

OPINION NO. 69-015**Syllabus:**

1. The monies received for the support of a County Board of Mental Retardation may be paid into the general fund of the county to the account of the board, unless the county funds are provided by a special levy, in which case, a separate fund must be established pursuant to Section 5705.10, Revised Code.
2. These funds are payable pursuant to vouchers approved by the County Board of Mental Retardation.
3. The monies received for the support of community mental health and retardation programs as authorized by Chapter 340, Revised Code, should be paid into the designated county treasury to the credit of the Community Mental Health and Retardation Fund.
4. These monies are payable pursuant to vouchers approved by the Community Board of Mental Health and Retardation.

To: David D. Dowd, Jr., Stark County Pros. Atty., Canton, Ohio
By: Paul W. Brown, Attorney General, February 11, 1969

Your request for my opinion poses the following questions:

"1. Should all monies received for the support of county board of mental retardation programs, including those monies received from the State pursuant to Section 5127.03 of the Revised Code, be paid into the county treasury to the credit of the General Fund or to the credit of a County Board of Mental Retardation Fund?

"2. Are the funds referred to in Question 1 payable pursuant to vouchers approved by the County Board of Mental Retardation or by the Board of Stark County Commissioners?

"3. Should all monies received for the support of community mental health and mental retardation programs, including those monies received from the State pursuant to Section 5119.62 of the Revised Code, be paid into the county treasury to the credit of the Community Health and Retardation Fund or to the credit of the General Fund?

"4. Are the funds referred to in Question 3 payable pursuant to vouchers approved by the Community Board of Mental Health and Retardation or by the Board of Stark County Commissioners?"

Your first two questions concern the County Board of Mental Retardation which was formed pursuant to the mandate of Chapter 5126, Revised Code, for the express purpose of supervising the operation of the training centers and workshops for the mentally deficient, which are provided by Sections 5127.01 to 5127.04, inclusive, of the Revised Code. The powers and duties of the County Board of Mental Retardation are set out in Section 5126.-03, Revised Code, which reads as follows:

"The county board of mental retardation, subject to the rules, regulations, and standards of the commissioner of mental hygiene shall:

"(A) Administer and supervise sections 5127.01 to 5127.04, inclusive, of the Revised Code and exercise such powers and duties as prescribed by the commissioner;

"(B) Submit an annual report of its work and expenditures, pursuant to section 5127.01 of the Revised Code, to the commissioner and to the board of county commissioners at the close of the fiscal year and at such other times as may be requested;

"(C) Employ such personnel and provide such services, facilities, transportation, and equipment as are necessary;

"(D) Provide such funds as are necessary for the operation of training centers and workshops.

"Any county board of mental retardation may enter into a contract with another such board of another county or with a public or nonprofit agency or organization of the same or another county, to provide the training center, workshop facilities and services authorized in section 5127.01 of the Revised Code, upon such terms as may be agreeable.

"The board of county commissioners shall levy taxes and make appropriations sufficient to enable the county board of mental retardation to perform its functions and duties as provided by this section." (Emphasis added)

It can therefore be seen that there is an express mandate upon the County Commissioners to provide the funds which are necessary for the County Board of Mental Retardation to perform its functions through appropriation. This appropriation may be provided from a general levy for current expenses under Section 5705.05 (E), Revised Code, which provides as follows:

"(E) In the case of counties, the amounts necessary for the maintenance, operation, and

repair of public buildings, for the relief and support of the poor, for the relief of needy blind, for the support of mental health services, for the support of mental retardation services, for the relief of honorably discharged soldiers, indigent soldiers, sailors, and marines, for mothers' pension fund, support of soil conservation districts, watershed conservancy districts, educational television, and for the county's share of the compensation paid judges;" (Emphasis added)

The monies necessary for the operation of the workshop would be appropriated to this use by the county commissioners.

Where general fund monies are appropriated to a specific use, it is only necessary to establish an account within the general fund for the purpose intended. Monies would be paid upon vouchers approved by the County Board of Mental Retardation inasmuch as the monies have been appropriated to their use.

Further authority for the county commissioners to provide funds for this use is found in Section 5705.19, Revised Code, which provides in pertinent part:

"The taxing authority of any subdivision at any time prior to the fifteenth day of September, in any year, by vote of two-thirds of all the members of said body, may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation will be insufficient to provide for the necessary requirements of the subdivision, and that it is necessary to levy a tax in excess of such limitation for any of the following purposes:

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"(L) For the maintenance and operation of schools, training centers, workshops, clinics, and residential facilities for mentally retarded persons. Money received from levies enacted or renewed prior to the effective date of this section shall be appropriated to the use of the county board of mental retardation established under section 5126.01 of the Revised Code. Revenue from a tax levy passed or renewed after October 25, 1965 shall not be expended until the budget for the operation of schools, training centers, workshops, clinics, and residential facilities for mentally retarded persons for that calendar year has been submitted to and approved by the board of county commissioners. Thereafter, surplus funds from the tax levy not used for operating purposes may be dispensed by the county board of mental retardation after approval by the board of county commissioners for the replacement of necessary equipment, or for acquiring, constructing, or improving schools, training centers, workshops, clinics, and residential facilities for the mentally retarded;

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Section 5705.10, Revised Code, provides in pertinent part as follows:

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"All revenue derived from a special levy shall be credited to a special fund for the purpose for which the levy was made.

