

442 Pa 45; 274 A2d 193 (1971), and concluded that a court may employ administrative assistants, including specifically probation officers.

In summary, the statute authorizing the establishment of a juvenile detention home and empowering the probate judge to appoint employees of the home, 1939 PA 288, § 16, *supra*, does not violate Const 1963, art 3, § 2. The legislature may, if it wishes, however, divest the probate court of its administration over juvenile detention homes.

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COUNTIES: Contract to perform activities that are the proper concern of the county.

COUNTIES: Delegation of authority.

A county board of commissioners may contract with a private, nonprofit corporation to provide health or welfare services to persons who are the proper concern of the county pursuant to guidelines and where final authority to take discretionary action remains with the public body.

Opinion No. 5083

August 6, 1976.

Mr. Allison Green
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The expenditure of public funds by a county is the subject of two questions you have brought to my attention. Your first question notes that Ingham County has entered into contracts with five private organizations to provide various services to the people of the County. You then ask:

“May the County Board of Commissioners legally contract with a private non-profit corporation to provide health or welfare services at public expense where such contract permits the private corporation to determine eligibility for such services?”

The statute which forms the basis of your inquiry, MCLA 327.205; MSA 14.165, establishes the jurisdiction of a county health department:

“The county health department shall have jurisdiction throughout the county in both indigent and non-indigent cases; except that it shall not have jurisdiction in non-indigent cases in cities having an organized health department with full time health officer, except that such cities may elect to join with the county in the organization. Subject to the approval of the board of supervisors, the county health department shall have the power to employ such physicians and nurses and other qualified personnel full or part time as shall be necessary to carry on its work.”

The language of this statute requires that the County Department of

Health operate under the direction of the Board of Commissioners. The Board of Commissioners, as the legislative branch of county government, has determined that some of the needs of the people of the county can be better met by certain private organizations than by the County Department of Health. The Board of Commissioners has implemented this decision by entering into contracts with these organizations to provide specific services.

When entering into these contracts, the basic principle enunciated in *Penn School District v Lewis Cass District*, 14 Mich App 109, 121; 165 NW2d 464 (1968), must be observed:

“ . . . It is generally true that legislative authority may not be delegated to private persons or associations. 16 Am Jur 2d, Constitutional Law, § 249; 16 CJS, Constitutional Law, § 137. . . .”

However, within this broad limitation, it has been determined that some decision making by private entities in areas usually regarded as strictly governmental is permissible where the final authority remains with the public body. *People v Gottlieb*, 337 Mich 276; 59 NW2d 289 (1953).

In the present case, the payment from the county to the various private organizations is made in furtherance of a contract, and not as a contribution. This important distinction was discussed in a letter opinion to Shiawassee County Prosecutor Gerald D. Lostracco dated December 17, 1975 wherein it was stated:

“ . . . While at first blush it may appear that there is little distinction between a grant or contribution to a private non-profit, charitable organization to perform an activity which is the proper concern of a county and a contract with the organization providing for payment of county funds to perform them, in fact there is a real distinction. Where a contract is entered into the organization is legally bound to perform these services and must do so in accordance with specific standards and requirements of the county whereas a grant or contribution would permit the organization considerable leeway in the expenditure of the donated funds and would not assure the county that its public responsibilities will be performed. . . .” [pp 2, 3]

The propriety of establishing a contractual relationship similar to those which prompted your first question was decided in a prior opinion dated January 10, 1974. In that opinion, I determined that the county could properly utilize public funds received under the revenue sharing act, Chap 24 of 31 USCA 1221 *et seq* to enter into a contract with the local legal aid bureau, a non-profit, private organization, to represent indigents in civil matters. That opinion quoted from the Michigan Court of Appeals case of *Youngblood v Jackson County*, 28 Mich App 361, 364, 365; 184 NW2d 290 (1970), *leave to app den* 384 Mich 810 (1971), and went on to cite additional authority:

“At the outset, we disagree with the view of plaintiff and third-party plaintiff that counties have only those powers which have been conferred on them by constitution and statutes insofar as that view implies that such powers are limited to *express* powers. Our disagreement arises from Const 1963, art 7, § 34, which provides that the constitution and

law concerning counties shall be liberally construed in their favor and that powers granted to counties by the constitution and by law shall include those fairly implied and not prohibited by the constitution." [Emphasis that of the quotation; pp 364-365]

