

## OPINION NO. 73-009

## Syllabus:

1. Under R.C. 154.20, enacted pursuant to Article VIII, Section 2i, Ohio Constitution, state funds for the construction of mental health and mental retardation facilities may not be granted to private nonprofit corporations, with the exception of those corporations which are "state supported or state assisted institutions of higher education."

2. Under R.C. 154.20, state funds for the construction of a mental health and mental retardation facility may be granted to a "governmental agency", as defined in R.C. 154.01 which may then contract with a private nonprofit corporation for the operation of such facility, if so empowered by the particular statutes relating to such governmental agency.

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To: Kenneth D. Gaver, Director, Dept. of Mental Health and Mental Retardation,  
Columbus, Ohio

By: William J. Brown, Attorney General, February 13, 1973

I have before me your request for my opinion, which reads as follows:

Ohio law now authorizes this Department to reimburse partially for construction costs for capital improvements whose purpose is to provide mental hygiene (now: mental health) and mental retardation services at community levels.

The state reimbursement assistance for these improvements is derived from the proceeds of the revenue obligations authorized by Article VIII, Section 2i, of the Constitution of Ohio and the implementing statutes subsequently enacted by the General Assembly. However, Article VIII, Section 4 of the Constitution of Ohio prohibits extension of the credit of the state to any cor-

poration whatsoever and further prohibits joint ownership by the state with a corporation formed for any purpose.

I now ask for your Opinion on the propriety of use of these funds in the following instance:

1. The applicant for construction reimbursement funds is a general hospital. It is a corporation organized on a not for profit basis.

2. The facility proposed for construction will be a multi-story building and completely separate from the other general hospital buildings now in existence. The fifth floor of the new structure will contain the mental health and retardation facility, but the title to the land and completed building will be vested in a not for profit corporation.

In the event you conclude that this Department may not approve an application for partial construction reimbursement in the foregoing instance, I then request your Opinion as to whether the statutes implementing Article VIII, Section 2i, permit this Department to reimburse a governmental entity which will construct this capital improvement. Thereafter, the governmental entity would lease the facility to a not for profit corporation or to a corporation organized for profit with either corporation empowered by its respective charter to provide mental health and mental retardation services at the community level.

The constitutional and statutory authority you mention is intended to provide mental health and retardation facilities at the local level, so that patients will not need to be removed from their communities and isolated at centralized state facilities.

Article VIII, Section 2i, Ohio Constitution, reads in part as follows:

In addition to the authorization otherwise contained in Article VIII of the Ohio Constitution, the general assembly, in accordance with but subject to the limitations of this section, may authorize the issuance of obligations, including bonds and notes, of the state or of state institutions, boards, commissions, authorities, or other state agencies or instrumentalities for any one or more of the following public capital improvements: \* \* \* the acquisition, construction, reconstruction, or other improvement of, and provision of equipment for, buildings, structures, or other improvements, and necessary planning and engineering, for \* \* \* state supported or assisted institutions of higher education, \* \* \* research and development with respect to \* \* \* mental hygiene and retardation, \* \* \* and other state buildings and structures, \* \* \*

\* \* \* \* \* \* \* \*

The general assembly also may authorize the issuance of revenue obligations and other obligations, the owners or holders of which are not given the right to have excises or taxes levied by the general assembly for the payment of principal thereof or interest thereon, for such capital improvements for mental hygiene and retardation, \* \* \* state supported and state assisted institutions of higher education, \* \* \* and housing of branches and agencies of state government, which obligations shall not be subject to other provisions of this section and shall not be deemed to be debts or bonded indebtedness of the state under other provisions of this Constitution. Such obligations may be secured by a pledge under law, without necessity for further appropriation, of all or such portion as the general assembly authorizes of charges for the treatment or care of mental hygiene and retardation patients, \* \* \* receipts of or on behalf of state supported and state assisted institutions of higher education, or other revenues or receipts, specified by law for such purpose, of the state or its officers, departments, divisions, institutions, boards, commissions, authorities, or other state agencies or instrumentalities, and this provision may be implemented by law to better provide therefor; provided, however, that any charges for the treatment or care of mental hygiene or retardation patients may be so pledged only to obligations issued for mental hygiene and retardation, \* \* \* any receipts of or on behalf of state supported or state assisted institutions of higher education may be pledged only to obligations issued for capital improvements for state supported or state assisted institutions of higher education, and any other revenues or receipts may be so pledged only to obligations issued for capital improvements which are in whole or in part useful to, constructed by, or financed by the department, board, commission, authority, or other agency or instrumentality that receives the revenues or receipts so pledged. \* \* \*

\* \* \* \* \* \* \* \*

This constitutional provision is implemented by R.C. 154.20, insofar as mental health and retardation is concerned. That Section reads as follows:

(A) Subject to authorization by the general assembly under section 154.02 of the Revised Code, the Ohio public facilities commission may issue obligations pursuant to Chapter 154. of the Revised Code to pay costs of capital facilities for mental hygiene and retardation.

