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1. CORPORATION NOT FOR PROFIT—IF MENTAL HYGIENE CLINIC ESTABLISHED, STATE DIVISION OF MENTAL HYGIENE WITHOUT AUTHORITY TO CONTRIBUTE MONEY TO ASSIST IN SUPPORT OF CLINIC—SECTION 1890-9 GC.
2. STATE DIVISION OF MENTAL HYGIENE—WITHOUT AUTHORITY TO ASSIGN EMPLOYEES TO DUTIES TO SERVE IN CLINIC NOT ESTABLISHED AND OPERATED IN DIVISION — STATUS WHERE LOCAL FACILITIES INADEQUATE — CORPORATION NOT FOR PROFIT — IF JOINT OPERATION, SEPARATE ENTITY OF EACH CLINIC MUST BE MAINTAINED.

SYLLABUS:

1. If a corporation not for profit establishes a local mental hygiene clinic to serve a specified territory, the Division of Mental Hygiene would have no authority under the provisions of Section 1890-9, General Code, or any other statute, to contribute money to such corporation to assist in the support of such clinic.

2. The Division of Mental Hygiene is without authority to assign its employes to duties which involve the rendition of their services to a clinic other than one established and operated by the Division; but the Division does have authority, under the provisions of Section 1890-9, General Code, to "establish resident * * * clinics * * * where local clinical facilities are * * * inadequate," and any such resident clinics may be established in such close association with a clinic established by a corporation not for profit, and operated in such close cooperation with it that the two clinics will, for many practical purposes, be operated as an integrated project. In any such case, however, it will be necessary to preserve the separate entity of each clinic in matters involving control of operations and financial support.

Columbus, Ohio, March 13, 1953

Hon. J. H. Lamneck, Director, Department of Public Welfare
Columbus, Ohio

Dear Sir:

I have before me your request for my opinion reading as follows:

"Under the provisions of Section 1890-9 of the General Code, the Division of Mental Hygiene in this Department is authorized to 'promote and develop a state-wide comprehensive system of

mental hygiene and psychiatric clinics, establish resident and traveling clinics to serve communities where local clinical facilities are lacking or inadequate.'

"Section 1815-2 of the General Code provides in part, 'Collections in excess of \$5.50 per week per patient shall be placed in a rotary fund to the credit of the Department of Public Welfare, Division of Mental Hygiene, to be used for research, education, and prevention purposes, under such rules and regulations as the Director of Welfare and the Commissioner of Mental Hygiene prescribe'.

"The primary reason for the establishment of mental hygiene clinics is to prevent mental illness.

"In connection with these two sections of the General Code, I desire your opinion on the following :

"First, if a corporation not for profit establishes a local mental hygiene clinic to serve a specific territory, would it be lawful for the Division of Mental Hygiene under a contract with such corporation, to contribute money to such a corporation to assist in supporting such local mental hygiene clinic.

"Second, would it be lawful for the Division of Mental Hygiene to pay specific items of expense such as salaries for specified individuals who would be put on the Division's payroll to assist in operating a local mental hygiene clinic operated by a corporation not for profit.

"Third, if the Division of Mental Hygiene is authorized to expend money to assist in operating local mental hygiene clinics as outlined in questions one and two above, would it be lawful for such a corporation not for profit to charge a fee for its services to those who are able to pay, to be used to assist the corporation in paying expenses of operating the clinic.

"In connection with these questions, I desire to point out that a physician admitted to practice medicine in the State of Ohio, would be in charge of such clinic."

I note the provisions of Section 1890-9, General Code, to which you direct my attention. That section reads as follows :

"There shall be a bureau of prevention and education under the supervision of the commissioner of mental hygiene. The bureau shall :

"Make studies and investigations concerning causes of mental diseases, mental deficiency, epilepsy, and other forms of mental deviation, practicable measures of prevention, and the effectiveness of different types of care and methods of treatment, and shall

encourage, guide and coordinate such research by the staffs of the state institutions for mental patients;

“Promote and develop a statewide comprehensive system of mental hygiene and psychiatric clinics, establish resident and traveling clinics to serve communities where local clinical facilities are lacking or inadequate;

“In cooperation with other departments and agencies, disseminate information as to mental hygiene and psychiatric facilities and services, including institutions and clinics provided for the counsel, care and treatment of those in need thereof;

“Perform such other duties as may be assigned to it by the commissioner of mental hygiene.”

This section is part of an Act which became effective October 11, 1945, relating to the care and treatment of the feeble-minded and insane. This, and related sections were originally enacted in 1938, 117 Ohio Laws, 550. As originally enacted, the above quoted section merely provided for the organization within the Division of Mental Hygiene, of a Bureau with authority to make scientific and medical investigation as to the causes and prevention of mental illness, and to collect and disseminate such information as was considered proper.

It will be noted that in its present form the statute goes much further. I call particular attention to the third paragraph, where it is provided that said Bureau shall:

“Promote and develop a statewide comprehensive system of mental hygiene and psychiatric clinics, establish resident and traveling clinics to serve communities where local clinical facilities are lacking or inadequate. (Emphasis added.)”

