OFFICIAL OPINION NO. 50

August 30, 1950.

Mr. Arthur G. Loftin,
Acting Director,
Indiana Council of Mental Health,
State Fairgrounds,
Indianapolis, Indiana.

Dear Sir:

I have your request of August 10, 1950, for an official opinion in which you propound two specific questions which are as follows:

"Does a County Council have the right, power and authority to appropriate money for the maintenance of a mental health clinic within the county but as a separate entity from the county welfare department?

"Does a County Council have the right, power and authority to appropriate money for the maintenance of a mental health clinic as a part of a county department of public welfare?"

I will answer these questions in reverse of the order stated:

In order to determine these questions it is necessary to consider the Acts of the Special Session of the Indiana General Assembly of 1936, which enacted the Public Welfare Statute, this being an Act entitled "An Act concerning Public Welfare."

Section 21 of that Act defines the duties of the County Department and provides that:

"Subject to the rules and regulations prescribed by the state department, the county department of public welfare is hereby charged with the administration of assistance to dependent children in their own homes, old age assistance, services and assistance to persons otherwise handicapped, the care and treatment of dependent, neglected, and handicapped children, children in danger of becoming delinquent, and such other welfare activities as shall be delegated to it by the state department of public welfare, under the provisions of
Section 98 of the same Act provides that a welfare fund shall be created to be known as the county welfare fund, which shall be raised by a separate tax levy, by the county council and that a portion of such fund shall be used to pay the respective items, awards, claims, allowances, assistance and other expenses as set forth in the annual budget.

Section 100 of said Act further provides that the County Council shall make such appropriation out of the County welfare fund based on the budget as submitted, as may be necessary to maintain the welfare services of the county and shall at the same time levy a tax in an amount necessary to produce the funds so appropriated. The Acts of 1941 made certain amendments to the Acts of 1936. Section 3 thereof amended Section 1 which in turn amended certain sections of the Act of 1936 and in this amendment specifically stated the duties of the state department of public welfare and paragraph (b) required the department to administer aid to all agencies and institutions caring for dependent or mentally or physically handicapped adults.

Section 4 of the amended Act required the state department to establish, maintain, and make available to all counties and public institutions, offices and agencies thereof including schools and private welfare agencies and "Mental health clinics under psychiatric supervision for the diagnosis, treatment, and prevention of mental diseases".

It is to be observed that by these amendments the care of mental patients and the establishment of mental clinics are brought directly under the provision of the public welfare department and by reason thereof in lieu of the original statute of 1936 it became the duty of the county council to appropriate funds covering the care of mental patients and the maintenance of mental clinics. It is apparent from what has been said that the county council not only has the right but has the duty of appropriating money for the maintenance of a mental clinic as a part of the department of public welfare and I might suggest in this connection that it would be proper to earmark the amount so appropriated for this purpose and its eventual use by the council of mental health.
In answer to question No. 1, I am of the opinion from what I have said in answer to your question No. 2 above that the county council would not have the authority to appropriate money for the maintenance of a mental health clinic within the county as a separate entity until there is some modification of the statute which confers such power.

It is a well known rule of law and statutory construction that bodies created by statute as a county council have only such powers as are expressly conferred upon them by statute and such incidental powers as may be implied. I find nothing in the statutes that would indicate that the county council has the authority by implication to make such direct appropriation.

OFFICIAL OPINION NO. 51

August 29, 1950.

Mr. Otto K. Jensen,
State Examiner,
State Board of Accounts,
Room 304, State House,
Indianapolis, Indiana.

Dear Sir:

Your letter has been received requesting an official opinion and reads as follows:

"We have had a question submitted from Kosciusko County regarding the authority of the county council of that county to make an annual grant of money under the provisions of Section 15-317, Burns 1933. You will notice that this section makes reference as follows:

'Provided, That the same shall not apply to any person, association or corporation conducting such fair or exhibition for gain.'

"It is difficult for us to determine whether or not this corporation is operating such fair or exhibition for gain and would appreciate your opinion regarding same.

"My specific question is: 'Is a county fair association a corporation organized under the Acts of 1852 (Burns