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OPINION	:	No. 10-502
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of	:	September 26, 2014
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THE HONORABLE TED LIEU, MEMBER OF THE STATE SENATE, has requested an opinion on the following questions:

1. Does federal law prevent the State of California from using United States Department of Defense money to fund a contract for firefighting services at the Joint Forces Training Base at Los Alamitos?

2. Does the Firefighters Procedural Bill of Rights Act apply to the firefighters who currently provide fire protection and emergency medical services at the Joint Forces Training Base at Los Alamitos?

CONCLUSIONS

1. Federal law prevents the State of California from using United States Department of Defense money to fund a contract for firefighting services at the Joint Forces Training Base at Los Alamitos.

2. The Firefighters Procedural Bill of Rights Act applies to the firefighters who currently provide fire protection and emergency medical services at the Joint Forces Training Base at Los Alamitos, so long as they have completed any required probationary period and do not have law enforcement as their primary duty.

ANALYSIS

The Joint Forces Training Base at Los Alamitos, California (“JTFB” or “the base”), is a federal property licensed indefinitely to the State of California for use by the State’s Military Department, pursuant to a master cooperative agreement between California and the federal National Guard Bureau.¹ The California National Guard operates the base, and is its primary occupant. Fire protection for the base is currently provided by employees of the State’s Military Department who are classified as “state active duty” personnel, but who are not members of the National Guard.

We are informed that the fire protection services currently provided on the base are less comprehensive than those provided to the surrounding cities by the Orange County Fire Authority. The base firefighters, while all trained as emergency medical technicians, do not provide paramedic services or have the use of an ambulance; the base has fewer engines and fire protection personnel, and less specialized equipment, than the Orange County Fire Authority; and the base currently operates on an internal telephone system not directly connected to the 911 emergency-response system,² causing potential delays when a situation requires emergency services beyond what the base firefighters can provide.

For these reasons, it has been proposed that the base should contract with the Orange County Fire Authority for fire protection services, thus aligning fire service on the base with that provided to the surrounding communities. There is concern, however, that such an arrangement would be prohibited by federal statute—specifically Title 10 United States Code section 2465(a), which provides generally that “funds appropriated to the Department

¹ Dept. of the Army License for Natl. Guard Purposes, Armed Forces Reserve Ctr., Los Alamitos, No. DACA09-3-78-47 (July 9, 1979).

² We have been informed that the base is making strides towards connecting with the 911 system.

of Defense may not be obligated or expended for the purpose of entering into a contract for the performance of firefighting or security-guard functions at any military installation or facility.” We have been asked to determine whether the contemplated arrangement would run afoul of this statutory directive.

Independent of our response to the first question, we have been asked whether the personnel currently providing fire-protection services on the base qualify to receive the benefits of California’s Firefighters Procedural Bill of Rights Act,³ which generally “prescribe[s] rights related to, among others, political activity, interrogation, punitive action, and administrative appeals”⁴ for firefighters.

We conclude (1) that federal law prohibits the JFTB from contracting with the Orange County Fire Authority for fire protection services on the base, and (2) that, subject to exceptions set forth in the Firefighters Procedural Bill of Rights itself, the personnel providing fire protection services at the base are covered by that legislation.

Question 1

Title 10 United States Code section 2465(a) provides that “funds appropriated to the Department of Defense may not be obligated or expended for the purpose of entering into a contract for the performance of firefighting or security-guard functions at any military installation or facility.”⁵

³ Gov. Code, §§ 3250-3262.

⁴ *International Assn. of Firefighters Local Union 230 v. San Jose* (2011) 195 Cal.App.4th 1179, 1187 (quoting Legis. Counsel’s Digest, Assem. Bill No. 220 (2007–2008 Reg. Sess.)).

⁵ This general provision is subject to certain exceptions, none of which are relevant here.

