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OPINION	:	No. 79-1007
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of	:	<u>February 20, 1980</u>
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SUBJECT: UNIVERSITY OF CALIFORNIA AS STATE AGENCY—As the term is used in Government Code section 11011 *et seq.*, the University of California is a state agency for the purpose of its acquisition of surplus state land being disposed of under such section.

The Honorable John W. Holmdahl, Senator, Eighth Senatorial District (County of Alameda), has asked for an opinion on the following question:

Is the University of California a state agency within the meaning of Government Code section 11011 *et seq.*?

CONCLUSION

The University of California is a state agency as that term is used in Government Code section 11011 *et seq.* for the purpose of its acquisition of surplus state land being disposed of thereunder.

ANALYSIS

Government Code sections 11011 and 11011.1 provide for the disposition of “surplus” state land. In paraphrase, section 11011 provides that each *state agency* shall make an annual review of proprietary state lands over which it has jurisdiction to determine and report to the Department of General Services what land, if any, is in excess of its foreseeable needs.

When land is reported as excess, the Department of General Services determines whether or not the use of the land is needed by any other *state agency*. (*Ibid.*) When it is, the Department of General Services may transfer the jurisdiction of such land to such other *state agency* upon such terms and conditions as it may deem to be for the best interest of the state. (*Ibid.*) On the other hand, when the Department of General Services has determined that the use of the land is *not* needed by any other *state agency*, it must sell or otherwise dispose of it, following legislative authorization, “upon such terms and conditions and subject to such reservations and exceptions as it may deem to be for the best interest of the state.” (*Ibid.*)

Section 11011.1 provides that the Department may transfer land that has been declared surplus and that is not needed by any *state agency*, to local governmental agencies at fair market value (§ 11011.1, subd. (a)) unless it is to be used for park and recreation purposes (*id.*, subd. (b)), for “open space” purposes (e.g., public recreation, natural resource conservation, scenic beauty enjoyment), or low or moderate income (*id.*, subd. (c)), or low or moderate income housing purposes (*id.*, subd. (d)) in which event it may be transferred at less than fair market value, in amounts depending upon use.¹ Section 11011.6 provides that land held by the state and not needed by any state agency that had been acquired at little or no cost and without significant amount of state funds having been expended on it, may be transferred to local government agencies at no cost, for use for a public purpose of broad public benefit, and not a benefit basically of local interest enjoyed and used primarily by the residents of the local jurisdiction.

¹ In enacting the scheme of section 11011 *et seq.* which provide for the disposition of surplus state land, the Legislature found and declared *inter alia* that (1) the disposition of surplus property owned by public agencies should be utilized to further state policies; that (2) there was a serious shortage of low and moderate income housing and a pressing and urgent need for the preservation and expansion of its supply; and that (3) there was also an identifiable deficiency in the amount of recreational land available to the public for park, recreational and open-space purposes as well as for housing and general community development purposes. (§ 11011.9(a) (1), (2), (4).) The Legislature expressed its specific intent that state surplus property be disposed of in a manner which furthers state policies in those areas. (*Id.*, subd. (b).) Subdivisions (b), (c), and (d) of section 11011.1 achieve that goal.

We understand that certain state land in Berkeley has been determined to be surplus pursuant to section 11011 and that both the University of California (Berkeley) and the City of Berkeley are interested in it. If the University is a “state agency” as that term is used in sections 11011 and 11011.1, it would have priority to obtain and utilize the site for its needs under the scheme of those sections. We conclude that the University of California is a state agency within the meaning of sections 11011 *et seq.* and that it therefore has priority over the local public agency.

The term “state agency” as used in title 2 of the Government Code (to wit, §§ 8000–22866, in Divisions 1–5) is defined by section 11000 as including “every state office, officer, department, division, bureau, board and commission.” In 28 Ops. Cal. Atty. Gen. 334 (1956) we opined that the University of California was a state agency” within the meaning of this section and former section 13110,² so that transfer of the former campus of the San Francisco State College to it could be effected under section 13110 as well as under the statute authorizing its sale (Stats. 1939, ch. 721, p. 2251, §§ 1–9, as amended by Stats. 1950, ch. 2, p. 351, § 3.5)³

In a cognate situation presented by the 1943 availability of budding funds for state institutions and agencies from the Postwar Employment Reserve, we concluded that the University of California was an “other state agency” within the meaning of section 4 of chapter 572 of the statutes of 1943,⁴ so as to enable it to receive benefits thereunder—i.e.,

² Section 13110 was repealed in 1965 when it was recodified as section 14673. (Stats. 1965, ch. 371, p. 1529, § 150.)

