



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

CHARLIE BROWN
ATTORNEY GENERAL

February 1, 1988

Melvin C. Snyder, Jr.
Prosecuting Attorney
Preston County
Kingwood, WV 26537

Dear Mr. Snyder:

You have requested an opinion concerning whether a county commission may limit or direct the way funds, appropriated to the county board of health, may be used. Specifically, you ask:

"May the Preston County Commission insert a provision in its contract with the Preston County Board of Health that removes all county funding from the County Board of Health's Home Health Care program?"

The specific provision reads: "In no way or fashion are these funds to be used directly or indirectly for the Home Health Agency."

BACKGROUND

Article IX, Section 11 of the West Virginia Constitution (1982) list the powers of the county commissions. This constitutional provision provides that the county commission "shall also, under such regulations as may be prescribed by law, have the superintendence and administration of the internal police and fiscal affairs of their counties."

W. Va. Code §7-1-1(1984) provides, in part, that the "county commission ... shall be a corporation ... and may contract and be contracted with...."

W. Va. Code §7-1-5(1984), entitled "Duties of County Commissions," states, in part:

"It shall be the duty of the county commissioners of each county to ... supervise the general management of the fiscal affairs and business of each county; and as further part of their duties they shall be empowered to purchase, lease, rent, control, supervise, inspect, maintain and erect county

mental health clinics and engage in any program designed for the betterment of the mental and physical well-being of the residents of their county and to cooperate with any public or private agency for these purposes....¹ (emphasis added).

The Preston County Board of Health is organized pursuant to W. Va. Code §16-2A-1 et seq. (1985). County boards established pursuant to this statutory provision are created, established and maintained by the county commission. W. Va. Code §16-2A-1 (1985). The board is composed of five members, citizens and residents of the county, and appointed by the county commission. (Where county boards of education contribute funds to the county commission, they may nominate one member). W. Va. Code §16-2A-2 (1985).

W. Va. Code §16-2A-3 provides that said county board of health:

"Shall direct, supervise, and control all matters relating to the general health and sanitation of their respective counties ... or municipalities, and shall possess and exercise such power in relation thereto as may be exercised and is possessed by the state board of health or the director, as the case may be, so far as such powers are applicable to such county or municipality. Such local boards of health shall also have the power and authority to adopt and promulgate and from time to time amend such rules and regulations, consistent with the laws of this State and the rules and regulations of the state board of health, as may be necessary and proper for the protection of the general health of the county or municipality and the prevention of the introduction, propagation and spread of disease therein...."

It shall be the duty of such local boards of health to protect the general health and supervise and control the sanitation of their respective counties and municipalities; to enforce the laws of this State pertaining to public health, and the rules and regulations of the state board of health, insofar as they are applicable to such counties or municipalities, and to perform such duties in relation to public health as may be prescribed by order of the county commission of such counties or ordinances of such municipalities, consistent with the public health laws of this State and the regulations duly adopted by the state board of health...." (emphasis added).

¹ Limitations on the fiscal authority of county commissions are set forth in W. Va. Code §11-8-16 (1983) which states:

"Except as provided in sections fourteen-b, twenty-five-a and twenty-six-a[§§11-8-14b, 11-8-25a and 11-8-26a] of this article, a local body shall not expend money or incur obligations:

- (1) In an unauthorized manner;
- (2) For an unauthorized purpose;
- (3) In excess of the amount allocated to the fund in the levy order;
- (4) In excess of the funds available for current expenses.

Notwithstanding the foregoing and any other provision of law to the contrary, a local fiscal body or its duly authorized officials shall not be penalized for a casual deficit which does not exceed its approved levy estimate by more than three per cent, provided

Thus, pursuant to the above-cited section, the county board of health has primary responsibility and control of all matters, in their respective counties, pertaining to general health and sanitation.² The county boards shall also perform such duties in relation to public health as are prescribed by order of the county commission or ordinances of municipalities.

Pursuant to W. Va. Code §16-2A-8 (1985) the director of the health department may enforce public health rules and regulations within the territorial jurisdiction of the local health authority, when in the director's opinion, the local authority refuses to enforce the public health laws or "a public health emergency exists". All expenses so incurred are chargeable to the county, city or town concerned.

The county may appropriate, or levy a special tax, and expend money from the county general fund for public health purposes and to pay the expenses of operation and administration of a county board of health. W. Va. Code §16-2A-6 (1985). Such funds may be received from the county commission and dispersed by the local health board as needed in administering its programs.³

W. Va. Code §16-2C-1 et seq. sets forth the statutory scheme for the State Department of Health's home health care services. Pursuant to these code provisions, the State Department of Health "shall provide home health services to those persons living in areas of the State in which adequate home health care services are not available otherwise. W. Va. Code §16-2C-2 (1985).⁴

Pursuant to W. Va. Code §16-2C-3 (1985) the local boards, including the §16-2A boards, are authorized to:

"Enter into written agreements with the [State] department [of Health] for the purpose of rendering home health services to persons within their respective counties and municipalities. Such agreements shall provide for the maintenance of standards established by the department for home health services by the local boards and of such supervision by the department as is deemed necessary to implement an effective program of home health services on the part of the local boards."

