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FILE NO. 96 -016

COUNTIES:

Transfer of Health Department
Assets to Private Service Provider in
Consideration of Services to be Rendered

Honorable Charles M. Colburn
State's Attorney, Morgan County
Morgan County Courthouse
Jacksonville, Illinois 62650

Dear Mr. Colburn:

I have your letter wherein you inquire whether your county board may authorize the transfer of assets of the mental health service maintained by the county health department to a not-for-profit corporation in consideration of the corporation agreeing to continue to provide mental health services to residents of the county. For the reasons hereinafter stated, it is my opinion that the county board of health has the authority to contract with a not-for-profit corporation for the provision of mental health services. The terms of such a contract may include a transfer of assets, if authorized by the county board.

You have stated that your county board of health has established a division called Community Counseling Services,

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which provides mental health counseling services to county residents. The majority of the funding for Community Counseling Services comes from the Department of Mental Health and Developmental Disabilities (DMHDD) and user fees, although some funds are contributed by the board of health and the county board. Community Counseling Services currently has liquid assets, as well as physical assets consisting of office equipment and vehicles. Community Counseling Services is now considering the possibility of merging its services with those of the Wells Center, a not-for-profit corporation which provides in-patient and out-patient services related to drug and alcohol abuse.

Based upon your previous correspondence with my office relating to the provision of mental health services, I am aware that a primary goal of the county in reorganizing the way that such services are provided is to accommodate group insurance providers which are moving to managed care systems. In order to provide necessary services within costs permitted by managed care systems, particularly in smaller counties, providers are finding it necessary to join together in networks or consortiums. The county's interest in contracting with or merging its mental health services with that of a private substance abuse service provider is not an attempt to curtail services, but is motivated by a desire to continue providing services more efficiently and within the scope required by changing medical insurance managed

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care systems. In order to meet such changing needs, DMHDD is moving to a pay per service arrangement, so that most of the funding now available to the county agency would be available to a private provider of the same services.

Counties other than home rule units, and their agencies, including county health departments, are creatures of the State and can exercise only those powers which are expressly delegated to them by the constitution or the General Assembly, and those powers that arise by necessary implication from expressly granted powers. (Heidenreich v. Ronske (1962), 26 Ill. 2d 360; Ill. Const. 1970, art. VII, sec. 7.) While your questions are posed in the context of county board action, I have assumed that the county board and the county board of health are in fundamental agreement with respect to the goals to be achieved. My response will therefore address the powers of each body, where necessary.

The manner and extent to which county agencies may participate in provider groups is necessarily limited by their nature and their dependence upon statutory authority for the exercise of their powers. Neither the county board nor the county board of health is authorized by statute or otherwise to merge its services with a private entity to provide a hybrid, public/private corporate entity. Indeed, the structure of governmental agencies and private, not-for-profit corporations is

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so fundamentally different that no true merger is possible. Creating a contractual relationship between the county, the board of health and the Wells Center, however, under which the public and private entities remain distinct and separate, is a matter within the power of the several entities.

The powers and duties of a county board of health are set forth in section 5-25013 of the Counties Code (55 ILCS 5/5-25013 (West 1994)), which specifically authorizes the board of health to carry out programs and services relating to mental health (55 ILCS 5/5-25013(A)(15) (West 1994)), and further provides, in part:

" * * *

(B) The board of health of each county or multiple-county health department may:

* * *

5. Enter into contracts with the State, municipalities, other political subdivisions and non-official agencies for the purchase, sale or exchange of health services;

* * *

"

The statute does not define the term "non-official agencies". As used in this context, however, the term clearly means something other than a State agency, a municipal agency, or another county or public entity. Thus, the term "non-official agencies" would appear to include private entities, such as foundations or not-for-profit corporations. Therefore, it is my

opinion that the quoted provision authorizes the board of health to contract with a not-for-profit corporation for the provision of mental health services to county residents.

It is the board of health, rather than the county board, which has the authority to contract for the rendition of mental health services. The power to enter into a contract for the purchase of services impliedly includes the power to pay for such services. Therefore, it is my opinion that the board of health may provide in its contract for the transfer of its resources, whether from the county health fund or other sources, in consideration of services to be provided. The consideration for such services may include the rental or sale value of its physical assets, as well as payment from its liquid assets.


The board of health, however, is not expressly authorized to dispose of county owned property. Although there are broad grants of authority to the board of health in section 5-25013 of the Counties Code from which authority to exchange or dispose of property might be implied, approval of the proposed transfer by the county board would resolve any doubt.

The county board has express authority to convey both real and personal property owned by the county. (55 ILCS 5/5-1005 (West 1994).) Further, the county board exercises significant authority over the board of health and the contracts into which it enters by reason of the county board's authority to

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approve the health department budget. (55 ILCS 5/5-25010 (West 1994).) For that reason, even though the power to contract for health care services is within the exclusive authority of the board of health, those aspects of such a contract relating to the transfer of county property, either in exchange for services or on some other basis, should have county board approval.

Sincerely,


JAMES E. RYAN
ATTORNEY GENERAL