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SPRINGFIELD

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FILE NO. 80-032

COUNTIES:

County Board's Authority to
Supervise the Activities of the
County Board for the Care and
Treatment of Certain Mentally
Deficient Persons

Honorable Michael M. Mihm
State's Attorney
Peoria County Court House
Peoria, Illinois 61602

Dear Mr. Mihm:

I have your letter wherein you request an opinion on several questions relating to the Peoria County Board's authority to supervise the activities of the Peoria County Board for the Care and Treatment of Certain Mentally Deficient Persons [Care and Treatment Board]. You have asked:

- (1) Whether title to real property acquired by the Care and Treatment Board should be held in its own name or in the name of the county of Peoria;
- (2) Whether the Care and Treatment Board, which provides services through contracts with

social service agencies, is the sole authority for determining which agencies shall receive funding;

- (3) Whether the Peoria County Board has the authority to amend or make changes in the budget submitted by the Care and Treatment Board in order to restrict or limit funding to certain organizations;
- (4) Whether the County Board has any authority to exercise control over funds levied pursuant to the Act;
- (5) Whether the Care and Treatment Board has the authority to hire personnel, including an administrator, accountant and legal counsel; and
- (6) Whether the State's Attorney is the legal counsel for the Care and Treatment Board.

"AN ACT concerning the care and treatment of certain deficient persons" (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 201 et seq.) [Care and Treatment Act] provides that a county may:

" * * * [P]rovide facilities or services for the benefit of its mentally deficient residents who are not eligible to participate in any such program conducted under Article 14 of the School Code, or may contract therefor with any privately or publicly operated entity which provides facilities or services either in or out of such county.

* * *

The county is authorized to levy a tax for the purposes of providing such services. (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 201.) Upon proper request, the question of whether a tax will be levied for such purposes is to be put to the voters

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by referendum. (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 202.)
Once a tax is levied, the county board is required to appoint
a board of directors [Care and Treatment Board] to administer
the Act. (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 203.)

The answer to your first question depends on
whether the Care and Treatment Board may be characterized
as an independent corporate entity. It is my opinion that
it may not. (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 204.)
The Care and Treatment Board has a broad grant of power, but
its creation and continued existence are dependent upon the
acts of the county board. (See, People v. Wood (1945), 391
Ill. 237.) The Care and Treatment Board is not a body politic
and corporate and it may not sue or be sued in its own name.
It is clear that the Care and Treatment Board is a creature
of the county, created to administer the Care and Treatment
Act and to efficiently deliver services to mentally deficient
persons. Therefore, it is my opinion that title to real
property acquired pursuant to the Act should be held in the
name of the county of Peoria, for the benefit of the Care
and Treatment Board.

In answer to your second and third questions, section
4 of the Act (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 204)
provides:

"

* * *

The board shall have exclusive control of all

money paid into the Mentally Deficient Persons' Fund and shall draw upon the county treasurer for all or any part of that fund required by the board in the performance of its duties and exercise of its powers under this Act.

The board may establish, maintain and equip facilities within the county, for the care and treatment of mentally deficient persons together with such auxiliary facilities connected therewith as the board finds necessary. For those purposes, the board may acquire real and personal property within the county by gift, grant, devise, purchase or lease and may occupy, purchase, lease or erect an appropriate building or buildings for the use of such facilities and all related facilities and activities.

The board may provide for the care and treatment of mentally deficient persons who are not residents of the county and may establish and collect reasonable charges for such services."

Since the Care and Treatment Board is charged by section 3 of the Act (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 203) with the administration of the Act, it may exercise not only those powers set forth specifically in section 4 of the Act (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 204) but also the general power granted to the county in section 1 (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 201) to:

" * * * contract [to provide facilities or services for the benefit of its mentally deficient residents] with any privately or publicly operated entity which provides facilities or services either in or out of such county."

