

OPINION NO. 83-088**Syllabus:**

1. If a county children services board determines pursuant to R.C. 5153.16(D) that provision of family planning information is in the best interests of a child in the permanent custody of the board, the board may dispense such information to the child, or assist the child's acquisition of such information from a source other than the board.
2. If a reputable practicing physician advises the executive secretary of a children services board that provision of contraceptive devices appears to be necessary for a child in the permanent custody of the board, then the executive secretary may consent to provision of contraceptive devices to such child by the board or may consent to provision of such devices by a source other than the board in accordance with R.C. 5153.11. Absent the requisite advice from a physician, a county children services board and its executive secretary are without authority to provide such devices or to aid a child in the permanent custody of the board to obtain such devices.
3. When a court places an abused, neglected or dependent child in the permanent custody of a children services board thereby divesting the natural parents of all parental rights and privileges, the board has no duty to involve the natural parents in decisions concerning the provision or assistance in the acquisition of family planning information or contraceptive devices for the child.
4. A minor in the permanent custody of a children services board need not gain the consent of the board prior to obtaining family planning information or contraceptive devices from a source other than the board.

To: Anthony G. Pizza, Lucas County Prosecuting Attorney, Toledo, Ohio
By: Anthony J. Celebreeze, Jr., Attorney General, December 20, 1983

I have before me your request for an opinion in which you ask several questions concerning the authority of a county children services board to provide family planning information or contraceptive devices to the dependent, neglected and abused children in its care and custody.¹

Initially, it must be noted that a county children services board is a creature of statute, created and organized under R.C. Chapter 5153. As such, it has only those powers which are conferred upon it by statute. See, e.g., State ex rel. Clarke

¹ It is my understanding that your questions do not concern abortion. Accordingly, this opinion will not address that subject.

v. Cook, 103 Ohio St. 465, 467, 134 N.E. 655 (1921); State ex rel. Bentley & Sons Co. v. Pierce, 96 Ohio St. 44, 47, 117 N.E. 6, 7 (1917).

Furthermore, I note that you have indicated that your questions pertain only to those abused, neglected or dependent children in the permanent custody of a county children services board pursuant to R.C. 2151.353. The term "permanent custody" is defined under R.C. 2151.011(B)(12) as follows:

As used in this chapter:

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"Permanent custody" means a legal status created by the court which vests in the county department of welfare which has assumed the administration of child welfare, county children services board, or certified organization, all parental rights, duties, and obligations, including the right to consent to adoption, and divests the natural parents or adoptive parents of any and all parental rights, privileges, and obligations, including all residual rights and obligations. (Emphasis added.)

Thus, if a child is placed in the permanent custody of a county children services board, all parental rights are vested in such board, and all rights and privileges of the child's natural or adoptive parents are severed. This opinion concerns only children in such circumstances.

Your first question asks whether the Lucas County Children Services Board may provide family planning information or contraceptive devices at its residential facility, the Miami Children's Center, to children in its care. A county children services board is vested with broad authority concerning the care of children pursuant to R.C. 5153.16(D), which provides:

The county children services board or county department of welfare that has assumed the administration of child welfare, subject to the rules and standards of the department of public welfare, on behalf of children in the county considered by the board or department to be in need of public care or protective services, shall:

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Provide such care as the board or county department considers to be in the best interests of any child the board or county department finds to be in need of public care or service; such care shall be provided by the board or county department, by its own means or through other available resources, in the child's own home, in the home of a relative, or in a certified foster home, receiving home, school, hospital, convalescent home, or other institution, public or private, within or outside the county or state. . . . (Emphasis added.)

Clearly, if a court has vested a county children services board (CSB) with permanent custody of a child, the child has been found in need of public care or service. Under such circumstances, a CSB is authorized to provide the care it determines to be in best interests of such child. Consequently, if a county children services board determines that provision of family planning information is in the best interests of a child in its permanent custody, then a board may dispense such information to the child.

As noted above, the authority granted under R.C. 5153.16(D) is quite broad. However, this authority has been constrained in the area of health care for children in the custody of a county children services board by the specific provisions of R.C. 5153.11 which states, in pertinent part:

Upon the advice of one or more reputable practicing physicians, the executive secretary may consent to such medical, dental and surgical care, including surgery and the administration of anesthetics,

inoculations, and immunizations, or other care as appears to be necessary for any child who is in the temporary or permanent custody of such board of department.

It is my understanding that the Lucas County Children Services Board operates a medical dispensary at its Miami Children's Center residential facility for the benefit of the children in its charge. If a reputable practicing physician advises the executive secretary of a CSB that a course of medical or other health care appears to be necessary for any child in the temporary or permanent custody of such CSB, then the executive secretary is authorized, under R.C. 5153.11, to consent to such care. There is no statutory ground upon which to distinguish advice to provide contraceptives from advice to provide any other medication, so long as a physician advises that such care appears necessary for the child. A county children services board may, thus, consent to provision of contraceptive devices to a child in its permanent custody if a reputable practicing physician advises the executive secretary of the board that such care appears to be necessary for the child.

