies with the terms of the bequest.

**To: Ronald L. Collins, Tuscarawas County Prosecuting Attorney, New Philadelphia, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, June 19, 1985**

I have before me your request for my opinion on a question which I have rephrased as follows:

May a county board of mental retardation and developmental disabilities legally donate money it has received pursuant to a testamentary bequest to a nonprofit foundation established to aid the mentally retarded?

County boards of mental retardation and developmental disabilities are created by R.C. Chapter 5126. Such boards are creatures of statute having only those powers which are expressly granted by statute or which may necessarily be implied therefrom. See Ebert v. Stark County Board of Mental Retardation, 63 Ohio St. 2d 31, 33, 406 N.E.2d 1098, 1100 (1980); 1984 Op. Att'y Gen. No. 84-006.

Subject to the rules of the Department of Mental Retardation and Developmental Disabilities, county boards of mental retardation and developmental disabilities have the authority pursuant to R.C. 5126.05 to do, inter alia, the following:

- (A) Administer and operate facilities, programs, and services as provided by Chapters 3323. and 5126. of the Revised Code;
- (B) Assess the facility and service needs of the mentally retarded and the developmentally disabled residents of the county and of former residents of the county presently residing in state institutions or placed under purchase of service agreements under section 5123.18 of the Revised Code;
- (C) Subject to the approval of the director of mental retardation and developmental disabilities, plan and set priorities based on available funds for the provision of both facilities and services to meet the needs of county residents with mental retardation or developmental disabilities and of former residents of the county presently residing in state institutions or placed under purchase of service agreements according to section 5123.18 of the Revised Code;
- (D) Coordinate, monitor, and evaluate existing services and facilities;
- (E) Provide early childhood services, supportive home services, and adult services, according to the plan and priorities developed under division (C) of this section;
- (F) Ensure that related services, as defined in section 3323.01 of the Revised Code and comprehensive evaluation services and residential services are available according to the plan and priorities developed under division (C) of this section;
- (G) Require individual habilitation plans for clients and eligible unserved clients;
- (H) Provide special education programs according to Chapter 3323. of the Revised Code;
- (I) Employ a qualified superintendent. . . .

R.C. 5126.05 further provides that county boards of mental retardation and developmental disabilities have the following powers related to bequests:

Any county board of mental retardation and developmental disabilities may receive by gift, grant, devise, or bequest any moneys, lands, or property for the benefit of the purposes for which the board is established and hold, apply, and dispose of the same according to the terms of the gift, grant, or bequest. All money received by gift, grant, bequest, or disposition of lands or property received by gift, grant, devise, or bequest shall be deposited in the county treasury to the credit of such board and shall be available for use by the board for purposes determined or stated by the donor or grantor, but may not be used for personal expenses of the board members. Any interest or earnings accruing from such gift, grant, or bequest shall be treated in the same manner and subject to the same provisions as such gift, grant, or bequest.

See also 8 Ohio Admin. Code 5123:2-1-02(D)(1)(k)(4).

Thus, a county board of mental retardation and developmental disabilities has express statutory authority to receive bequests and to use such bequests to pursue the board's statutory purposes, provided that the use is not contrary to the terms of the bequest. The statutory language granting this authority does not expressly authorize county boards of mental retardation and developmental disabilities to give the money received through a bequest to a nonprofit corporation formed to aid the mentally retarded.<sup>1</sup> I believe, however, that such authority may reasonably be implied from the authority expressly granted.

County boards of mental retardation and developmental disabilities are required by law to administer and operate facilities and programs and to provide services to aid the mentally retarded and developmentally disabled. Within the limits established by statute and rule, a board has discretion in determining how best to carry out its statutory duties. See State ex rel. Hunt v. Hildebrandt, 93 Ohio St. 1, 11-12, 112 N.E. 138, 140-141 (1915) (in the absence of specific directions, a public officer has the implied authority to exercise discretion in performing his statutory duty). R.C. 5126.05 expressly authorizes a board to receive bequests "for the benefit of the purposes for which the board is established and hold, apply, and dispose of the same according to the terms of the . . . bequest." Thus, a board has authority to dispose of funds received by bequest in such manner as it deems appropriate, provided that the disposal benefits the purposes of the board and is consistent with the terms of the bequest. Pursuant to such authority, a county board of mental retardation and developmental disabilities may donate funds received by bequest to nonprofit foundations which assist in carrying out the purposes of the board.

