

State proposal for Beth Rifka may be illegal

By RON DesJARLAIS

A state proposal to use the vacant Beth Rifka Nursing Home building in Concord to house people now in state institutions may conflict with a decision handed down more than a year ago in Brooklyn Federal Court, sources claimed yesterday.

The proposal was made by the state Office of Mental Retardation and Developmental Disabilities (MRDD), which earlier this week announced it may use the 240-bed former Beth Rifka Nursing Home as a relocation point for residents of state institutions who eventually will move to "small community settings."

The federal court decision, however, forbids placing Willowbrook State School (now Staten Island Developmental Center) "class members" — the 5,200 people who lived there in March 1972 — in homes with more than 10 beds. Class members were so designated after a lawsuit was filed in March 1972 that led to a 1975 consent decree ordering improved care for Willowbrook residents.

The order was based primarily on a belief by many experts that retarded people can better reach their potential in small homes

than in large institutions.

Central to whether the MRDD proposal would conflict with the federal court decision is whether any of the approximately 3,000 "class members" still in state care will be moved into the Beth Rifka building.

If class members are included in the MRDD proposal, legal sources said, the agency could be in contempt of the federal decision, which was handed down by Judge John R. Bartels.

MRDD Commissioner Zygmund Slezak said Thursday that the Beth Rifka building could be used to temporarily house the 250 Willowbrook residents who will stay there permanently. It has not yet been decided how many, if any, of the 250 will be class members.

Staten Island Developmental Center (SIDC) now has 800 residents, a population which must be pared to 250, according to the 1975 consent decree.

Chris Hansen, a staff lawyer for the New York Civil Liberties Union who helped argue the 1972 class-action suit on behalf of Willowbrook residents, said moving any of the class members into

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Beth Rifka or any other home with more than 10 beds would be "inexplicable and contemptuous."

The state's appeal of the Bartels decision is now before a federal appeals court. Hansen said a decision on the appeal is expected "any day."

Hansen said using a facility as large as Beth Rifka for non-class members would not be flouting Bartels's decision, but would be "extremely bad policy."

"Using an institution like that hurts retarded people," Hansen said.

Murray B. Schneps, a Manhattan lawyer and advocate for the mentally retarded, said a building like Beth Rifka's "won't be any more appropriate than Willowbrook."

"It's a horrible waste of money to pursue this property for that purpose," he said. "It's rather consistent with what seems to be an attitude from (Slezak) and his office to disregard their obligation to make community placements."

MRDD officials could not be reached for comment last night.

Hansen said retarded people "are being used as financial pawns."

Although unfamiliar with the circumstances surrounding the former Beth Rifka property, which is embroiled in a Manhattan Bankruptcy Court battle, Hansen said the MRDD proposal for the Concord property seems like the agency is "trying to bail someone out of a financial problem."

Officers of the bank left holding the defaulted mortgage on the property agree. The bank's president and his lawyers expressed suspicion at the suddenness of the proposal, and questioned whether it was offered as a tactic to delay the bank's six-year-old foreclosure efforts.

The MRDD proposal was made known on the same day that the bank, Washington Federal Savings and Loan, expected a Bankruptcy Court judge to let it proceed with the foreclosure sale.

Bank officials and their lawyers were caught off guard Thursday when former U.S. Attorney General Ramsey Clark appeared at the hearing with the MRDD proposition.

Judge John Galgay then gave Clark and bankruptcy trustee James Garrity until June 15 to come up with a sale.

The property has been tied up in Bankruptcy Court for six years. Washington Federal moved to foreclose in 1976, but the owners of the property, Medicaid felon Bernard Bergman and his family, blocked it by declaring bankruptcy.

Because of the bankruptcy, the Bergman company still holds title to the Concord property. The bank, Washington Federal Savings and Loan, has reportedly lost approximately \$3 million while the bankruptcy lingers in court.

According to Frank Leitgeb, the president of Washington Federal, the bank is losing \$25,000 a month in taxes and maintenance

at the former Beth Rifka site.

Clark was assigned seven years ago to sell off Bergman's property to raise \$2.5 million restitution to the state to make up for the Medicaid money Bergman stole.

Clark has still not raised \$700,000 of that total, state officials said, and Bergman owes \$700,000 more in interest.

Bergman owns 40 percent of the Targee Street property. If the bank is allowed to foreclose, Clark then would be unable to raise restitution money from the property.

Clark has not returned repeated telephone calls to his office.

Felix Gilroy, a Concord resident who is head of the Dongan Hills Estates Civic Association, which fought Beth Rifka's 1981 opening, said the MRDD proposal "will never stand up to the light of day."

He called the proposal "a sham."

"Ramsey Clark has continuously operated in the shadows and always for the benefit of Bernard Bergman and not for the people of New York, for whom has has an obligation," Gilroy said.

He said a dispute over the building's certificate of occupancy, which, sources said, held up the aborted 1980 sale from Bergman to Beth Rifka, still must be settled. Beth Rifka was supposed to make monthly payments into an escrow account during its two-year operation, but did not, according to lawyers for the bank.