

ATTORNEY GENERAL

legislative district offices would be valid under Art. IV, § IV, para. 7 of the 1947 New Jersey Constitution. Your attention is again directed, however, to the importance of coordination of such a program with the State Treasurer.

Very truly yours,
WILLIAM F. HYLAND
Attorney General
By: PETER D. PIZZUTO
Deputy Attorney General

* Art. IV, §IV, para. 7 of the 1844 document, as amended, directed:

“Members of the senate and general assembly shall receive annually the sum of five hundred dollars during the time for which they shall have been elected, and while they shall hold their office, and no other allowance or emolument, directly or indirectly, for any purpose whatever.”

** The original language of 1844 specified:

“Members of the senate and general assembly shall receive a compensation for their services, to be ascertained by law, and paid out of the Treasury of the State; which compensation shall not exceed the sum of three dollars per day for the period of forty days from the commencement of the session, and shall not exceed the sum of one dollar and fifty cents per day for the remainder of the session. When convened in extra session by the Governor they shall receive such sum as shall be fixed for the first forty days of the ordinary session. They shall also receive the sum of one dollar for every ten miles they shall travel in going to and returning from their place of meeting, on the most usual route.”

September 9, 1974

THE HONORABLE ANN KLEIN
Commissioner
Department of Institutions
and Agencies
135 West Hanover Street
Trenton, New Jersey 08625

FORMAL OPINION NO. 7-1974

Dear Commissioner Klein:

You have asked for an opinion as to whether the county government or the state government is responsible for establishing shelter care facilities for juveniles in need of supervision pursuant to N.J.S.A. 2A:4-42 *et seq.* Initially, it should be noted that N.J.S.A. 2A:4-42 does not require that any new accommodations for juveniles be built or otherwise established. Since the Legislature enacted this code only a few months in advance of its effective date, it did not contemplate the need to establish additional residential facilities. If, however, existing residential arrangements do

FORMAL OPINION

prove inadequate, then, you are hereby advised that the county governing body may establish such new facilities or adapt existing facilities so as to provide for the shelter care of juveniles within its jurisdiction. The Division of Youth and Family Services may establish such shelters for children who are in its care, custody or guardianship programs. The State, however, has no obligation to establish and maintain facilities for the shelter care of every juvenile determined to be in need of supervision.

Under the new juvenile act, which became effective March 1, 1974, "shelter care" is defined as "the temporary care of juveniles in facilities without physical restriction pending court disposition" (N.J.S.A. 2A:4-43d) and "detention" means "the temporary care of juveniles in physically restricting facilities pending court disposition." N.J.S.A. 2A:4-43c. Furthermore, the act distinguishes between those juveniles charged with an act of delinquency (N.J.S.A. 2A:4-44) and those juveniles in need of supervision (N.J.S.A. 2A:4-45) and clearly establishes different criteria for placing a juvenile in a detention facility or in a shelter facility pending court disposition. N.J.S.A. 2A:4-56. It is thus immediately apparent that the law no longer permits a youth house facility to be used indiscriminately as a place of detention for alleged delinquents and as a place of residence for those juveniles who may be abandoned or neglected or who may be charged with some juvenile offense such as truancy, incorrigibility, etc. The act, while authorizing use of separate facilities, does not provide for the establishment of any new facilities nor does the act repeal any sections of the existing law providing for the establishment of shelter care facilities. Therefore, in order to fix the responsibility for establishment and maintenance of shelter care facilities, it is necessary to examine existing law.

Under N.J.S.A. 9:12A-1, the county board of chosen freeholders may establish and maintain shelters for the temporary residence of juveniles. N.J.S.A. 9:12A-1 provides in pertinent part:

"The board of chosen freeholders of any court may establish, equip and maintain a home for the temporary detention of children, separated entirely from any place of confinement of adults, to be known as "The Children's Shelter of County," which shall be conducted as an agency for the purpose of caring for the children of the county whose cases are pending before the juvenile and domestic relations court of the county or who are homeless or abandoned, abused, neglected or cruelly treated, or who, being under 16 years of age, are witnesses before such court or some other court." N.J.S.A. 9:12A-1.

Similarly, the county is authorized to appropriate funds for the maintenance of County Youth Houses (N.J.S.A. 9:11-8), County Detention Schools (N.J.S.A. 9:10-3), and County Homes for Children. N.J.S.A. 9:12-1.

In the event the county fails to establish a residential facility, county funds must be used to maintain the juvenile in an appropriate place in a neighboring county, at a state facility or in a foster home. Under N.J.S.A. 44:4-24, the county welfare board has charge of the supervision of the relief and settlement of the poor in its jurisdiction. "Settlement of a person" means his right under the provisions of Chapter 4 of Title 44 to relief, maintenance or support in any county or counties. N.J.S.A. 44:4-1. Specifically, if a county maintains a Youth House for the detention of juveniles, the court has the power to order financially able parents to pay the county for the maintenance and clothing of the detainee. N.J.S.A. 9:11-6. Even when a young-

ATTORNEY GENERAL

ster is adjudged delinquent and committed to a state institution, the expenses of the committment and board are to be paid by financially able parents to the county treasurer. N.J.S.A. 30:4-157.4.

The Legislature, on the other hand, has placed no statutory burden on the State to maintain facilities for shelter care of all juveniles. Only juveniles enrolled in Division of Youth and Family Services programs are statutorily eligible for maintenance by the State. N.J.S.A. 30:4C-27 provides in pertinent part:

“Pursuant to the providing of care, custody or guardianship for any child, in accordance with the provisions of this act¹, the Bureau of Children’s Services may expend sums as may be necessary for the reasonable and proper cost of maintenance, including board, lodging, clothing, medical, dental, and hospital care, or any other similar or specialized commodity or service as the needs of any such child may require . . .” N.J.S.A. 30:4C-27.

Since this provision is permissive rather than mandatory, the obligation to provide maintenance for even Division of Youth and Family Services children can be considered discretionary with the agency. In any event, the Division of Youth and Family Services has the statutory power to assess a certain portion of any maintenance costs it expends for children in the State to the home counties of the children involved. N.J.S.A. 30:4C-30 provides that maintenance costs for each child in the care, custody or guardianship of the Division are to be shared 75% by the State and 25% by the county.

Moreover, the State is authorized to establish child care shelters pursuant to N.J.S.A. 40:4C-26.2, but they are restricted in their use by N.J.S.A. 30:4C-26.3 which provides *inter alia* that “such shelters shall be equipped and used for the temporary care and supervision of children who are placed in the care, custody or guardianship of the State Division of Youth and Family Services”. Thus, maintenance payments by the State are reserved for those youngsters accepted by the Division of Youth and Family Services for placement. To be eligible for placement in a Division of Youth and Family Services program, the youngster must be of such circumstances as to qualify for these services under N.J.S.A. 30:4C-11. If the child meets the standards set forth in N.J.S.A. 30:4C-11, “then the Bureau of Children’s Services *may* accept and provide such care or custody as the circumstances of such child may require”. N.J.S.A. 30:4C-11 (emphasis added). For purposes of temporary shelter care pending a hearing, the Division of Youth and Family Services has no statutory obligation to maintain youngsters who are not in its programs.

Therefore, the county governing bodies may establish shelter care facilities if they deem it necessary or they must expend the sums necessary for maintaining county juveniles in other appropriate facilities.

Very truly yours,
WILLIAM F. HYLAND
Attorney General

By: JOSEPH T. MALONEY
Deputy Attorney General

1. Sections 30:4C-1 to 30:4C-40