10 U.S.C. § 2465 states in full:

(a) Except as provided in subsection (b), funds appropriated to the Department of Defense may not be obligated or expended for the purpose of entering into a contract for the performance of firefighting or security-guard functions at any military installation or facility.

(b) The prohibition in subsection (a) does not apply to the following contracts:

(1) A contract to be carried out at a location outside the United States (including its commonwealths, territories, and possessions) at which members of the armed forces would have to be used for the performance of

Tracking this language, we first consider whether the fire-protection services provided under the proposed contract would be paid for with “funds appropriated to the Department of Defense.”⁶ We are informed that the firefighters at the base are paid by the California Military Department,⁷ which includes the State’s National Guard.⁸ The federal National Guard Bureau reimburses the State of California for California National Guard operations, including operations at the base at Los Alamitos, through a master cooperative agreement.⁹ The National Guard Bureau is part of the Department of Defense.¹⁰

Thus, funding for the base and the operations conducted there generally comes from the Department of Defense. This is confirmed by the cooperative agreement itself, which states that it is “entered into by the Department of Defense, National Guard Bureau, with [the State of California], funded by Department of Defense appropriations for the Army National Guard and Air National Guard, for . . . operations of the Army National Guard and Air National Guard, and for other programs authorized and directed by Congress or the Department of Defense to be performed by [the State of California] and the National

a function described in subsection (a) at the expense of unit readiness.

(2) A contract to be carried out on a Government-owned but privately operated installation.

(3) A contract (or the renewal of a contract) for the performance of a function under contract on September 24, 1983.

(4) A contract for the performance of firefighting functions if the contract is--

(A) for a period of one year or less; and

(B) covers only the performance of firefighting functions that, in the absence of the contract, would have to be performed by members of the armed forces who are not readily available to perform such functions by reason of a deployment.

⁶ 10 U.S.C. § 2465(a).

⁷ An unspoken assumption of the question presented is that the contract services would be funded from the same source that currently funds the existing firefighting services on the base, and no other source of funding has been identified.

⁸ Mil. & Vet. Code, § 51.

⁹ Master Cooperative Agreement between the State of California and the National Guard Bureau, No. DAHA-2-1000 (Oct. 1, 2003).

¹⁰ 10 U.S.C. § 10501.

Guard Bureau.”¹¹ Further, the Adjutant General of the California National Guard has stated that, “The California National Guard receives funding for operation and maintenance of the installation at JFTB, Los Alamitos, from the Department of Defense, via the National Guard Bureau.”¹²

Moreover, the costs of firefighting services at the base are specifically accounted for within the master cooperative agreement.¹³ These types of agreements are governed by National Guard Regulation 5-1,¹⁴ which requires the recipient of funds to annually submit a proposed budget “in sufficient detail to allow . . . review.”¹⁵ When the proposed budget is approved, federal funds may be obligated.¹⁶ Documentation submitted by the base at Los Alamitos for this purpose sets out the costs of firefighting services in detail, including salaries, equipment, supplies, and training. We are informed that these costs are reimbursed annually by the federal National Guard Bureau. The Adjutant General of the California National Guard has confirmed that, through the master cooperative agreement funding process, “the state of California does not provide any funding toward fire fighting capabilities at the JFTB, Los Alamitos. The state is reimbursed for all personnel and operational costs associated with fire fighting at the JFTB, Los Alamitos.”¹⁷ Thus, we conclude that Department of Defense money—i.e., “funds appropriated to the Department of Defense”¹⁸—is currently being used to fund firefighting at the base.¹⁹

¹¹ Master Cooperative Agreement, No. DAHA-2-1000 (Oct. 1, 2003), § 601.

¹² Ltr. from Lt. Col. Warren L. Alberts, Dir., Policy & Liaison, Cal. Natl. Guard, to Sen. Joseph L. Dunn, Chairman, Budget & Fiscal Rev. Subcomm. #4 (Feb. 17, 2004), at p. 1.

¹³ Master Cooperative Agreement, No. DAHA-2-1000, § 403 (requiring the State to annually submit a budget for approval by the National Guard Bureau).

