



TYRONE C. FAHNER
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

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FILE NO. 80-031

COUNTIES:
Powers of County and County
Board for Care and Treatment
of Mentally Deficient Persons

Honorable Bruce W. Black
State's Attorney
Tazewell County
Courthouse
Pekin, Illinois 61554

Dear Mr. Black:

I have your letter wherein you ask certain questions regarding the Tazewell County Board for Care and Treatment of Mentally Deficient Persons [Care and Treatment Board]. You first ask whether a Tazewell County board member may be appointed as a director on the Care and Treatment Board. For the reasons hereinafter stated, it is my opinion that a county board member, during the term for which he is elected, may not be appointed as a director of the County Board for Care and Treatment of that county. Any such appointments are void.

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Section 3 of "AN ACT concerning the care and treatment of certain mentally deficient persons" (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 203) provides in pertinent part:

"When any county has authority to levy a tax for the purpose of this Act, the presiding officer of the county board with the advise [sic] and consent of the county board, shall appoint a board of 3 directors who shall administer this Act. The board shall be designated the '(name of county) County Board for Care and Treatment of Mentally Deficient Persons'. * * *"

You advise that in making appointments under the above provision, your county board appointed three directors to the Care and Treatment Board from its membership.

You refer in your letter to section 1 of "AN ACT to prevent fraudulent and corrupt practices, etc." (Ill. Rev. Stat. 1979, ch. 102, par. 1), which provides:

"No member of a county board, during the term of office for which he is elected, may be appointed to, accept or hold any office other than chairman of the county board or member of the regional planning commission by appointment or election of the board of which he is a member. Any such prohibited appointment or election is void. This Section shall not preclude a member of the county board from being selected or from serving as a member of the County Personnel Advisory Board as provided in Section 12-17.2 of 'The Illinois Public Aid Code', approved April 11, 1967, as amended, or as a member of a County Extension Board as provided in Section 7 of the 'County Cooperative Extension Law', approved August 2, 1963, as amended."

Section 1 expressly prohibits a county board member from being appointed to an office, other than those specified therein, by the county board. The office of director on

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the Care and Treatment Board is not excepted from the application of section 1, and, under the rule expressio unius exclusio alterius, where a statute contains certain exceptions, other or different exceptions cannot be read into it. City Savings Association et al. v. International Guaranty and Insurance Company et al. (1959), 17 Ill. 2d 609, 612; In re Estate of Tilliski (1945), 390 Ill. 273, 283.

You next ask what effect the invalidity of these appointments would have on action previously taken by the Care and Treatment Board, specifically with respect to money expended for care and treatment. Even though section 1 specifically provides that such prohibited appointments are void, the acts of these officers are valid so far as the public or third parties who have an interest in them are concerned, since such persons would be de facto officers. See, People ex rel. Chillicothe Township et al. v. Board of Review of Peoria County (1960), 19 Ill. 2d 424, 426; People ex rel. Hess v. Wheeler et al. (1933), 353 Ill. 147, 150; People ex rel. Hicks v. Lycan (1924), 314 Ill. 590, 593.)

The doctrine relating to de facto officers was introduced into the law as a matter of policy and necessity, to protect the interests of the public and individuals who were affected by the official acts of persons exercising the duties of an office, without being lawfully entitled to such office. (People ex rel. Rusch v. Wortman et al. (1929),

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334 Ill. 298, 303.) It was seen that it would be unreasonable to require the public to inquire on all occasions into the title of an officer, or to compel the officer to show title, especially since the public has neither the time nor opportunity to investigate the title of an incumbent. Sawyer v. State (Fla. S.Ct. 1927), 113 So. 736, 744; Forwood v. Taylor (Tex. App. 1948), 209 S.W. 2d 434.

You advise that your county board proposes to make a joint purchase of real estate with the Care and Treatment Board, and to lease this real estate to various organizations in your county capable of providing care for mentally deficient persons on a contractual basis. The proposal contemplates that funds generated by the tax levy authorized in section 1 of "AN ACT concerning the care and treatment of certain mentally deficient persons" (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 201), and funds provided by the county board from its general revenue would be used to make the purchase.

You ask whether your county board may make a joint purchase of real estate with the Care and Treatment Board, or in lieu of a joint purchase, whether the Care and Treatment Board could contribute money to the county to make an independent purchase of real estate. It is my opinion that the county board and the Care and Treatment Board could make a joint purchase of real estate or the Care and Treatment Board

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could contribute money to the county to enable it to make an independent purchase of real estate.

