

## OPINION NO. 75-034

## Syllabus:

A community board of mental health and mental retardation or a joint county board of mental health and mental retardation may pay for membership in the Ohio Community Mental Health and Mental Retardation Association from funds made available to them from appropriations by the county commissioners, or from a voted levy pursuant to R.C. 5705.221.

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio  
By: William J. Brown, Attorney General, May 16, 1975

I have before me your request for my opinion on the following questions:

"1. Can a community mental health and mental retardation board lawfully pay for membership in the State Association of Boards of Mental Health and Retardation from funds made available to them from appropriations by the county commissioners, or from a voted levy pursuant to Section 5705.221 of the Revised Code?

"2. Can a joint-county board of mental health and mental retardation lawfully pay for membership in the State Association of Boards of Mental Health and Retardation from funds made available to them by appropriations from their respective counties, or from a voted levy pursuant to Section 5705.221 of the Revised Code?"

The Ohio Community Mental Health and Mental Retardation Association is a private entity the object of which, as stated in Article II of the By-Laws, is "to promote, maintain, and improve mental health and mental retardation services in Ohio." In order to accomplish this objective, the association provides a clearing-house for Community Mental Health and Mental Retardation Boards for such activities as the sharing of information between Boards and the promoting of continuing education on current mental health and mental retardation trends.

You specifically inquire about expenditures by a community mental health and mental retardation board or a joint county board of mental health and mental retardation for membership in the Ohio Community Mental Health and Retardation Association from funds made available by the county commissioners through appropriations pursuant to R.C. 340.07 or from a voted levy pursuant to R.C. 5705.221.

The funds made available by R.C. 340.07 and R.C. 5705.221 are for the fulfillment of the necessary requirements for the operation of mental health and mental retardation facilities and programs. What is necessary must be elicited from those statutes governing such facilities and programs. It is well settled that county boards and officials, such as a community

mental health and retardation board, as creatures of statute, possess only such power and privileges as may be delegated to or conferred upon them by statute, and these powers must be strictly construed. State, ex rel. Hoel v. Goubeaux, 110 Ohio St. 287, 288 (1924); Portage County v. Gates, 83 Ohio St. 19, 30 (1910). Thus, it must be determined whether the payment for membership in the Ohio Community Mental Health and Retardation Association is specifically authorized or necessarily implied from the powers and duties granted to the board by statute.

Community mental health and retardation boards are provided for in R.C. 340.02. R.C. 340.03 provides in pertinent part:

"Subject to rules and regulations of the director of mental health and mental retardation, the community mental health and retardation board, with respect to its area of jurisdiction, and except for training center and workshop 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 director of mental health and mental retardation, 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;

". . . .

"(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.

". . . .

I have had occasion to discuss the general purposes and duties of a community mental health and mental retardation board in previous opinions. In 1971 Op. Att'y Gen. No. 71-070, I noted:

". . . The community board . . . has a general planning and coordinating function with respect to all mental health and retardation facilities, programs, and services in the community . . . with the exception of those specifically committed to the jurisdiction of the county board.

In 1974 Op. Att'y Gen. No. 74-015, I stated:

"Specifically the board is charged with planning for community mental health and retardation facilities, services, and programs; appointing a qualified mental health specialist or mental health administrator to

serve as executive director; and adopting rules and regulations and performing other duties necessary to implement R.C. Chapter 340."

I specifically discussed expenditures by a community mental health and mental retardation board in Op. No. 74-015, supra, wherein the syllabus reads:

"A community mental health and retardation board may pay the expenses incurred by prospective employee in coming from out of town for a personal interview. The board may also pay the travel expenses of the interviewee's spouse when in the exercise of reasonable discretion it determines such expenditures to be necessary for the recruitment of a competent professional staff."

In that opinion, I reasoned that such expenditures were, by necessary implication, authorized because of the statutory duty of the board to hire a competent staff. See R.C. 340.03(F). Thus, it is clear that a community board has broad powers and duties, and that it may, when necessarily implied and in the exercise of reasonable discretion, make expenditures which are highly beneficial in aiding it to carry out its express statutory duties.

In 1971 Op. Att'y Gen. No. 71-067 I noted that recent Supreme Court Opinions have given a more liberal interpretation to the concept of "public purposes" as applied to the use of public funds. State, ex rel. McClure v. Hagerman, 155 Ohio St. 320 (1951); State, ex rel. Bruestle v. Rich, 159 Ohio St. 13 (1953). Consequently, I concluded in that opinion that upon approval from the board of county commissioners, a county board of mental retardation may pay membership dues from its general operational funds in order to obtain a membership in the State Association of Boards of Mental Retardation.

From the foregoing it is clear that a community board has broad powers and duties for the planning and caring of the mentally ill and retarded. Despite the vast resources made available to community boards by the Department of Mental Health and Mental Retardation (See R.C. Chapter 5119) in such areas as coordination and education, R.C. 340.03 charges the board with independent duties of evaluation and planning of community mental health and retardation facilities, services, and programs. It can easily be seen that an exchange of ideas and concerns among the various boards throughout the state can only lead to a more efficient discharge of those duties.

Thus, I find that, subject to the rules and regulations promulgated by the Director of Mental Health and Mental Retardation, a community board of mental health and mental retardation may expend funds to pay for membership in the Ohio Community Mental Health and Mental Retardation Association. The same is true for joint county boards of mental health and mental retardation.

In specific answer to your questions, it is my opinion and you are so advised that a community board of mental health and mental retardation or a joint county board of mental health and mental retardation may pay for membership in the Ohio Community Mental Health and Mental Retardation Association from funds made available to them from appropriations by the county commissioners, or from a voted levy pursuant to R.C. 5705.221.