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OPINION	:	No. CV 78-92
	:	
of	:	<u>February 23, 1979</u>
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SUBJECT: AUTHORIZATION OF POWER—No section of the Government Code authorizes the Secretary of the Business and Transportation Agency to exercise the power or control the actions of the Small Business Development Board.

The Honorable Ernest Shell, Chairperson, Small Business Development Board, has requested an opinion on the following question:

Does section 13978 of the Government Code authorize the Secretary of the Business and Transportation Agency to exercise the power of the Small Business Development Board or control the actions of the Small Business Development Board?

The conclusion is:

Section 13978 of the Government Code does not authorize the Secretary of the Business and Transportation Agency to exercise the power or control the actions of the Small Business Development Board.

ANALYSIS

There is in the state government the Business and Transportation Agency. (Gov. Code, § 13975.) The Business and Transportation Agency is under the supervision of an executive officer known as the Secretary of the Business and Transportation Agency, who is appointed by the Governor, subject to confirmation by the Senate. (Gov. Code, § 13976.) Among the powers of the Secretary are those specified in Government Code section 13978, to wit:

“The secretary has the power of general supervision over, and is directly responsible to the Governor for, the operations of each department, office, and unit within the agency. He may issue such orders as he deems appropriate to exercise any power or jurisdiction, or to assume or discharge any responsibility, or to carry out or effect any of the purposes vested by law in any department in the agency.” (See also Gov. Code, §§ 13978.2 through 13988.)

The issue presented is whether the provisions of Government Code section 13978 authorize the Secretary to exercise the authority of the Small Business Development Board (hereinafter Board”) or to control the actions of that Board. We turn, then, to an examination of the provisions creating the Board in order to determine whether it is an entity that is subject to an exercise of the authority that is vested in the Secretary by Government Code section 13978.

A brief examination of the Board’s legislative history is pertinent. In 1968, the Legislature enacted the California Job Development Corporation Law. (Corp. Code,¹ § 14000 *et seq.*; Stats. 1968, ch. 1455, p. 2874 *et seq.*) That law provided that “there is in state government a California Job Development Corporation Law Executive Board.” (§ 14020; Stats. 1968, ch. 1455.) The Board then consisted of over 14 members (§ 14021; Stats. 1968, ch. 1455) whose duties and responsibilities were specified in detail (§ 14023 *et seq.*; Stats. 1968, ch. 1455). The Board was authorized to appoint an executive director “who shall implement policies of the executive board and who may, with the prior approval of the board, appoint other persons to the staff of the executive board.” (§ 14028, subd. (b); Stats. 1968, ch. 1455.) As thus established, the Board was an independent public agency of the state.

In 1973, the Legislature repealed the California Job Development Corporation Law and enacted the California Job Creation Corporation Law. (Stats. 1973, ch. 1211, p. 2714 *et seq.*) The Legislature thereby established the California Job Creation Program (Stats.

¹ All unidentified section references are to the Corporations Code.

1973, ch. 1211, § 2, p. 2714) under the authority of a similarly constituted multi-membered entity denominated the California Job Creation Program Board (§ 14021; Stats. 1973, ch. 1211, § 9), similarly assisted by an executive director appointed by the Board. (§ 14023; Stats. 1973, ch. 1211, § 14.) At this time, the Legislature specified separately the duties and responsibilities of the executive director and of the Board. (§§ 14022, 14023, 14025.5; Stats. 1973, ch. 1211.) The Legislature also established the Board as being in the Department of Employment Development. (Stats. 1973, ch. 1211, § 10; but see Stats. 1973, ch. 1211, § 9.)

In 1977, the Legislature amended the California Job Creation Corporation Law. (Stats. 1977, ch. 924.) Section 14020 now provides that “there is in the Business and Transportation Agency in the Department of Economic and Business Development a Small Business Development Board.” The Legislature enacted a new heading of part 5 of division 3 of title 1 of the Corporations Code, containing the provisions under review, that reads as follows: “PART 5. CALIFORNIA OFFICE OF SMALL BUSINESS DEVELOPMENT.” Section 14010, subdivision (o) was added providing that “‘Executive director’ means the executive director of the Office of Small Business Development.”

It is instructive to note that the Legislature imposed specific duties with respect to what could appear to be three separate entities. For example, sections 14022, 14024, 14025, 14027, 14029.4, 14029.5, 14029.6, 14029.8 and 14044.5 impose specific duties and responsibilities upon the Board. Sections 14023, 14023.5, 14028.4, 14029.7 and 14033 impose specific duties and responsibilities upon the executive director. Sections 14028, 14028.1, 14028.2 and 14028.3 provide authority for the “office” to undertake certain activities.

