

OPINION NO. 71-082

Syllabus:

1. The Ohio Rehabilitation Services Commission has authority to request an unrestricted contribution from an establishment or construction grant recipient and use the proceeds for the Commission's administrative costs.

2. The Ohio Rehabilitation Services Commission may not condition any official action it has power to take on the receipt or non-receipt of any contribution solicited for general or administrative purposes.

**To: Denver L. White, Administrator, Ohio Rehabilitation Services Commission,
Columbus, Ohio**

By: William J. Brown, Attorney General, November 29, 1971

I have your request for an opinion, addressed to my predecessor, in which you inquire whether the Ohio Rehabilitation Services Commission, which administers a federal-state program of grants for remodeling existing rehabilitation facilities and constructing new ones, may solicit contributions from the recipients of such grants to cover the Commission's administrative costs.

Your letter states that the Department of Health, Education and Welfare, under authority of the federal Vocational Rehabilitation Act (29 U.S.C. 31 et seq.), allots funds to the states for vocational rehabilitation services on a proportional matching basis that your Commission is the designated agency of the State of Ohio for the ad-

ministration of such funds; that, in the case of "establishment" (expansion or remodeling) of an existing rehabilitation facility or construction of a new one, the state may make up the amount necessary to match the full available federal allotment by accepting a contribution from a public or private non-profit agency, both the state funds and the federal matching funds then being returned to the donor agency by your Commission as an establishment or construction grant; that, since appropriations by the General Assembly have been insufficient to match all the federal funds available for the State of Ohio, the shortages have been made up by the receipt of such contributions; that your Commission's administrative costs will, if paid from the state's appropriated funds, make it impossible for the state to match all available federal funds; and that you have, therefore, asked the grant recipients to contribute two percent of the cost of their approved projects, to be used to cover your administrative costs. Your letter continues, in part, as follows:

"Question has been raised concerning the legality of the State vocational rehabilitation agency soliciting and accepting the two percent contribution to cover the cost of administering the grant.

"Those who question this procedure take the view that costs of administering grants and all related costs of the development of rehabilitation facilities are responsibilities of the State vocational rehabilitation agency which is supported by public funds. They assert that, being a public agency, we have the obligation to provide this service and have no right to assess the grant recipient for the cost of service.

"Our view is that public funds appropriated or otherwise obtained are not sufficient to match all the Federal funds available for vocational rehabilitation. Therefore, the Rehabilitation Services Commission must administer a budget which is not sufficient to meet the rehabilitation needs of all eligible handicapped persons in Ohio. It is the opinion of the Rehabilitation Services Commission that, as long as otherwise unused Federal funds are used for grant purposes, the cost of administering these grants should not be a financial burden on the already limited program of services to handicapped persons.

* * * * *

"We do not believe that we are violating any Federal or State law or regulation and request an opinion from the Attorney General as to the legal right of the Ohio Rehabilitation Services Commission to request an unrestricted contribution from an establishment or construction grant recipient to cover our administrative costs."

The powers and duties of the Ohio Rehabilitation Services Commission are prescribed by Section 3304.16, Revised Code, which reads, in pertinent part, as follows:

"In carrying out the purposes of sections 3304.11 to 3304.27, inclusive, of the Revised Code, the rehabilitation services commission:

"(A) Shall develop all necessary rules and regulations;

"(B) Shall prepare and submit to the governor * * *, prior to each regular session of the general assembly, an estimate of sums required to carry out the commission's responsibilities;

* * * * *

"(E) May take any other necessary or appropriate action for cooperation with public and private agencies and organizations which may include:

* * * * *

"(2) Contracts or other arrangements with public and other non-profit agencies and organizations for the construction or establishment and operation of vocational rehabilitation programs and facilities;

* * * * *

"(5) Compliance with any requirements necessary to obtain federal funds in the maximum amount and most advantageous proportion possible;

* * * * *

"(H) May accept and hold, invest, reinvest, or otherwise use gifts made for the purpose of furthering vocational rehabilitation;

* * * * *"

Section 3304.18, Revised Code, provides in pertinent part that:

"* * * [i]f federal funds are not available to the state for vocational rehabilitation purposes, the governor shall include as part of his biennial budget request to the general assembly a request for funds sufficient to support the activities of the commission."

