be fashioned and substantiated to ensure that local purposes are served and confrontations over the essential meanings of the FCC's 'minimum' standards are avoided. Of course, full deference should be given to the FCC's recognition that its present regulations are 'interim.' But the launching of independent initiatives—possibly coordinated with other local franchising authorities—would ensure that local desires are vigorously pressed in negotiating with the FCC and the cable industry. Such a coordinated response to the FCC's regulations would inevitably contribute to shaping further federal policies in these areas." Rivkin, *supra,* p 77-78.

FRANK J. KELLEY,
Attorney General.

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MENTAL HEALTH: Temporary Detention; Private psychiatric hospitals

A county jail cannot be used as a place of temporary detention for allegedly mentally ill persons unless such person displays homicidal or dangerous tendencies.

A private psychiatric hospital cannot be compelled to accept alleged mentally ill persons.

Opinion No. 4814 April 25, 1974.

Dale Ruohomaki
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Marquette, Michigan 49855

You have requested an opinion regarding temporary detention of allegedly mentally ill persons pursuant to MCLA 330.19; MSA 14.809. As you have noted, MCLA 330.19; MSA 14.809 provides three procedures for temporary detention: 1) By a judge pursuant to certificates from two legally qualified physicians; 2) By any peace officer with the approval of the prosecuting attorney; and 3) By the regularly-appointed official physician of the city or county. The questions that you have posed with regard to these procedures are as follows:

I. "Under which of the three procedures outlined can an alleged mentally ill person be detained in the county jail and under what circumstances?"

II. "Is it mandatory for the psychiatric unit of St. Mary's Hospital, Marquette, Michigan, a private hospital certified for the treatment of the mentally ill, to accept alleged mentally ill persons delivered to the hospital by a police officer, either pursuant to order of the court, authorization from the prosecuting attorney, or certification of the county physician?"

I.

MCLA 330.19; MSA 14.809 specifies the procedures for temporary detention of persons allegedly mentally ill. It also specifies the places where

an allegedly mentally ill person may be detained. In the case of a temporary commitment by a judge, MCLA 330.19; MSA 14.809 provides that such a person may be removed

> "to a veterans hospital, state hospital, any licensed hospital in the state or some place which shall be designated by the county or district health officer or mental health authority but not to include the county jail, . . ."

That section further provides that in the case of a temporary detention instituted by a peace officer with the approval of the prosecuting attorney, the patient may be removed to the same places to which a judge could have the patient removed.

In the case of a temporary commitment pursuant to the direction of the regularly-appointed official physician, the statute as most recently amended by 1972 PA 253 provides that the patient can be taken into custody and transferred to

> "a veterans, state or any licensed hospital in the state for confinement, examination and treatment or to some other place for detention if a hospital is not available, as the physician may direct."

In addition, MCLA 330.19; MSA 14.809 provides:

> ". . . No person arrested under this act shall be confined in a jail or other lock-up unless the person manifests homicidal or other danger-our tendencies. . . ."

In order to understand the above-quoted provisions, it is necessary to briefly review the recent history of MCLA 330.19; MSA 14.809.

Prior to 1969, the section provided only for temporary commitment by a judge or by a peace officer with the approval of the prosecuting attorney. The section specified that such temporary detention could be in either "a hospital or other place of detention."

In addition, the prohibition against temporary detention in a jail unless the person manifests homicidal or other dangerous tendencies was part of the act in 1968 and before.

In 1969, MCLA 330.19; MSA 14.809 was amended by 1969 PA 13. As a result of that act, it was provided that a judge or a peace officer with the approval of the prosecuting attorney could cause a person to be placed in the custody of

> "a veterans hospital, state hospital, or any licensed hospital in the State of Michigan. . . ."

In addition, 1969 PA 13 added what is now subsection (b) of MCLA 330.19; MSA 14.809 and provided that the official physician of any city or county could remove an allegedly mentally ill person to

> "a hospital for confinement, examination and treatment or to some other place of detention in case a hospital is not available, as said physician may direct."

In 1970, the legislature again amended MCLA 330.19; MSA 14.809 by enacting 1970 PA 71. As a result of that amendment, subsection (a)

read (for the purposes of this analysis) substantially as it does today with regard to where a person could be temporarily detained. However, subsection (b) was again amended by 1972 PA 253 to provide that the county medical officer could remove an allegedly mentally ill person to a

> "veterans, state or any licensed hospital in the state for confinement, examination and treatment or to some other place for detention if a hospital is not available as a physician may direct."

Through all of these amendments, the prohibition against placing an allegedly mentally ill person in a jail except if he displayed homicidal or dangerous tendencies has remained a part of the section.

Thus, as MCLA 330.19; MSA 14.809 stands today, a judge or a peace officer acting with the approval of the prosecuting attorney can have an allegedly mentally ill person temporarily detained in any of a specifically enumerated group of facilities. However, the county jail is not included in that group. In fact, there is in subsection (a) of MCLA 330.19; MSA 14.809 a direct prohibition against the county or district health officer designating a county jail as an alternate place of detention.

The Michigan Supreme Court has ruled that a probate court has no power to act in committing a person except as the court is specifically authorized by statute and that strict compliance with that statute is necessary. *In re Petition of Martin,* 248 Mich 512, 227 NW 754 (1929). The same rule would clearly apply to a prosecuting attorney, especially where his action is not immediately reviewable by a court (except by writ of habeas corpus) and the person detained has few statutory protections. Therefore, it would appear that a judge or a peace officer with the approval of the prosecutor has no authority to place any temporarily detained mental patient in the county jail.