Here it will be noted that the Bureau is charged not only with establishing resident and traveling clinics to serve communities, but also with the duty of promoting and developing a statewide comprehensive system of mental hygiene and psychiatric clinics. It appears to me that the General Assembly had in mind the encouragement of private clinics and their cooperation with the public institutions which the Bureau is to establish. This idea is emphasized by the provisions of Section 1890-20, General Code, a part of the same Act, which provides in part:

“The division shall have the right to inspect, license and supervise all institutions for the mentally ill, maintained in whole or in part by public funds or by any political subdivision of the

state of Ohio. The division shall have the right to inspect, license and supervise all private institutions that may or do receive mentally ill persons."

It will be observed that this section contemplates that some of these institutions will be maintained partly by private and partly by public funds. It is plain that a public institution may receive contributions from private sources. But it does not necessarily follow that the public authorities are authorized to grant a direct subsidy to a private organization. The idea of cooperation between public agencies and private organizations in matters involving public philanthropy is not peculiar to the situation with which we are dealing. In the statutes relating to child welfare, particularly Sections 3070-1 et seq., General Code, we find express provisions authorizing cooperation with private individuals and organizations whose purposes are similar to those of the child welfare board. In Section 3070-17, General Code, there is authority given to the child welfare board to enter into agreements with the parents, guardian, or other person having the legal custody of a child, respecting its "*custody and care.*" Such board is also authorized "To cooperate with, make its services available to and act as the agent of persons, courts and the state department of public welfare in matters relating to the welfare of children."

In the matter of hospitalization, Section 3138-1, General Code, authorizes the county commissioners to "enter an agreement with one or more corporations or associations organized for charitable purposes * * * for the purpose of maintaining and operating a hospital * * * for the care of the indigent sick and disabled of the county, upon such terms and conditions as may be agreed upon." Furthermore, the commissioners are given authority by this same section, to hire the necessary employes to assist them in carrying out the responsibilities devolving upon them by reason of such agreement. Similar provisions are found in Section 3139-18 et seq. relative to tuberculosis hospitals. All of the provisions of law above cited contemplate close relation and cooperation between public and private philanthropic agencies. But in none of them has the legislature seen fit to authorize direct payment of public funds for the establishment or operation of these private organizations.

Section 4022, General Code, affords an instance where the General Assembly does appear to have granted express authority to municipalities

to contribute directly to a privately owned charitable institution. That section provides :

“Such council may agree with a corporation organized for charitable purposes and not for profit, for the *erection and management* of a hospital suitably located for the treatment of the sick and disabled of such municipality, or for an addition to such hospital, and for a *permanent interest therein* to such extent and upon such terms and conditions as may be agreed upon between them, *and the council shall provide for the payment of the amount agreed upon for such interest* either in one payment or in annual installments as may be agreed upon. Provided, that such agreement shall not become operative until approved by a vote of the electors of such municipality as provided for in the next section.”
(Emphasis added.)

There is certainly no language in Section 1890-9, General Code, or in the related sections which gives express authority to the Bureau of Mental Hygiene to contribute money for the organization or maintenance of private clinics. If we are to find such authority it must arise by implication. We must keep in mind that a public body or public officer whose office is established by law, has only such powers as the General Assembly has seen fit to grant, together with such powers as are necessarily implied from the powers specifically granted. This proposition is thus stated in 32 Ohio Jurisprudence, page 933 :

“As a general rule, public officers have only such powers as are expressly delegated them by statute, and such as are necessarily implied from those so delegated. These powers must be exercised in the mode prescribed by statute. It is equally well settled that where the statute prescribes the mode by which power conferred upon a public officer or board shall be exercised, the mode specified is also the measure of power granted.”

Again, it is said at page 936, of the same work :

“The rule in respect of implied powers is that, in addition to the powers expressly given by statute to an officer or board of officers, he or it has by implication, such additional powers as are *necessary* for the *due and efficient exercise* of the power expressly granted, or as may be fairly implied, from the statute granting the express powers.”
(Emphasis added.)

It certainly cannot be claimed that the payment of subsidies to private organizations, however desirable, is essential to carrying out the pro-

visions of the law under consideration. In any action involving the expenditure of public money the law is especially strict in holding public bodies and officers to the letter of the law. As stated in 32 Ohio Jurisprudence, page 734:

“Public funds can be disbursed only by clear authority of law, and upon compliance with statutory provisions relating thereto. And in case of doubt as to the right of any administrative board to expend public moneys under a legislative grant, such doubt must be resolved in favor of the public and against the grant of power.”

Substantially the same language is used in the case of *State ex rel. Bentley v. Pierce*, 96 Ohio St., 44.