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Therefore, if the necessary funds were obtained through use of a special levy, it would be necessary that they be credited to a special fund.

A portion of the funds used for a workshop are received from other sources; namely, the Department of Mental Hygiene and Correction and the local boards of education as provided in Sections 5127.03 and 5127.04, Revised Code.

Section 5127.03, supra, reads as follows:

"On the thirtieth day of June of each year, the county board of mental retardation shall certify to the commissioner of mental hygiene:

"(A) The names and residences of the persons enrolled in the training center and workshop pursuant to section 5127.01 of the Revised Code;

"(B) The period of time each deficient person was enrolled;

"(C) An itemized report of expenditures which have been approved by the commissioner;

"(D) The net per capita cost for operating such training center and workshop.

"The division of mental hygiene, upon receipt and approval of the report provided in this section, shall present a voucher to the auditor of state in favor of the agency providing the specialized training in an amount not to exceed three hundred dollars per year for each mentally deficient person who is enrolled in such training center and workshop. Upon presentation of such voucher the auditor of state, if satisfied as to the correctness of the voucher, shall draw a warrant on the treasurer of state in the amount of the voucher."

Section 5127.04, supra, reads:

"The county board of mental retardation which during the school year has administered and supervised, pursuant to the provisions of section 5127.01 of the Revised Code, a training center for the mentally deficient shall prepare a statement for each person under twenty-one years of age who has received such training,

such statement to show the name of the person, the name of the school district in which the person is a school resident, the name of the board providing the training, and the number of months the person received training. Not later than the thirtieth day of June the board shall forward a certified copy of such statement to the clerk of the board of education of the school district in which the person is a school resident and shall forward a certified copy of such statement to the commissioner of mental hygiene. Within thirty days after the receipt of such statement the board of education shall pay to the county board of mental retardation submitting the statement an amount equal to the computed amount of tuition that would be due the school district receiving the statement if a nonresident pupil attended the schools of such district for the same period of time that the mentally deficient person attended the training center, such amount to be computed in the manner prescribed by section 3317.08 of the Revised Code."

These monies are paid into the county treasury "in favor of the agency" and "to the county board of mental retardation." Therefore, they could be paid either to the special fund created as a result of a special levy or into a trust fund created pursuant to Section 5705.09 (H), Revised Code.

There is ample statutory authority in Section 5127.03, supra, for the County Board of Mental Retardation to expend its monies and I, therefore, can only conclude that the expenses incurred in the operation of the workshop should be paid directly on the warrant of the county auditor pursuant to vouchers approved by the County Board of Mental Retardation.

Your third and fourth questions relate to the Community Mental Health and Retardation Board which was formed pursuant to Chapter 340, Revised Code. Its powers and duties are set out therein. It is not primarily responsible for the operation of any specific mental health facility, but is rather a supervisory, coordinating and planning board charged with the following duties by Section 340.03, Revised Code, which reads as follows:

"Subject to rules and regulations of the commissioner of mental hygiene, the community mental health and retardation board, with respect to its area of jurisdiction, and except for programs and facilities conducted pursuant to Chapter 5127. of the Revised Code, shall:

"(A) Review and evaluate community mental health and retardation services and facilities and submit to the commissioner of mental hygiene, the board or boards of county commissioners, and the executive director of the program recommendations for reimbursement from state funds as authorized by section 5119.62 of the Revised Code and for the provision of needed additional services and facilities with special reference to the state comprehensive mental health plan;

"(B) Coordinate the planning for community mental health and retardation facilities, services, and programs seeking state reimbursement;

"(C) Receive, compile, and transmit to the division of mental hygiene applications for state reimbursement;

"(D) Promote, arrange, and implement working agreements with social agencies, both public and private, and with educational and judicial agencies;

"(E) Enter into contracts with state hospitals, other public agencies, and with private or voluntary hospitals and other private or voluntary nonprofit agencies for the provision of mental health and mental retardation service and facilities;

"(F) Appoint a qualified mental health specialist or qualified mental health administrator to serve as the executive director of the board on a full-time or part-time basis. If the executive director is neither a psychiatrist nor a pediatrician, the board shall designate a qualified doctor of medicine to assume responsibility for the medical activities of the board.

