

OPINION 5

OFFICIAL OPINION NO. 5

May 17, 1973

Mr. Maurice Endwright
Executive Director
Committee on Aging and Aged
215 North Senate Avenue
Indianapolis, Indiana 46204

Dear Mr. Endwright:

This is in response to your request for my official opinion on the following question:

“Can Revenue Sharing Funds legally be appropriated by County Councils and Boards of Commissioners to nonprofit and nongovernmental agencies to be used in programs for the aging and aged?”

ANALYSIS

The State and Local Fiscal Assistance Act of 1972, as found in 31 U.S.C.A., Sec. 1221 through Sec. 1263, provides funds collected from the federal personal income tax to state and local governments by the mechanism commonly known as “revenue sharing.” Units of local government are limited in the use of such funds to “priority expenditures,” which include ordinary and necessary maintenance and operating expenses for “social services for the poor or aged.” 31 U.S.C.A., Sec. 1222(a)(1)(G). Said local government may provide for the expenditure of such “revenue sharing” funds only in accordance with the laws and procedures applicable to the expenditure of its own revenues. 31 U.S.C.A., Sec. 1243(a)(4). Thus, if County Councils and County Boards of Commissioners of the State of Indiana could properly, under the laws of the State of Indiana, utilize their own revenues for such a program, such bodies can so utilize “revenue sharing” funds.

Political subdivisions of the State of Indiana have the general statutory authority to accept and appropriate federal funds. IC 1971, 5-19-1, as found in Burns' (1961 Repl.), Sec. 61-1301 through Sec. 61-1305. However, such funds can only be utilized by a Board of County Commissioners within the scope of the general powers of such Board. A Board

of County Commissioners can only exercise the powers expressly conferred on it by the Constitution and the statutes of the State of Indiana, or such powers as arise by necessary implication from those expressly granted, or such as are requisite to the performance of the duties imposed upon the Board by law. *Board of County Commissioners v. Sanders* (1940), 218 Ind. 43, 30 N.E. 2d 713. The powers and duties of a Board of County Commissioners are specifically enumerated by IC 1971, 17-1-14-11, as found in Burns' (1972 Supp.), Sec. 26-620. Said statute provides in relevant part that:

“Such commissioners in their respective counties shall have the power at their meetings;

“ . . . (2) To allow all accounts chargeable against such county, not otherwise provided for, and to direct the raising of such sums as may be necessary to defray all county expenses; but only in conformity with existing law.

“ . . . (4) To perform all other duties which may be enjoined on them by any law of this state”

Similarly, County Councils require specific statutory authority to appropriate funds for a particular purpose. IC 1971, 17-1-24-14, as found in Burns' (1970 Repl.), Sec. 26-515, provides that the power of making appropriations from the County Treasury rests with the County Council. The exceptions to this power are found in IC 1971, 17-1-24-21, as found in Burns' (1970 Repl.), Sec. 26-522. Yet such appropriations may not be made except pursuant to specific authority. IC 1971, 17-1-24-28, as found in Burns' (1970 Repl.), Sec. 26-529.

Thus, County Councils and Boards of Commissioners require specific statutory authority to appropriate funds to non-governmental agencies. The authority to appropriate funds to nongovernmental, nonprofit agencies for use in programs for the aging and aged does not currently exist in the State of Indiana.

CONCLUSION

It is, therefore, my Official Opinion that in the absence of specific statutory authority, County Councils and Boards of

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Commissioners may *not* legally appropriate "revenue sharing" funds to *nonprofit* and *nongovernmental* agencies for use in programs for the aging and aged, *but* such funds may be legally appropriated to governmental agencies for such programs.