It might be argued that the authority given by the law to “promote” a state-wide system of mental clinics implies authority to contribute to the organization and support of private clinics. In my opinion the ordinary meaning of the word “promote” does not necessarily include the concept of financial support. It is a matter of common knowledge that one who “promotes” the organization of a corporation or business enterprise does so not by putting his own money into them, but by inducing others to do so. This meaning of the term “promote” and “promoter” is illustrated by numerous cases cited in Volume 34, of “Words and Phrases,” page 315. Among others I note *State ex rel. v. Dammann*, 228 Wisc., 147, where it was held:

“The words ‘encourage’ and ‘promote,’ as used in statute authorizing use of funds appropriated to Wisconsin Development Authority to promote or encourage co-operative associations to engage in utility businesses, merely authorized Authority to engage in such educational activities as are ordinarily proper for a state to engage in and to use funds for that purpose; the word ‘promote’ referring to advancing by general educational means and word ‘encourage’ referring to activity of promoting by proper educational means.”

Accordingly, my answer to your first question must be in the negative.

In reaching this conclusion it should be pointed out that I have considered your question to be concerned only with so-called “state funds,” i.e, funds credited to the Division’s rotary fund under the provisions of Section 1815-2, General Code.

It is my understanding that certain so-called "federal funds" are periodically made available to the Division, and that under the provisions of pertinent federal statutes and regulations of the United States Public Health Service, such funds are granted for the purpose of direct financial aid to mental hygiene clinics operated by corporations not for profit. Such use has, of course, been recognized as proper by the General Assembly by the provision in the current general appropriation act, Amended House Bill No. 671, 99th General Assembly, that "all revenues received from the federal government by the state of Ohio, or any of its departments or divisions, and any receipts or any collections made for and on behalf of the United States Government are hereby appropriated for the purpose for which allotted or collected."

In view of this statutory authorization, I assume that you entertain no doubt as to the propriety of the expenditure of "federal funds" for the purposes described in your first question.

In your second question you suggest the possibility of paying the salaries of certain employes who would be assigned the duty of assisting in the operation of a local clinic by a corporation not for profit. I perceive no basis on which a distinction could be drawn between a grant of funds to such corporation and a grant of the services of a public employe to it; and since it has been concluded that such a grant of funds is not authorized, the same conclusion must be reached with respect to the services of public employes.

It may be pointed out, however, that the Division is authorized, under the provisions of Section 1890-9, General Code, to "establish resident * * * clinics * * * where local clinical facilities are * * * inadequate." In the establishment of resident clinics to supplement existing facilities which are deemed inadequate, it would appear to be logical and desirable to locate them in close proximity to, and to operate them in close cooperation with, the local clinics the facilities of which are to be supplemented. Not only do I perceive no legal objection to such an arrangement but I deem it to be the evident purpose of the statute to authorize it. Moreover, I see no reason why, under such an arrangement, the two clinics, that established by the Division and that operated by a private corporation not for profit, should not be established in such close association and operated in such close cooperation that they would in large measure, and for many practical purposes, be operated as an integrated project, provided, of course,

that the separate entity of each is preserved in matters of control of operations and financial support.

In the establishment of such a cooperative project you have indicated in a supplemental inquiry that the Division proposes to employ a physician on a part-time basis to operate the state's clinic, and that the same physician would be employed on a part-time basis by the local clinic. Assuming that you find such a practicable basis for the division of the physician's services between the two clinics that his compensation may be fixed in amounts commensurate therewith, I know of no legal objections which could be raised as to such a plan.

In your inquiry you indicate that you desire an answer to your third question only in the event it should be determined that the Division is authorized to expend public funds as described in your first two questions. Such questions having been answered in the negative, it would appear unnecessary to discuss the authority of corporate clinics to charge a fee for the services which they provide. However, it may be observed that some of such services will undoubtedly be of a professional nature and that they may well constitute the practice of medicine. Certain general questions relative to the status of corporations and unincorporated associations of unlicensed persons in activities involving the practice of the professions of medicine and dentistry were discussed in my opinions Nos. 1717 and 1751, dated August 5, 1952, and August 20, 1952, and to these opinions your attention is respectfully invited.

Accordingly, in specific answer to your inquiry, it is my opinion that:

1. If a corporation not for profit establishes a local mental hygiene clinic to serve a specified territory, the Division of Mental Hygiene would have no authority under the provisions of Section 1890-9, General Code, or any other statute, to contribute money to such corporation to assist in the support of such clinic.

2. The Division of Mental Hygiene is without authority to assign its employes to duties which involve the rendition of their services to a clinic other than one established and operated by the Division; but the Division does have authority, under the provisions of Section 1890-9, General Code, to "establish resident * * * clinics * * * where local clinical facilities are * * * inadequate," and any such resident clinic may be established in such close association with a clinic established by a corpora-

tion not for profit, and operated in such close cooperation with it that the two clinics will, for many practical purposes, be operated as an integrated project. In any such case, however, it will be necessary to preserve the separate entity of each clinic in matters involving control of operations and financial support.

Respectfully,

C. WILLIAM O'NEILL
Attorney General