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
R.S. 15-301) qualified to receive an annual grant from the county to be used and expended for premiums on agricultural and horticultural products, livestock, boys and girls club work and judging of such products, stock and club work, under the authority of the provisions of Section 15-317?"

"The men who called at our office pointed out that annual dividends are paid to the stockholders and they have so stated in their letter to this department, a copy of which I am attaching to this request."

Section 15-317, of Burns Statutes, referred to in your letter, in full reads as follows:

"The county councils and boards in county commissioners of all counties in the state of Indiana may, in their discretion, appropriate and pay to any agricultural fair or association, or duly organized county four-H clubs in which the people of such county are interested, a sum not exceeding one cent (1¢) on the one hundred dollars ($100) valuation of the taxable property of such county, to be paid out of the general county fund, to be used and expended only for necessary costs and expenses incident to the conduct and carrying out of the purposes of duly organized four-H clubs and boys’ and girls’ club work, and for premiums on agricultural and horticultural products, live stock, boys’ and girls’ club work and judging of such products, stock and club work; Provided, That the same shall not apply to any person, association or corporation conducting such fair or exhibition for gain, nor to street fairs or exhibitions, but only to regularly organized fair associations and regularly organized boys’ and girls’ four-H or agricultural clubs, but such fair or exhibition must be given only for the promotion of the interests of agriculture, horticulture and stock raising: That no part of such money shall be used or given for contests of speed."

In some states such grants to private corporations are prohibited by constitutional fiat. The Constitution of Indiana at Article 10, Section 6 in part provides:
"Nor shall any county loan its credit to any incorporate company."

I assume that this language would prohibit any county from underwriting or assuming the obligations of any incorporated company. But your question does not deal with grants of money to pay debts, so that the grants or appropriations of funds as described in the foregoing act of the legislature are not shown to be prohibited by the Constitution.

I assume further that the grants or appropriations of funds for the purposes described in the Act, are public rather than private purposes. Such purpose largely is determined by the Legislature. It has been said of such power:

"It is implied in all definitions of taxation that taxes can be levied for public purposes only. This doctrine, now so firmly established in our system of constitutional law, is of comparatively recent origin and finds its justification in the due process clause of the Fourteenth Amendment to the Federal Constitution, adopted in 1868. It was nine years later, however, before the United States Supreme Court applied the principle as a matter of substantive law. Davidson v. Board of Admrs. of New Orleans (1878), 96 U. S. 97. The exact line of cleavage between what is and what is not, a public use, is somewhat difficult to mark. Some purposes readily align themselves on one side of the line as being clearly public in their nature, while others as readily fall on the other side as being obviously private, and there is a debatable ground between the two. The courts have never attempted to lay down with minute detail an inexorable rule distinguishing public from private purposes, because it would be impossible to do so. Such determination is primarily one for the legislative branch of the government and it can not be held to any narrow or technical rule of action. Courts will not intervene unless there is a plain departure from every public purpose which could reasonably be conceived. * * *" State ex rel. Jackson, Attorney General v. Middleton, et al. (1938), 215 Ind. 219, 20 N. E. (2d) 509.

See also: 116 A. L. R. 892.
It is noted that the corporation applying for the grant of public funds is a corporation for profit. The Act prohibits the granting of such funds to a corporation that conducts such fair or exhibition for gain. It does not appear that the character of the corporation is controlling, but rather the character of the objects of the grant that controls. We quote 116 A. L. R. 893 as follows:

"* * * 'The right of taxation depends upon the public character of the objects for which the fund is appropriated, and in no sense can it be made to depend upon the nature or character of the person, natural or artificial, through whom or by whom it is to be applied or used.' * * *"

The Act does not exclude a corporation that is in business for profit or gain, but rather a corporation that conducts the fair or exhibitions for gain. So long as the corporation, directly or indirectly, makes no profit or gain from the conduct of the fair or exhibition, such corporation is not excluded by the act.

If such corporation engages in other profitable or gainful activities in connection with its conduct of the fair or exhibition, then it would become a question of fact for the determination of the Board of County Commissioners as to whether or not any of the profits or gains were derived either directly or indirectly from the conduct of such fair or exhibition.

Therefore, with the foregoing qualifications, in my opinion your question should be answered in the affirmative.