

OPINION NO. 69-146

Syllabus:

1. A community mental health and retardation board established pursuant to Chapter 340, Revised Code, is without authority to supervise or control a county board of mental retardation established pursuant to Section 5126, Revised Code, or the functions thereof, or the establishment or operation of any facilities provided by Chapter 5127, Revised Code.

2. The educational facilities of the training center or workshop established pursuant to Section 5127.01, Revised Code, are only for the special training of mentally deficient persons, as a person of this classification is defined by such section.

To: Fred V. Skok, Lake County Pros. Atty., Painesville, Ohio
By: Paul W. Brown, Attorney General, November 10, 1969

Your letter of request states that the board of county commissioners created a county board of mental retardation pursuant to the requirements of Chapter 5126, Revised Code. To provide a training center or workshop for the special training of mentally deficient persons of the county, as required by Section 5127.01, Revised Code, the board of county commissioners, by resolution, submitted a proposed 2-mill levy for five years to electors of the county which the electorate approved. The wording of the ballot submitted to the electorate was in pertinent part as follows:

"An additional tax for the benefit of Lake County for the purpose of constructing, furnishing, and equipping a Training Center, Workshops, Clinic, and Residential Facilities for Mentally Retarded Persons, including the acquisition and improvement of a site, therefor, at a rate not exceeding 2.0 mill for each one dollar of valuation, which amounts to 20 cents for each One Hundred Dollars of valuation, for five years."

Your letter further states that subsequent to the creation of the county board of mental retardation and approval of the levy, a community mental health and retardation service program was established and a community mental health and retardation board was appointed pursuant to the requirements of Chapter 340, Revised Code.

Your letter requests my opinion relative to the following questions:

1. Should the community mental health and retardation board exercise any supervision or control over the expenditure of funds raised by the levy referred to above? This would extend to such questions as the selection of a site, the priority of the type of facility to be constructed and the necessity of a particular type of facility.
2. Can any facilities for the mentally ill be included as a part of the facilities to be financed by the above levy? There are no facilities in the county for in-patient care of the mentally ill, and it has been suggested that the two boards cooperate by including facilities for the mentally ill as a part of the facilities to be constructed with the proceeds of the approved levy.

In response to your first question, it is necessary to consider the powers and duties of each board as prescribed by statutory law.

Section 5126.03, Revised Code, reads:

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

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

"(B) Submit an annual report of its work and expenditures, pursuant to section 5127.01 of the Revised Code, to the commissioner and to the board of county commissioners at the close of the fiscal year and at such other times as may be requested;

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

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

"Any county board of mental retardation may enter into a contract with another such board of another county or with a public or nonprofit agency or organization of the same or another county, to provide the training center, workshop facilities and services authorized in section 5127.01 of the Revised Code, upon such terms as may be agreeable.

"The board of county commissioners shall levy taxes and make appropriations sufficient to enable the county board of mental retardation to perform its functions and duties as provided by this section."

Section 340.03, Revised Code, reads in pertinent part:

"Subject to rules and regulations of the commissioner of mental hygiene, the community mental health and retardation board, with respect to its area of jurisdiction, and except for programs and facilities conducted pursuant to Chapter 5127. of the Revised Code, shall: * * *"

(Emphasis added)

The county board of mental retardation, by statutory provision, was given the responsibilities relative to the providing and operation of a training center or workshop for the special training of mentally deficient persons, which facilities are established pursuant to Chapter 5127, Revised Code.

The powers and duties of a community mental health and retardation board provided by Section 340.03, Revised Code, expressly excludes from such powers and duties any authority with reference to programs and facilities conducted pursuant to Chapter 5127, Revised Code. Further, a community mental health and retardation board, not having been given statutory power or authority to supervise or control the organization

or functions at a county mental retardation board, is without authority to exercise any control over the levying, collecting or expenditure of any funds pertaining to facilities established and operated pursuant to Chapter 5127, Revised Code. See Opinion No. 69-015, Opinions of the Attorney General for 1969.

It would appear, therefore, that a community mental health and retardation board established pursuant to Chapter 340, Revised Code, is without authority to supervise or control a county board of mental retardation established pursuant to Section 5126, Revised Code, or the functions thereof, or the establishment or operation of any facilities provided by Chapter 5127, Revised Code.

Section 5127.01, Revised Code, provides that 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. Such section further provides that the commissioner shall be the final authority in determining the nature and degree of mental deficiency and decide all questions relative or incidental to the establishment and operation of each training center or workshop.

A training center or workshop for the special training of mentally deficient persons contemplates a type of facility for the special training of a particular group of persons, i.e., mentally deficient persons, a "mentally deficient person" being defined within Section 5127.01, Revised Code. See Terteling Bros., Inc., v. Glander, Tax Commr., 151 Ohio St. 236, Syllabus No. 1. The term "mentally ill" is not used within the provisions of Chapters 5126 and 5127, Revised Code, and therefore such term is without significance with reference to the educational program or facility authorized, established and operated pursuant to said chapters.

Generally, "mental illness" and "mental deficiency" are considered to be contradistinctive terms. The General Assembly has used "mental illness" and "mental deficiency" as contradistinctive terms for group classification purposes, e.g., Sections 2947.25 and 5123.63, Revised Code.

The proceeds of the approved levy may be appropriated and used only for the purpose of establishing a training center or workshop as authorized by Section 5127.01, Revised Code. Although the ballot submitted to the voters used the term "mentally retarded persons," such term and the term "mentally deficient persons" in the present instance are considered synonymous. Compare Amended House Bill No. 688, enacted by the 108th Ohio General Assembly, effective November 21, 1969.

I am therefore of the opinion and you are advised that a community mental health and retardation board established pursuant to Chapter 340, Revised Code, is without authority to supervise or control a county board of mental retardation established pursuant to Section 5126, Revised Code, or the functions thereof, or the establishment or operation of any facilities provided by Chapter 5127, Revised Code, and that the educational facilities of the training center or workshop established pursuant to Section 5127.01, Revised Code, are only for the special training of mentally deficient persons, as a person of this classification is defined by such section.