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April 21, 1972

FILE NO. S-442
MENTAL HEALTH AND COUNTIES:
Funding of the Mental Health Board

Honorable Lawrence E. Johnson
State's Attorney
Champaign County
Court House
Urbana, Illinois 61801

Dear Mr. Johnson:

I have your letter requesting my opinion as follows:

"I have been requested to seek your opinion on the question of funding Community Mental Health Boards by the chairman of the County Mental Health Board which was formed under the provisions of H.B. 708, but without the passage of a '708' referendum.

"I request your opinion on the following two questions:

1. Is it legal for the Board of Supervisors to allocate County funds for a Community Mental Health Board, constituted under the H.B. 708 legislation, for its own operation? This would

mean the employment of a staff to enable it to carry out its work.

2. Is it legal for the Board of Supervisors to allocate County funds to the Community Mental Health Board for reallocation by said Board to other Community Health agencies?"

House Bill No. 708 of the Seventy-third General Assembly, passed and approved in 1963, is known as the Community Mental Health Act, and is found in Illinois Revised Statutes 1971, ch. 91 1/2, pars. 301-313.

Section 3a of that Act provides for the establishment of a Community Mental Health Board by the governmental unit, in your situation the county, as follows:

"Every governmental unit authorized to levy an annual tax under any of the provisions of this Act shall, before it may levy such tax, establish a 7 member community mental health board who shall administer this Act. Such board shall be appointed by the chairman of the governing body of a county, the mayor of a city, the president of a village, the president of an incorporated town, or the supervisor of a township, as the case may be, with the advice and consent of the governing body of such county, city, village, incorporated town or the town board of auditors and town clerk of any township. Membership of the community mental health board shall as nearly as possible be representative of interested groups of the community such as local health departments, medical societies, local welfare boards, hospital boards, school boards, lay associations concerned with mental health or alcoholism, drug addiction or mental retardation,

as well as labor, business and civic groups or the general public." Ill. Rev. Stat. 1971, ch. 91 1/2, par. 303a

Section 3e, concerning Community Mental Health

Board powers, provides in part:

"Subject to the provisions of this Act, every community mental health board shall have the power to:

* * *

"(c) within amounts appropriated therefor, execute such program and maintain such services and facilities as may be authorized under such appropriations, including amounts appropriated under bond issues, if any * * *" Ill. Rev. Stat. 1971, ch. 91 1/2, par. 303e

Section 4 of the Act provides:

"In order to provide the necessary funds or to supplement existing funds for such community mental health facilities and services, including facilities and services for the alcoholic, the drug-addicted and the mentally retarded, the governing body of any governmental unit, subject to the provisions of Section 5, may levy an annual tax of not to exceed .1¢ upon all of the taxable property in such governmental unit at the full, fair cash value thereof, as equalized or assessed by the Department of Revenue. Such tax shall be levied and collected in the same manner as other governmental unit taxes, but shall not be included in any limitation otherwise prescribed as to the rate or amount of governmental unit taxes, but shall be in addition thereto and in excess thereof.

"When collected, such tax shall be paid into a special fund in the governmental unit treasury to be designated as the 'Community Mental Health Fund' and

shall be used only for the purposes specified in this Act. Nothing contained herein shall in any way preclude the use of other funds available for such purposes under any existing statute relating to such governmental unit.

"In any city, village, incorporated town, or township which levies a tax for the purpose of providing community mental health facilities and services and part or all of such city, village, incorporated town, or township is in a county or township, as the case may be, which levies a tax to provide community mental health facilities and services under the provisions of this Act, such county or township, as the case may be, shall pay to such city, village, incorporated town, or township, as the case may be, the entire amount collected from taxes under this Section on property subject to a tax which any city, village, incorporated town, or township thereof levies to provide community mental health facilities and services.

"Whenever any city, village, incorporated town, or township receives any payments from a county or township as provided above, such city, village, incorporated town, or township shall reduce and abate from the tax levied by the authority of this Section a rate which would produce an amount equal to the amount received from such county or township." Emphasis supplied. Ill. Rev. Stat. 1971, ch. 91 1/2, par. 304

Please note the specific provision in section 4 that the tax levy possibility does not preclude the use of other funds available for such purposes under any existing statute applicable to the governmental unit.