The Care and Treatment Board has statutory authority to acquire real property for the care and treatment of mentally deficient persons. Section 4 of "AN ACT concerning the care and treatment of certain mentally deficient persons" (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 204) provides in pertinent part:

" * * *

The board may establish, maintain and equip facilities within the county, for the care and treatment of mentally deficient persons together with such auxiliary facilities connected therewith as the board finds necessary. For those purposes, the board may acquire real and personal property within the county by gift, grant, devise, purchase or lease and may occupy, purchase, lease or erect an appropriate building or buildings for the use of such facilities and all related facilities and activities.

* * *

"

The county itself has authority to provide facilities for mentally deficient persons without levying the tax authorized by section 1 of "AN ACT concerning the care and treatment of certain mentally deficient persons" (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 201). This section provides in pertinent part as follows:

"Any county may provide facilities or services for the benefit of its mentally deficient residents who are not eligible to participate in any such program conducted under Article 14 of the School Code, or may contract therefor with any privately or publicly operated entity which provides facili-

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ties or services either in or out of such county.

For such purpose, the county board may levy an annual tax of not to exceed .1% upon all of the taxable property in the county at the value thereof, as equalized or assessed by the Department of Local Government Affairs. * * * "

The aforesaid statute states that the county board "may" levy a tax. The word "may" is generally a sign of permission or power. (Foutch et al. v. Zempel et al. (1928), 332 Ill. 92, 198.) A tax is not required. I am of the opinion that this statute authorizes a county to provide facilities or services for mentally deficient persons who are not eligible to participate in any such program conducted under article 14 of The School Code, even though a tax, as authorized for this purpose, is not levied. Furthermore, section 24 of "AN ACT to revise the law in relation to counties" (Ill. Rev. Stat. 1979, ch. 34, par. 303) provides in pertinent part:

"Each county shall have power -- First --
To purchase and hold the real and personal
estate necessary for the uses of the county,
* * *

* * *

In opinion No. 225 (1962 Ill. Att'y Gen. Op. 217, 218), Attorney General Clark concluded that a county board has authority to appropriate funds for the purposes of "AN ACT concerning the care and treatment of certain mentally deficient persons". This includes the acquisition of necessary real property and facilities. I am in agreement with

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that opinion. It should be noted, however, that the annual county budget and appropriations in it must conform to the substantive and procedural requirements of "AN ACT in relation to the budgets of counties not required to pass an annual appropriation bill". (Ill. Rev. Stat. 1979, ch. 34, par. 1 et seq.).

If both the county board and the Care and Treatment Board believe that it is necessary or advisable to make a joint purchase of real estate, or for the Care and Treatment Board to contribute money to the county to make an independent purchase, each board has power to do either. A county board or county officers have not only such powers as are expressly given by law, but also those which arise by necessary implication from the powers granted or are indispensable to carry into effect the object and purpose of its creation. Dahnke v. People (1897), 168 Ill. 102, 114; McKenzie v. McIntosh (1964), 50 Ill. App. 2d 370, 376; Donlevy v. Sims (1912), 175 Ill. App. 290, 294-296.

Regardless of whether the Care and Treatment Board and the county board separately or jointly acquire real property for eligible mentally deficient residents, title to such real estate should be held in the name of the county, for the benefit of the County Care and Treatment Board. This was my conclusion in opinion No. 80-032, issued September 25, 1980.

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In your fifth question, you ask who is invested with authority to make binding decisions on the use and disposition of jointly acquired premises. I am of the opinion that if the county board and the Care and Treatment Board were to acquire real estate jointly to provide facilities for mentally deficient persons, the Care and Treatment Board would control the use and disposition of the premises. Section 4 of "AN ACT concerning the care and treatment of certain mentally deficient persons" (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 204), set forth above, provides that the Care and Treatment Board has the power to acquire real estate and establish and maintain facilities for the purposes of the Act. Section 3 (Ill. Rev. Stat. 1979, ch. 91 1/2, par. 203) states that the Care and Treatment Board administers the Act. It seems clear that the intention of the General Assembly is that the Care and Treatment Board is to control the use and disposition of premises acquired for use in the care and treatment of mentally deficient persons.

Very truly yours,


ATTORNEY GENERAL