

**OPINION NO. 88-045****Syllabus:**

A community mental health board is without statutory authority to loan or donate funds to a private, nonprofit agency, which provides mental health services and facilities, for expansion of the agency's facilities.

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**To: John W. Allen, Richland County Prosecuting Attorney, Mansfield, Ohio**  
**By: Anthony J. Celebrezze, Jr., Attorney General, June 21, 1988**

I have before me your opinion request in which you ask: "Does a community mental health board have authority to either loan or grant funds to a private, nonprofit mental health agency for the purpose of expanding the agency's facility?" Your letter states that the Richland County Community Mental Health Board has contracted with a private, nonprofit agency for the provision of mental health services to county residents. The agency is planning to expand its facility and the community mental health board would like to make a loan or grant to the agency for the purpose of expanding the agency's facility.

Community mental health service districts are established in accordance with R.C. 340.01. Pursuant to R.C. 340.02, a community mental health board is appointed for each community mental health service district. As characterized in *Greene County Guidance Center, Inc. v. Greene-Clinton Community Mental Health Board*, 19 Ohio App. 3d 1, 4, 482 N.E.2d 982, 986 (Greene County 1984), a community mental health board "is a public authority created by law to carry out a public purpose in a limited area of sovereign responsibility for a public purpose with public funds....The [board] has the primary responsibility for the mental health program in its county or district."

Since a community mental health board is a creature of statute, it has only those powers and duties expressly assigned to it by the General Assembly or those which are necessarily implied therefrom. See 1974 Op. Att'y Gen. No. 74-015. Specifically concerning the expenditure of funds, a community mental health board is bound by the legal principle that a public body may expend public funds only pursuant to clear statutory authority. See *State ex rel. Locher v. Menning*, 95 Ohio St. 97, 99, 115 N.E. 571, 572 (1916) ("[t]he authority to act in financial transactions must be clear and distinctly granted, and, if such authority is of doubtful import, the doubt is resolved against its exercise in all cases where a financial obligation is sought to be imposed upon the county"). See also *State ex rel. Smith v. Maharry*, 97 Ohio St. 272, 119 N.E. 822 (1918) (syllabus, paragraph one) ("[a]ll public property and public moneys, whether in the custody of public officers or otherwise, constitute a public trust fund....Said trust fund can be disbursed only by clear authority of law"). In order to determine whether the board may grant or loan the funds in the situation you present, it is, therefore, necessary to examine the statutory powers of a community mental health board.

The duties of a community mental health board are set forth, in part, in R.C. 340.03<sup>1</sup> which states:

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<sup>1</sup> The General Assembly recently enacted Sub. S.B. 156, 117th Gen. A. (1988) (eff. June 14, 1988) which makes numerous changes in mental health law. Pursuant to Sub. S.B. 156, the duties of a community mental health board, as specified in R.C. 340.03, have been significantly altered, but such amendments will not alter the conclusion reached in this opinion.

Subject to rules of the director of mental health, the community mental health board shall:

(A) Serve as the community mental health planning agency for the county or counties under its jurisdiction, and in so doing it shall:

(1) Evaluate the need for programs and facilities for which state or federal aid for mental health purposes is requested and local planning action is required and submit its findings and recommendations to the appropriate local, regional, state, or federal agency;

(2) Assess the community mental health needs, set priorities, and develop plans for the operation of community mental health services and programs and facilities for those services and programs, in cooperation with other local and regional planning and funding bodies;

(3) Develop and submit to the chief of the division of mental health facilities and services each year a comprehensive annual plan listing community mental health needs, including the needs of former residents of the district now residing in state mental institutions who may return to the district within the planning year, and all qualified programs and facilities that are or will be in operation during the year in the community to meet such needs;

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(G) *Enter into contracts with public and private agencies for the provision of mental health services and facilities....*

...  
(J) Establish such rules, operating procedures, standards, and bylaws, and perform such other duties as may be necessary or proper to carry out the purposes of this chapter.

A community mental health board may receive by gift, grant, devise, or bequest any moneys, lands, or property for the benefit of the purposes for which the board is established, and may hold and apply it according to the terms of the gift, grant, or bequest. All money received, including accrued interest, by gift, grant, or bequest shall be deposited in the treasury of the county, the treasurer of which is custodian of the community mental health funds to the credit of the board and shall be available for use by the board for purposes stated by the donor or grantor. (Emphasis added.)

