



WILLIAM J. SCOTT

ATTORNEY GENERAL
STATE OF ILLINOIS
500 SOUTH SECOND STREET
SPRINGFIELD

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FILE NO. S-835

APPROPRIATIONS:

Expenditure from Department
of Mental Health Appropriation
to Individuals Who Are Performing
Services Unrelated to the Powers
and Duties of the Department of
Mental Health

Honorable Robert S. Juckett
Chairman
Mental Health Fund Advisory Committee
2059 State Office Building
Springfield, Illinois 62706

Dear Mr. Juckett:

I have your letter in which you state:

"As Chairman of the Mental Health Fund
Advisory Committee, I would like to request
a legal opinion from you in regard to the
announced spending by Governor Walker.

It is my understanding that Governor Walker
intends to spend monies appropriated by the
General Assembly for specific positions and
purposes in the mental health field for

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positions and purposes other than mental health; specifically the Governor's Office of Human Resources, the Governor's Office of Collective Bargaining, Illinois Information Service, and the Office of Special Investigations.

Is it legal for the Governor to hire persons and pay them out of the appropriation to the Department of Mental Health, which persons are performing services that are completely unrelated to the powers and duties of the Department of Mental Health?"

My answer to the question you have raised is premised on my understanding of your statement that the individuals to which you refer are in fact performing services unrelated to any purpose within the functions, powers or duties of the Department of Mental Health.

Section 2(b) of article VIII of the Illinois Constitution of 1970 provides: "The General Assembly by law shall make appropriations for all expenditures of public funds by the State. * * *" This section states the basic proposition that the General Assembly alone has the authority to obligate or expend funds. VII 6th Ill. Const. Conv., Comm. Prop., p. 2011 (1972); II 6th Ill. Const. Conv., Record of Proceedings, 883 (1972).

Section 1(b) of article VIII provides: "The State,

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units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance."

In presenting this section to the floor of the Constitutional Convention, Delegate Cicero stated:

"* * * This (section) is intended to be a reaffirmation of the general rule that requires expressed authority for agents of government to make contracts or obligations binding government, or to make expenditures, payments, and so on." II 6th Ill. Const. Conv., Record of Proceedings, 871 (1972).

Generally, a department of State government must find its source of authority in the statute conferring it, and can exercise the power conferred only in conformity with the statute. (People ex rel. Brundage v. Richeimer, 298 Ill. 611, 618.) When you state that these individuals are performing services "unrelated" to the powers and duties of the Department of Mental Health, I assume, as hereinabove indicated, that you mean that the function which these individuals are performing are not for a purpose within the statutory power or duty, express or implied, of the Department. Clearly, if the Department does not have such a duty or power, its appropriation cannot be expended for that purpose.

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Art. VIII, sec. 1(b), supra.

Specifically, "AN ACT making appropriations for the ordinary and contingent expenditures of the Department of Mental Health", (Public Act 78-1068), contains the following provision at the beginning of each section:

"The following named amounts, or so much thereof as may be necessary, respectively, are appropriated for the objects and purposes hereinafter named, to meet the ordinary and contingent expenditures of the Department of Mental Health."

An appropriation may be expended only in pursuance of legislative authority, and only for the objects and purposes specified, unless otherwise expressly permitted by law. (County of Cook v. Ogilvie, 50 Ill. 2d 379.) Assuming that the individuals to which you refer are not performing services which are within the objects and purposes of the appropriation to the Department of Mental Health, they cannot be paid from that appropriation.

My answer to your question must necessarily be couched in general terms. A determination of whether a particular individual's activities have incurred an

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obligation against the appropriation to the Department of
Mental Health must be left to the specific factual
considerations involved.

Very truly yours,

A T T O R N E Y G E N E R A L