³ Section 5 of the statute which authorized the sale of the campus contemplated that a valuable, i.e., monetary, consideration would be realized as a result of the transaction. (28 Ops. Cal. Atty. Gen. 334, 340.) Former section 13110 provided that “the control or possession of real property owned by the State may be transferred from one state agency to another state agency with the written approval of the director [of Finance]” and that “[i]n connection with such transfer [h]e may authorize the payment of such consideration as he deems proper from available funds of the receiving agency to the transferring agency.”

If the transfer of the state college campus to the University of California were to be carried out under the statute, we concluded that a monetary or pecuniary consideration would have had to be received (28 Ops. Cal. Atty. Gen. *supra*, at pp. 340–341), whereas if it was effected under section 13110 we concluded that a monetary consideration would not be necessary and the transfer could take place with passage of a “reasonable consideration” either paid directly or by budgetary adjustment or in some other manner (e.g., an exchange of other property). (*Id.*, at p. 341.) Again, since we deemed the University of California to be a state agency, we concluded the transfer could take place under section 13010. (*Ibid.*)

⁴ Section 4 of chapter 572 of the statutes of 1943 read in full as follows:

“There is hereby appropriated out of the Postwar Employment Reserve the sum of one million two hundred fifty thousand dollars (\$1,250,000) which, upon written

to have the Department of Public Works use surplus funds to plan for postwar construction and reconstruction of its buildings and facilities. (3 Ops. Cal. Atty. Gen. 184, 185–186 (1944).)

In that same year we also concluded that the University of California was a state institution within the meaning of Political Code section 658 (now Gov. Code, §§ 13292–13294) making it subject to audit by the Director of the Department of Finance pursuant to that section.⁵ (3 Ops. Cal. Atty. Gen. 108 (1944).)

Having determined the University of California to be a state agency within the meaning of section 11000 taken in conjunction with section 13100 (28 Ops. Cal. Atty. Gen.

authorization of the Department of Finance and the approval of the State Board of Control, shall become available to the State Department of Public Works for expenditure as provided by law for surveys, preparation of plans and specifications and other preliminary work necessary to a program of construction, reconstruction, rehabilitation and replacement of buildings and other facilities for State institutions, prisons, reformatories or custodial schools, homes, including the Woman s Relief Corps Home and the Veterans’ Home of California, colleges, schools, and *other State agencies* on land owned by the State of California.” (Emphasis added.) (Stats. 1943, ch. 572, p. 2142.)

⁵ Prior to its transfer to Government Code section 13292–13294 in 1945, Political Code section 658 read as follows:

“It shall be the duty of the Director of Finance to examine and expert, or cause to be examined and experted, the books of the different State prisons, reformatories, State hospitals and other *institutions, commissions, bureaus* and officers of the State, at least once in each year, and as often as may be deemed necessary. The officers of said prisons, reformatories, hospitals and other institutions, boards, commissions and bureaus and the several officers of the State, must permit such examination and experting and must upon demand produce without unnecessary delay all books, contract a and papers in their respective offices, and must furnish upon demand the information touching books, papers and contracts and other masters pertaining to their respective offices. The Director of Finance shall supply to the State Controller a certified copy of each periodical audit of the accounts of any State institution, commission, bureau, or officer.” (Emphasis added.)

The sections of the Government Code to which Political Code section 658 was transferred (with modification) in 1945 refer to the Department’s duty to examine the books of the “several state agencies” (Gov. Code, § 13294), of the duty of “every state agency” to permit such examination (*Id.*, § 13293) and the Director’s duty to supply a copy of his audit of the accounts of “any state agency” to the Controller (*Id.*, § 13296). The Political Code in its time defined state agency to include any State commission, board, bureau, officer, department, division, or other State agency. (Pol. Code, § 658.5; compare Gov. Code, § 11000.)

334, *supra*) we have no hesitancy in concluding that it is also a state agency within the meaning of section 11000 taken in conjunction with sections 11011 and 11011.1, which also provide for acquisition of real property owned by the state.

Section 9 subdivision (a) of article IX of the California Constitution provides:

“The University of California shall constitute a public trust, to be administered by the existing corporation known as ‘The Regents of the University of California’⁶ with full powers of organization and government, subject only to such legislative control as may be necessary to insure security of its funds . . . and such competitive bidding procedures as may be made applicable to the university by statute for . . . sales of real property.”