¹⁴ See <http://www.ngbpd.c.ngb.army.mil/pubs/ARNG%20Series/arnseries.htm>.

¹⁵ Natl. Guard Regulation 5-1, Ch. 11, § 1(d)(1).

¹⁶ *Id.* at § 2(d).

¹⁷ Ltr. from Warren L. Alberts, at p. 2.

¹⁸ 10 U.S.C. § 2465(a).

¹⁹ Although the Department of Defense appropriates the funds for JFTB, it has been suggested that, once the State takes possession of funds from the federal National Guard Bureau, the money no longer qualifies as “funds appropriated to the Department of Defense,” thereby allowing the State to fulfill its duty to provide fire protection services on the base without regard to the restrictions contained section 2465. But we have found no support for the proposition that federal funds are transformed into State funds simply by passing into state coffers. The funds for fire protection on the base are specifically detailed and accounted for through the master cooperative agreement process, and to label

Having determined that Department of Defense funds pay for the firefighting services on the base, we next consider whether the base is a “military installation or facility” within the meaning of section 2465.²⁰ “Military installation or facility” is not specifically defined in section 2465, but “military installation” is consistently defined elsewhere in Title 10 of the United States Code as “a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the Department of Defense, including any leased facility, which is located within any of the several States”²¹ We have seen the base at Los Alamitos referred to by a variety of names, each of which contains a term listed in title 10’s definition: the California National Guard Base at Los Alamitos, the Joint Forces Training Base at Los Alamitos, and the Armed Forces Reserve Center at Los Alamitos. Moreover, given the facility’s use by the California National Guard, its status as a “base” appears to be beyond dispute. In addition, the license for the base establishes unequivocally that the Department of Defense has jurisdiction over it.²² Thus, the base meets the definition of “military installation,” and the

the funds *allocated for that purpose* as state moneys simply because they move into a state account is contrary to general legal principles. (Cf. *In re Marriage of Braud* (1996) 45 Cal.App.4th 797, 822-823 (commingling of separate property and community property funds in one account “does not alter the status of the respective property interests, provided that the components of the commingled mass can be adequately traced to their . . . sources.”).)

²⁰ 10 U.S.C. § 2465(a).

²¹ E.g., 10 U.S.C. §§ 993, 2687(g)(1), 2801(c)(4); see also 10 U.S.C. §§ 2391, 2667(i)(3) (both defining “military installation” by reference to 10 U.S.C. § 2687); see also Educ. Code, § 49701, art. II, ¶ (J) (defining “military installation” identically in the Interstate Compact on Educational Opportunity for Military Children).

²² The license is granted for use “as an Armed Forces Reserve Center and support of the California Army National Guard,” as well as for use by “designated active Army, Navy and Air Force units and reserve component units of the Army[,] Navy, Air Force and Marines.” (Dept. of the Army License, No. DACA09-3-78-47, at p. 1.) It dictates that “the management, operation, use and occupancy of said Armed Forces Reserve Center . . . shall be performed in accordance with Department of Defense Directives and Department of the Army regulations,” and that “the management, operation, use and occupancy of said Armed Forces Reserve Center shall be with the general supervision of the duly authorized representative of the Secretary of the Army.” (*Ibid.*) The license gives the United States the right to use the base for any purpose that “the Department of the Army deems necessary in the interest of national defense,” and forbids the State from making additions, alterations, or improvements to the base without permission of the Secretary of the Army. (*Id.* at p. 2.) The license is “revocable at will by the Secretary of the Army.” (*Id.* at p. 1.) All of these terms demonstrate that the Department of Defense, of which the

general prohibition against the contracting-out of firefighting services contained in section 2465 applies to it.

Therefore, we conclude that federal law prevents the State of California from using United States Department of Defense money to fund a contract for firefighting services at the Joint Forces Training Base at Los Alamitos.

