

OPINION NO. 79-041**Syllabus:**

The Ohio Department of Mental Health and Mental Retardation is authorized under Ohio law to engage in and assist in the development or operation of housing for low-income, handicapped persons, and may accept and administer federal funds under Section 8 of the Housing and Community Development Act of 1974, 42 U.S.C. §1437(f), for such purpose.

To: Timothy B. Moritz, M.D., Director, Dept. of Mental Health and Mental Retardation, Columbus, Ohio

By: William J. Brown, Attorney General, July 27, 1979

I have before me your request for my opinion which poses the question whether the Department of Mental Health and Mental Retardation is authorized by statute to engage in the activities of a public housing agency, as defined by the United States Housing and Community Development Act of 1974, in order to provide housing for the low-income, mentally handicapped of the State of Ohio.

The Housing and Community Development Act of 1974, 42 U.S.C. §1437 *et seq.*, was enacted by Congress for the purpose of appropriating federal funds and credit to the states to subsidize the rental of dwellings by low-income families. It is the stated policy of the Act that maximum responsibility for the administration of such low-rent housing programs shall be vested in local public housing agencies 42 U.S.C. §1437. Section 8 of the Act, 42 U.S.C. §1437(f), authorizes the Secretary of Housing and Urban Development to enter into annual contribution contracts with public housing agencies, pursuant to which such agencies may enter into contracts to make assistance payments to owners of dwelling units who rent to eligible low-income persons.

You state in your letter that the Department of Mental Health and Mental Retardation provides state construction assistance funds to community mental health and retardation boards, county boards of mental retardation, and non-profit agencies incorporated to provide mental health or mental retardation services. The

Department reimburses these county and non-profit agencies for facilities acquired, constructed, operated, and owned by them. You further state that as a public housing agency under 42 U.S.C. §1437(f), the Department would be in a position to negotiate directly with the Secretary of Housing and Urban Development for an allocation of rental assistance funds, which would "pass through" the Department for the benefit of the mentally handicapped living in those facilities constructed or acquired with state construction assistance funds. Your question, therefore, is whether the Department of Mental Health and Mental Retardation is a "public housing agency," as that term is used in Section 8 of the United States Housing and Community Development Act of 1974.

In 42 U.S.C. §1437a(6), "public housing agency" is defined as follows:

. . . any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.

"Low income housing" means decent and sanitary dwellings within the financial reach of low-income families, 42 U.S.C. §1437a(l), and for the purposes of the Act, "families" include a person having a physical or mental impairment. 24 C.F.R. §812.2. The question of what constitutes a family, however, is a matter of federal law which should be determined by the Department of Housing and Urban Development. I shall assume, for the purposes of this opinion, that the federal agency will find that mentally handicapped persons are included within the term "families."

Apart from this assumption, the resolution of your inquiry must focus on whether, as a matter of Ohio law, the Department of Mental Health and Mental Retardation is "authorized to engage in or assist in the development or operation" of housing facilities for low-income, mentally handicapped persons. As such, it must be determined whether the General Assembly has authorized the Department to provide or contribute to residential facilities for the mentally handicapped.

The Department is given broad authority to provide for the care and custody of mentally handicapped persons in facilities other than hospitals pursuant to R.C. 5123.12. More specifically, R.C. 5126.06 authorizes the establishment of residential centers for the training of the mentally retarded, and R.C. 5123.121 gives the Department of Mental Health and Mental Retardation the power to contract with private organizations, non-profit corporations, and local public agencies for the provision of residence and other services, at a reasonable cost, for the mentally retarded. Additionally, pursuant to R.C. 5119.62 and R.C. 5119.63, the Department reimburses community and county mental health and retardation boards for their expenditures in the development and operation of facilities for the mentally handicapped, which include residential facilities. See R.C. 340.07 and 340.08. Thus, the Department of Mental Health and Mental Retardation is authorized under Ohio law to establish and operate, or provide financial assistance to, residential centers for the mentally handicapped. Accordingly, the Department is a public body "authorized to engage in or assist in the development or operation of" housing within the financial reach of low-income, mentally handicapped persons.

A final consideration is whether the Department of Mental Health and Mental Retardation may apply for and administer grants of federal funds available by virtue of the Housing and Community Development Act. Although no express provision exists with reference to this particular act, R.C. 5123.06 provides, in pertinent part:

The director of mental health and mental retardation, with the approval of the joint mental health and mental retardation advisory and review commission, for the purpose of taking, holding, and administering in trust for the state, may receive any grant, devise, gift, or bequest, made either to the state, or to it for the use and benefit of persons under its control in any hospital or institution, or

for any hospital or institution under its control, or if the trust so provides, for expenditure, upon any work which the division of mental health or the division of mental retardation and developmental disabilities is authorized to undertake. (Emphasis added.)

As noted above, the Department is authorized to undertake work with respect to the financing and operation of residential centers for the mentally handicapped, and as such, may receive any grant for that purpose pursuant to R.C. 5123.06. This would, of course, include any grant or subsidy from the federal government.

Accordingly, it is my opinion, and you are so advised, that the Ohio Department of Mental Health and Mental Retardation is authorized under Ohio law to engage in and assist in the development or operation of housing for low-income, handicapped persons, and may accept and administer federal funds under Section 8 of the Housing and Community Development Act of 1974, 42 U.S.C. §1437(f), for such purpose.