I presume the referendum to which your letter refers is that for tax levy provided in section 5:

"When the governing body of a governmental unit passes a resolution as provided in Section 4 asking that an annual tax may be levied for the purpose of providing such mental health facilities and services, including facilities and services for the mentally retarded, in the community and so instructs the clerk of the governmental unit such clerk shall, in the next legal notice of a regular general election in the governmental unit or at least 20 days before a special election called for the purpose by the governing body of the governmental unit give notice that at such election every elector may vote for or against the levy of a tax for the purpose of providing community mental health facilities and services and shall make provision for voting upon the proposition at such election. * * *

"If a majority of all the votes cast upon the proposition are for the levy of such tax, the governmental body of such governmental unit may thereafter annually levy such tax. Thereafter the governing body shall in the annual appropriation bill appropriate from such funds such sum or sums of money as may be deemed necessary, based upon recommendations by the community mental health board to defray necessary expenses and liabilities in providing for such community mental health facilities and services." Ill. Rev. Stat. 1971, ch. 91 1/2, par. 305

If the referendum passes, the governing body
"shall * * * appropriate from such funds such sum or sums
of money as may be deemed necessary, based upon recommen-
dations by the community mental health board to defray

necessary expenses and liabilities in providing for such community mental health facilities and services." (Ill. Rev. Stat. 1971, ch. 91 1/2, par. 305) Under sections 10, 11, and 12 of the Act bonds may be issued under referendum for buildings or permanent improvements in Community Mental Health facilities, as follows:

"The proceeds received from the sale of the bonds shall be placed in a special fund in the governmental unit treasury to be designated as the 'Bond Community Mental Health Fund' and thereafter the governing body shall in the annual appropriation bill appropriate from such funds such sum or sums as may be necessary to carry out the provisions of this section." Ill. Rev. Stat. 1971, ch. 91 1/2, par. 312

Only in section 4 is there reference to the use of funds other than the specific tax fund or specific bond fund for Community Mental Health Board programs and purposes. Section 5 requires that the governing body "shall appropriate" funds from the proposed tax levy for Community Mental Health Board purposes only when the tax is levied and only to the extent that the governing body deems necessary, based on Community Mental Health Board recommendations.

Under an Act headed "POWERS AND DUTIES OF COUNTY BOARDS", I find no authority in the County Board to appropriate amounts from the general revenue fund for Community

Mental Health Board purposes. Ill. Rev. Stat. 1971, ch. 34, pars. 401 - 440.

In "AN ACT to revise the law in relation to counties", there is no provision in section 24 for the appropriation of money for Community Mental Health Board activities. Ill. Rev. Stat. 1971, ch. 34, par. 303.

An opinion of my predecessor, No. UP-1397, dated June 28, 1965, held, however, that section 2 of the Community Mental Health Act is sufficiently broad to permit appropriation by the governmental unit, in your case the county board, from the general revenue fund for Community Mental Health Board purposes. That section provides in part that the county " * * * shall have the power to construct, repair, operate, maintain and regulate community mental health facilities to provide mental health services * * * and/or to contract therefor with any private or public entity which provides such facilities and services * * * "

I concur in that opinion and conclude that in its discretion the governing body may appropriate funds from its general revenue fund, to the Community Mental Health Board, for use in the area of Community Mental Health Board authority under section 3e of the Act to:

* * *

"(f) Within amounts appropriated therefor, execute such programs and maintain such services and facilities as may be authorized under such appropriations, including amounts appropriated under bond issues, if any;"

* * *

"The community mental health board may:

"(a) Enter into contracts for rendition or operation of services and facilities on a per capita basis or otherwise;

"(b) Arrange for the rendition of services and operation of facilities by other agencies of the governmental unit or county in which the governmental unit is located with the approval of the governing body;" Ill. Rev. Stat. 1971, ch. 91 1/2, par. 303e

Certainly the language "Enter into contracts for * * * services and facilities", found in section 3e, second grammatical paragraph (a), contemplates the use of other agencies, either public or private, to fulfill the program of the Community Mental Health Board. I therefore see no legal barrier to the Community Mental Health Board dealing with other agencies in the carrying out of its approved programs. The Community Mental Health Board must, of course, assure itself that the contracting agency

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performs its services in strict compliance with the Board's
mandate to the agency.

Very truly yours,

ATTORNEY GENERAL

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