Question 2

The Firefighters Procedural Bill of Rights Act²³ (“Act”) prescribes rights to firefighters relating to political activity, interrogation, punitive action, and administrative appeals. The Act defines “firefighter” as “any firefighter employed by a public agency, including, but not limited to, any firefighter who is a paramedic or emergency medical technician, irrespective of rank”—excluding inmates, probationary employees, and public safety officers.²⁴ “Firefighter” is not an ambiguous term for our purposes. We are informed that the full-time, regular assignment of the JFTB employees at issue is to perform fire protection services, and we accept that they are “firefighters” within the meaning of the Act.

The question then is whether these firefighters are “employed by a public agency” for purposes of the Act. The Act defines “public agency” by reference to Government Code section 53101,²⁵ which defines a public agency as “the state, and any city, county, city and county, municipal corporation, public district, or public authority located in whole or in part within this state which provides or has authority to provide firefighting, police, ambulance, medical, or other emergency services.” Does the federal source of the JFTB firefighters’ salaries take them outside of this definition? We conclude that it does not. The firefighters on the base are employed and paid by the State’s Military Department (with federal funds received for this purpose). Thus, the fire protection personnel on the base are firefighters employed by a public agency as required to come under the Act’s protections.²⁶

Department of the Army is a part (10 U.S.C. § 111(b)(6)), retains jurisdiction over the base. Moreover, the license allows the Secretary of the Army to “relinquish such jurisdiction as he deems advisable” over the base “by separate action.” To our knowledge, no action has been taken to relinquish any jurisdiction.

²³ Stats. 2007, ch. 591 (AB 220); Gov. Code, §§ 3250-3262.

²⁴ Gov. Code, § 3251, subd. (a).

²⁵ Gov. Code, § 3251, subd. (b).

²⁶ This conclusion is consistent with our opinion that “[a] firefighter on full-time active

The Act does exclude certain public agency firefighters from its coverage—most notably “public safety officers.”²⁷ In this connection, we note that the designation of “public safety officer” includes firefighters employed by the Military Department if their *primary* duty “is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.”²⁸ While we have not been given any indication that any of the base firefighters have law enforcement as their primary duty, any individual acting in that capacity would be excluded from coverage under the Act.²⁹

Accordingly, we conclude that the Firefighters Procedural Bill of Rights Act applies to the firefighters who currently provide fire protection and EMS services at the Joint Forces Training Base at Los Alamitos, so long as they have completed any required probationary period and do not have law enforcement as their primary duty.

duty in the California State Military Reserve, working at a military base and being paid by the California Military Department, [qualifies] as ‘a permanent career firefighter employed by the state’” for purposes of placement on a firefighter hiring list used by the California Firefighter Joint Apprenticeship Program. (91 Ops.Cal.Atty.Gen. 55 (2008).)

²⁷ Government Code section 3251, subdivision (a), excludes inmates, probationary employees, and public safety officers. Fire protection personnel employed at the base are not inmates, so that exclusion is inapplicable. To the extent that base firefighters must complete a probationary period, the probationary employee exclusion would apply to those individuals during their period of probation.

²⁸ Pen. Code, § 830.37, subd. (d).

²⁹ Our conclusion that firefighters on the base at Los Alamitos are generally covered by the Firefighters Procedural Bill of Rights Act is consistent with the opinion of the Legislative Counsel that “[f]or purposes of the Firefighters Procedural Bill of Rights Act, a permanent career firefighter employed by the state whose regular duty assignment is to perform firefighting services at a federal facility that is located in California and leased by this state, who does not fall within an exception to the definition of a firefighter, is considered to be employed by a public agency as that term is defined in Section 3251 of the Government Code.” (Ops.Cal.Legis.Counsel, No. 0806438 (Apr. 2, 2008); see *California Assn. of Psychological Providers v. Rank* (1990) 51 Cal.3d 1, 17 [opinions of the Legislative Counsel, although not binding, are entitled to great weight].)