



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

November 30, 1998

Jim Ryan
ATTORNEY GENERAL

FILE NO. 98-026

COUNTIES:

Agreement with Private Provider
for Juvenile Detention Facility

The Honorable Thomas J. Brown
State's Attorney, Livingston County
Livingston County Courthouse
Pontiac, Illinois 61764

Dear Mr. Brown:

I have your letter wherein you inquire whether your county may enter into an agreement with the Salem Children's Home, Flanagan, Illinois, to provide secure detention services for juveniles referred by the court pursuant to the provisions of the Juvenile Court Act (705 ILCS 405/1-1 et seq. (West 1996)). For the reasons hereinafter stated, it is my opinion that a county may contract with a private entity for the provision of a juvenile detention facility provided that the county and the contracting entity comply with all requirements of the County Shelter Care and Detention Home Act (55 ILCS 75/1 et seq. (West

1996)) and the minimum standards established by the Department of Corrections.

There is nothing in the provisions of the County Shelter Care and Detention Home Act that expressly authorizes the licensure of private agencies to provide secure detention facilities for children. Section 1 of the County Shelter Care and Detention Home Act (55 ILCS 75/1 (West 1996)), however, provides in pertinent part:

"The board of county commissioners or the county board in any county in this State, may locate, purchase, erect, lease, or otherwise provide and establish, support and maintain a detention home for the care and custody of delinquent minors and a shelter care home for the temporary care of minors who are delinquent, dependent, neglected, addicted, abused or require authoritative intervention. They may levy and collect a tax to pay the cost of its establishment and maintenance in accordance with the terms and provisions of this Act. In counties with 300,000 or less inhabitants, the powers enumerated in this Act shall not be exercised unless this Act is adopted by the legal voters of the county as provided in this Act. * * *

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(Emphasis added.)

Section 1 of the Act provides broad authority for a county to acquire, lease or "otherwise provide and establish, support and maintain" a juvenile detention facility. In the absence of an express limitation upon that power, implicit with

The Honorable Thomas J. Brown - 3.

the plain language of section 1 is the authority for a county to enter into a lease or contract with a private child care provider for the provision of such a facility. Further, the Private Correctional Facility Moratorium Act (730 ILCS 140/1 et seq. (West 1996)), which prohibits the State from contracting with private entities for correctional facilities, does not apply to counties, and, moreover, juvenile facilities are expressly excepted from its provisions. (730 ILCS 140/3(1) (West 1996).)

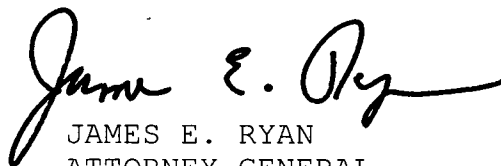
Because the County Shelter Care and Detention Home Act is the exclusive grant of authority to counties to maintain a county detention home, a county must comply with all requirements of the Act when entering into an agreement for the provision of a detention services. Therefore, in a county having fewer than 300,000 inhabitants, the provisions of the Act must be adopted by the legal voters of the county prior to the exercise of the powers enumerated therein. Further, detention facilities must comply with the minimum standards established by the Department of Corrections (55 ILCS 75/2 (West 1996)) and personnel therein must be appointed by the Chief Judge or his designee (55 ILCS 75/3 (West 1996)).

Assuming, however, that a the county complies with all of the requirements of the County Shelter Care and Detention Home Act, it is my opinion that the county board may validly enter

The Honorable Thomas J. Brown - 4.

into an agreement with a private child care facility for the provision of secure detention of minors referred by the courts.

Sincerely,

A handwritten signature in cursive script that reads "James E. Ryan". The signature is fluid and extends to the right with a long tail.

JAMES E. RYAN
ATTORNEY GENERAL