Your second question asks whether a county children services board and/or its executive secretary may aid a minor in its care to obtain family planning information or contraceptive devices from sources other than the county children services board. The grant of authority pursuant to R.C. 5153.16(D), discussed earlier, is sufficiently broad to permit a CSB or its executive secretary to aid a minor in its permanent custody to obtain family planning information from a source other than the CSB if it determines that access to such information is in the best interests of the child. However, as indicated earlier, the law distinguishes the provision of health care from other care provided to a child by a CSB. A CSB or its executive secretary is only authorized to consent to such health care services as a reputable practicing physician may advise appears to be necessary for a child. Accordingly, if a reputable practicing physician advises that such care appears to be necessary for a child in the permanent custody of the board, the executive secretary of the board may consent to the provision of contraceptive devices by a source other than the board. Absent the requisite advice from a physician, a county children services board, or its executive secretary, is without statutory authority to aid a minor in its permanent custody to obtain contraceptive devices.

You have also questioned the duty of a children services board to involve a child's natural parents in any decision concerning the provision or assistance in the acquisition of family planning information or contraceptive devices for a child in its care. As discussed earlier, this opinion concerns only those abused, neglected or dependent children who are in the permanent custody of a CSB pursuant to a court order. See R.C. 2151.01(B)(12); R.C. 2151.353. When a court places such a child in the permanent custody of a CSB, the child's natural or adoptive parents are divested of all parental rights, privileges, and obligations; all parental rights are vested in the CSB. Accordingly, a CSB has no duty to involve the natural parents in decisions concerning the provision or assistance in the acquisition of family planning information or contraceptive devices for a child who a court has placed in the permanent custody of the board.

Your final question asks whether a child in the permanent custody of a CSB must obtain the consent of the board or its executive secretary prior to obtaining family planning information or contraceptive devices from sources other than the board. While there is no pertinent statutory provision in this state, federal courts have examined the issue of a minor's rights in this area. The United States Supreme Court has held that "[t]he right to privacy in connection with decisions

affecting procreation extends to minors as well as to adults." Carey v. Population Services International, 431 U.S. 678 (1977) (syllabus paragraph 4(a)).² Subsequently, the United States Court of Appeals for the Sixth Circuit considered a case which involved a family planning center that distributed contraceptive devices and medication to unemancipated minors without notice to the minors' parents. The Court therein, relying upon Carey, expressly stated that "[a]s with adults, the minor's right of privacy includes the right to obtain contraceptives." Doe v. Irwin, 615 F.2d 1162, 1166 (6th Cir.), cert. denied, 449 U.S. 829 (1980). The Court in Irwin further found "no deprivation of the liberty interest of parents in the practice of not notifying them of their children's voluntary decisions to participate in the activities" of the family planning center. 615 F.2d at 1168. It is, therefore, apparent that a child has a constitutionally protected privacy interest regarding the decision to obtain contraceptive devices.

The cases referred to concern the rights and interest of parents regarding their minor children's procreative decisions. As discussed earlier, this opinion concerns only those children whose natural or adoptive parents have been divested of parental rights and privileges. While a CSB to which permanent custody has been granted is vested with parental rights and acts in loco parentis with regard to such children, the laws of this state impose no obligation upon a minor to seek the consent of a parent, or one acting in loco parentis, prior to obtaining family planning information or contraceptive devices. Furthermore, the courts have clearly declared that a minor's decision to obtain contraceptive devices and information falls within the minor's constitutionally protected rights. Consequently, a child in the permanent custody of a children services board need not gain the consent of the board or its executive secretary prior to obtaining such information or devices from a source other than the board.

Based upon the foregoing, it is my opinion, and you are advised that:

1. If a county children services board determines pursuant to R.C. 5153.16(D) that provision of family planning information is in the best interests of a child in the permanent custody of the board, the board may dispense such information to the child, or assist the child's acquisition of such information from a source other than the board.
2. If a reputable practicing physician advises the executive secretary of a children services board that provision of contraceptive devices appears to be necessary for a child in the permanent custody of the board, then the executive secretary may consent to provision of contraceptive devices to such child by the board or may consent to provision of such devices by a source other than the board in accordance with R.C. 5153.11. Absent the requisite advice from a physician, a county children services board and its executive secretary are without authority to provide such devices or to aid a child in the permanent custody of the board to obtain such devices.
3. When a court places an abused, neglected or dependent child in the permanent custody of a children services board thereby divesting the natural parents of all parental rights and privileges, the board has no duty to involve the natural parents in decisions

² This case concerned a New York statute which restricted distribution of contraceptives. The Court held, *inter alia*, that attempts by the state to suppress information about the availability and price of contraceptives unjustly infringed upon expression protected by the First Amendment to the United States Constitution. Further, the Court held that a blanket prohibition of the distribution of contraceptives to minors is an unconstitutional infringement of a minor's right to privacy. 431 U.S. 678 (1977) (syllabus paragraph 4).

concerning the provision or assistance in the acquisition of family planning information or contraceptive devices for the child.

4. A minor in the permanent custody of a children services board need not gain the consent of the board prior to obtaining family planning information or contraceptive devices from a source other than the board.