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**MENTAL HEALTH:** Community mental health service programs.  
**COUNTIES:** Joint mental health boards.

Joint county mental health board may contract with county authorities of Wisconsin to purchase from or sell to such counties mental health services, including services for legally consenting patients voluntarily seeking such services, under circumstances approved by State Department of Mental Health under Act 54, P.A. 1963; such joint board may purchase all or part of such mental health services from a nonprofit corporation providing such services and incorporated in Michigan or Wisconsin, so long as board remains primarily responsible for operation of program.

No. 4470

September 13, 1965.

Robert A. Kimmich, M.D., Director  
Department of Mental Health  
Lewis Cass Building  
Lansing, Michigan 48913

You ask several questions about the development of community level mental health programs under Act 54, P.A. 1963,<sup>1</sup> in Upper Peninsula counties bordering the State of Wisconsin. You ask for guidance regarding the following matters:

Question I.

"Can the (12-man, combined) Iron-Dickinson County Mental Health Board, acting within its authority under the provisions and regulations of the Michigan Community Mental Health Services Act (P.A. 54), contract with the county authorities of Florence and/or Marinette Counties of Wisconsin to buy (from) or sell (to the Wisconsin counties) mental health services for legally consenting patients and guardians or parents of minors who voluntarily seek or accept mental health services?

"Under what conditions or necessary changes of funding arrangements could the board 'reserve' and 'sell' a block of clinic service or time, weekly, to Florence and/or Marinette Counties of Wisconsin? How would this affect State (Michigan) participation in P.A. 54 fund matching?"

Question II.

"Can the (12-man, combined) Iron-Dickinson County Mental Health Board, acting within its authority under the provisions and regulations of the Michigan Community Mental Health Services Act (P.A. 54), contract to obtain all or part of these mental health services?

- A. from a legally constituted, 'free standing' (profit or) non-profit corporation (providing mental health services)
1. incorporated legally in Michigan?
  2. incorporated legally in Wisconsin?

<sup>1</sup> M.S.A. 1963 Cum. Supp. §§ 14.863(1) *et seq.*

3. incorporated legally in both Michigan and Wisconsin?  
and/or

B. contract to purchase inpatient psychiatric care

1. at and from a local legally incorporated Michigan hospital?

2. at and from a local legally incorporated Marinette or Florence County Wisconsin hospital?

for legally consenting patients and guardians or parents of minors, who voluntarily seek or accept mental health services."

Act 54 of the Public Acts of 1963, being M.S.A. 1963 Cum. Supp. §§ 14.863(1) *et seq.*, provides at Section 10 for establishment of a 12-member community mental health services board to establish and implement community mental health programs authorized by Act 54. Section 10 provides in pertinent part that any such board: ". . . shall be an agency of the governmental entity or entities participating in its establishment or operation and shall be subject to the laws and regulations relating to such agencies."

Section 12 of Act 54 provides that, subject to the provisions of the Act and the rules and regulations of the Department of Mental Health, the community mental health services board shall, *inter alia*, promote, arrange and implement working agreements with other social service agencies, both public and private and with other educational and judicial agencies.

Section 1 of the Act permits the Department of Mental Health to make matching grants to assist local mental health programs to provide services including out patient diagnostic and treatment services and inpatient diagnostic and treatment services.

Section 6 of the Act provides in pertinent part as follows:

"Grants may be made for expenditures for mental health services whether provided by operation of a local facility or through contract with other public or private agencies."

In O.A.G. 3161, January 27, 1958, O.A.G. 1957-58, Vol. II, page 26, it was held that the Upper Peninsula Development Bureau, Inc., is not prohibited from contracting with a Wisconsin printer by a statute requiring all printing for the State of Michigan to be printed within the State of Michigan. The basis of the opinion is that the Upper Peninsula Development Bureau, Inc., is not an agency of the State of Michigan nor is the contract for printing a contract of the State of Michigan.

In O.A.G. 2011, May 2, 1955, O.A.G. 1955-56, Vol. I, p. 223, it was ruled that the State Department of Mental Health may permit psychotherapy treatment of patients rather than at State hospitals by psychiatrists in private practice. Further, it is provided by Section 2 of Act 54 that the services of psychiatrists in private practice may be engaged in such programs and clinics.

