

1980 WL 120630 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 28, 1980

**\*1 Re: Regional Mental Health Clinics and Centers**

Honorable Edgar A. Vaughn, Jr.  
State Auditor  
Office of the State Auditor  
Post Office Box 11333  
Columbia, South Carolina 29211

Dear Mr. Vaughn:

I regret very much that there has been such a delay in replying to your request for an opinion concerning several questions in the operation of the regional mental health clinics and centers.

Your first question is whether or not state appropriated funds are to be used prior to the use of local, federal or other funds for the operation of local mental health clinics? Section 124, Part I, Act No. 199 of 1979 (State General Appropriation Act) requires all departments, institutions and agencies of the state having revenue funds other than state appropriated funds available for operation to use such revenues before appropriations from the state's general fund are expended or requisitioned. The local mental health centers and clinics are operated pursuant to the provisions of § 44-15-10 through [§ 44-15-90, Code of Laws of South Carolina \(1976\)](#), and they are funded by an appropriation to the State Department of Mental Health, see for example: § 39, Part I, Act No. 199 of 1979 (General Appropriation Act). The statutory provisions authorizing the local mental health clinics and centers are essentially a grant-in-aid statute as the statute does not specifically call for any percentage of participation or matching from local sources. It is commonly understood that the clinics and centers are financed by state, local and federal funding. The statutory scheme for the clinics and centers puts the control and regulation of the clinics and centers both in the local community mental health boards and to some degree, in the State Department of Mental Health. As an example, the administration of the clinic or center is directly set forth as the responsibility of the community mental health board. § 44-15-70(1). The local board is also given the authority to employ personnel whose job specifications are prescribed by the State Department; review and evaluate community mental health services and make recommendations to the State Department; recruit and promote local financial support from private sources; promote, arrange and implement working agreements with other social service agencies, etc. The State Department, on the other hand, is specifically given the authority to promulgate rules and regulations governing the eligibility of the local programs to receive state grants; prescribe standards for qualifications of personnel; governing eligibility for service at the local community center; authority to establish fee schedules; regulation of fees for consultation and diagnostic services; to promulgate such other rules and regulations as may be necessary to carry out the purposes of the article creating the centers and clinics; to review and evaluate local programs; to provide consultative services to the local communities and to employ personnel including a state director of community mental health services. § 44-15-80.

**\*2** While not a true state agency in its classic sense, it is the opinion of this Office that the clinics and centers throughout the state must be deemed 'quasi-state agencies' in order to respond to your question as to the use of appropriated funds. All employees of the clinics and centers are considered 'state employees' and they derive all benefits of a state employee, to-wit: retirement, state holidays, workmen's compensations and are under the state personnel classification system and they are paid directly by the State Department of Mental Health. Actually, the operation of the clinics and centers is somewhat of a hybrid system for a statewide mental health program. Many of the clinics and centers are multi-county in their operation and multi-county in their local funding as well as the funding received from the federal government. Thus, they cannot be classified as a county agency, but are closer to being an instrumentality of the state government. The best conclusion that can be drawn

concerning their split authority as presently structured is that they should be classified as a 'quasi-state agency'. Therefore, in the opinion of this Office, the provisions of § 124, Part I, Act No. 199 of 1979 (General Appropriation Act) would be applicable to the clinics and centers and they would be required to use local and federal revenue first before expending state appropriated funds, unless a waiver is obtained from the Budget and Control Board as permitted by § 124.

Your next question concerns the proper distribution of unexpended local funds at year end? Our research has disclosed no South Carolina statute which would assist in answering your question. Neither does our case law assist in answering your question. It is assumed that the local funds appropriated by the local governing bodies of the counties, or from whatever source, are appropriated or donated to the clinics and centers on the assumption that they would be expended for the programs conducted by the local clinics and centers. Therefore, if at the end of the fiscal year local funds remain unexpended, they should be returned directly to the entity which remitted the funds to the State Department of Mental Health to assist in the operation of the clinics and centers. If the funds are returned to an entity other than the governing body of the county, if you are dealing with county appropriated funds, then the governing body of the county should be notified at the time that the remittance is made. I regret that there cannot be a more specific answer to your question, but absent statutes directing the application of these funds, we cannot go beyond our answer as given.

