

VOLUME NO. 37

OPINION NO. 127

APPROPRIATIONS - Accounting requirements in general appropriations bills; CONTRACTS, PUBLIC - Regional Community Mental Health Centers - contracts for services; CORPORATIONS, NONPROFIT - Powers to contract; powers over financial affairs; LEGISLATIVE BILLS - Single subject and title requirements; accounting requirements in general appropriations bills; MENTAL HEALTH - Regional Community Mental Health Centers; PUBLIC FUNDS - Conditions of grants of State moneys to Regional Community Mental Health Centers; STATE AGENCIES: DEPARTMENT OF ADMINISTRATION - Statewide Budget and Accounting System (SBAS); DEPARTMENT OF INSTITUTIONS - Contracts with Regional Community Mental Health Centers; TREASURY, STATE - Treasury fund structure, Statewide Budget and Accounting System (SBAS); federal and private grant clearance fund; CODE OF FEDERAL REGULATIONS - Title 45, § 74.45; 1889 MONTANA CONSTITUTION - Art. V, sec. 23; 1972 MONTANA CONSTITUTION - Art. V, sec. 11; REVISED CODES OF MONTANA, 1947 - Sections 15-2305, 79-410, 79-411(2), 79-413, 79-2310, 79-2310(7), 80-2802, 80-2803, 80-2804, 80-2804(2), 82-110, and 82A-801.1(17).

HELD: State grants to regional mental health centers are properly conditioned upon each recipient center accounting for all of its funds through the State Treasury and the Statewide Budget and Accounting System (SBAS).

29 March 1978

Larry M. Zanto, Director
Department of Institutions
1539 Eleventh Avenue
Helena, Montana 59601

Dear Mr. Zanto:

You have requested my opinion concerning the method of accounting established for regional community mental health centers by the last Legislature. That method requires each regional center to account for all funds through the State Treasury and the statewide budget and accounting system (SBAS). The requirement is attached to a line item appropriation in the 1977 general appropriations bill, wherein the 1977 Legislature appropriated approximately five million dollars to the Department of Institutions for grants to community mental health centers during the 1978-1979 biennium, and provides:

All funds for community mental health programs shall pass through the state treasury for accounting purposes, unless prohibited by law. (Emphasis added.)

Specifically, the department asks whether the particular method of accounting prescribed in H.B. 145 is otherwise prohibited by law. Three possible sources of prohibition are mentioned. They are Art. V, sec. 11, 1972 Montana Constitution, which governs enactment of legislation; section 15-2305, R.C.M. 1947, which enumerates the statutory powers of nonprofit corporations; and Title 45, Code of Federal Regulations, section 74.45, which regulates use of non-federal moneys by recipients of federal grants from the United States Department of Health, Education and Welfare. It is my opinion that none of the three mentioned provisions prevent compliance with the accounting requirement of H.B. 145.

Regional community mental health centers are created by statute, being authorized by chapter 28, Title 80, R.C.M. 1947. Under that chapter the State of Montana is divided into mental health regions and each region is authorized to establish itself as a nonprofit, community mental health center. Section 80-2804, R.C.M. 1947. Each center is governed by a board of directors appointed by the county commissioners for each of the counties served. Section 80-2804(2), R.C.M. 1947.

While it is expressly provided that the centers are to be organized as nonprofit corporations and "shall not be considered agencies of the department (of Institutions) or the State of Montana ***, " section 80-2804(2), R.C.M. 1947, regional mental health centers are nonetheless instrumentalities through which the state delivers mental health services at local levels. The Department of Institutions has general responsibility for the administration of the mental health program and mental health centers. Sections 82A-801.1(17) and 80-2802, R.C.M. 1947. That responsibility is discharged through the department's authority to enter into contracts with regional mental health centers. Section 80-2803, R.C.M. 1947. Pursuant to these contracts, the State of Montana furnishes up to fifty percent (50%) of each regional mental health center's operating budget. Each recipient center must agree to deliver mental health services within its jurisdictional area and comply with regulations and guidelines established by the department.

Id. Federal grants, private donations and charges for services make up the remainder of regional centers' operating budgets.

All recipients of state grants are required to permit state access to and audit of their financial records. Section 79-2310, R.C.M. 1947, specifically provides, in relevant part:

The legislative auditor shall:

* * *

(7) have the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. Whenever a state agency enters into an agreement to grant resources under its control to others, the agency must obtain the written consent of the grantee to the audit provided for in this subsection.

The 1977 line item appropriation for regional community mental health centers makes no exception to that requirement. To the contrary, it provides in relevant part:

The preceding general fund monies are appropriated for contracts for services by nonstate entities and any contracts for these services shall be considered grants for purposes of 79-2310(7) and the contractors may be audited pursuant to 79-2310(7).

