

February 14, 2000

OPINION NO. 2000-010

The Honorable Kevin J. Baxter
Erie County Prosecuting Attorney
247 Columbus Avenue, Suite 319
Sandusky, Ohio 44870-2636

Dear Prosecutor Baxter:

We have received your request for an opinion concerning the Erie County Family and Children First Council. You have asked the following questions:

1. Under R.C. 121.37(B), does a county family and children first council have the authority to expand the county council to include non-statutory members such as a county auditor?
2. Under R.C. 121.37(B), may a statutory member of a county family and children first council appoint a designee to attend and vote in that statutory member's place?
3. Under R.C. 121.37, may a statutory member of a county family and children first council vote in absentia by either written or oral proxy to another member or the chair?
4. Under R.C. 121.37(B), may a county family and children first council adopt rules and regulations relating to personnel issues, such as travel and benefits, which would supersede the administrative agent's personnel rules and regulations?

We are informed that the Erie County Family and Children First Council operates in accordance with R.C. 121.37(B) and that several issues have arisen concerning its operation. Of particular interest is the question whether persons appointed by the administrative agent to perform duties for the council are subject to the personnel policies of the administrative agent, or whether the council is permitted to adopt more restrictive personnel policies to govern those persons.

Let us begin our analysis with an examination of the provisions governing a county family and children first council. We note, first, that county family and children first councils are created pursuant to R.C. 121.37, which also provides for the Ohio Family and Children First Cabinet Council. The Ohio Family and Children First Cabinet Council is a statewide council created to coordinate the delivery of various services to children. That statewide council is composed of the superintendent of public instruction and the directors of youth services, human services, mental health, health, alcohol and drug addiction services, mental retardation and developmental disabilities, and budget and management. It is chaired by the governor or the governor's designee. R.C. 121.37(A).

A county family and children first council coordinates the delivery of services to children on a county level. R.C. 121.37(B) requires that each county establish a county family and children first council. The county council must include certain named public officials, representatives from various specified public bodies, and at least three individuals whose families have received services from agencies represented on a county council. The county may invite other agencies or groups to have a representative serve as a permanent or temporary member. R.C. 121.37(B)(1).¹

¹ The membership provisions governing a county council are as follows:

Each county shall establish a county family and children first council. A county may invite any local public or private agency or group that funds, advocates, or provides services to children and families to have a representative become a permanent or temporary member of its county council. Each county council must include the following individuals:

(a) At least three individuals whose families are or have received services from an agency represented on the council or another county's council. Where possible, the number of members representing families shall be equal to twenty per cent of the council's membership.

(b) The director of the board of alcohol, drug addiction, and mental health services that serves the county, or, in the case of a county that has a board of alcohol and drug addiction services and a community mental health board, the directors of both boards. If a board of alcohol, drug addiction, and mental health services covers more than one county, the director may designate a person to participate on the county's council.

(c) The health commissioner, or the commissioner's designee, of the board of health of each city and general health district in the county. If the county has two or more health districts, the health commissioner membership may be limited to the commissioners of the two districts with the largest populations.

(d) The director of the county department of human services;

(e) The executive director of the county agency responsible for the administration of children services pursuant to section 5153.15 of the Revised Code;

(f) The superintendent of the county board of mental retardation and developmental disabilities;

(g) The county's juvenile court judge senior in service or another judge of the juvenile court designated by the administrative judge or, where there is no administrative judge, by the judge senior in service;

(h) The superintendent of the city, exempted village, or local school district with the largest number of pupils residing in the county, as determined by the department of education, which shall notify each county of its determination at least biennially;

(i) A school superintendent representing all other school districts with territory in the county, as designated at a biennial meeting of the superintendents of those districts;

(j) A representative of the municipal corporation with the largest population in the county;

(k) The chair of the board of county commissioners, or an individual designated by the board;

(l) A representative of the regional office of the department of youth services;

(m) A representative of the county's head start agencies, as defined in section 3301.31 of the Revised Code;

(n) A representative of the county's early intervention collaborative established pursuant to the federal early intervention program operated under the "Education of the Handicapped Act Amendments of 1986";

(o) A representative of a local nonprofit entity that funds, advocates, or provides services to children and families.

Notwithstanding any other provision of law, the public members of a county council are not prohibited from serving on the council and making decisions regarding the duties of the council, including those involving the funding of joint projects and those outlined in the county's service coordination mechanism implemented pursuant to division (C) of this section.

The cabinet council shall establish a state appeals process to resolve disputes among the members of a county council concerning whether reasonable responsibilities as members are being shared. The appeals process may be accessed only by a majority vote of the council members who are required to serve on the council. Upon appeal, the cabinet council may order that state funds for services to children and families be redirected to a county's board of county commissioners.