At this point, we note that there is no specific provision creating the Office of Small Business Development, although it is implied from the heading previously referred to. In interpreting statutes, titles of acts, headnotes, and chapter and section headings may properly be considered in determining legislative intent. (*Bowland v. Municipal Court* (1976) 18 Cal. 3d 479, 489; *People v. Navarro* (1972) 7 Cal. 3d 248, 273. See also § 14010, subd. (o), *supra*.)

Further, section 14020, *supra*, establishes the Board as an entity in the Department of Economic and Business Development and does not mention the Office of Small Business Development (hereinafter “Office”). Despite these omissions, we think it is reasonably clear that the Legislature deems the Board and the Office to be separate entities, each having distinct functions operating in a symbiotic relationship. Support for that conclusion is found in items 139 and 139.1 of the 1978–79 Budget Act. (Stats. 1978, ch. 359.) For instance, the Legislature states in part that: “. . . on or after July 1, 1978, all contracts proposed to be entered into by the Office of Small Business Development shall

be approved by the Small Business Development Board and the secretary prior to signing by the executive director of the board”²

Having satisfactorily established that the Board and the Office are distinct entities, we may address the primary question: Is the Board subject to the provisions of Government Code section 13978? We conclude that it is not.

Section 14021 provides that:

“The board consists of the following membership: Secretary of the Business and Transportation Agency; Superintendent of Banks; Director of the Department of Commerce; Eleven members appointed by the Governor, including:

“Two persons residing in economically disadvantaged areas who are actively engaged in providing leadership and assistance for persons residing in these areas;

“Four persons experienced in financial matters and actively engaged in the banking, savings and loan, or insurance business;

“Four persons actively engaged in commercial or industrial business, two of whom are members of the California Commission for Economic Development; and

“One person who is an officer of a labor organization.

“Two Members of the Legislature, one of whom shall be appointed by the Speaker of the Assembly, and one by the Senate Rules Committee, shall advise with the board insofar as it does not conflict with the duties of the legislators. For purposes of this part, such two Members of the Legislature shall constitute a joint interim legislative committee on the subject of this part and shall have all the powers and duties imposed upon such committees by the Joint Rules of the Senate and Assembly.

“One person from each job creation corporation, who shall be selected by the board of directors or members of each corporation in accordance with its bylaws, each of whom shall serve as nonvoting members of the board.”

² Reference is made to items 139 and 139.1 solely for the purpose of reflecting a legislatively established distinction between the Office and the Board.

Among the various duties of the Board are those specified in section 14022:

“The board shall:

“(1) Formulate policy for the administration of this part.

“(2) Advise the executive director on matters regarding this part.

“(3) Receive with the approval of the Department of Finance, and disburse federal, state or local funds.

“(4) Allocate, with the approval of the Department of Finance, funds appropriated for purposes of this part to provide administrative costs and loan guarantee funds to a corporation.

“(5) Adopt regulations for the purposes of this part, including regulations for the operation, supervision and suspension of job creation corporations, the allocation of funds thereto and the proper administration of allocated funds.

“(6) Select a chairman and vice chairman from among its members.

“(7) Have the power to examine, or cause to be examined, at any reasonable time all the books, records, and documents of every kind, and the physical properties of a corporation. Such inspection shall include the right to make extracts and search records.”

Further, section 14027 provides that:

“The board shall report annually to the Legislature and the Governor indicating steps which have been taken to fulfill the purpose of this part during the preceding calendar year, which report shall describe:

“(a) Action taken to encourage the formation of job creation corporations.

“(b) Evaluation of corporations formed under this part, including annual financial statements of each corporation.

“(c) Businesses located and expanded and the number of jobs created through employment-incentive loans made pursuant to this part.

“(d) Small businesses established or assisted under this part.

“(e) Recommendations for action by the Governor and Legislature to carry out the purposes of this part.”

It appears that the Board is thus composed of public officials and private individuals who are intended to provide diverse experience and judgment in the implementation of the policy objectives established by the Legislature. It seems obvious that the functioning of a Board composed of members with such diverse backgrounds cannot be deemed equivalent to the functioning of one individual. ‘We deem this factor to be critical in the resolution of the issue presented since our primary objective is to ascertain and give effect to legislative intent. (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 163; *Select Base Materials v. Board of Equal.* (1959) 51 Cal. 2d 640, 645; *Steilberg v. Lackner*(1977) 69 Cal. App. 3d 780, 785.)