Const 1963, art 7, § 34, provides:

"The provisions of this constitution and law concerning counties . . . shall be liberally construed in their favor. Powers granted to counties . . . by this constitution and by law shall *include those fairly implied and not prohibited by this constitution.*" [Emphasis supplied]

Thus, a review of express powers granted by the legislature to counties is required. Section 3 of Chapter 13, RS 1846, MCLA 45.3; MSA 5.283, provides:

"Each organized county shall be a body politic and corporate, for the following purposes, that is to say: . . . *to make all necessary contracts, and to do all other necessary acts in relation to the property and concerns of the county.*" [Emphasis supplied]

It is apparent in view of the foregoing that the county may properly enter into contracts such as these. As to that aspect of your question concerning determination of eligibility, attention must be focused on the specific contractual provisions. The five private organizations listed in your letter are:

Volunteer Action Corps of the Office of Volunteer Programs of
Michigan State University
Open Door, Inc. (Rape Counseling Service)
Voluntary Action Center of Greater Lansing, Inc.
Y.M.C.A.
Greater Lansing Visiting Nurses Association

Examination of the contracts with each of these entities discloses that two of them, the contracts with the Volunteer Action Corps, and the Voluntary Action Center of Greater Lansing, Inc., do not provide for the delivery of health care services. Therefore, as to these contracts, there is no conflict with the provisions of MCLA 327.205, *supra*, and there is nothing in that statute which would prohibit the establishment of this contractual relationship because they do not require the private organization to determine eligibility to receive health care services.

Moreover, a county health department has no general power to contract. OAG, 1973-1974, No 4825, pp 174, 176 (August 14, 1974). Therefore, the county health department cannot independently enter into contracts which specify guidelines as to eligibility to receive any services from these organizations. Instead, these guidelines are to be found in the individual contracts negotiated between these organizations and the Board of Commissioners.

Furthermore, each of these contracts includes by its express terms the precise designation of those persons who are to benefit from the services of the private organizations. For example, those persons who are to receive services under the contract with Open Door are persons "who have been rape victims". Obviously, this is a very narrow classification.

Similarly, the contract with the Y.M.C.A. of Lansing, provides for the development and implementation of "a physical education program" for "physically handicapped children". More particularly, the contract requires the establishment of "corrective and remedial programs for motor deficiencies of children of the poor and indigent suffering from acute or chronic disease or from injury." The distinguishing characteristics which make persons eligible for services under the contract is not imposed by the private agency.

Again, the contract with the Greater Lansing Visiting Nurses Association requires that nursing services be provided to "persons confined at home, including the elderly and handicapped." Additionally, the persons who are to receive services are defined as "individuals who are confined at home and are without insurance, adequate resources and are not eligible for assistance programs such as Medicare and Medicaid."

In view of the detailed eligibility guidelines set forth in these contracts, it cannot be said that these contracts permit "the private corporation to determine eligibility for such services." Eligibility is, in fact, determined by the county board of commissioners. Therefore, in answer to your first question, the County Board of Commissioners may legally enter into contracts with private non-profit corporations to provide health or welfare services at public expense without contravening the provisions of MCLA 327.205, *supra*, where these contracts include precise guidelines which do not permit the private corporations discretion in the determination of eligibility for such services.

The foregoing discussion of the principal question is also helpful in answering your second question relative to a contract between the county and a public entity, the Capital Area Transit Authority. Your question has been restated to reflect the facts surrounding this arrangement as set forth in the contract itself:

May Ingham County expend funds for the purpose of contracting with the CATA even though the county is not one of the governmental units forming the authority?

Express authorization permitting a county to enter into such contract is found in 1951 PA 35, § 2, MCLA 124.2; MSA 5.4082, which reads:

"Any municipal corporation shall have power to join with any other municipal corporation, or with any number or combination thereof by contract, or otherwise as may be permitted by law, for the ownership, operation, or performance, jointly, or by any 1 or more on behalf of all, of any property, facility or service which each would have the power to own, operate or perform separately."

A "municipal corporation" is defined in 1951 PA 35, § 1, MCLA 124.1; MSA 5.4081, as including both a county and a public authority. Therefore, in answer to your second question, Ingham County may lawfully expend funds for the purpose of contracting with the Capital Area Transit Authority.

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