Further, R.C. 340.031(B) specifically authorizes a community mental health board to "[a]cquire, convey, lease, or enter into a contract to purchase, lease, or sell property for community mental health and related purposes, and enter into loan agreements, including mortgages, for the acquisition of such property."

From the foregoing, it is clear that while a community mental health board may use its funds for the purpose of providing mental health facilities, it may do so only as specified by statute. See, e.g., R.C. 340.03(G) (authorizing a community mental health board to: "Enter into contracts with public and private agencies for the provision of mental health services and facilities"); R.C. 340.031(B); 1977 Op. Att'y Gen. No. 77-057 at 2-205 ("the community board of mental health and retardation [(predecessor of community mental health board)] may enter into contracts for the lease of facilities necessary to its operation"); 1975 Op. Att'y Gen. No. 75-084 (syllabus, paragraph two) (stating in part: "A single county mental health and retardation board [(predecessor of community mental health board)] may enter into lease agreements for facilities without the approval of the county commissioners"). Cf. 1971 Op. Att'y Gen. No. 71-044 (syllabus) ("[a] municipality may not make an outright, unrestricted gift of funds to a nongovernmental organization, regardless of whether or not such organization may be generally engaged in performing a beneficial, public purpose"). Nowhere in R.C. Chapter 340, however, is there express authority for the community mental health board to loan or grant funds to a private, nonprofit agency, which provides mental health services and facilities, to be used for expansion of the agency's facilities.

I addressed a question similar to yours in 1983 Op. Att'y Gen. No. 83-069. I was asked whether a township could use funds derived from a tax levied under R.C. 5705.19(I) to pay for the purchase of a fire station, fire apparatus, or equipment to be owned by a private volunteer fire company or to pay for the maintenance of such property not owned by the township. I concluded that a township, as a creature of

statute, would need a specific grant of statutory authority to simply donate tax funds, or property or maintenance services acquired with such funds to a private individual or corporation. I also noted that: "any such arrangement would have to be reconciled with the provisions of Ohio Const. art. VIII, §6, which prohibit a township from raising money for, or lending its credit to, a private enterprise." Op. No. 83-069 at 2-286. Despite the township's lack of authority simply to donate money or property to a private fire company, Op. No. 83-069 concluded that the township's authority to contract with a private fire company would allow the township funds to be used for the proposed purpose, subject, however, to the limitations set forth as follows:

[T]here is clear authority for a township to contract with a "[p]rivate fire company,"...to obtain fire protection, upon authorization of the appropriate governing boards. R.C. 9.60(C). No statutory limitations are placed upon the terms which such contracts may include. Subject to the standard of abuse of discretion, a board of township trustees may, therefore, agree to such terms and conditions as it deems appropriate....I am aware of no principle of law which would prohibit a board of township trustees from including terms and conditions which may result in making township funds available for the purchase of property or maintenance services for the fire company, provided, of course, that the payments made by the township are reasonable compensation for the services to be rendered.<sup>4</sup>

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<sup>4</sup> In entering into any such contract, the township should, of course, remain mindful of Ohio Const. art. VIII, §6. A contract which provides benefits to a private company which are disproportionate to those received by the township, or which inextricably mingles assets of the two bodies, *see* 1979 Op. Att'y Gen. No. 79-101, may run afoul of this provision. *See* 1981 Op. Att'y Gen. No. 81-093; 1977 Op. Att'y Gen. No. 77-049.

Op. No. 83-069 at 2-287.

Similarly, although a community mental health board is without authority to loan or donate funds to a private, nonprofit agency, which provides mental health services and facilities, it does have authority under R.C. 340.03(G) to "[e]nter into contracts with public and private agencies for the provision of mental health services and facilities." *See generally* 1977 Op. Att'y Gen. No. 77-048 at 2-170 (examining the provisions of R.C. 340.03(E) (predecessor of R.C. 340.03(G)), and concluding that: "[n]ecessarily implied from this power to contract is the authority to set specific contractual terms"). No statute of which I am aware prohibits the use of funds provided under a contract entered into under R.C. 340.03(G) from being used for expansion of the contracting agency's facilities. I caution, however, that in negotiating the terms of a contract under R.C. 340.03(G), the community mental health board must assure that the funds provided to the agency under the contract are reasonable compensation for the mental health services and facilities provided by the agency.

It is, therefore, my opinion, and you are hereby advised that, a community mental health board is without statutory authority to loan or donate funds to a private, nonprofit agency, which provides mental health services and facilities, for expansion of the agency's facilities.