

Topic: STATE PROPERTY; PRIVATIZATION; MENTALLY HANDICAPPED;

Location: MENTAL RETARDATION;

Scope: Court Cases; Connecticut laws/regulations;



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December 23, 1993 94-R-0003TO:

FROM: John Kasprak, Senior Attorney

RE: Privatization of Southbury Training School

You are interested in the process for "privatization" of Southbury Training School, specifically selling the facility to a private group that would continue the mission of the school. (Some of the information in this report derives from an earlier OLR report on conveyance of state property, 93-R-0405, prepared by Mary Janicki.)

SUMMARY

Generally, "privatization" is broadly defined as the use of the private sector in government management and delivery of public services **as well as the sale of government assets to the private sector**. Among the various types of privatization are contracting, asset sale, service shedding, public-private partnerships and private donation.

In Connecticut, the transfer or conveyance of state property can only occur after the agency using it informs the commissioner of public works that it is no longer needed. The statutory process for disposing of surplus state property must be followed. It includes determining whether the Department of Housing or other state agencies have a use for the property, notifying the town in which it is located and allowing the town the right of first refusal, then offering it for sale to other parties. Generally, a sale of Southbury Training School to a private group would have to follow this procedure. Another way to convey state real property is for the legislature to enact special purpose legislation authorizing it. Such legislation would be referred to the Government Administration and Elections Committee.

DEPARTMENT OF MENTAL RETARDATION

Background--Training Schools

Many of the decisions and actions undertaken by DMR over the past decade have been the result of two federal court cases, both settled through consent decrees. While a consent decree is not a judicial decision (it is entered into by consent of both parties), it is a contract that is binding on both parties. In 1978, DMR became the defendant in a federal class action suit, *Connecticut Association of Retarded Citizens (CARC) v. Thorne*. CARC, representing clients at Mansfield Training School, contended that the care provided by DMR to these clients at Mansfield and clients transferred from there to other long-term care facilities violated the U.S. Constitution and other federal protection laws.

The case was settled in 1984 through a consent decree. The settlement applied to about 1300 individuals meeting certain criteria, primarily residing at Mansfield on a particular date or at risk of placement there at a particular time. These "class members" for lawsuit purposes retained their status as such even after placement in the community.

A second significant court case involving DMR was *U.S.A. v. State of Connecticut*, which concerned Southbury Training School. Plaintiffs in this case alleged civil rights violations based on conditions at the school. The suit was filed in 1984 and resolved in 1986 through a consent decree. The U.S.A. case only applies to individuals while they are in residence at Southbury. The consent decree required DMR to develop an implementation plan addressing conditions that led to the lawsuit. The plan addresses: (1) assuring sufficient staffing to protect and enhance the life of residents; (2) providing periodic, professional evaluation of residents and communication about their care, training and medical needs; (3) creating more community-based opportunities for residents; and (4) improving the physical environment of the facility to eliminate fire and safety risks (1990 LPR and IC Management Audit of DMR, p.8).

Southbury remains open with a population of about 920 but DMR Commissioner Richardson recently appointed a committee to study closing the facility (see LPR+IC Staff Briefing Paper, *Public/Private Provision of Selected Services in Connecticut*, September 15, 1993, P.1).

Current Use of Private Contractors

The Department of Mental Retardation provides a number of services for its residents living in the community and in campus facilities. The various DMR regions select private service providers based on a standard process that takes into account the availability of funds, target priorities, and the provider's ability to address these areas. According to a breakout of private sector expenditures provided by the Fiscal Administrative Office of DMR, private contractors started providing services in the early 1980s with the introduction of private workshops. As a consequence of the *CARC* case, the amount of private contracting increased tremendously after 1984.

Community Residential Facilities

Community residential facilities for DMR clients were developed long before the 1984 *CARC v. Thorne* consent decree. But this court settlement provided an impetus for developing more community residences. Since such development had to proceed quickly in order to meet court-imposed deadlines, much of it was accomplished through use of private non-profit organizations. Most private group homes were developed between 1985 and 1990. The current residential service system is complex involving state agencies as well as private, mostly non-profit agencies (see LPR and IC staff Briefing Paper on *Public/Private Provision of Selected Services in Connecticut*, September 15, 1993, p.1)

Employment Opportunities

State law directs the DMR commissioner to develop, within available appropriations, a program of employment opportunities and day services for adults with mental retardation (CGS § 17a-226). Any nonprofit organization which provides such services can apply to DMR for funds to help establish, maintain, or expand its programs. No funding for this purpose can exceed the ordinary and recurring operating expenses of such employment opportunities and day services under the law.

The commissioner is charged with establishing the requirements that must be met by the organizations in order to be eligible for funding. She must also establish application procedures (CGS § 17a-226). Subject to available funds, DMR must provide the funds to the organization if the application is in proper form and if it meets established requirements.

Under the law, DMR may receive federal, municipal, or private funds available or tendered on a matching or supporting basis for developing, maintaining, and promoting employment opportunities and day services. "Employment opportunities and day services" include supported employment, sheltered employment, community experience, adult day treatment, and opportunities for older adults (CGS § 17a-226).

