

OPINION NO. 79-022**Syllabus:**

A community mental health and mental retardation board is authorized under the terms of R.C. 340.03(I) to expend public funds to promote the approval of a tax levy by the electorate. (1920 Op. Att'y Gen. No. 1532, p. 915; 1937 Op. Att'y Gen. No. 7245, p. 2142; 1968 Op. Att'y Gen. No. 68-124 distinguished.)

To: Thomas E. Ferguson, Auditor of State, Columbus, Ohio
By: William J. Brown, Attorney General, May 24, 1979

I have before me your request for my opinion which poses the following question:

May a community mental health and retardation board lawfully authorize the expenditure of public funds to promote the approval of a tax levy by the electorate?

R.C. 340.01 provides for the establishment of community mental health and retardation service districts. As you have observed in your request, financial support for such districts is available through property taxes which may be levied, with the approval of the electorate, by a board of county commissioners under the terms of R.C. 5705.19, 5705.191 or 5705.221, or by a joint county district under the terms of R.C. 5705.19 or 5705.191. See R.C. 5705.01(A); 1975 Op. Att'y Gen. No. 75-089.

As you have further observed, my predecessors have had occasion — in 1920 Op. Att'y Gen. No. 1532, p. 915; 1937 Op. Att'y Gen. No. 7245, p. 2142; and 1968 Op. Att'y Gen. No. 68-124 — to consider whether several other statutorily created governmental entities are authorized to expend public funds to promote the approval by the electorate of a tax levy. In 1920 Op. Att'y Gen. No. 1532, p. 915, one of my predecessors considered the issue of whether a board of education could be said to be authorized to expend public money for such a purpose. Taking cognizance of the general rule that funds may be expended from the public treasury only with proper statutory authorization, my predecessor concluded, after a review of the statutory powers and duties of such a board, that there was no authority for a board of education to make such an expenditure.

In 1937 Op. Att'y Gen. No. 7245, p. 2142, another of my predecessors addressed the issue of whether a board of county commissioners is authorized to expend funds for the purpose of showing voters the necessity of a levy. He based his conclusion that there is no authority for a board of county commissioners to make such an expenditure upon the following language of State ex rel. Locher v. Menning, 95 Ohio St. 97, 99 (1916):

The legal principle is settled in this state that county commissioners, in their financial transactions, are invested only with limited powers, and that they represent the county only in such transactions as they may be expressly authorized so to do by statute. The 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.

In reaching his conclusion, my predecessor commented as follows:

There is no question but that a reasonable expenditure of public funds to advertise the necessity of a tax levy in certain cases would be perhaps a proper and in some instances even a laudable purpose, but, as has been stated by this office, it is a lawful rather than a laudable purpose that justifies the expenditure of the taxpayers' money. The remedy in the instant case is obviously with the legislature.

In 1968 Op. Att'y Gen. No. 68-124, another of my predecessors concluded that a regional water district is without authority to expend funds to conduct an educational program which has as its ultimate goal the passage of a bond issue.

I approve and follow the reasoning of my predecessors; however, a review of the statutory powers granted to community mental health and mental retardation boards under the terms of R.C. Chapter 340 compels a different conclusion in this instance. R.C. Chapter 340 empowers a community mental health and mental retardation board to seek community support for mental health and retardation programs. R.C. 340.03 devolves upon such a board a variety of duties concerning the review, development, coordination and financing of such programs. R.C. 340.03(l) specifies that such a board shall "[r]ecruit and promote local financial support for mental health and retardation programs from private and public sources."

While I agree with my predecessors that authority to expend funds may not be inferred from a laudable purpose which is related in only a very general way to a public body's statutory functions, I am of the opinion that the terms of R.C. 340.03 specifically place upon a community mental health and mental retardation board the duty of actively seeking both public and private financial support for its programs. Consequently, it is my opinion, and you are advised, that:

A community mental health and mental retardation board is authorized under the terms of R.C. 340.03(l) to expend public funds to promote the approval of a tax levy by the electorate. (1920 Op. Att'y Gen. No. 1532, p. 915; 1937 Op. Att'y Gen. No. 7245, p. 2142; 1968 Op. Att'y Gen. No. 68-124 distinguished.)