

OPINION NO. 1306**Syllabus:**

1. A county child welfare board or a county department of welfare assuming the administration of child welfare in accordance with Chapter 5153, Revised Code, has a duty under Section 5153.161, Revised Code, to provide mentally deficient persons with necessary transportation without cost to training schools and workshops established within the county.

2. The Commissioner of Mental Hygiene, with the approval of the Director of Mental Hygiene and Correction, has authority under Section 5153.161, Revised Code, to promulgate reasonable rules and regulations and to fix reasonable standards for furnishing transportation of mentally deficient persons to training schools and workshops.

To: Martin A. Janis, Director of Department of Mental Hygiene and Correction, Columbus, Ohio

By: William B. Saxbe, Attorney General, August 19, 1964

Your request for my opinion reads in pertinent part as follows:

"The problem involves fees charged parents or guardians of retarded children for the transportation of children to and from classes. * * *

"In amended Substitute House Bill No. 434, the last legislature amended Sec. 5153.161 of the Revised Code, which among other things states:

"Sec. 5153.161. The county child welfare board, subject to the rules, regulations and standards of the commissioner of mental hygiene shall: (Emphasis mine)

C. Employ such personnel and provide such facilities, transportation, (emphasis mine) and equipment as are necessary;

"The legislation became effective in October, 1963, after the beginning of the school year. Some counties, I have been advised, provided free transportation while welfare directors or directors of child welfare departments in other counties assessed charges and plan to continue to do so. Although the legislation does not say 'free' transportation, since the Department was involved in its passage, I am sure the intent was that 'free' transportation be provided.

"Classes for the retarded children are conducted in 75 of the 88 counties but service is provided in 80 counties. In approximately 30 of the counties, the administrative authority is the county child welfare board. In the remainder it is the county welfare department.

"In amending Sec. 5153.161 of the Revised Code to include transportation, HB 434 as drafted and passed read 'The county child welfare board' (quotes mine). Again I am of the opinion that the legislature meant to include all county welfare boards or departments.

"My question is whether, by reason of the new legislation, which includes transportation, the responsibility of seeing that this is done is placed upon the department because of the clause that states 'subject to the rules, regulations and standards of the Commissioner of Mental Hygiene.'"

Your question deals primarily with the responsibility of the Director of Mental Hygiene and Correction to insure that provision for the transportation of the mentally retarded to and from classes in the various counties is made, and incidentally whether or not such transportation should be provided without charge to the recipients thereof.

To answer the question as to your responsibilities it is necessary to examine Sections 5127.01 and 5153.161, Revised Code.

Section 5127.01 provides in part 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, * * *. The commissioner 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, * * * and approve the current operating costs of such programs." (Emphasis added)

Section 5153.161 provides:

"The county child welfare board, subject to the rules, regulations, and standards of the commissioner of mental hygiene shall:

"(A) Administer and supervise sections 5127.01 and 5127.04, inclusive, of the Revised Code, and exercise such powers and duties as prescribed by the commissioner;

* * * * *

"(C) Employ such personnel and provide such facilities, transportation, and equipment as are necessary;

"(D) Provide such funds as are necessary for the operation of training centers and workshops.

* * * * *

The word "transportation" was inserted in this section in Amended Substitute House Bill No. 434 which became effective in October, 1963. Prior thereto it had been determined that a county child welfare board did 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 might provide such transportation as it deemed necessary. Opinion No. 3212, Opinions of the Attorney General for 1962. It had been determined also that whether or not such transportation was necessary was a question of fact to be determined by the child welfare board upon considering all of the circumstances in a given case. Opinion No. 3337, Opinions of the Attorney General for 1962.

It is clear that with the amendment of Section 5153.161, Revised Code, effective October 8, 1963, Opinion No. 3212, Opinions of the Attorney General for 1962, can no longer be considered as expressing a correct statement of the law. Under the existing statute a county child welfare board has a duty to furnish necessary transportation. I have found no provision of law, however, which authorizes a county child welfare board to charge a fee for transportation for any of the persons attending a training school or workshop. On the contrary, Section 5153.161, supra, states that the county board shall provide such funds as are necessary for the operation of training centers and workshops. And for this purpose, the "operation of training centers and workshops" includes furnishing transportation.

The Commissioner of Mental Hygiene has authority under Sec-

tion 5153.161, supra, to promulgate reasonable rules and regulations or to fix reasonable standards for transportation to be furnished under this section, and (under 5127.01, supra) to decide all questions pertaining to the operation of training centers or workshops, including transportation. In addition, I think it fair to conclude that the Commissioner has a responsibility to see that county child welfare boards supply needed transportation for mentally retarded persons to training centers and workshops. The responsibility for furnishing necessary transportation, however, lies with the county boards.

The term "county child welfare board" includes a county department of welfare which has assumed the administration of child welfare under Chapter 5153, Revised Code. See Section 5127.01, Revised Code.

Accordingly it is my opinion and you are advised that:

1. A county child welfare board or a county department of welfare assuming the administration of child welfare in accordance with Chapter 5153, Revised Code, has a duty under Section 5153.161, Revised Code, to provide mentally deficient persons with necessary transportation without cost to training schools and workshops established within the county.

2. The Commissioner of Mental Hygiene, with the approval of the Director of Mental Hygiene and Correction, has authority under Section 5153.161, Revised Code, to promulgate reasonable rules and regulations and to fix reasonable standards for furnishing transportation of mentally deficient persons to training schools and workshops.