The county council is a creature of statute and, as such, has only those powers that it is granted by statute, either expressly or by implication. *See, e.g.*, 1996 Op. Att’y Gen. No. 96-046. The county council does not itself hire employees. Rather, it designates an administrative agent from among various named public entities. R.C. 121.37(B)(4).² The administrative agent serves as the council’s appointing authority and ensures that all expenditures of the council are properly handled. The administrative agent is authorized to enter into contracts, accept gifts, and perform various other functions relating to the operation of the county council. *Id.*

Let us turn now to your first question, which asks whether a county family and children first council has the authority to expand the council to include non-statutory members, such as a county auditor. Pursuant to statute, a county council “must include” certain individuals. R.C. 121.37(B)(1); *see* note 1, *supra*. Those members represent the board of alcohol, drug addiction, and mental health services, the board of health, the county department of human services, the county agency responsible for the administration of children services, the county board of mental retardation and developmental disabilities, the juvenile court, the public schools, the most populous municipality in the county, the board of county commissioners, the Department of Youth Services, the county’s head start agencies, and the county’s early intervention collaborative. R.C. 121.37(B)(1). The county council must also include a representative of a local nonprofit entity that funds, advocates, or provides services to children and families, and, in addition, must include at least three individuals whose families are recipients of services. *Id.*

The membership of a county council is not restricted to the members expressly listed. The statute provides that, in addition to those members, “[a] county may invite any local public or private agency or group that funds, advocates, or provides services to children and families to have a representative become a permanent or temporary member of its county council.” R.C. 121.37(B)(1). Hence, it is clear that a county council has the authority to expand the council to include members who are not listed in the statute.

Your specific question is whether a member “such as a county auditor” may be included on the county council. The statute lists individuals who must be included as members and also persons who may be invited to serve as members. The county auditor is not listed as an individual who must be included on the council. However, it appears that the county auditor may be invited to serve as a permanent or temporary member of the council.

² The entities that may serve as administrative agent are: the board of alcohol, drug addiction, and mental health services; a board of alcohol and drug addiction or a community mental health board; the board of county commissioners; a board of health; the county department of human services; the county agency responsible for the administration of children services; the county board of mental retardation and developmental disabilities; a board of education or the governing board of an educational service center; and the juvenile court. Any entity other than the board of county commissioners may decline to serve. R.C. 121.37(B)(4).

The county council is permitted to invite “any local public or private agency or group that funds, advocates, or provides services to children and families” to have a representative serve as a member. R.C. 121.37(B)(1). Although the word “agency” is frequently used to refer to an organization, *see Webster’s Third New International Dictionary* 40 (unabridged ed. 1993) (defining “agency” as “an establishment engaged in doing business for another” or an “administrative unit of a government”), it may also be used to refer to a single individual, *see Webster’s Third New International Dictionary* 40 (unabridged ed. 1993) (defining “agency” as “a person or thing through which power is exerted or an end is achieved”). Hence, a public official or private individual who is involved in the funding, support, or provision of services to children and families may be invited to serve on a county council in accordance with R.C. 121.37(B)(1).

The county auditor is an agent of the county who performs important functions relating to the administration of county finances, including the funding of services for children and families. *See, e.g.,* R.C. 319.15-.16; R.C. 319.28-.30; R.C. 5705.27; R.C. 5705.31. The provision of county funds for various purposes is within the expertise and responsibility of the county auditor, and it is clear that the auditor’s participation on the county council could assist the council in making funding determinations. In this regard, the participation of the county auditor on a county family and children first council could serve a purpose similar to that of the participation of the director of budget and management on the Ohio Family and Children First Cabinet Council. *See* R.C. 121.37(A). Therefore, if the county council invites the county auditor to serve as a member of the council, and if the county auditor accepts that offer, the county auditor may so serve.³

We conclude, accordingly, that, pursuant to R.C. 121.37(B)(1), a county family and children first council may expand the membership of the council beyond those persons who are required by statute to serve on the council by inviting any local public or private agency or group (including a public official or private individual) that funds, advocates, or provides services to children and families to have a representative become a permanent or temporary member. The county auditor is a public official who participates in the funding of services for children and families and thus may be invited to serve as a member of the county family and children first council.

Let us turn now to your second question, which asks whether a member of a county family and children first council may appoint a designee to attend and vote in that member’s place. The general question whether members of a public body may designate representatives to

³ This reading of the law is consistent with the action taken by the various state agencies that serve on the Ohio Family and Children First Cabinet Council and work with county family and children first councils. Those state agencies have permitted a county council to include among its members groups or individuals who participate in the funding, support, or provision of services to children and families.

vote on their behalf was considered in 1996 Op. Att’y Gen. No. 96-046. That opinion concluded that Ohio’s public meeting law prohibits such designation, because the law requires a member of a public body to “be present in person ... to vote at the meeting.” R.C. 121.22(C). Thus, members of a public body are required to appear in person at a meeting in order to vote and are not permitted to send representatives to vote on their behalf if they are absent. 1996 Op. Att’y Gen. No. 96-046, at 2-174.

