



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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Jim Ryan
ATTORNEY GENERAL

FILE NO. 97-026

PUBLIC HEALTH:
Merger of Public Health and
Community Mental Health Boards

The Honorable Gary L. Spencer
State's Attorney, Whiteside County
200 East Knox Street
Morrison, Illinois 61270

Dear Mr. Spencer:

I have your letter wherein you inquire whether a county community mental health board and a public health board may be merged into a single entity. For the reasons hereinafter stated, it is my opinion that such a merger would not be possible under current law.

You have stated that the Whiteside County Public Health Board was established in 1966 by resolution of the county board pursuant to what is now division 5-25 of the Counties Code (55 ILCS 5/5-25001 et seq. (West 1996)). The Whiteside County Community Mental Health Board was established in 1968 following the passage of a referendum authorizing the levy of a mental health tax pursuant to the provisions now entitled the Community Mental Health Act (405 ILCS 20/1 et seq. (West 1996)).

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A public board of health consists of eight members appointed by the chairman of the county board, with the approval of the county board, for staggered three year terms beginning on July 1 following appointment. Membership on the board is to include two physicians, one dentist and one member of the county board. In addition, one member should have experience in the field of mental health (55 ILCS 5/5-25012 (West 1996)). The public health board is responsible for the operations of the public health department and its programs, which may include programs and services in mental health. (55 ILCS 5/5-25013 (West 1996).) It is funded either from county general funds or from the county health fund, which is derived from a tax levied by the county board for that purpose. (55 ILCS 5/5-25010 (West 1996).)

A community mental health board, established within a county which has adopted a referendum to levy a mental health tax, is composed of seven members appointed by the chairman of the county board with the advice and consent of the board. Membership on the board is to be representative of interested groups in the community, and is to include one member of the county board. (405 ILCS 20/3a (West 1996).) Members serve staggered four year terms measured from the first day of the year of appointment. (405 ILCS 20/3b (West 1996).) The board is responsible for the operation of services and facilities which it directs, supervises or funds, as well as for the review of

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certain grant applications submitted to the Department of Human Services. (405 ILCS 20/3e (West 1996).)

Any county which is authorized to levy a mental health tax is required to establish a community mental health board to administer the funds. (405 ILCS 20/3a (West 1996).) The establishment of a public health board is a prerequisite to the levy of the additional tax authorized to create the county health fund. (55 ILCS 5/5-25010 (West 1996).) Therefore, if the county is to levy the taxes necessary to fund the programs administered by these boards, the boards must exist, as provided in the respective acts. The membership of the two boards, while not necessarily mutually exclusive, is not identical; and the number of members, the length of terms of office and the beginning of terms all are distinctly different.

While the public health board is authorized to provide certain mental health services (55 ILCS 5/5-25013(A)(15) (West 1996)), it does not have the authority and duty to perform the community wide planning for mental health, joint programs with the Department of Human Services, and grant application review that a community mental health board does. Conversely, a community mental health board does not have the authority to operate public health programs apart from those involving mental health.

A non-home-rule county possesses only those powers that are expressly granted to it by statute or by the constitution (Ill. Const. 1970, art. VII, sec. 7), together with those powers

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that may be implied therefrom as being necessary to carry out the express powers. (Heidenreich v. Ronske (1962), 26 Ill. 2d 360.)

Division 5-25 of the Counties Code and the Community Mental Health Act specifically require that when taxes are levied for the purposes authorized by those Acts, the funds collected must be administered by the boards appointed for those purposes. Neither Act permits one board to administer funds collected for the other, or provides for the merger of the two boards. Therefore, in the absence of express or implied authority therefor, it is my opinion that a county has no authority to merge the boards.

Moreover, it is my opinion that an informal merger of the two boards, by appointing the members of one board to serve simultaneously as members of the other, is not possible because the offices are incompatible.

Offices are deemed to be incompatible where the constitution or a statute specifically prohibits the occupant of either one of the offices from holding the other, or where, because of the duties of either office a conflict of interest may arise, or the duties of either office are such that the holder of one cannot, in every instance, properly and faithfully perform all the duties of the other. (People ex rel. Myers v. Haas (1908), 145 Ill. App. 283, 286; People ex rel. Fitzsimmons v. Swailes (1984), 101 Ill. 2d 458, 465.) While no statute prohibits one person from serving simultaneously on both a mental health board

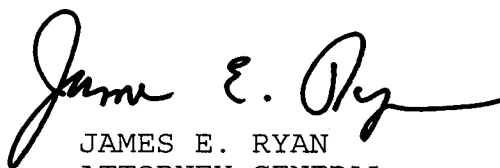
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and a public health board, the duties of the two offices may conflict.

The two boards are responsible for planning and administering programs supported by separately levied tax funds. Certain of these programs might reasonably be funded by either or both of the funds. The boards each have statutory authority to consult with other agencies, including each other, and to enter into joint agreements. (55 ILCS 5/5-25013; 405 ILCS 20/3e (West 1996).) In so doing, the members of each board have a fiduciary duty to act in the best interest of the funds and purposes of the public health department or the community mental health center, respectively. A person who was a member of both boards could not fully and faithfully serve either in such an event.

Therefore, it is my opinion that a county public health board and a community mental health board organized by the same county cannot be merged, and that one or more persons cannot properly be appointed to serve on both boards simultaneously.

Sincerely,

A handwritten signature in cursive script that reads "James E. Ryan". The signature is written in black ink and is positioned above the printed name and title.

JAMES E. RYAN
ATTORNEY GENERAL