House Bill 145, 1977 Session Laws, Vol. II, p. 1995.

The apparent purpose of the Treasury pass through requirement in H.B. 145 is to standardize the accounting systems of all regional mental health centers and give state auditors immediate and simple access to each center's financial transactions. In his Budget Analysis presented to the 1977 Legislature, the Legislative Fiscal Analyst stated with regard to regional mental health centers that, "*** the diversity of fund sources for each region along with a fragmented and non-standardized reporting and accounting systems makes accountability very difficult." (Page 354.) He went on to recommend that the Legislature require, as a condition of the regional community mental health center appropriation, that regional centers "utilize the statewide budgeting and accounting system (SBAS) so that all funds and

expenditures for each mental health region can be easily identified in SBAS." *Id.* That recommendation is reflected in the State Treasury pass through requirement.

SBAS is a computerized accounting system which records every deposit to or expenditure from a particular fund within the State Treasury. A coded entry identifies the nature of each deposit and expenditure. The system has been established by the Department of Administration pursuant to its responsibilities under section 82-110, R.C.M. 1947, which provides in relevant part:

(1) The Department (of Administration) shall prescribe and install uniform accounting and reporting for all state agencies and institutions, showing the receipt, use, and disposition of all public money and property and shall develop plans for improvements and economies in the organization and operation thereof ***.

The combination of computerization and uniformity in record keeping will permit almost instantaneous access to each regional mental health center's financial records. In turn, this will facilitate auditing and fiscal analysis. The department presently plans to facilitate usage of SBAS by establishing SBAS computer terminals throughout the state. Local terminals will give regional mental health centers direct access to the accounting system.

Implementation of the Treasury pass through requirement presents no insurmountable difficulties. An appropriate account utilizing SBAS can be set up for each regional center within the present State Treasury fund structure. Section 79-410, R.C.M. 1947, sets forth the various funds within the State Treasury, including a federal and private grant clearance fund:

* * *

(5) Federal and private grant clearance fund. The federal and private grant clearance fund consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which the state disburses to persons, associations or units of local government. ***

* * *

The funds of each regional mental health center can be separately segregated for accounting purposes. Section 79-413, R.C.M. 1947, provides, in relevant part, "Moneys deposited in each fund except the general fund shall be segregated by the Department of Administration by specific accounts based on source, function, or department." Additionally, section 79-411(2), R.C.M. 1947, provides:

Any laws enacted in the future, or any contracts entered into in the future in pursuance of law, that require the segregation of moneys in the state treasury by means of a separate treasury fund, shall be interpreted as permitting the segregation of such moneys by means of a subfund or account within one of the funds created by section 79-410.

None of the three provisions mentioned by the Department of Institutions precludes implementation of the requirement.

The federal regulation referred by the department is set forth in uniform provisions of the United States Department of Health, Education and Welfare (HEW) which govern the administration of HEW grants. 45 C.F.R., part 74. Section 74.45 of that part provides:

- (a) This section applies to all program income earned during the grant period except royalties and proceeds from the sale of real property or tangible personal property.
- (b) All such income earned during the grant period shall be retained by the grantee. The terms and conditions of the grant shall provide either:
 - (1) That such income shall be used by the grantee for any purposes which further the objectives of the legislation under which the grant was made, or
 - (2) That such income shall be deducted from total project costs for the purpose of determining the net costs on which the Federal share of costs shall be based.
- (c) The grantee shall elect either of the alternatives specified in paragraph (b) of this section if the terms and conditions of the grant do not specify which is to be followed.

Section 74.45 is not automatically applicable to federal grants to nonprofit organizations. The section is within subpart F of part 74, a subpart which applies to all grants

made to state and local governmental entities but is "applicable to HEW grants to grantees other than state and local governments only to the extent made applicable by other duly published HEW policy statements (usually, but not necessarily, in the program regulations of the granting agency.)" 45 C.F.R. section 74.4. (Emphasis added.) I do not know whether subpart F has been made applicable to federal mental health grants to nonprofit mental health corporations, but, in any event, the SBAS accounting requirement does not conflict with section 74.45. That section merely limits federal control over a grantee's use of non-federal income. The Treasury pass through requirement does not restrict use of funds by the mental health centers or subject centers expenditures to control by the Department of Administration. The pass through is "for accounting purposes" only.

Similarly, there is no conflict between the Treasury pass through requirement and the statutory powers of nonprofit corporations under section 15-2305, R.C.M. 1947, to manage their own financial affairs. Corporations, profit and nonprofit alike, customarily enter into contracts wherein they commit themselves to particular expenditures and accountability.