In donating part or all of a bequest to a nonprofit foundation, a county board of mental retardation and developmental disabilities must, however, place restrictions on the donation to assure that it will be used to carry out the board's statutory duties as those duties are set forth in R.C. 5126.05 and elsewhere. See

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<sup>1</sup> County boards of mental retardation and developmental disabilities do have express authority to "enter into contracts with . . . private, nonprofit . . . agencies or organizations . . . to provide the facilities, programs, and services authorized or required, upon such terms as may be agreeable, and in accordance with Chapters 3323. and 5126. of the Revised Code and rules adopted thereunder." R.C. 5126.05. I assume, for purposes of this opinion, that the county board at issue does not wish to contract with the nonprofit corporation pursuant to this provision, but that it simply wishes to make a gift of the money to the nonprofit foundation, permitting the foundation to exercise discretion, within the terms of the bequest and the county board's statutory purposes, in determining how the money is to be spent. Thus, I assume that the portion of R.C. 5126.05 quoted above does not expressly answer your question.

1984 Op. Att'y Gen. No. 84-096; 1971 Op. Att'y Gen. No. 71-044. The money may not, for example, be used to provide a bonus to the foundation's chairman or chief administrative officer, since that would not further the purposes for which the county board was formed. See Op. No. 71-044.

I note that, in my opinion, Ohio Const. art. VIII, §6 does not prohibit a county board of mental retardation and developmental disabilities from donating money which it has received through a testamentary bequest to a nonprofit foundation which will use the money to carry out the purposes of the board. As I stated in Op. No. 84-096 at 2-324 to 2-325:

Article VIII, §6 states in part: "[n]o laws shall be passed authorizing any county, city, town or township. . .to become a stockholder in any joint stock company, corporation, or association whatever; or to raise money for, or to loan its credit to, or in aid of, any such company, corporation, or association. . ."

The courts of this state have held that art. VIII, §6 does not prohibit counties and other political subdivisions from giving their aid and credit to a private nonprofit corporation which will use the aid and credit for a public purpose. See Bazell v. City of Cincinnati, 13 Ohio St. 2d 63, 233 N.E.2d 864 (1968); State ex rel. Dickman v. Defenbacher, 164 Ohio St. 142, 128 N.E.2d 59 (1955); State ex rel. Kauer v. Defenbacher, 153 Ohio St. 268, 91 N.E.2d 512 (1950); State ex rel. Leaverton v. Kerns, 104 Ohio St. 550, 136 N.E. 217 (1922); State ex rel. Taft v. Campanella, 51 Ohio App. 2d 237, 368 N.E.2d 76 (Cuyahoga County 1977), aff'd, 50 Ohio St. 2d 242, 364 N.E.2d 21 (1977); 1977 Op. Att'y Gen. No. 77-049. See also 1978 Op. Att'y Gen. No. 78-040 at 2-96 ("[t]he public purpose exception depends upon the nature of the recipient or partner as well as the purpose for which the funds are spent or the venture is undertaken").

Legislative authorities have broad discretion in determining what constitutes a public purpose, and such determination will be judicially overturned only in cases where the determination is manifestly arbitrary or unreasonable. See State ex rel. Taft v. Campanella, 50 Ohio St. 2d 242, 364 N.E.2d 21 (1977); Bazell v. City of Cincinnati; State ex rel. Gordon v. Rhodes, 156 Ohio St. 81, 100 N.E.2d 225 (1951). Generally, however, it may be stated that:

a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents. . .The modern trend of decision is to expand and liberally construe the term 'public use' in considering state and municipal activities sought to be brought within its meaning. . .The right of the public to receive and enjoy the benefit of the use determines whether the use is public or private.

State ex rel. McClure v. Hagerman, 155 Ohio St. 320, 325, 98 N.E.2d 835, 838 (1951) (quoting 37 American Jurisprudence, 734, 735, Section 120).

In adopting R.C. Chapter 5126, the General Assembly has indicated that the provision of aid to the mentally retarded and developmentally disabled fulfills a public purpose. The donation of funds to a nonprofit foundation to carry out the purposes of R.C. Chapter 5126 appears, similarly, to constitute a public purpose. In determining how to dispose of funds received pursuant to bequest, the board must decide whether the aid to be provided by a particular nonprofit foundation will carry out the purposes of R.C. Chapter 5126.

It is, therefore, my opinion, and you are advised, that a county board of mental retardation and developmental disabilities has authority to give money received pursuant to a testamentary bequest to a nonprofit foundation established

to aid the mentally retarded, provided that the gift to the nonprofit foundation bears restrictions designed to assure that the money is used in furtherance of the board's statutory purposes, and further provided that the gift complies with the terms of the bequest.