"(G) Prescribe the duties of the executive director and review his performance thereof;

"(H) Approve salary schedules for employees and consultants in agencies and facilities maintained and operated, in whole or in part, or by contract, under the direction of the board;

"(I) Recruit and promote local financial support for mental health and retardation programs from private and public sources;

"(J) In the event a needed service cannot be provided by an existing public or private agency, directly operate a mental health or mental retardation facility until such time as this responsibility can be assumed by another agency.

"(K) Prescribe fees to be charged for services, not to exceed the cost of the service. Physicians and mental health professionals shall be allowed to follow and assist in the care of the patients under the direction of the director of the facility.

"(L) Establish the operating procedures of the board and submit an annual report of the programs under the jurisdiction of the board, including a fiscal accounting, to the board of county commissioners.

"(M) Establish such rules and regulations or standards and perform such other duties as may

be necessary or proper to carry out Chapter 340. of the Revised Code."

The County Commissioners have authority to provide funds for the use of this board, but, in contradistinction to their duty to provide funds for the operation of the Chapter 5127, Revised Code, workshop, they are not required by law to do so. Section 340.07, Revised Code, provides as follows:

"The board of county commissioners of any county participating in a community health and retardation program, upon receipt from the community mental health and retardation board of a resolution so requesting, may appropriate money to a public agency for the acquisition, construction, reconstruction, maintenance, and operation of mental health and mental retardation diagnostic, treatment, rehabilitation, and training facilities and programs, hospital units, schools, workshops, and residential facilities for mentally ill, mentally retarded, and emotionally disturbed persons or may appropriate money to a private nonprofit corporation or association for the operation of such facilities and programs.

"Such facilities and programs shall be authorized by the commissioner of mental hygiene and shall be operated under rules and regulations adopted under Chapter 340. and section 5119.61 of the Revised Code, subject to sections 119.01 to 119.13, inclusive, of the Revised Code."

Although it is not mandatory upon the County Commissioners to provide funds to the Community Mental Health and Retardation Board, they have been given express authority for a special levy for this purpose by Section 5705.221 [5707.22.1], Revised Code, as follows:

"At any time the board of county commissioners of any county by a majority vote of the full membership may declare by resolution that the amount of taxes which may be raised within the ten-mill limitation by levies on the current tax duplicate will be insufficient to provide the necessary requirements of the community mental health and retardation program established pursuant to Chapter 340. of the Revised Code and that it is necessary to levy a tax in excess of such limitation for mental health and retardation purposes.

"Such resolution shall conform to section 5705.19 of the Revised Code and be certified and submitted in the manner provided in section 5705.-25 of the Revised Code.

"If the majority of electors voting on a levy to supplement general funds appropriations for the support of the comprehensive mental health and mental retardation program vote in favor of the levy, the board may levy a tax within the county at the additional rate outside the

ten-mill limitation during the period, for the purpose stated in the resolution."

It is my understanding that at the present time, state monies are being provided quarterly in advance and constitute approximately seventy-five percent of the budget as approved by the Commissioner of Mental Hygiene. The local twenty-five percent may be provided by the County Commissioners or other sources, i.e., United Appeal or other donations. Since the funds are provided from various sources and the County Treasurer is charged with their custody, it would be necessary for a separate fund to be established as a repository for such funds. This is especially true where the community involved consists of more than one county: funds may be forthcoming from the general fund of each county if said funds are appropriated by the commissioner; the funds from special levies would necessarily be put in a separate fund as provided by Section 5705.10, supra. Certainly, the general fund would not be a proper repository for funds from charitable donations made for an express purpose. Section 340.10, Revised Code, provides as follows:

"State funds allocated for the support of a community mental health and retardation program shall be paid to the county treasurer or, in a joint program, to the treasurer of that custodian of the community mental health and retardation fund and authorized to make payments from such fund on order of the county auditor and on recommendation of the community mental health and retardation board."

Clearly, then, the General Assembly provided that there be a distinct fund, held by a County Treasurer, payable upon the warrant of the County Auditor pursuant to vouchers approved by the Board.

Therefore, it is my opinion and you are hereby advised that:

1. The monies received for the support of a County Board of Mental Retardation may be paid into the general fund of the county to the account of the board, unless the county funds are provided by a special levy, in which case, a separate fund must be established pursuant to Section 5705.10, Revised Code.
2. These funds are payable pursuant to vouchers approved by the County Board of Mental Retardation.
3. The monies received for the support of community mental health and retardation programs as authorized by Chapter 340, Revised Code, should be paid into the designated county treasury to the credit of the Community Mental Health and Retardation Fund.
4. These monies are payable pursuant to vouchers approved by the Community Board of Mental Health and Retardation.