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SPRINGFIELD

February 18, 1982

FILE NO. 82-002

MENTAL HEALTH:
Authority of County
Community Mental Health
Board to Regulate Private
Extended Care Facilities

Honorable Basil G. Greanias
State's Attorney, Macon County
307 County Building
Decatur, Illinois 62523

Dear Mr. Greanias:

This responds to your letter wherein you ask whether a county community mental health board has the power and obligation to review and monitor the activities of private, for profit, extended care facilities which are now being used to house persons who were formerly residents with the Department of Mental Health and Developmental Disabilities. You have stated that you are concerned only with the board's power or

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obligation with respect to private, for profit, extended care facilities which do not have any contractual arrangement with the county community mental health board. For the reasons hereinafter stated, it is my opinion that a county community mental health board does not have the power or obligation to review or monitor the activities of the above-described facilities.

Macon County is not a home rule unit, and has only those powers expressly conferred on it by the constitution or by law or powers that may be implied as necessary to carry out its express powers. Ill. Const. 1970, art. VII, § 7; Crumpler et al. v. County of Logan (1967), 38 Ill. 2d 146, 149; Heidenreich et al. v. Ronske et al. (1962), 26 Ill. 2d 360, 362.

Section 2 of the Community Mental Health Act (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 302) provides in pertinent part:

"Any county, city, village, incorporated town, township, public health district, county health department, multiple-county health department, school district or any combination thereof, in consultation with and being advised by the Department of Mental Health and Developmental Disabilities and the Dangerous Drugs Commission, shall have the power to construct, repair, operate, maintain and regulate community mental health facilities to provide mental health services as defined by the local community mental health board, including services for, the developmentally disabled and for the substance abuser, for residents thereof and/or to contract therefor with any private or public entity which provides such facilities and services * * *."

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The aforesaid provisions of section 2 of the Act give a county the authority to regulate community mental health facilities and the power to contract with any private or public entity which provides such facilities and services. It is clear from the subject matter and context of the statute that the term "community mental health facility" means a facility provided by one of the designated governmental units or districts. I am of the opinion that this term would not include a private, for profit, extended care facility housing former residents of facilities operated by the Department of Mental Health and Developmental Disabilities.

The powers and duties of community mental health boards, which are established pursuant to section 3a of the Community Mental Health Act (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 303a), are set forth in section 3e of the Act (Ill. Rev. Stat. 1980 Supp., ch. 91 1/2, par. 303e), which provides in pertinent part:

"Every community mental health board * * * shall:

* * *

(d) Review and evaluate community mental health services and facilities, including services and facilities for the treatment of alcoholism, drug addiction, developmental disabilities and mental retardation;

* * *

(f) Within amounts appropriated therefor, execute such programs and maintain such services and

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facilities as may be authorized under such appropriations, including amounts appropriated under bond issues, if any;

* * *

(h) Consult with other appropriate local private and public agencies and the Department of Mental Health and Developmental Disabilities in the development of local plans for the most efficient delivery of mental health services. The Board is authorized to join and to participate in the activities of associations organized for the purpose of promoting more efficient and effective mental health services and programs;

* * *

The community mental health board may:

(a) Enter into contracts for rendition or operation of services, facilities and educational programs;

* * *

The board * * * shall encourage, by financial support, the development of private agencies to deliver such needed services, pursuant to regulations of the board.

* * *

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The above language gives a community mental health board the power to consult with appropriate private agencies, encourage, by financial support, the development of private agencies to deliver needed mental health services and facilities, and the power to enter into contracts for such services. A board would certainly have implied authority to review and monitor the activities of a private facility for which it is providing funds. There is, however, no express or

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implied authority to review or monitor the activities of a private, for profit, extended care facility which does not have a contractual arrangement with the county community mental health board.

I am therefore of the opinion that a county community mental health board, in the absence of a contractual arrangement, does not have the power or obligation to review or monitor a private, for profit, extended care facility which is being used to house persons who were formerly residents of facilities operated by the Department of Mental Health and Developmental Disabilities.

Very truly yours,

A T T O R N E Y G E N E R A L