

**OPINION**  
**65-157**

April 30, 1965 (OPINION)

Mr. Eugene A. Kruger

State's Attorney

Cass County

RE: Mental Health - Mental Health Units - Operation

This is in reply to your letter of April 20, 1965, relative to a bill enacted by the Legislative Assembly providing for comprehensive mental health services. You ask the following questions relative to the bill:

1. Could a private nonprofit corporation establish mental health services and qualify for aid or help from the state mental health division without going through the formality of establishing a mental health unit in a political subdivision or subdivisions (such as obtaining a petition containing eight percent of the voters of such political subdivision)?
2. If the answer to question number one is yes, and a private nonprofit corporation contracts with a political subdivision to render mental health services, must or may the political subdivision appoint a board of directors to govern and/or supervise the mental health services and thus superseding the already established board of directors of the private nonprofit corporation?
3. The act provides 'A private nonprofit corporation may receive aid from any political subdivision on a contract basis,'. Could an additional 3/4 mill levy be passed by a political subdivision to give help to such nonprofit corporation without having gone through the formality of setting up a mental health unit under the other provisions of the act?
4. Can a private nonprofit corporation be established now without regard to any requirements of the act and use such corporation to aid in establishing the required budgets and plans so that a mental health unit composed of a political subdivision or subdivisions can later be established?
5. The act provides 'The unit or corporation requesting state aid shall submit to the Mental Health Division of the State Department of Health not later than March first of each year the proposed budget for the following year, plus detailed plans with regard to the extent of services and programs to be undertaken.' Does this provision prohibit the submitting of the proposed budget before March 1, 1966,

that is, is it possible to obtain aid for the calendar years 1965 and 1966?

6. What is the earliest possible date any financial aid could be received under this bill?
7. If a mental health unit is established by and in a political subdivision or subdivisions and such unit contracts for services with a private nonprofit corporation subservient to and governed by the board of directors appointed by the governing body of the political subdivision or subdivisions comprising such unit?"

While your letter does not specifically so state, we believe you have reference to Senate Bill 87 enacted by the 39th Legislative Assembly.

Our replies to your questions are listed in the order presented above.

1. Section 2 of Senate Bill 87 provides in part: "Cities, counties, or other political subdivisions or any combination thereof, and private nonprofit corporations may apply to the mental health division of the State Department of Health for assistance in establishing and maintaining mental health and retardation service units. In the case of a private nonprofit corporation a contract between the mental health division and the corporation shall be entered into for state aid and for the provision of mental health and retardation services by such corporation, which contract shall be upon such terms as the mental health division shall prescribe." From this statement it is our opinion that a private nonprofit corporation could establish mental health services and qualify for aid or help from the state mental health division without going through the formality of establishing a mental health unit in a political subdivision or subdivisions. However if the private nonprofit corporation applies for assistance it must enter into a contract with the Mental Health Division for the provision of mental health and retardation services by the corporation upon the terms prescribed by the Mental Health Division. It is obvious from reading this provision of the bill that the assistance is not in the nature of a grant from state funds but rather is consideration for the mental health and retardation services to be provided by the nonprofit corporation to the public in the area which it intends to serve.
2. Your second question gives us some concern. Section 3 of the bill provides in part: "Each mental health and retardation service unit, whether established by a political subdivision or a body corporate, shall be governed by and under the general supervision of a board of directors. The board of directors shall be appointed by the governing body of the political subdivision comprises such unit then appointed by the governing bodies of each such political subdivision meeting jointly. The board of directors shall not exceed thirteen members, but may be

less in the discretion of such governing bodies." The provision uses the term "whether established by a political subdivision or a body corporate." The term "political subdivision" obviously refers to cities and counties authorized by the bill to establish mental health and retardation service units. Since political subdivisions may also be referred to as "municipal corporations" and therefore a "body corporate" it could be argued the bill refers to something other than a political subdivision since that term is also used. However, we believe the better view is that the governing body of the political subdivision appoints a board of directors only if the political subdivision establishes a mental health and retardation unit by petition as provided in the bill. If the unit is so established the governing body of the political subdivision then appoints a board of directors which either carries out the responsibilities of establishing and maintaining a unit directly or contracts with a private nonprofit corporation to do so. If, after the establishment of the unit by the political subdivision by petition, etc., a private nonprofit corporation contracts with a political subdivision to render mental health services, the political subdivision would appoint a board of directors for the unit but not for the private nonprofit corporation. The board of directors appointed by the political subdivision would then be responsible for carrying out the activities of the unit directly or for supervising the functions and operations of the private nonprofit corporation in accordance with any agreement which might have been entered into with the nonprofit corporation to provide services to the unit.

3. Section 1 of the bill provides in part for the establishment of a city or county mental health and retardation service unit upon the conditions set forth therein, including the petition of eight percent of the voters of the city or county, as the case may be, determined by the number voting for the office of Governor at the most recent general election at which a Governor was elected. The section further provides: "Such service may be established by the county or city and operated by the political subdivisions involved, or in the discretion of their respective governing bodies such service unit may be operated by contract with a nonprofit corporation which shall agree to furnish such services in the field of mental health and retardation in accordance with such contract in a manner consistent with state law and rules of the division of mental health of the State Health Department." It would appear from this provision that a political subdivision could not enter into an agreement with the private nonprofit corporation until the establishment of a mental health and retardation service unit had been established for the political subdivision as provided in the bill.

