

OP. NO. 04-052

MENTAL HEALTH GENERALLY: COMMUNITY MENTAL HEALTH SERVICES.

TAXATION: LOCAL OFFICERS – TREASURERS.

Responsibility for treasurer of locality that created community services board, or treasurer of locality of fiscal agent of multi-jurisdictional board, to deposit all state and federal funds. Treasurer must maintain and control funds in accordance with statutes. Direct control over such funds by a community services board requires compliance with statutes governing treasurers and regulations promulgated by locality governing such boards. Attorney General declines to render opinions on matters of local concern and procedure.

The Honorable Ilva M. James
Treasurer for Northampton County
October 14, 2004

Issue Presented

You inquire concerning the extent of your responsibilities with respect to the local community services board, in your capacities as the designated fiscal agent for the board, and as county treasurer, as well as your authority to delegate duties you perform for the board. Specifically you ask whether someone other than the fiscal agent for a local community services board has authority to open and maintain a bank account for the receipt and disbursement of board funds without violating § 58.1-3127, which pertains to the collection of taxes and levies by treasurers.

Response

It is my opinion that as community services boards are agencies of the political subdivision or subdivisions that created them, all state and federal funds therefor must be deposited with the locality's treasurer (in the case of a board serving only one political subdivision), or the treasurer in the locality served by the fiscal agent. Therefore, that treasurer must account for these funds as required by §§ 58.1-3127 and 58.1-3127.1. These requirements do not preclude the treasurer from depositing these funds in a bank account maintained and controlled by the board pursuant to the regulations governing it, provided that the treasurer continues to comply with the requirements of the aforesaid sections of the Code. The ability of a treasurer to comply with these sections, however, depends upon an interpretation of the applicable local regulations governing the board. The Attorney General does not render opinions on matters of local concern and procedure.¹ Therefore, no opinion is offered regarding local applicable rules and procedures for the community services board in question.

Background

You relate that you are the treasurer for Northampton County and serve as the fiscal agent for the local community services board. You state that federal and state funds designated for the local board's use are direct-deposited into a bank account that you maintain. You further note that you sign all checks disbursed from this bank account. The director of the local community services board has requested that you relinquish control of the board's bank account to him.

Applicable Law and Discussion

Section 58.1-3127 relates to the duties of a local treasurer:

A. Each treasurer shall receive the state revenue and the levies and other amounts payable into the treasury of the political subdivision of the Commonwealth served by the treasurer. Such treasurer shall account for and pay over the revenue received in the manner provided by law.

B. The treasurer shall keep a correct account of all moneys received and disbursed by him. The treasurer shall keep subject to the provisions of § 58.1-3,^[2] the books, papers and moneys pertaining to his office at all times ready for inspection of the attorney for the Commonwealth or governing body or any taxpayer of the county and shall, when required by such attorney, governing body or any judge of a court of record, exhibit a statement of his accounts and the books containing a list of the warrants drawn upon him.

Section 58.1-3127.1 places similar requirements on the treasurer in relation to federal funds:

All amounts to be received or expended by any department or agency, or department or agency head, of a political subdivision of the Commonwealth by virtue of a federal grant, gift, or forfeiture or other disposition of federal funds shall be made payable to the treasury or treasurer of the political subdivision and shall not be made payable to such department or agency, or department or agency head. Accounting and disbursement provisions of § 58.1-3127 shall apply to such amounts. (Emphasis added.)

Chapter 10 of Title 37.1 provides generally for the establishment, membership and duties of a community services board.³ Section 37.1-195 requires a city or county, or a combination of each or both ("county-city combination"), that establishes a community services board to designate an official of the county or city, or county-city combination, to act as fiscal agent.⁴ A fiscal agent⁵ serving joint boards is required to review and act on the independent audit of a board and arrange for the provision of legal services to the board.⁶

Prior opinions of the Attorney General conclude that a community services board is an agency or instrumentality of local government.⁷ The General Assembly, however, has revised the statutes governing community services boards. The 1998 Session of the General Assembly established three types of community services boards—operating boards, administrative policy boards, and policy-advisory boards⁸—and required each county or city, or county-city combination,

to designate which type of board it has established.⁹ In addition, certain eligible localities may establish a behavioral health authority.¹⁰

The powers and duties of the boards in § 37.1-197 also changed, depending on the type of board involved.¹¹ The 1998 Session of the General Assembly amended § 37.1-197(A)(10),¹² relating to operating community services boards or policy-advisory boards, and added B(10) to § 37.1-197,¹³ relating to administrative policy community services boards. Both statutory subdivisions state that, with regard to the ability to disperse funds, the boards "[h]ave authority, notwithstanding any provision of law to the contrary, to disburse funds appropriated to it in accordance with such regulations as may be established by the governing body or bodies of the political subdivision or subdivisions that established it."¹⁴ A community services board, however, continues to remain responsible to the governing body or bodies of the county or city, or county-city combination, that established it.¹⁵