The power to contract granted in section 1 (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 201), however, is a power granted specifically to the county and may be exercised by the county

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board at its discretion. Therefore, the Care and Treatment Board, though it has control of the amount of funding which might be given to a particular agency, does not have sole authority for determining which agencies receive funding.

With regard to the control of Mentally Deficient Persons' Fund monies, the use of the words "exclusive control" in section 4 of the Act (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 204) must be taken to be synonymous with sole control. In view of the express statutory language, therefore, it is my opinion that the Care and Treatment Board has sole control of the expenditure of funds from Mentally Deficient Persons' Fund and that the county board is not authorized to make changes in a budget submitted by the Care and Treatment Board to restrict or direct the expenditure of funds.

With regard to your fourth question, it has been held that the exclusive power to exercise control over funds raised through a tax levy does not impair the right of a taxing body to determine the total amount of money to be raised. (Schlaeger v. Jarmuth (1947), 398 Ill. 60; Ickes v. Macon County (1953), 415 Ill. 557.) In Effertz v. Brzezinski (1968), 91 Ill. App. 2d 202, the court was asked to consider whether the directors of a library board had the authority to determine the amount of money to be raised by tax levy for library purposes. Under the Library Act, the board had exclusive control of all money deposited in the library

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fund. The court held at page 207 that a:

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* * *

* * * village board may not refuse to levy any taxes for library purposes and, presumably, the amount must be fair and reasonable. However, there is no requirement in the language or spirit of the Act that the village board must honor the recommendation of the library board as to the amount to be appropriated and levied * * *.

* * *

"

In my opinion, a similar result obtains under the Care and Treatment Act. Once the tax is levied, however, the county board may not direct the manner in which funds are expended. There is no language in the Act authorizing the county board to exercise control over the Mentally Deficient Persons' Fund, nor is there a requirement that the budget of the Care and Treatment Board be submitted to the county board for approval.

Your fifth question may be answered with reference to the language of the statute. Administrative agencies are authorized to exercise all powers which are expressly granted or necessarily incident to the exercise of express powers. (Owen v. Green (1948), 400 Ill. 380.) The power to provide services to mentally deficient residents of the county and the power to establish and maintain facilities for the care and treatment of mentally deficient persons (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 201, 204) carry with them, by necessary

implication, the power to hire personnel necessary to provide such services or operate such facilities. Further, because the Care and Treatment Board is empowered to set maintenance rates for the use of facilities and services provided under the Act (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 207) and is directed to calculate rates and investigate the ability of persons to pay for services provided (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 208), the acquisition of financial expertise is necessary for the efficient administration of the Board's program. Therefore, it is my opinion that hiring of personnel such as accountants and administrators is within the Care and Treatment Board's power. The Board, however, has no power to hire legal counsel.

The portion of your fourth question concerning hiring legal counsel is related to your final question regarding the duties of the State's Attorney. The duties of the State's Attorney are set out in "AN ACT in regard to attorneys general and state's attorneys" (Ill. Rev. Stat. 1979, ch. 14, par. 1 et seq.). Section 5 of that Act provides that the State's Attorney shall act as the legal representative of the county. Section 11 of the Care and Treatment Act (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 211) specifically requires the State's Attorney to prosecute actions to recover charges on behalf of the Care and Treatment Board. In Ashton v. County of Cook (1943), 384 Ill. 287, 300, the Illinois Supreme Court

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held that a county may not hire private counsel to do county legal work absent specific statutory authorization. Since there is no specific authorization in the Care and Treatment Act to hire private counsel, it is my opinion that the State's Attorney is the proper legal representative of the Care and Treatment Board.

In consideration of the preceding discussion, it is my opinion that property acquired by the Care and Treatment Board should be held in the name of the county; that the Care and Treatment Board has exclusive control over money deposited in the "Mentally Deficient Persons' Fund" and is authorized to hire personnel necessary to administer the Act; that the county board has the final authority to determine and set the rate of tax to be levied under the Act; and that the State's Attorney is the legal representative of the Care and Treatment Board.

Very truly yours,


ATTORNEY GENERAL