

OPINION NO. 97-008**Syllabus:**

Absent specific contractual terms providing otherwise, funds paid by an alcohol, drug addiction, and mental health board to a private entity, pursuant to contract, as reasonable compensation for services rendered or facilities provided become the property of the private entity and may be used by the private entity for any purposes for which that entity may properly expend its money.

To: Michael F. Hogan, Director, Department of Mental Health, Columbus, Ohio
By: Betty D. Montgomery, Attorney General, January 8, 1997

I have before me your opinion request in which you ask about the authority of an alcohol, drug addiction, and mental health board (ADAMH board) to control the use of funds that it has paid to private entities as compensation for services or facilities provided by those entities. By way of background, your opinion request states:

[S]everal ADAMH Boards seem to have taken the position that public funds never lose their public character, even after they are disbursed to private agencies for services contractually required by the Board's agreements with the providers, and even after those agencies have either designated those moneys for specific services per Board contract or have, in fact, expended those funds for contractually required services. In contrast, the provider agencies believe that once public moneys are disbursed by the public body to the private entity and those moneys have been drawn down after services have been rendered, the moneys and any earned surplus become private funds subject only to those appropriate limitations and controls contained in the contracts between the Board and the provider (including the requirements in the Medicaid agreement which specify reimbursement based on

actual cost) or the specific conditions of a grant. Absent these restrictions, the providers believe that any property purchased with funds earned through the provider of services to the Boards is the property of the provider and not, as a matter of law, property subject to the Board's control or ownership.

Initially, I note that an alcohol, drug addiction, and mental health services board is a creature of statute. R.C. 340.02. As such, it has only those powers and duties that the General Assembly has either expressly or by necessary implication imposed upon it. *See* 1988 Op. Att'y Gen. No. 88-045 (a community mental health board, as a creature of statute, has only those powers and duties expressly assigned to it by the General Assembly or those which are necessarily implied therefrom). In order to address your concerns, it is, therefore, necessary to examine the general powers and duties of boards of alcohol, drug addiction, and mental health services.

R.C. 340.01(B) provides for the establishment of alcohol, drug addiction, and mental health service districts within a single county or on a joint county basis. In each such service district there is appointed an ADAMH board. R.C. 340.02. Pursuant to R.C. 340.03(A)(1), an ADAMH board "serve[s] as the community mental health planning agency for the county or counties under its jurisdiction." The board is to assess community mental health needs and to develop a community mental health plan for approval by the Department of Mental Health. R.C. 340.03(A)(1). The board is also required to "[r]eceive, compile, and transmit to the department of mental health applications for state reimbursement," and "[p]romote, arrange, and implement working agreements with social agencies, both public and private, and with judicial agencies." R.C. 340.03(A)(1)(d)-(e). In addition, each board must "[r]eview, evaluate, and conduct program audits for community mental health services, facilities, and agencies seeking federal, state, or board assistance," R.C. 340.03(A)(3), and "[a]udit, in accordance with rules adopted by the auditor of state pursuant to [R.C. 117.20], at least annually all programs and services provided under contract with the board," R.C. 340.03(A)(4).

The responsibility of an ADAMH board with respect to contracting for mental health services and facilities is set forth in R.C. 340.03, which states in part:

(A) Subject to rules issued by the director of mental health after consultation with relevant constituencies as required by [R.C. 5119.06(A)(11)], with regard to mental health services, the board of alcohol, drug addiction, and mental health services shall:

....

(6)(a) Enter into contracts with public and private agencies for the provision of mental health services and facilities.... In contracting with a public or private agency, a board shall consider the cost effectiveness of services provided by that agency and the quality and continuity of care, and may review cost elements, including salary costs, of the services to be provided. A utilization review process shall be established as part of the contract for services entered into between a board and a public or private agency. The board may establish this process in a way which is most effective and efficient in meeting local needs.

....

(7) Approve fee schedules and related charges or adopt a unit cost schedule or other methods of payment for contract services provided by community mental health agencies in accordance with guidelines issued by the department as necessary to comply with state and federal laws pertaining to financial assistance;

....
 (B) The board shall 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.

Thus, an ADAMH board has express authority to enter into contracts with public and private agencies for the provision of mental health services and facilities. *See generally* 1988 Op. Att'y Gen. No. 88-045 at 2-214 ("in negotiating the terms of a contract under former R.C. 340.03(G) (analogous provisions now at R.C. 340.03(A)(6)(a)), 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"). In entering into such contracts, an ADAMH board may establish methods of payment for contract services and may review certain aspects of the finances of those entities with which it contracts. Nothing in R.C. 340.03, however, grants an ADAMH board continuing control or ownership of funds once those funds are paid to an agency for the provision of mental health services or facilities.