A related question, however, is whether another individual may be designated not to act on behalf of a member but, rather, to serve as a member of the county council in place of the original member. *See, e.g.*, 1984 Op. Att’y Gen. No. 84-074. Such a designee would be permitted under R.C. 121.22(C) because the designee would be a member of the county council, exercising powers previously held by the person who selected the designee.

In the instant case, the statute governing membership on a county family and children first council clearly establishes instances in which a designee or a representative may be named to be a member of a county council. In the list of those who are required or permitted to serve on a county council, the statute specifies in certain instances that a designee may be named to participate as a member of the council, thereby indicating that the designee is authorized to attend and vote. R.C. 121.37(B). The authority to name such a designee is granted to the director of a board of alcohol, drug addiction, and mental health services (but only if the board covers more than one county), R.C. 121.37(B)(1)(b); the health commissioner of an appropriate health district, R.C. 121.37(B)(1)(c); the administrative judge or juvenile court judge senior in service, whose authority extends only to designating another judge of the juvenile court, R.C. 121.37(B)(1)(g); and the board of county commissioners, R.C. 121.37(B)(1)(k).

Certain other entities that are included on a county family and children first council are granted authority to select a representative to serve as a member of the county council. The entities that are authorized to select representatives are the local public or private agencies or groups invited to join the council pursuant to R.C. 121.37(B)(1); the school districts with territory in the county (other than the school district with the largest number of pupils residing in the county), whose superintendents meet biennially to designate a superintendent to serve as their representative, R.C. 121.37(B)(1)(i); the municipal corporation with the largest population in the county, R.C. 121.37(B)(1)(j); the regional office of the Department of Youth Services, R.C. 121.37(B)(1)(l); the county’s head start agencies, R.C. 121.37(B)(1)(m); the county’s early intervention collaborative, R.C. 121.37(B)(1)(n); and the local nonprofit entity that funds, advocates, or provides services to children and families, R.C. 121.37(B)(1)(o).

Except as otherwise provided, the authority of these entities to select representatives to serve on the county council includes the implied authority to change those representatives from time to time, thereby designating different individuals to attend and vote at meetings. *See generally Jewett v. Valley Ry. Co.*, 34 Ohio St. 601, 608 (1878); 1977 Op. Att’y Gen. No. 77-064. Once a representative has been named, however, the statute does not authorize the representative to appoint a designee.

On the other hand, while it permits some designees, R.C. 121.37 does not appear to authorize some members to appoint designees or to name representatives. Those members are individuals whose families are recipients of services, R.C. 121.37(B)(1)(a); the director of the board of alcohol, drug addiction, and mental health services that serves a single county, or the directors of the board of alcohol and drug addiction services and the community mental health board, R.C. 121.37(B)(1)(b); the director of the county department of human services; R.C. 121.37(B)(1)(d); the executive director of the county agency responsible for the administration of children services, R.C. 121.37(B)(1)(e); the superintendent of the county board of mental retardation and developmental disabilities, R.C. 121.37(B)(1)(f); and the superintendent of the city, exempted village, or local school district with the largest number of pupils residing in the county, R.C. 121.37(B)(1)(h). These individuals may appoint a designee to attend and vote at county council meetings in their place only if they are granted such authority by a statute other than R.C. 121.37. *See, e.g.*, R.C. 3.06(A) (a duly qualified deputy may perform any duties of his principal); *cf.* R.C. 121.05 (the director of a state department may designate an assistant director or deputy director to serve in the director's place as a member of a board, committee, authority, or commission). *See generally* 1977 Op. Att'y Gen. No. 77-064, at 2-235 (public member of commission "must personally perform those duties attendant to ... membership, except in those situations in which members are expressly authorized by [statute] to send a representative"). Our research discloses no general authority in this regard. We leave to you a thorough examination of all provisions governing the members of your particular county council.

Let us now consider your third question, which asks whether a member of a county family and children first council may vote in absentia by either written or oral proxy to another member or the chair. The question of voting in absentia has been addressed by the General Assembly in the public meeting law as follows: "A member of a public body *shall be present in person* at a meeting open to the public ... *to vote* at the meeting." R.C. 121.22(C) (emphasis added).

