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FILE NO. S-416
MENTAL HEALTH:
Facilities and Services for
Emotionally Disturbed Persons

Honorable Richard A. Hollis
State's Attorney
Sangamon County
Room 404
County Building
Springfield, Illinois 62701

Dear Mr. Hollis:

I have your letter requesting my opinion as follows:

"In the Mental Health Act,
Ch. 91-1/2, Sections 201-213, Ill-
inois Revised Statutes 1969 provide
for the care and treatment of men-
tally deficient persons. Section
201 provides that: 'Any county may
provide facilities or services for
the benefit of its mentally defic-
ient residents who are not eligible
to participate in any such program

conducted under Article 14 of the School Code and may contract therefor with any privately or publicly operated entity which provides facilities or services either in or without such county.' For such purpose, the statute provides for the county board to levy an annual tax not to exceed .1% on all of the taxable property in the county, subject only to a request for a referendum after the tax has been levied.

"Section 1-23 provides: 'Whenever the words "insane", "mentally ill", "feeble minded" or "mentally deficient" are used in the laws of this state, such words mean "in need of mental treatment" or "mentally retarded" as the case may be in accordance with this Act.'

"Can Sangamon County, under the Care and Treatment of Mentally Deficient Persons Act, provide a county facility to provide facilities and services to emotionally disturbed persons, as well as retarded persons? Are 'emotionally disturbed persons' included in the phrase 'mentally deficient residents who are not eligible to participate in any such program conducted under Article 14g of the School Code,' as stated in Ch. 91 1/2, Para. 201, Illinois Revised Statutes 1969?"

"Mentally deficient" has no specific definition in "AN ACT concerning the care and treatment of certain mentally deficient persons", Ill. Rev. Stat. 1971, ch. 91 1/2, pars. 201 et seq. The phrase by common acceptance and usage is ordinarily equated with "mental retardation", which is defined at section 1-12 of the Mental Health Code as:

"'Mentally Retarded and Mental Retardation', refer to subaverage general intellectual functioning which originates

during the developmental period and is associated with impairment in adaptive behavior. Impaired adaptive behavior may be reflected in delayed maturation or reduced learning ability or inadequate social adjustment." Ill. Rev. Stat. 1971, ch. 91 1/2, par. 1-12

Section 1 of "AN ACT concerning the care and treatment of certain mentally deficient persons" applies only to "mentally deficient residents" and provides for those in that category "who are not eligible to participate in any such program conducted under Article 14 of the School Code" (Emphasis supplied) (Chapter 122). That School Code Article relates only to physically or mentally handicapped or maladjusted children or those with speech deficiency, under twenty-one years of age. By express language the General Assembly put "mentally deficient" persons in the same general category as those "mentally retarded".

This conclusion is borne out by section 1-23 of the Mental Health Code which you quoted. From this statutory quotation, it seems apparent that the section intends to have "insane" and "mentally ill" equate with "in need of mental treatment", and, separately, to have "feebleminded" or "mentally deficient" equate with "mentally retarded". Please note the use of the disjunctive word "or" between "in need of mental treatment" and "mentally retarded". In other words, an insane, or mentally ill person is one

who is in need of mental treatment, and a feebleminded or mentally deficient person is mentally retarded within the definition of the statute. This does not mean that a mentally retarded person cannot have and benefit from some type of "treatment" or care.

It is obvious that a person who develops a mental aberration well into adulthood is not "mentally retarded" as the statute defines; nor in common understanding, would he be "mentally deficient" except perhaps as the result of an injury which affects the function of a portion of the brain.

You will note that section 1-11 of the Mental Health Code specifically excludes the mentally retarded from the definition of "in need of mental treatment" as follows:

"'Person In Need of Mental Treatment', when used in this Act, means any person afflicted with mental illness, not including a person who is mentally retarded, as defined in this Act, if that person, as a result of such mental illness, is reasonably expected at the time the determination is being made or within a reasonable time thereafter to intentionally or unintentionally physically injure himself or other persons, or is unable to care for himself so as to guard himself from physical injury or to provide for his own physical needs. This term does not include a person whose mental processes have merely been weakened or impaired by reason of advanced years." Ill. Rev. Stat. 1971, ch. 91 1/2, par. 1-11

The statute does not define "emotionally disturbed". It is generally understood to be a possibly temporary condition as opposed to the permanent condition of mental retardation or mental deficiency. Some mentally deficient persons may also be emotionally disturbed, but only professional opinion could determine the fact and the degree of emotional disturbance, or whether the primary problem was "disturbance" or "deficiency".

It therefore would be my opinion that emotionally disturbed persons are not per se "mentally deficient persons" under "AN ACT concerning the care and treatment of certain mentally deficient persons", and that a county cannot provide, under that Act, a facility for the benefit of emotionally disturbed persons who are not eligible to participate in a program conducted under Article XIV of the School Code (Ill. Rev. Stat. 1971, ch. 122, par. 14-1 et seq.), unless such persons are also primarily "mentally deficient" as defined in the Mental Health Code.

Very truly yours,

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