Your next question is whether or not the expenditure of local funds has to be in accordance with state laws and regulations? By opinion of this Office, dated June 7, 1979, it was concluded that the local mental health programs and clinics did not have to comply with Act No. 701 of 1976, regarding the leasing of real property for state agencies as for the purposes of that Act, the clinics and centers were not deemed to be 'state agencies'. Further, without express statutory authority regulating the expenditure of purely local funds by the center or clinic, it is difficult to conclude that local authorities may not expend such funds, from whatever source derived, as they deem necessary. At present, there is no specific requirement for matching local funds on a percentage basis for the program. The statutory enactments establishing the local boards designated that the community programs be partially funded by 'grant-in-aids' from the Department of Mental Health. <sup>1</sup> See, § 44-15-20 *et seq.* Thus, express statutory authority is necessary to restrict the expenditure of purely local funds, whether such funds be appropriations from the county government or donations from a business, industry or private foundation.

\*3 Where, however, such statutory authority is present, local funds may not be expended in conflict therewith. For example, Proviso, § 130, Part I, Act No. 199 mandates that:

... the expenditure of funds by agencies of the State Government from sources other than General Fund appropriations shall be subject to the same limitations and provisions of law applicable to the expenditure of appropriated funds with respect to salaries, wages or other compensation, travel expense and other allowances or benefits for employees. [emphasis added].

In view of our response to question number one that the community mental health program is a 'quasi-state agency' for purposes of § 124 of the same Act, expenditures of local funds are similarly governed by this provision, which refers to 'agencies of the State Government.' Likewise, all other provisions of state law which regulate expenditures of local funds in a similar manner govern community mental health centers. See, e.g. §§ 133, 135, 136 of Act No. 199 of 1979.

It is the opinion of this Office that the clinics and centers fall within the provisions of § 124 and must use local and federal funds prior to the use of state appropriated funds; that the distribution of unexpended local funds at the end of the fiscal year is to be refunded to the entity from which they were received; and that other provisions of state law governing the expenditure of local funds by state agencies, e.g. § 130 of Act 199, likewise govern such expenditures by community mental health centers and clinics.

I wish to point out that there are other provisions scattered throughout the statutes which would strongly indicate not only are the clinics and centers in essence 'quasi-state agencies,' but they could not be classified as a 'county agency'. An example, § 44-11-10 specifies the facilities of the State Department of Mental Health which are to continue in existence, including the mental health clinics and it is required that they are to be maintained for the diagnosis, treatment and prevention of mental

illness. Section 44-11-60 requires the Mental Health Commission to establish mental health clinics throughout the state and supervise them. Section 44-9-70 designates the State Department of Mental Health as the state's mental health authority for the purpose of administering federal funds allocated to the state under the National Mental Health Act. The State Department is, in the same provision, designated as the agency to administer minimum standards and requirements for the mental health clinics. Thus, while much of the responsibility and supervision for the clinics and centers is vested in the State Department of Mental Health, there is a decided degree of autonomy which remains vested in the local community mental health boards for the day to day operation of the clinics and centers.

Very truly yours,

Raymond G. Halford  
Deputy Attorney General

#### Footnotes

- 1 Subsequent enactments by the General Assembly lead to the conclusion the Legislature has construed the 'grant-in-aid' provisions in a broad, rather than literal or technical sense. See, [Caughman v. Columbia YMCA](#), 212 S.C. 337, 341, 47 S.E.2d 788; [Etiwan Fertilizer v. South Carolina Tax Commission](#), 217 S.C. 354, 60 S.E.2d 682; Sutherland, *Statutory Construction*, § 49.10-49.11. The Legislature has consistently interpreted the community mental health program as an important part of the State's mental health system, by annually funding it through specific appropriations within the budget of the Department. Thus, mental health centers are annually funded similarly to all State agencies.

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