

## OPINION NO. 74-015

## Syllabus:

A community mental health and retardation board may pay the expenses incurred by a 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.

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To: David D. Dowd, Jr., Stark County Pros. Atty., Canton, Ohio  
By: William J. Brown, Attorney General, February 22, 1974

You have requested my opinion on the following questions:

"1. Is the Stark County Community Mental Health and Retardation Board legally authorized to expend funds to reimburse expenses for professionals being brought to Stark County to be interviewed for potential staff positions on the Stark County Community Mental Health and Retardation Board or its contract agencies for travel, meals and lodging?

"2. If the answer to question one is in the affirmative, may the Stark County Community Mental Health and Retardation Board legally expend funds for the purposes set forth in question one for travel, meals and lodging for the professional's spouse?"

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 powers and privileges as may be delegated to or conferred on 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); State, ex rel. Winters v. Kratt, 19 Ohio App. 454, 456 (1926). It is, therefore, necessary to consider whether the payment of travel and other expenses, incident to the interviewing of prospective employees, is specifically authorized by statute or necessarily implied from those powers granted by statute.

Community mental health and retardation boards are provided for in R.C. 340.02. R.C. 340.03 and R.C. 340.04 direct the board and its executive director to develop plans and to hire employees necessary to the implementation of a community mental health and retardation service program:

R.C. 340.03

"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;

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"(F) Appoint a qualified mental health specialist or qualified mental health administrator to serve as the executive director of the board on a full-time or part-time basis. If the executive director is neither a psychiatrist nor a pediatrician, the board shall designate a qualified doctor of medicine to assume responsibility for the medical activities of the board.

"(G) Prescribe the duties of the executive director and review his performance thereof;

"(H) Approve salary schedules for employees and consultants in agencies and facilities maintained and operated, in whole or in part, or by contract, under the direction of the board;

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"(I) Establish the operating procedures of the board and submit an annual report of the programs under the jurisdiction of the board, including a fiscal accounting, to the board of county commissioners.

"(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.

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R.C. 340.04

"In addition to such other duties as may be lawfully imposed, the executive director of

a community mental health and retardation board shall:

"(A) Serve as executive officer of the community mental health and retardation board;

"(B) Supervise services and facilities provided, operated, contracted, or supported by the board to the extent of determining that programs are being administered in conformity with Chapter 340. of the Revised Code and regulations of the director of mental health and mental retardation;

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"(E) Employ and remove from office such employees and consultants as may be necessary for the work of the board, and fix their compensation within the limits set by the salary schedule and the budget approved by the board;

\* \* \* \* \*

In Opinion No. 66-006, Opinions of the Attorney General for 1966, and Opinion No. 1126, Opinions of the Attorney General for 1952, my predecessors had occasion to consider the question of interviewing expenses. Opinion No. 66-006 concerned the authority of the trustees of a county hospital to pay from funds, appropriated for their use in the operation of the hospital, necessary travel expenses incurred in interviewing prospective employees. Opinion No. 1126 also involved the authority of the trustees of a county hospital to pay these expenses. The opinions considered R.C. 339.06 (G.C. 3717), which vests in the county hospital trustees "the entire management and control of the hospital" and directs the board to employ an administrator and to confirm such administrator's employment of necessary employees.

With respect to the recruitment of a competent professional staff, the Attorney General stated at page 100 of Opinion No. 1126:

"In considering the expenses to which you refer in your first and second questions, in connection with the employment of the necessary staff, I am mindful of the fact that many of these employees are not common laborers but are persons who are specially trained and may have to be secured from a considerable distance and after very careful investigation. Obviously, in some cases, this could only be accomplished by personal interviews which might necessitate traveling expense either on the part of the superintendent or some member of the board, or on the part of the person who is under consideration for employment and who is invited in by the board for an interview."

Based on this rationale he concluded that authority to pay necessary expenses incurred in interviewing prospective employees must necessarily be implied from the boards broad discretion to provide for the management and control of the hospital. The same argument was made in Opinion No. 66-066.

These opinions may be distinguished from Opinion No. 1429, Opinions of the Attorney General for 1957, p. 752. That Opinion held that a board of education is without authority to expend funds under its control in payment of the travel expenses of prospective employees for interviews. The money in question was in a "service fund", the use of which was specifically restricted to the payment of expenses of members of boards of education or their official representative in the performance of their duties. See R.C. 3315.15.

There is no such explicit restriction in the case of a community mental health and retardation board. Rather, the board and its executive director are assigned powers and duties which are very similar to those discussed in Opinion No. 1126 and Opinion No. 66-006. 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. See R.C. 340.03, set out above.

The executive director, whose performance is subject to review by the board, is directed to employ "such employees and consultants as may be necessary for the work of the board." R.C. 340.04. It appears clear from the foregoing that the legislature has attempted to provide for an effective community mental health and retardation service program staffed by competent professionals. It follows that authority to pay necessary expenses, incurred in recruiting such professionals, must be implied from the general grant of authority in R.C. 340.03 and R.C. 340.04. I must, therefore, conclude that a community mental health and retardation board may expend funds to reimburse necessary expenses of prospective employees incurred in coming to the county for an interview. Of course, the extent to which the board may be reimbursed from state funds for the expenditures, is subject to approval by the director of mental health and retardation pursuant to R.C. 5119.62. See R.C. 340.03(A).

Your second question is whether the board may also pay such expenses for the prospective employee's spouse. As discussed in my answer to your first question, boards which are creatures of statute are limited to those powers which are expressly provided for in the statute or necessarily implied for those set out. Whereas the payment of the interviewee's expenses has been justified on the grounds that a personal interview assists the board and its director in making a careful investigation of the prospective employee, such a rationale is not useful in the case of the interviewee's spouse.

However, while the primary purpose of an interview is to assist the board's investigation of candidates for a position, these meetings also enable the interviewee to learn more about the job. Candidates for a professional position will naturally be interested in available facilities and the program of services being implemented. When prospective employees come from out of town for an interview they will be interested in the community and what it has to offer. Married employees especially may consider such factors as residential areas and schools. The spouse then plays an important role in a prospective employee's decision whether to accept a job offer. It follows that the expenditure of funds to reimburse the spouse who accompanies an interviewee may be necessary to the recruitment of the prospective employee. Authority to pay such travel expenses must, therefore, be implied from the board's general grant of authority under R.C. Chapter 340. when the board in a reasonable

exercise of its discretion determines that such expenditures are necessary. As with the payment of the interviewee's travel expenses, reimbursement from state funds for expenditures covering a spouse's traveling expenses must be approved by the director of mental health and retardation in accordance with R.C. 5119.62.

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

A community mental health and retardation board may pay the expenses incurred by a 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.