Similar responsibilities with respect to alcohol and drug addiction services are imposed upon each ADAMH board by R.C. 340.033, which states in pertinent part:

(A) The board of alcohol, drug addiction, and mental health services shall serve as the planning agency for alcohol and drug addiction services for the county or counties in its service district. In accordance with procedures and guidelines established by the department of alcohol and drug addiction services, the board shall do all of the following:

(1) Assess alcohol and drug addiction service needs and evaluate the need for alcohol and drug addiction programs;

...
 (5) Enter into contracts with alcohol and drug addiction programs for the provision of alcohol and drug addiction services;

(6) Review and evaluate alcohol and drug addiction programs in the district, and conduct program audits;

...
 (8) Receive, compile, and transmit to the department applications for funding;

(9) Promote, arrange, and implement working agreements with public and private social agencies and with judicial agencies;

...
 (13) Approve fee schedules and related charges, adopt a unit cost schedule, or adopt other methods of payment for services provided by programs under contract pursuant to division (A)(5) of this section, in accordance with guidelines established by the department under [R.C. 3793.04].

(B) In accordance with rules adopted by the auditor of state pursuant to [R.C. 117.20], at least annually the board shall audit all alcohol and drug addiction programs provided under contract with the board....

(C) In contracting with a program under division (A)(5) of this section, a board shall consider the cost effectiveness of services provided by the program and the program's quality and continuity of care. The board may review cost elements, including salary costs, of the services provided by the program.

A utilization review process shall be established as part of the contract for services. The board may establish this process in any way that it considers to be the most effective and efficient in meeting local needs.

Thus, R.C. 340.033 requires an ADAMH board to contract with alcohol and drug addiction programs for the provision of alcohol and drug addiction services. Again, however, nothing in R.C. 340.033 gives an ADAMH board continuing control or ownership of funds it has paid to an alcohol and drug addiction program for the provision of such services.

As mentioned in your opinion request, the authority of ADAMH boards to enter into contracts for services and facilities includes the authority to include in these contracts such reasonable terms as may be agreed to between the parties. *See* 1977 Op. Att'y Gen. No. 77-048 at 2-170 (examining the provisions of former R.C. 340.03(E) (now at R.C. 340.03(A)(6)), applicable to the predecessor agencies of ADAMH boards, and stating, "[n]ecessarily implied from this power to contract is the authority to set specific contractual terms"). Thus, an ADAMH board may include in an agreement for services specific terms regarding the provider's use of funds paid to it under the contract. Any limitations on the provider's use of funds paid to it under the contract would, of course, result from the terms of the contract itself, not from a statutory restriction.¹

Outside of any such contractual limitations, however, I am aware of no principle of law that entitles an ADAMH board to maintain control over, or ownership of, funds paid to a private entity pursuant to contract for services rendered by that private entity. Rather, it is well settled that, absent specific contractual terms providing otherwise, funds paid to a private entity by a public body for goods or services become the property of the private entity and may be used by the private entity for any purposes for which that entity may properly expend its money. 1989 Op. Att'y Gen. No. 89-010 at 2-40.² In carrying out its duties to obtain mental health services

¹ A number of statutes specify certain terms that are to be included in contracts for the provision of services to public entities. *See, e.g.*, R.C. 149.431 (which imposes a number of requirements upon certain nonprofit corporations and associations that contract with, among others, political subdivisions of the state for the provision of services, and requires such entities to "keep accurate and complete financial records of any moneys expended in relation to the performance of the services pursuant to such contract or agreement according to generally accepted accounting principles"); R.C. 307.851(C) (where board of county commissioners contracts with corporation or association for the provision of certain services, agreement shall include, among other things: "(3) [t]hat the corporation or association is liable to repay to the county any county moneys it receives that are improperly used; (4) [t]hat the corporation or association shall repay to the board all county moneys remaining unused at the end of the fiscal year ... for which the board paid the moneys," with certain exceptions).

² As concluded in the syllabus of 1989 Op. Att'y Gen. No. 89-010:

Moneys derived from a township fire levy pursuant to R.C. 5705.19(I) and paid to a private fire company as reasonable compensation for fire and rescue services may be expended by the private fire company for any proper purpose of the company, including litigation relating to the construction and operation of the

and facilities and alcohol and drug addiction services, absent specific contractual terms providing otherwise, an ADAMH board has no continuing ownership, or control of, public funds that it has paid to the providers of such services or facilities.

Based on the foregoing, it is my opinion, and you are hereby advised that, absent specific contractual terms providing otherwise, funds paid by an alcohol, drug addiction, and mental health board to a private entity, pursuant to contract, as reasonable compensation for services rendered or facilities provided become the property of the private entity and may be used by the private entity for any purposes for which that entity may properly expend its money.

contract under which the moneys were paid to the fire company, except to the extent that the terms of the contract restrict the purposes for which the fire company may expend the moneys.