This provision applies to public meetings of public bodies. A county family and children first council is a public body, as that term is used in the public meeting law. R.C. 121.22(B)(1) (defining "[p]ublic body" to include "any ... council ... or similar decision-making body of any county"); *see* 1993 Op. Att'y Gen. No. 93-050 (local cluster is county board for purposes of representation by county prosecutor); *see also* R.C. 121.37(B) (county council makes various types of decisions); 1994 Op. Att'y Gen. No. 94-096.

Public bodies are required to "take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law." R.C. 121.22(A). Certain matters may be discussed in executive session—as, for example, if confidentiality is required—but formal action of the public body, such as voting, may be taken only at an open meeting. R.C. 121.22(G) and (H); *see also* 1980 Op. Att'y Gen. No. 80-083, at 2-329 ("[v]oting is considered to be a final action, which must be done publicly").

Thus, a county family and children first council must take its formal action only at public meetings, and a member is required to be present in person at the meeting in order to vote. This

requirement eliminates any possibility of voting in absentia by written or oral proxy. Rather, pursuant to R.C. 121.22(C), a member of a county family and children first council must be present in person in order to vote at a meeting of the county council and cannot vote in absentia by written or oral proxy.

Finally, let us turn to your fourth question, which asks whether a county family and children first council may adopt rules and regulations relating to personnel issues, such as travel and benefits, which would supersede the administrative agent's personnel rules and regulations. As outlined in your letter, the county council does not itself have any employees. Rather, persons who perform duties for the council are housed within the appointing authority of the administrative agent. We are informed that certain members of the council in your county believe that the personnel rules and regulations of the administrative agent are more expansive than the ones those members have adopted under their own appointing authority status. Thus, they are interested in limiting eligible reimbursements on the basis of criteria not adopted by the present administrative agent.

As noted above, each county council is required to designate one of the named public entities as administrative agent. R.C. 121.37(B)(4); *see* note 2, *supra*. The administrative agent serves as appointing authority and is authorized to perform various actions on behalf of the county council. R.C. 121.37(B)(4).

We have previously observed that a county family and children first council has only the powers that it is given by statute. No statute authorizes the county council to employ personnel or to adopt rules and regulations relating to personnel issues. Instead, the responsibility of securing and administering such personnel as may be necessary rests with the administrative agent, who is designated the appointing authority. R.C. 121.37(B)(4). The apparent intent of the General Assembly was that the administrative agent would employ council personnel in accordance with its general authority to serve as an appointing authority. This arrangement seems appropriate in light of the comparatively small number of employees the county council is likely to need.

The result of this arrangement is that county council personnel are subject to the personnel policies of the administrative agent. A county family and children first council has no authority to adopt rules and regulations relating to personnel issues, such as travel and benefits, that would supersede the administrative agent's personnel rules and regulations.

For the reasons discussed above, it is my opinion, and you are advised, as follows:

1. Pursuant to R.C. 121.37(B)(1), a county family and children first council may expand the membership of the council beyond those persons who are required by statute to serve on the council by inviting any local public or private agency or group (including a public official or private individual) that funds, advocates, or provides services to children and families to have a representative become a permanent or temporary member. The county auditor is a public official who participates in the funding of services for

children and families and thus may be invited to serve as a member of the county family and children first council.

2. A member of a county family and children first council may appoint a designee to attend meetings and vote in the place of the designating member only if there is statutory authority for the member to make such an appointment.
3. Pursuant to R.C. 121.22(C), a member of a county family and children first council must be present in person in order to vote at a meeting of the county council and cannot vote in absentia by written or oral proxy.
4. A county family and children first council has no authority to adopt rules and regulations relating to personnel issues, such as travel and benefits, that would supersede the administrative agent's personnel rules and regulations.

Respectfully,

BETTY D. MONTGOMERY
Attorney General

February 14, 2000

The Honorable Kevin J. Baxter
Erie County Prosecuting Attorney
247 Columbus Avenue, Suite 319
Sandusky, Ohio 44870-2636

SYLLABUS:

2000-010

1. Pursuant to R.C. 121.37(B)(1), a county family and children first council may expand the membership of the council beyond those persons who are required by statute to serve on the council by inviting any local public or private agency or group (including a public official or private individual) that funds, advocates, or provides services to children and families to have a representative become a permanent or temporary member. The county auditor is a public official who participates in the funding of services for children and families and thus may be invited to serve as a member of the county family and children first council.
2. A member of a county family and children first council may appoint a designee to attend meetings and vote in the place of the designating member only if there is statutory authority for the member to make such an appointment.
3. Pursuant to R.C. 121.22(C), a member of a county family and children first council must be present in person in order to vote at a meeting of the county council and cannot vote in absentia by written or oral proxy.
4. A county family and children first council has no authority to adopt rules and regulations relating to personnel issues, such as travel and benefits, that would supersede the administrative agent's personnel rules and regulations.