Whenever any local board has entered into an agreement with the department as is herein provided, it may render such home health services

such casual deficit be satisfied in the levy estimate for the succeeding fiscal year."

²The word "control" is very comprehensive, meaning to regulate, restrain, dominate or subdue. Boyles v. County Court, 116 W.Va. 689, 182 S.E. 863 (1935).

³See, also 82 Ops. Att'y General 524 (1967).

⁴"The mission of the Preston County Health Department - Home Health Agency is to provide therapeutic, supportive, and preventive services on an intermittent basis to Preston County residents who demonstrate a need for home care. Services provided must be in accordance with physician orders and desired by the patient and/or family. Presently, we are able to provide home visits by nurses, physical therapists, speech therapists, home health aide, nutritionist, and social worker. Mission Statement, Preston County Board of Health, County Plan, 1988.

as are authorized by this article and for that purpose may charge fees and expend moneys to the same extent as this article authorizes for the department. Any local board may render such service anywhere within the area which it serves."

W. Va. Code §16-2C-4 (1985), provides that:

"The [State] department [of Health] and local boards are authorized to receive moneys from any source for home health services. All such moneys as the department and local boards may receive for this service shall be used to carry out the provisions of this article."

The State Department of Health and the local boards may thus seek reimbursement for home health services from families, private providers and federal, state and local government entities. However, the decision by the local board to render home health services is not only discretionary on the part of the board but a decision that rests solely with the local board of health.

DISCUSSION

"A county court [commission] possesses only such powers as are expressly conferred upon it by constitutional or statutory provision, together with such powers as are reasonably and necessarily implied in the full and proper exercise of powers expressly conferred upon it."⁵

The county commission, pursuant to the statutory provisions of W. Va. Code §16-2A-3 may, "create, establish and maintain"⁶ a county board of health. W. Va. Code §16-2A-6 (1985) provides the mechanism for maintenance of the board, either by special levy or appropriations from the general fund "for public health purposes, ... and to pay the expenses of operation and administration of a county or municipal board of health...."

In order to address the issue of whether the county commission has the authority to direct what public health programs receive and do not receive funding, the statutory provisions of 16-2A-1 et seq. must be examined as a whole.⁷ W. Va. Code §16-2A-3 provides, in part, that the county boards of health "shall"⁸ direct, supervise and control all matters relating to the general health and sanitation of their respective counties ... and shall possess and exercise such power in relation thereto as may be exercised and is possessed by the state board of health or the director, as the case may be, so far as such powers are applicable to such county or municipality.⁹ W. Va. Code §16-2A-4 (1985)

⁵Mohr v. County Court of Cabell County, 145 W.Va. 377, 115, S.E.2d 806 (1960).

⁶"Maintain" is defined as to bear the expense of; preserve; support; sustain; commence; continue. Black's Law Dictionary, Fifth Edition (1979).

⁷"In ascertaining the legislative intent, effect must be given to each part of the statute and to the statute as a whole so as to accomplish the general purposes of the legislation. Spencer v. Yerace, 155 W.Va. 54, 180 S.E.2d 868 (1971).

⁸The word "shall" connotes a mandatory duty. Terry v. Sencindiver, 153 W.Va. 651, 171 S.E.2d 430 (1969). Currey v. State Human Rights Commission, 273 S.E. 2d 77 (W.Va. 1980).

provides, in part, that the board of health shall have the power to employ such "technical, administrative and clerical employees and for such period of time as may be determined by the board...."

Thus, it is clear in reading the above-cited provisions of §16-2A-1 et seq. as a whole, that the legislature intended that those monies appropriated by the county commission for county health programs are to be directed, controlled and administered by the county board of health. To allow otherwise would frustrate the legislative delegation of the police power, in safeguarding the public health, to the state department of health and through that department to the local boards of health.

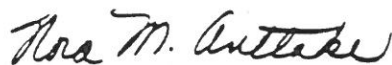
An earlier opinion of the Attorney General reached the same conclusion (through a combined reading of W. Va. Code §§16-2 and 2A) that the proper authority to direct, control and administer specific health measures on the county level is the local board of health. See, 5 Op. Att'y. Gen.,17, (1960).

Therefore, we conclude in response to your specific inquiry that:

1. The county board of health is the appropriate body to enact, control and direct specific health programs on the local level; and
2. The county commission cannot, by inserting a provision into a "lump-sum" appropriation, delete a specific health program established and administered by the local board of health.

Very truly yours,

CHARLES G. BROWN
ATTORNEY GENERAL



By

NORA M. ANTLAKE

Assistant