The federal Vocational Rehabilitation Act, *supra*, requires that the Secretary of the Department of Health, Education and Welfare approve all state requests for funds. 29 U.S.C. 35, provides, in pertinent part, as follows:

"(A) To be approvable under this chapter, a State plan for vocational rehabilitation services shall -

* * * * *

"(3) [P]rovide for financial participation by the State, and provide that the plan shall be in effect in all political subdivisions of the State;

"(4) [S]how the plan, policies, and methods to be followed in carrying out the work under the State plan and in its administration and supervision, * * *'

"(5) [P]rovide such methods of administration, * * * as are found by the Secretary to be necessary for the proper and efficient administration of the plan;

"* * * * * * * * * *"

The regulations adopted by the Department of Health, Education and Welfare provide in pertinent part (34 Fed. Reg. 16814-16815 (1969) as follows:

§ 401.80 State and local funds.

"(a) In order to receive the Federal share of expenditures under the State plan, expenditures from State or local funds under such plan equal to the State's share must be made. * * * The State's share shall be the difference between the Federal share (see §§ 401.86 and 401.135) and 100 per centum.

"(b) For the purposes of this section, 'State or local funds' means (1) funds made available by appropriation directly to the State or local rehabilitation agency * * *; (2) contributions by private organizations or individuals, which are deposited in the account of the State * * * rehabilitation agency * * * for expenditure by, and at the sole discretion of, the State * * * rehabilitation agency: Provided, however, That such contributions earmarked for meeting the State's share * * * for carrying on types of administrative activities so identified, may be deemed to be State funds, * * * except that Federal financial participation will not be available in expenditures that revert to the donor's use or facility; * * * or (4) contributions by private organizations or individuals, deposited in the account of the State * * * rehabilitation agency * * * which are earmarked, under a condition imposed by the contributor, for meeting (in whole or in part) the State's share for establishing or constructing a particular rehabilitation facility * * *; Provided, however, That such funds may be used to earn Federal funds only with respect to expenditures for establishing or constructing the particular rehabilitation facility for which the contributions are earmarked: * * *."

In summary, it would appear from the above statutes and regulations that the funds available to your Commission are (omitting

certain small business proceeds) specifically limited to three sources: (1) appropriations by the General Assembly, (2) unrestricted or restricted gifts, and (3) federal matching funds; that restricted gifts can be expended only upon the particular construction or establishment operation specified by the donor (Fed. Reg. § 401.80(b) (4), *supra*); that unrestricted gifts can be expended for administration purposes (Fed. Reg. § 401.80(b) (2), *supra*); and that your Commission's plan of administration must be approved by the Secretary of the Department of Health, Education and Welfare.

I have no doubt that, under these statutes and regulations, the Commission may request that construction and establishment grantees contribute bona fide gifts to meet the costs of administration of their grants. But I would caution that the solicitation of such funds not take such form that it could be characterized legally as an "assessment". As noted above, some have raised this objection. I realize that, as your letter states, the Commission "must administer a budget which is not sufficient to meet the rehabilitation needs of all eligible handicapped persons", and that, if some grantees refuse to contribute administrative expenses, appropriated funds must be used for that purpose, thus diminishing the amount of state funds available to obtain the maximum amount of federal matching funds. But the remedy for that lies with the General Assembly. See Section 3304.18, *supra*. Under the present Revised Code the Commission has the power to accept gifts, but it has no power to make an assessment, and the Commission can exercise only such powers as are bestowed upon it by statute. 1 O. Jur. 2d, Administrative Law and Procedure, Sections 18, 19 and 54. In *State, ex rel. Foster v. Evatt*, 144 Ohio St. 65 100-104 (1944), *certiorari denied*, 324 U.S. 878, the Court said, at pages 104 and 105:

"Where statutes are ambiguous there is room for judicial interpretation but where instead of an ambiguity there is an absence of enactment, courts are without power to supply the deficiency. It has been held, too often to need any citation of authority, that in seeking legislative intention courts are to be guided by what the legislative body said rather than what we think they ought to have said.

* * * * *

"Where the General Assembly has omitted a provision in an act necessary to make it complete or otherwise advisable, the courts have no power to supply what the court thinks the legislature ought to have enacted.

"In the case of *Slingluff v. Weaver*, 66 Ohio St., 621, 64 N.E. 574, this court held:

"* * * The question is not what did the General Assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction."

Attached to your letter were two sample "contribution" agreements to be signed by grant recipients. After careful consideration of the terminology used in these agreements, I am of the opinion that they

do not describe gifts, but rather contracts to pay the costs of administration of the grants. I do not believe that the statutes give the Commission the authority to enter into such a contract. Your attention is also directed to the fact that the Commission's plan of administration must be approved by the Secretary of the Department of Health, Education and Welfare.

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

1. The Ohio Rehabilitation Services Commission has authority to request an unrestricted contribution from an establishment or construction grant recipient and use the proceeds for the Commission's administrative costs.

2. The Ohio Rehabilitation Services Commission may not condition any official action it has power to take on the receipt or non-receipt of any contribution solicited for general or administrative purposes.