The amount of payments by the state to an organization providing employment opportunities and day services for persons referred by any state agency is determined annually by the commissioners of mental retardation, human resources, mental health, and any other state agency purchasing such services using a uniform payment system. But the state cannot authorize a payment exceeding the charges of comparable services to the general public (CGS § 17a-246).

Organizations (providers) wishing to provide employment opportunities to adults with mental retardation negotiate an annual contract with a particular DMR region or regions (there are six DMR regions). Prior to the early 1980s, DMR and providers negotiated agreements for services for the mentally retarded on an informal basis as the opportunity and need arose.

The process was formalized following legislation passed in 1983 (PA 83-64). This law authorized the DMR commissioner to provide a full range of services to support mentally retarded persons, including education and training programs. DMR can provide the services directly, or purchase them from agencies through contracts (see CGS § 17a-218).

After passage of this legislation, DMR had to negotiate contracts with providers of employment opportunities. Previous providers of these services were "grandfathered in" at the time, meaning that DMR would continue to use them and pay for services they offered if they continued to be interested in participating. The department also issued a "request for proposal" (RFP) at this time for new providers of employment opportunities (called "supported employment").

This contract negotiation process is still the system in place today. The department uses a standard contract for this purpose. As new people enter the DMR system, particularly due to deinstitutionalization of clients from the training schools, the department issues RFPs to organizations to provide services to these individuals.

PRIVATIZATION

Background

The term "privatization" is defined in a variety of ways. It can mean the transfer of government assets or functions to the private sector; the shifting of government services and state enterprises to private sector owners and/or suppliers; or a shift from publicly to privately produced goods and services (see Keon Chi, "Privatization and Contraction for State Services: A Guide," Innovations - The Council of State Governments, 1988).

Privatization can take several forms with the following those basically used or available to state government: contracting, vouchers, grants and subsidies, franchise, asset sale, deregulation, volunteerism, private donation, public-private partnership, and service shedding.

For purposes of your questions, asset sale, service shedding, and contracting appear to be the types of privatization you are contemplating. "Asset sale" refers to the state selling or "cashing out" its assets to private firms or individuals to shift government functions to the private sector. This would involve a state selling state-owned surplus property to the private sector.

"Service shedding" occurs when a state drastically reduces the level of a service or stops providing a service so that the private sector can assume the function. Some human services programs as well as recreational services in state parks have been considered as candidates for this type of privatization.

Under "contracting," the state would enter into an agreement with a private firm, for profit or nonprofit, to provide goods or services. The state funds private provision of public services. Generally, contracting can be used for in-house and professional services, transportation, health care and social services, mental retardation and mental health, and employment and training.

Selling of Southbury Training School--State Procedures

There are basically six steps involved when the state decides to sell a property.

The state must give the town in which a property is located the first chance to buy it, and only after the town decides not to buy can the state offer it to other parties. Then before the state actually sells or leases a property, it must notify the town.

The process operates as follows:

1. A state agency determines that it does not need land or buildings it controls. It simultaneously notifies the departments of Public Works (DPW) and Housing (DOH) (CGS § 4b-21(b)).
2. DOH determines whether the property can be used for an emergency shelter or transitional housing facility for homeless people or for housing for low and moderate income people. If the property can be used for these ends, the agency transfers custody and control to DOH (CGS § 4b-21(b)).
3. If DOH determines that the property cannot be used for this kind of housing, DPW surveys other state agencies to see if they can use it. If no one can, DPW declares the property surplus (CGS § 4b-21(b)).

4. If DPW decides to sell a surplus property, the state treasurer handles the transaction. He must give the town in which the property is located the right of first refusal. If the town does not want the property or cannot agree to terms with the state, the treasurer may then offer it to other parties. But he must re-offer it to the town on the same terms that he ultimately negotiates with a private buyer (§ 3-14b, 3-14e).

5. All sales must be approved by the secretary of the Office of Policy and Management (OPM), the State Properties Review Board, and the legislature's Finance, Revenue and Bonding and Government Administration and Elections committees. DPW must inform towns and the members of the General Assembly representing them of the pending sale before these bodies may approve it (§ 4b-21(b), (c)).

DOH uses the same procedures when selling a property that has been transferred to it with one additional condition, the property must be used for one of the approved types of housing. And the town must approve any conveyance, including leasing, before it can be approved by OPM, DPW, and the Properties Review Board.

6. If DPW decides to lease the property, it must notify the town and its legislators at least two weeks before OPM and the other bodies approve the lease. The notice must describe the lease arrangements and the use the lessee intends to make of the property (§ 4b-21(b)).

General Assembly Conveyance Legislation

Members of the General Assembly can sponsor bills to convey state property. These bills are referred to the Government Administration and Elections Committee and are subject to the same procedures as other legislation.

The committee requests that proponents of conveyance bills provide the following materials for its consideration:

1. an appraisal or preliminary estimate of the property's value;
2. a legal description of the property or a description which identifies the property;
3. the best available map of the property;
4. the costs, if any, that the state would incur if the property is conveyed;
5. the size of the property;
6. a description of the proposed use of the property and a statement as to whether the intended recipient of the property agrees to returning the property to the state if the specified use is not realized; and
7. a statement indicating whether the proposed recipient has tried to have the property conveyed through the administrative procedures described above.

If the General Assembly passes the conveyance bill, the transfer is made according to the conditions contained in the special act.

JK:pa