



WILLIAM J. SCOTT
ATTORNEY GENERAL
STATE OF ILLINOIS
SPRINGFIELD

March 15, 1978

FILE NO. S-1348

MENTAL HEALTH:
Operation of Gasoline Station
as Rehabilitation Facility

Dr. Robert A. DeVito, Director
Department of Mental Health and
Developmental Disabilities
160 North LaSalle Street
Chicago, Illinois 60601

Dear Dr. DeVito:

You have asked certain questions about the operation at the Meyer Mental Health Center in Decatur of a facility for patients who have progressed through treatment programs, to aid in their orientation toward the outside world. This facility contains an automobile service station where patients provide service to motorists and sell petroleum products, but are supervised by Department staff. The products are purchased from a major petroleum company, and the station's charges for products

Dr. Robert A. DeVito, Director - 2.

and services are similar to those of nearby stations. You state that:

" * * * Although termination would have no fiscal impact upon the Department's operations, alternative workshop activities would have to be developed in which to channel the energies of the patient-participants. * * *"

Your questions, as I understand them, raise two issues:

- (1) Has the Department the substantive authority to operate a gasoline station for rehabilitation of patients, and to spend State or Federal funds therefor?
- (2) Even if the Department has such substantive authority, does its exercise in competition with other stations violate "any State or Federal antitrust, fair competition or other law?"

For reasons to be stated, I conclude that the Department does have such authority, and that the present mode of exercising it is not prohibited.

Section 7 of "AN ACT codifying the powers and duties of the Department of Mental Health and Developmental Disabilities" (Ill. Rev. Stat. 1975, ch. 91 1/2, par. 100—7) authorizes the Department:

"To receive and provide the highest possible quality of humane and rehabilitative care and treatment to all persons admitted or committed or transferred in accordance with law to the institutions, divisions,

Dr. Robert A. DeVito, Director - 3.

programs, and services under the jurisdiction of the Department. * * *

* * *

(Emphasis added.)

Section 16.1 of the same Act (Ill. Rev. Stat. 1975, ch. 91 1/2, par. 100—16.1) more specifically implies the power to provide work for patients as part of their treatment. It authorizes the Department:

"At the discretion of the Director, to provide patients under Department jurisdiction with monetary remuneration or other incentives on a graduated scale for work performed as part of their training for useful employment. Such patient-workers are exempt from the Personnel Code.

Such remuneration or incentives must be paid solely from funds received by gift or grant from private sources or the federal government or the Mental Health Fund. No general revenue funds may be used to pay such remuneration or incentives. * * *

* * *

Thus the Department is authorized to provide work situations appropriate for the rehabilitation and orientation of its patients. You state that:

" * * * [T]his type of work, for which the patients are paid, is practical in orientation and beneficial to the participants both in terms of life skills and realizable income.

* * *

Dr. Robert A. DeVito, Director - 4.

Since, in your medical judgment, this is an appropriate method of rehabilitation and reorientation of patients, I conclude that it is within the authorization of the statutes just quoted.

Without more facts, I am unable to express an opinion whether the use of State or Federal grants in the project complies in all respects with statutes or regulations restricting use of such grants. I refer you to section 16.1 of the Act, quoted above, which prohibits the use of general revenue funds to pay remunerations or incentives to patients, and section 18 (Ill. Rev. Stat. 1975, ch. 91 1/2, par. 100--18), which authorizes the use of Federal or other agency funds in Department programs "for indicated purposes". The use of funds received under this section depends on the conditions set forth in the grants.

The second question summarized above is whether operation of such a station in competition with other stations violates "any state or federal antitrust, fair competition or other law." Apparently, the only Illinois statute prohibiting the State from competing with private business is "AN ACT in regard to the retail sale or merchandise by or on the property of State institutions of higher learning" (Ill. Rev. Stat. 1975, ch. 144, par. 251), which clearly is inapplicable. Nor do the Federal antitrust laws, compiled in 15 U.S.C. §§ 1 et seq., or the Illinois Antitrust Act

Dr. Robert A. DeVito, Director - 5.

(Ill. Rev. Stat. 1975, ch. 38, pars. 60—1 et seq.) restrict operation by the State of businesses that would otherwise be private. Many State and local governments provide various utility services or otherwise engage in proprietary activities. Whether a state may monopolize a particular market is a question not involved here, since the Department operates only one station in the City of Decatur. There appear to be no other provisions in the Illinois or Federal Constitutions or statutes that would prohibit operation of this station in the manner and for the purposes you describe.

Very truly yours,

A T T O R N E Y G E N E R A L