In determining the legislative intent, one turns first to the words used in the statute. (*Moyer v. Workman’s Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230; *Steilberg v. Lackner, supra*, 69 Cal. App. 3d at p. 785.) One is required to give effect to the statutes according to the usual ordinary import of the language, significance being given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose. (*Moyer v. Workman’s Com. p. Appeals Bd., supra*, 10 Cal. 3d at p. 230; *Steilberg v. Lackner, supra*, 69 Cal. App. 3d at p. 785.)

Therefore, we are compelled to examine the provisions of Government Code section 13978 in order to ascertain whether they may be said to encompass a multi-membered board. We find no indication that Government Code section 13978 applies to a multi-membered Board. Government Code section 13978 refers to “department, office, and unit³ within the agency.” It specifically authorizes the Secretary to “assume or discharge any responsibility, or to carry out or effect any of the purposes *vested by law in any department in the agency.*” (See also Gov. Code, § 13978.4, which provides in part that ‘Tribe Secretary of the Business and Transportation Agency shall exercise the authority vested in the Governor in respect to the functions of each department, office, or other unit within the agency. . . .”).

In no instance does the word “board” appear; we do not believe that it may be lightly implied. Referring again to items 139 and 139.1 of the 1978–79 Budget Act, the Legislature

³ For an example of a “unit” of the state government, see Government Code section 15360: “The Economic Development Unit in the Department of Housing and Community Development . . . shall become the Office of Local Economic Development” in the Department of Economic and Business Development.

has stated that “no funds shall be expended from this item for support of the Office of Small Business Development, unless the Secretary of the Business and Transportation Agency . . . assumes that authority and management of the Office of Small Business Development, as authorized under section 13978 of the Government Code.”⁴ (Emphasis added.)

An administrative agency must act within the powers conferred upon it by law and may not validly act in excess of such powers. (*City and County of San Francisco v. Padilla* (1972) 23 Cal. App. 3d 388, 400.) Such an agency has no powers other than those conferred on it, expressly or impliedly, by the legislation creating it. (*Id.*) An express grant of powers will be deemed to include such other powers as are necessarily or reasonably incident to the powers granted. (*Cal. Drive-In Restaurant Assn. v. Clark* (1943) 22 Cal. 2d 287, 302, 303.) Powers may be inferred as a necessary means of accomplishing the end sought by legislation. (*Laurelle v. Bush* (1911) 17 Cal. App. 409, 415–416), as indispensable to the successful functioning of the agency in the manner provided by statute (*Shoults v. Alderson* (1921) 55 Cal. App. 527), or as necessary for the efficient exercise of the powers expressly granted. (*Lewis v. Colgan* (1897) 115 Cal. 529, 534.) The doctrine of implied powers, however, is not without limitations. It cannot be invoked where the grant of express powers clearly excludes the exercise of others, or where the claimed power is incompatible with, or outside the scope of, the express power. (*Blatz Brewing Co. v. Collins* (1945) 69 Cal. App. 2d 639.)

The Secretary is, in our opinion, not expressly authorized by Government Code section 13978 to exercise the power or control the actions of the Small Business Development Board. Neither may it be concluded that he is impliedly authorized to do so for the reason that a Board is a multi-membered entity distinct in concept and in the manner in which it functions from the head of a department, office or unit of state government. One would confidently expect that the Legislature would reserve to itself the decision to abolish a Board rather than it implying that some or all of a Board’s functions may be supplanted within the discretion of a public officer. This observation is particularly relevant when that public officer is himself a member of that Board. (See § 14021.) Thus, the exercise by the Secretary of the statutory powers of the Board itself is incompatible with the legislative scheme as reflected by the legislation described in this opinion.

If we assume that the Board may be deemed a “unit” of the Department of Economic and Business Development within the Business and Transportation Agency, we reach the same conclusion. While the Secretary may exercise the powers of a department under the second sentence of section 13978, the Department of Economic and Business Development

⁴ We express no view concerning the effect of these provisions; we refer to them only for the limited purpose of our reflecting upon the legislative intent with respect to the precise issues being considered in this opinion.

is nowhere empowered to exercise the powers of the Board; thus, neither is the Secretary under section 13978. It is concluded, therefore, that section 13978 of the Government Code does not authorize the Secretary of the Business and Transportation Agency to exercise the power or control the actions of the Small Business Development Board.