The third type of temporary detention, by a city or county physician, provides a more difficult question of interpretation. That section as presently constituted does not contain a direct prohibition against detention in the county jail. Rather, it provides that the official physician may provide for some place of detention other than a hospital, without specifying what that other place of detention can or cannot be.

It is my opinion that subsection (b) should be read in harmony with subsection (a), and the alternate places of detention available to the city or county physician must be of the same type as the alternate places of detention available to a court or prosecution. That is not to say that the official physician is limited to those places designated by the district health officer or mental health authority, but rather that he cannot detain a person in the county jail.

It is true that under such an interpretation that part of subsection (a), which would allow detention in the county jail, is rendered inoperative. Nevertheless, there appears to be a direct conflict between that sentence and the remainder of MCLA 330.19; MSA 14.809, and our courts have held that in such circumstances, part of the statute may be ignored in order to give effect to the legislative intent as expressed in the statute as a whole. *Attorney General ex rel. McKay* v *Detroit and Erin Plank Road Co.,* 2 Mich 139 (1851) 2A *Sutherland, Statutory Construction* 47.37.

It would appear that the intent of the Legislature is that the county jail not be used as a place of temporary detention for allegedly mentally ill persons. The more recent amendments to MCLA 330.19; MSA 14.809 concerning the place of detention have been those amendments which prohibited the designation of the county jail as an alternate place of detention for judicial or prosecutorial commitments. It would be absurd to interpret MCLA 330.19; MSA 14.809 to allow a local physician to confine someone in a jail where a judge or a prosecutor could not. Statutes should not be interpreted so as to reach an absurd result. *Attorney General* v *Detroit United Railway*, 210 Mich 227; 177 NW 726 (1920).

In summary, therefore, as to your first question, it is my opinion that a person who is temporarily detained as allegedly mentally ill cannot be confined in a county jail under any of the procedures contained in MCLA 330.19; MSA 14.809.

II.

Your second question is, essentially, whether or not a private licensed psychiatric hospital has to accept an allegedly mentally ill person brought to it pursuant to one of the three procedures discussed above. It is my opinion that there is no obligation, either by statute or at common law, of a private psychiatric hospital to accept any particular patient.

Private psychiatric hospitals are licensed pursuant to section 51 of 1923 PA 151; MCLA 330.61; MSA 14.850.

I can see nothing in that section which would require a private mental hospital to accept a person temporarily detained as allegedly mentally ill. Furthermore, I have reviewed all other legislation relating to hospitals, both federal and state, and can find nothing in them which would require a private facility to accept a temporarily detained person who is allegedly mentally ill.[1]

Lastly, I have reviewed the common law with regard to the duties of private hospitals and have found no cases which would require a private hospital to accept a patient under the circumstances you have outlined.

The courts have held that even though hospitals accept public funds and tax benefits, they are not thereby changed into public hospitals, but rather are generally free to operate according to their own rules and bylaws. See e.g. *Davidson* v *Youngstown Hospital Association*, 19 Ohio App 2d 246; 250 NE2d 892 (Ohio 1969).

In summary, therefore, the answer to your second question is that there is no duty on the part of a private psychiatric hospital to accept a patient brought to it pursuant to any of the temporary detention procedures con-

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[1] Certain public hospitals might be required to accept such patients. 1913 PA 350, as amended, an act which provides for the establishment of public county hospitals. MCLA 331.151 et seq.; MSA 14.1131 et seq. Section 15 of that act, MCLA 331.165; MSA 14.1144, provides as follows:

> "The said board of trustees shall at all times provide a suitable room for the detention and examination of all persons who are brought before the commissioners of insanity for such county: Provided, That such public hospital is located at the county seat." MCLA 331.165; MSA 14.1144

tained in MCLA 330.19; MSA 14.809, regardless of the fact that such a hospital is licensed by the state.

FRANK J. KELLEY,
Attorney General.

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COUNTIES: Board of Commissioners, Election of Chairman

A majority of the members present at a meeting of the county board of commissioners must vote to have an election for chairman by secret ballot.

Opinion No. 4816 May 9, 1974.

Honorable Alfred A. Sheridan
State Representative
The Capitol
Lansing, Michigan 48933

In a recent letter to this office you requested an opinion concerning 1851 PA 156, § 3a, as added by 1973 PA 102, MCLA 46.3a; MSA 5.323(1), which requires open voting by a board of county commissioners or a committee thereof on certain matters. Expressly excluded from this mandatory open voting requirement is the vote held to elect a chairman:

> "The names and votes of members shall be recorded on an action which is taken by the board of county commissioners or by a committee of the board of county commissioners if the action is on an ordinance, resolution, or appointment or election of an officer, except the vote for chairman *may* be by secret ballot. . . ." [Emphasis added]

The new section goes on to provide that:

> ". . . The vote and the name of the member voting on other questions or motions shall be recorded at the request of: 1/5 of the members present. . . ."

Your question is:

> "Under the Act, 1/5 of the members present may make it necessary to have a roll call. Since this language is in the bill, will the 1/5 language include the vote by which chairmen are selected?"

In order to answer your question, it is first necessary to deal with an apparent conflict between MCLA 46.3a; MSA 5.323(1) and MCLA 46.3; MSA 5.323 which would appear to require the voting for chairman to be by secret ballot. MCLA 46.3; MSA 5.323 provides:

> ". . . No votes shall be taken by secret ballot except when voting for chairman of the board or on the appointment of officials or employees. . . ."

While a literal reading of this section would lead one to conclude that the vote for chairman must be by secret ballot, it is doubtful that the legislature intended this result. The purpose of the section appears to be to insure that county government is conducted in the open rather than behind