Section 2 of the bill also provides in part: "The governing body of any such political subdivisions for the

purpose of operating, maintaining, or participating in the operation and maintenance of mental health and retardation service units or providing such services by contract in accordance with this Act, may by resolution of governing body thereof submit the question of the authorization of a tax upon all taxable property in the political subdivision of not to exceed three-quarters of one mill to the electorate of the political subdivision at any special or regular election. If such levy shall be approved by the majority of the electors voting thereon a tax not to excess of that authorized may be levied by the governing body of the political subdivision for the purpose of providing services as authorized in this Act. Such levy, when authorized, shall be over and above any mill levy limitation provided by law, provided, however, there shall not be more than one election per year on the mill levy." Since the political subdivision cannot operate or maintain a mental health and retardation service unit until it is established by petition and since the political subdivision cannot contract with a private nonprofit corporation until such unit has been established by petition, it is our opinion the three-fourths mill levy cannot be made by a political subdivision to give help to the nonprofit corporation until the unit has been established in accordance with the provisions of the Act.

4. We believe a nonprofit corporation may be established now without regard to any requirements of the Act and use such corporation to aid in establishing the required budgets and plans so that a mental health unit composed of a political subdivision or subdivisions can later be established. In so holding we recognize that the establishment of such corporation for such purpose is valid under the general corporation laws of this state. In order to be eligible for assistance under the provisions of the bill, when it becomes effective, the corporation would necessarily be required to comply with the provisions of the bill at such time and the actions taken by the nonprofit corporation prior to the effective date of the bill and prior to applying for assistance under the provisions of the bill would have to be adopted by and ratified by the board of directors appointed pursuant to the provisions of the bill and would have to be approved by the Mental Health Division of the State Health Department.
5. As you have noted in your question, the bill requires the submission of a budget plus detailed plans with regard to the extent of services which shall include fee schedules based on the ability to pay and programs to be undertaken to the State Mental Health Division of the State Health Department prior to March first of each year. This budget is to be the proposed budget for the following year. Since the bill does not become effective until July 1, 1965, and, in fact, was not approved until March 15, 1965, it is obvious such requirement cannot be met for the coming year. The bill further provides that the Mental Health Division shall not allocate any funds to any unit maintaining or

establishing mental health and retardation service units until the proposed budget and detailed plans shall be approved by the division. During July of each year the Mental Health Division shall allocate funds, to the extent available, to the various units in accordance with approved budgets and programs. However, section 5 of the bill provides an appropriation for financial assistance in establishing and maintaining mental health and retardation service units "for the biennium beginning July 1, 1965, and ending June 30, 1967." If the March first deadline for submitting budgets is to be recognized in the first year, no monies could be available until after July 1, 1966. This is directly contrary to the appropriation provision. We do not believe this was the intent of the Legislative Assembly. It is therefore our opinion that funds may be made available after July 1, 1965.

6. This question is, in part, answered in question 5, above. We cannot specify the earliest possible date any financial aid could be received under the bill since the approval of any assistance is dependent upon the Mental Health Division of the State Health Department. As stated above, however, we believe the division may grant financial assistance at any time after the bill becomes effective, i.e., July 1, 1965, since we do not believe the March first date is binding for the first year. Such date is, of course, binding for the year beginning July 1, 1966, and any requests for assistance for that year must be made by March 1, 1966.
7. In order to provide services to a mental health unit established by and in a political subdivision, a private nonprofit corporation must enter into a contract with such political subdivision to provide the services. The political subdivision must also appoint a board of directors to represent the political subdivision (mental health and retardation unit). The contract is a matter of agreement between the board of directors appointed by the political subdivision and the private nonprofit corporation. The functions and duties of the private corporation insofar as the mental health services are concerned would be governed by such agreement or contract and also by the regulations and requirements of the Mental Health Division. In this respect it is not feasible to issue a blanket statement as to whether the board of directors of the private corporation is subservient to and governed by the board of directors appointed by the governing body of the political subdivision. This would appear to be governed by the agreement entered into between the two boards of directors. We might state we believe it is the responsibility of the board of directors of the unit, as appointed by the governing body of the political subdivision, to adopt a "master plan" for the operation of their unit. Presumably the services of the private corporation will be a part of such plan or there would be no agreement between the two. As to any specific services to be provided by the private corporation, it would appear

the contract would govern. As to any other questions, it would appear to be the responsibility of the board of directors appointed by the governing body of the political subdivisions to make the final determination. We believe it should be borne in mind that the eight percent petition, the municipal action and/or county action would not of itself, eliminate or transfer control of preexisting corporations or other entities to county or city or their mental health service units.

There are certain aspects of this bill which are, as your questions imply, not clear. However, we believe the conclusions set forth above constitute a reasonable interpretation of the language contained in the bill.

HELGI JOHANNESON

Attorney General