It, therefore, appears that there is nothing in Act 54, P.A. 1963, to prevent the Iron-Dickinson County Mental Health Board from contracting with county authorities of Florence and/or Marinette Counties of Wisconsin to buy from or sell to such Wisconsin Counties, as a part of a working agreement, mental health services for legally consenting patients and

guardians or parents of minors who voluntarily seek or accept mental health services.

It is more difficult to answer under what conditions or necessary changes of funding arrangements the Board could reserve and sell a block of clinic service or time, weekly, to the Wisconsin counties, since at some point such funding and blocking arrangement would, when sufficiently predominant, result in the creation of a program which could not factually be found to constitute a public mental health service program for the Michigan community. I believe, therefore, that within this general framework the arrangements must be analyzed on a case-by-case basis.

There would appear to be nothing in the statute which would prevent the State of Michigan from making a contribution to the Iron-Dickinson community program, provided that the total program was qualified for approval by the State Department of Mental Health.

At to Question IIA, the Iron-Dickinson County Mental Health Board is authorized by Section 12 to implement working agreements with other social service agencies both public and private, and by Section 6 to make grants for expenditures for mental health services whether provided by operation of a local facility or through contract with other public or private agencies. But the grant may only be made to assist cities, counties or combinations of counties, as designated in Section 1, in the establishment and operation of local mental health programs to provide the services referred to in the Act. The Iron-Dickinson County Mental Health Board, therefore, must remain responsible for the administration of the program, though services are purchased in whole or in part from a private corporation.

Article IX, Section 18 of the Michigan Constitution of 1963 provides in part:

“The credit of the state shall not be granted to, nor in aid of any person, association or corporation, public or private, except as authorized in this constitution.”

The same provision was found in substance in Article X, Sec. 12 of the Michigan Constitution of 1908. Claim was made in *Hays v. City of Kalamazoo*, 316 Mich. 443 (1947) that public moneys paid to a private corporation for certain services violated Sec. 12 of Article X of the 1908 Constitution. Reliance was placed on *Detroit Museum of Art v. Engel*, 187 Mich. 432 (1915). The Michigan Supreme Court held that public moneys could be used to pay for services rendered to a city in the performance of its governmental functions without violation of Article X, Sec. 12 of the Michigan Constitution of 1908.

The purchase of mental health services by a community mental health board through contract with other public or private agencies, as authorized by Sec. 6 of Act 54, P.A. 1963, supra, does not involve the use of the credit of the state. See *Sommers v. City of Flint*, 355 Mich. 655 (1959).

The pledge of the credit of the state is not involved if the Iron-Dickinson County Mental Health Board expends public money to purchase services from a public or private agency under the act. However, the Iron-Dickinson County Mental Health Board must remain responsible for and in control

of the mental health program authorized by the act and cannot surrender the grant to another public or private agency and allow it to operate the program without violating Article IX, Section 18 of the Michigan Constitution of 1963. *Detroit Museum of Art v. Engel*, supra.

With respect to Question IIA, it makes no difference where the private corporation is incorporated.

As to the purchase of service from a profit corporation, it does not appear that Act 54 contemplates the purchase of any service from such a corporation no matter where incorporated for the reason that a corporation incorporated for profit is not a "social service agency" such as is contemplated by Section 12(c).

Question IIB. Section 1(f) of Act 54 provides for the making of grants by the State to purchase services including inpatient diagnostic and treatment services, and Section 12, contemplates that each community mental health board will implement working agreements with other social service agencies both public and private.

It is conceivable that inpatient psychiatric services may be purchased from a local legally incorporated Michigan or Wisconsin hospital. The particular pattern of such agreements should be considered on a case-by-case basis with care being taken to insure that the local community mental health board does not abrogate its responsibility for the operation of the program.

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**CONSTITUTIONAL LAW: Separation of Powers.**  
**PUBLIC OFFICES AND OFFICERS: Incompatibility – Justice of the peace and member of board of education.**

The offices of justice of peace and member of the board of education of a local school district being in different branches of the government, dual holding of the two offices is prohibited by Section 2 of Article III of the constitution. Common law incompatibility also exists between the two offices by reason of the jurisdiction vested in the justice of peace over certain civil actions against a school district.

No. 4467

September 20, 1965.

Honorable Gerald R. Dunn  
State Senator  
State Capitol  
Lansing, Michigan

You have requested my opinion as to whether an individual may serve simultaneously as justice of peace and member of the board of education