Finally, the accounting requirement does not violate Art. V, sec. 11, 1972 Montana Constitution. That section provides in relevant part:

* * *

(3) Each bill, except general appropriation bills and bills for the codification and general revision of the laws, shall contain only one subject clearly expressed in its title. If any subject is embraced in any act and is not expressed in the title, only so much of the act not so expressed is void.

(4) A general appropriation bill shall contain only appropriations for the ordinary expenses of the legislative, executive, and judicial branches for interest on the public debt, and for public schools. Every other appropriation shall be made by a separate bill, containing but one subject.

* * *

A presumption of constitutionality attaches to a statute, "*** and every intendment in its favor will be made unless unconstitutionality appears beyond a reasonable doubt."

Board of Regents of Higher Education v. Judge, 168 Mont. 433, 444, 543 P.2d 1323 (1975). A party attacking the constitutionality of a statute has the burden of proving its invalidity, Reeves v. Ille Electric Company, Mont. ____, 551 P.2d 647, 650 (1976); that burden has not been met in the present case.

The accounting requirement does not violate subsection (4) of Art. V, sec. 11. House Bill 145 is a general appropriations bill. Laws of Montana (1977), Session Laws, Vol. II, sec. 1, p. 1981. The Department of Institutions has a statutory duty to provide mental health services, and payment for delivery of those services is an ordinary expense of the department. "Any expense which recurs from time to time and is to be reasonably anticipated as likely to occur in order for the proper operation and maintenance of the departments of the state government is an ordinary expense." Miller Insurance Agency v. Porter, 93 Mont. 567, 571-572, 20 P.2d 643 (1933).

Nor does the requirement violate the single subject and title restriction of subsection (3). In Davidson v. Ford, 115 Mont. 165, 141 P.2d 373 (1943), the Montana Supreme Court considered a provision similar to the one considered here. That provision was attached to an appropriation for veterans' welfare and specified the manner of expenditure of the appropriation. The Court rejected the contention that its inclusion in an appropriations bill violated the single subject requirement of Art. V, sec. 23, 1889 Montana Constitution:

The contention is without merit. So long as incidental provisions of an appropriation bill are germane to the purposes of the appropriation it does not conflict with any constitutional provision. (See State ex rel Souders v. District Court, 92 Mont. 272, 12 Pac. (2d) 852; Miller Ins. Agency v. Porter, 93 Mont. 567, 20 Pac. (2d) 643, State v. Healow, 98 Mont. 177, 38 Pac. (2d) 285; State v. McKinney, 29 Mont. 375, 74 Pac. 1095, 1 Ann. Cas. 579.) We think this point is dealt with in an able manner by the Supreme Court of New Mexico, whose constitution contains provisions much the same as our sections 23 and 25 of Article V, supra. That court, having under consideration the identical question involved here, said in State ex rel. Lucero v. Marron, 17 N.M. 304, 128 Pac. 485, 488:

"To sustain the contention that the general appropriation bill should contain nothing, save the bare appropriations of money, and that provisions for the expenditure of the money, or its accounting, could not be included therein, *** would lead to results so incongruous that it must be presumed that the framers of the Constitution had no such intent in the adoption of the restrictions referred to. ***

"Numerous states have provisions similar to that contained in the first part of section 16, supra, which require the subject of every bill to be clearly expressed in its title, and that no bill embracing more than one subject shall be passed, etc., and the courts all uniformly hold that any matter germane to the subject expressed in the title of a bill and naturally related to it is valid. When an appropriation is made, why should not there be included with such appropriation matter germane thereto and directly connected with it, such as provisions for the expenditure and accounting for the money, ***. What valid objection can be interposed to such a course, so long as the Legislature confines the incidental provisions to the main fact of the appropriation, and does not attempt to incorporate in such act general legislation, not necessarily or directly connected with the appropriation legally made, under the restrictions of the section in question?" This decision was followed in the later case of State ex rel. Whittier v. Safford, 28 N.M. 531, 214 Pac. 759.

Davidson is conclusive. Art. V, sec. 23, 1889 Constitution is identical to Art. V, sec. 11(3), 1972 Montana Constitution. The Legislature may require a particular method of accounting in connection with any line item appropriation within a general appropriations bill.

No other provision of law which would prohibit implementation of the Treasury pass through requirement has been brought to my attention.

THEREFORE, IT IS MY OPINION:

State grants to regional mental health centers are properly conditioned upon each recipient center accounting for all of its funds through the state

Treasury and the Statewide Budget and Accounting System
(SBAS).

Very truly yours,

MIKE GREELY
Attorney General