\* \* \* \* \* \* \* \*

(F) There is hereby created a fund designated the "mental health facilities improvement fund" which shall be in the custody of the treasurer of state. Subject to the bond proceedings therefor, all of the proceeds of the sale of obligations pursuant to this section shall be credited to said fund, except that any accrued interest shall be credited to the mental health bond service fund. Such mental health facilities improvement fund may also be comprised of gifts, grants, appropriated moneys, and other sums and securities received to the credit of such fund. Such fund shall be applied, when appropriated therefor by the general assembly, only to the purpose of paying costs of capital facilities for mental hygiene and retardation under the jurisdiction of the department of mental hygiene and correction or for participation in capital facilities for mental hygiene and retardation with the federal government, municipal corporations, counties, or other governmental agencies or any one or more of them which participation may be by grants or contributions to them for such capital facilities.

\* \* \* \* \*

(Emphasis added.)

The statutory authority to which you apparently refer is contained in the language just emphasized. This language authorizes grants to "the federal government, municipal corporations, counties, or other governmental agencies" for capital facilities. "Governmental agency" is defined by R.C. 154.01 as follows:

As used in Chapter 154. of the Revised Code:

\* \* \* \* \*

(E) 'Governmental agency' means state agencies, state supported and assisted institutions of higher education, municipal corporations, counties, townships, school districts, and any other political subdivision or special district in this state established pursuant to law, and, except where otherwise indicated, also means the United States or any department, division, or agency thereof, and any agency, commission, or authority established pursuant to an interstate compact or agreement.

(F) 'Institutions of higher education' and "state supported or state assisted institutions of higher education" means the state universities identified in section 3345.011 of the Revised Code, the medical college of Ohio at Toledo, state universities or colleges at any time created, community college districts, university branch districts, and technical college districts at any time established or operating under Chapter 3354., 3355., or 3357., of the Revised Code, institutions at any time established or operating under

Chapter 3349. of the Revised Code, and other institutions for education, including technical education, beyond the high school, receiving state support or assistance for their expenses of operation.

\* \* \* \* \*

In view of the above language, grants for construction of capital facilities may not be made to private nonprofit corporations, with the exception of a privately-owned college or university which is a "state supported or state assisted" institution of higher education. Hence, a nonprofit corporation which is organized as a general hospital may not apply for a cash grant from the Mental Health Facilities Improvement Fund created by R.C. 154.20.

Your question mentions Article VIII, Section 4 of the Ohio Constitution, which reads as follows:

"The credit of the state shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation whatever; nor shall the state ever hereafter become a joint owner, or stockholder, in any company or association in this state, or elsewhere, formed for any purpose whatever."

While it is not actually necessary to the answer to your question, I should point out that this provision does not apply to private nonprofit corporations which seek state grants for public purposes. In Opinion No. 71-044, Opinions of the Attorney General for 1971, I stated with respect to this provision, as follows:

State, ex rel. Leaverton v. Kerns, 104 Ohio St. 550 (1922), had held that such provision does not prevent grants being made to corporations or associations not for profit where the purpose of the grant is a public one. Neither the majority nor minority in Defenbacher, supra, [State ex rel. v. Defenbacher, 164 Ohio St. 142 (1955)], entertained any doubt about the correctness of that holding. Donees of public funds therefore are not restricted as to type of organization by the above quoted provision, with the exception of private business entities. \* \* \*

(Bracketed material added.)

Cf. Opinion No. 72-096, Opinions of the Attorney General for 1972. There is no question that a grant for the construction of a mental health facility would be for a public purpose.

You ask, in the alternative, whether a governmental entity can receive a grant under R.C. 154.20, construct a facility and then lease it to a private corporation which would operate it. R.C. 154.20 does not address itself to this question, although it does authorize leases, to "governmental agencies", of capital facilities constructed by the Ohio Public Facilities Commission. However, authority for the type of lease in question can be found in other statutes, since the constitutional provision which authorizes R.C. 154.20 specifies that the authority provided by such provision is in addition to, and not a limitation upon, other authority created by the General Assembly under other provisions of the Constitution. Article VIII, Section 21,

Ohio Constitution. Hence, a "governmental agency" has authority to lease the facility it has constructed, if the statutes relating to it grant it such power.

For example, funds may be granted to a county for construction of a facility, and the board of county commissioners may, upon resolution of the community mental health and retardation board, "appropriate money to a private nonprofit corporation or association for the operation of such facilities and programs." R.C. 340.07. R.C. 340.03 (E) provides that a community mental health and retardation board may:

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 services and facilities;

\* \* \* \* \*

See Opinion No. 71-070, Opinions of the Attorney General for 1971. A 50-year renewable lease to a private "hospital agency", as defined in R.C. 140.01 (C), is authorized by R.C. 140.05. Finally, it should be noted that there is authority to contract only with nonprofit corporations, not with corporations for profit.

In specific answer to your question it is my opinion, and you are so advised, that:

1. Under R.C. 154.20, enacted pursuant to Article VIII, Section 2i, Ohio Constitution, state funds for the construction of mental health and mental retardation facilities may not be granted to private nonprofit corporations, with the exception of those corporations which are "state supported or state assisted institutions of higher education."

2. Under R.C. 154.20, state funds for the construction of a mental health and mental retardation facility may be granted to a "governmental agency", as defined in R.C. 154.01, which may then contract with a private nonprofit corporation for the operation of such facility, if so empowered by the particular statutes relating to such governmental agency.