

Gentlemen:

You have requested my opinion concerning the legality of inclusion of the Mental Hygiene Clinic under the Montana Joint Merit System.

The Mental Hygiene Clinic was created by Chapter 103, Laws of 1947. The act set up the clinic, provided the duties and obligations of the department of mental hygiene, and further provided it was authorized and empowered to receive aid from the Federal government in the following provision:

"The State Department of Mental Hygiene is hereby authorized and empowered to receive from the United States or agencies thereof, and from other agencies within and without the state, such grants or sums of money as may hereafter be allocated from the United States or agencies thereof, or from other agencies to the State Department of Mental Hygiene of Montana for the development of mental hygiene services within the state."

The act does not expressly require inclusion of the Mental Hygiene Clinic under the Montana Joint Merit System, but it does expressly vest in the department a power which cannot be carried out without exercising other incidental powers not specifically enumerated. The department of mental hygiene is specifically authorized and empowered to receive grants and sums of money from the United States or agencies thereof. That specific power granted also carries with it the implied powers reasonably necessary to carry out the granted power.

"But the powers which an officer, commission or department may exercise are not confined to those expressly granted by the Constitution or statutes of the state . . . an officer has by implication such powers as are necessary for the due and efficient exercise of those expressly granted, or such as may fairly be implied therefrom. . . ." (Guillot v. State Highway Commission of Montana, 56 Pac. (2d) 1072, 102 Mont. 149, 154)

Chapter 30, Laws of 1943, providing for the appointment and discharge of

**Opinion No. 96**

**Mental Hygiene Clinic—Montana  
Joint Merit System—Board  
of Examiners.**

**Held:** The Mental Hygiene Department may legally be brought under the Montana Joint Merit System and in view of the fact United States grants provided for in the act may not be made unless the Mental Hygiene Department is included under the act, said department **MUST** be brought under the act if United States funds are to be sought.

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Board of Examiners  
State Capitol  
Helena, Montana

state employees and authorizing the State Board of Examiners to fix the number, compensation, term and tenure of office of employees in all civil executive state offices, is a general act prior in time to the act creating the Mental Hygiene Department. Chapter 103, Laws of 1947, being a specific act, later in time, therefore supercedes the prior general act in this instance.

It is, therefore, my opinion the Mental Hygiene Department may legally be brought under the Montana Joint Merit System and in view of the fact United States grants provided for in the act may not be made unless the Mental Hygiene Department is included under the act, said department **must** be brought under the act if United States funds are to be sought.

Sincerely yours,  
R. V. BOTTOMLY,  
Attorney General