Because the community services board, as an agency or instrumentality of local government, continues to remain responsible to the governing body or bodies that established it, state and federal funds to be received or expended by the community services board must be paid to the treasurer and accounted for in accordance with §§ 58.1-3127 and 58.1-3127.1. The treasurer may, however, permit the community services board to disburse funds in accordance with the regulations established by the governing body or bodies that established the board without violating §§ 58.1-3127 and 58.1-3127.1 as long as the regulations are consistent with these provisions. Whether funds may be deposited in an account under the control of the community services board would therefore depend upon the regulations in place in the governing locality.

As a general rule, the Attorney General does not issue opinions on matters that do not require an interpretation of federal or state law, rule or regulation.¹⁶ Inasmuch as community services boards are created at the local level, and their rules and procedures are a matter of local ordinances, it would not be appropriate to render an opinion on internal governance issues of the described community services board.

Conclusion

Accordingly, it is my opinion that as community services boards are agencies of the political subdivision or subdivisions that created them, all state and federal funds therefor must be deposited with the locality's treasurer (in the case of a board serving only one political subdivision), or the treasurer in the locality served by the fiscal agent. Therefore, that treasurer must account for these funds as required by §§ 58.1-3127 and 58.1-3127.1. These requirements do not preclude the treasurer from depositing these funds in a bank account maintained and controlled by the board pursuant to the regulations governing it, provided that the treasurer continues to comply with the requirements of the aforesaid sections of the *Code*. The ability of a treasurer to comply with these sections, however, depends upon an interpretation of the applicable local regulations governing the board. The Attorney General does not render opinions on matters of local concern and procedure.¹⁷ Therefore, no opinion is offered regarding local applicable rules and procedures for the community services board in question.

¹ See *infra* notes 16 and 17.

² Section 58.1-3 generally prohibits state and local tax and revenue officials from disclosing confidential information about the transactions, property, income or business of any particular taxpayer.

³ See Va. Code Ann. §§ 37.1-194 to 37.1-199, § 37.1-202.1 (LexisNexis Supp. 2004); § 37.1-200 (Michie Repl. Vol. 1996).

⁴ The fiscal agent acts on behalf of a community services board designated as an operating board (§ 37.1-195(C)) or an administrative policy board (§ 37.1-195(D)).

⁵ The fiscal agent of such an operating board is not necessarily the local treasurer.

⁶ Section 37.1-195(C), (D).

⁷ See Op. Va. Att'y Gen.: 1977-1978 at 246; 1975-1976 at 150; 1974-1975 at 336, 337; 1971-1972 at 17. The Supreme Court of Virginia has held that the Fairfax-Falls Church Community Services Board "is an agency created by statute," and based on the evidence, "was in no sense an independent agency." *Fairfax-Falls Church Cmty. Servs. Bd. v. Herren*, 230 Va. 390, 394, 337 S.E.2d 741, 743 (1985).

⁸ See § 37.1-194.1 (defining "administrative policy community services board" or "administrative policy board," "operating community services board" or "operating board," "policy-advisory community services board" or "policy-advisory board").

⁹ See 1998 Va. Acts ch. 680, at 1554, 1555-57 (amending § 37.1-194 and adding §§ 37.1-194.1, 37.1-195(B)).

¹⁰ In 1997, the General Assembly authorized the governing body of any city with a population of 350,000 or more or with a population between 200,000 and 250,000, and any county with a population between 200,000 and 210,000, to establish a behavioral health authority by resolution. See 1997 Va. Acts ch. 587, at 976, 1398 (adding § 37.1-244).

¹¹ See 1998 Va. Acts, *supra* note 9, at 1558-61.

¹² See *id.* at 1559.

¹³ See *id.* at 1560.

¹⁴ Section 37.1-197(A)(10), (B)(10).

¹⁵ See § 37.1-195(A) ("The board appointed pursuant to this section shall be responsible to the governing body or bodies of the county or city or combination thereof that established such board.").

¹⁶ See Op. Va. Att'y Gen.: 1998 at 71, 72; 1976-1977 at 17, 17.

¹⁷ See, e.g., 2004 Op. Va. Att'y Gen. 04-017, available at <http://www.vaag.com/media%20center/Opinions/2004opns/04-017w.htm>.

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