The powers and duties of the Regents in administering their public trust are set forth at section 9, subdivision (f) of article IX of the Constitution, thus:

“The Regents of the University of California shall be vested with the legal title and the management and disposition of the property of the university and of property held for its benefit and shall have the power to take and hold, either by purchase or by donation, or gift, testamentary or otherwise, or in any other manner, without restriction, all real and personal property for the benefit of the university or incidentally to its conduct; *provided, however, that sales of university real property shall be subject to such competitive bidding procedures as may be provided by statute.* Said corporation shall also have all the powers necessary or convenient for the effective *administration of its trust*, including the power to sue and to be sued, to use a seal, and to delegate to its committees or to the faculty of the university, or to others, such authority or functions as it may deem wise. The Regents shall receive all funds derived from the sale of lands pursuant to the act of Congress of July 2, 1862, and any subsequent acts amendatory thereof. The university shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs, and no person shall be debarred admission to any department of the university on account of race, religion, ethnic heritage, or sex. (Emphasis added.)

⁶ The history and interrelationship of the University and its Regents was discussed in *Estate of Royer* (1899) 123 Cal. 614, and an earlier opinion of this office (20 Ops. Cal. Atty. Gen. 229 (1932)).

The University of California thus is a state institution (*Estate of Purington* (1926) 199 Cal. 661, 666; *Estate of Royer* (1899) 123 Cal. 614, 623) and interest in land acquired by it is property of the state held in public trust. (Cal. Const., art. IX, § 9(a); *Webster v. Board of Regents* (1912) 163 Cal. 705, 708; *Estate of Royer, supra*, at pp. 619–621; *Newmarker v. Regents of University of California* (1958) 160 Cal. App. 2d 640, 645 (“The Board of Regents is a public legal entity charged with the government of a public trust”).) It therefore stands in no different position with respect to its ownership of land from any other state agency. Whether title is nominally in the Regents (Cal. Const., art IX, § 9(f)) or acquired by the Director of the Department of General Services in the name of the state (§ 14660), ownership is ultimately in the people for whom it is held in trust.

The basis for the difference in treatment between surplus state land that is transferred to other state agencies and that which is sold to local governmental agencies or private parties under Code section 11011 *et seq.* is understandable. There is the constitutional prohibition on “the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever” to be considered. (Cal. Const., art. XVI, § 6.) Deeming the University a “state agency” for its acquiring surplus state lands under section 11011 is consistent with, if not compelled by, this consideration. As we said in 28 Ops. Cal. Atty. Gen. 334, 340, *supra*:

“A transfer of property owned by the State from one State agency to another is not a gift of public property contrary to section 31 of article IV of the State Constitution.⁷ The property is still owned by the State. The transfer is made for a state public purpose, which in itself is a consideration (*County of Alameda v. Janssen*, [1940] 16 Cal. 2d 276, 281–282). If a transfer of the subject property were made to the Regents, they would be required to use the property received for the purposes of the public trust administered by them. Thus, there would not be a gift of public property in contravention of the constitutional prohibition.”⁸

⁷ On November 8, 1966, section 31 of article IV of the California Constitution was renumbered and transferred to section 25 of article XIII, which in turn was transferred to its present place at section 6 of article XVI on November 5, 1974. The current text is substantially similar in germane respect to that appearing in former article IV, section 31.

⁸ We note that in the transfer of state surplus land to local agencies or private parties at no cost pursuant to section 11011.6, the land must be used for a public purpose of broad public benefit. The benefit envisioned is one that must inure to the people statewide, since the section specifically states that the land so transferred may not be used for a benefit basically of local interest enjoyed and used primarily by the residents of the local area. Similarly in the transfer of state surplus land to local governmental agencies at less than fair market value pursuant to subdivisions (b), (c) and (d) of section 11011.1, the land *must* be used for specific purposes (to wit, park and recreation, open space, or low or moderate income housing) which the Legislature has not only declared to be

We are also persuaded that the University is a “state agency” within the meanings of sections 11000 and 11011 *et seq.*, by the fact that other sections of title 2, division 3 of the Government Code, exempt it from provisions applicable therein to *other* state agencies. Thus section 14790 specifically exempts the Regents of the University of California from the requirements of article 2 of chapter 6 of part 5.5 of division 3 of title 2 of the Government Code (i.e., §§ 14790–14815) relating to control by the Department of General Services over purchases by state agencies, and section 14824 specifically exempts the Regents of the University of California from the application of article 3 of that chapter (i.e., §§ 14790–14815) which vests the Department of General Services with exclusive authority to negotiate with the federal government for the acquisition of surplus federal real property for use by state agencies, and prohibits state agencies from so doing. With like clarity of exclusion, section 14773 declares in plain terms that “state agency” as used in chapter 5.5 of part 5.5 of division 3 of the Government Code, to wit its sections 14770–14774 which deal with state forms management, “does not include educational institutions.”

Similarly yet other provisions of title 2, division 3 of the code exempt the Regents of the University of California *and other state agencies*, boards or officers, from requirements applicable to state agencies generally. For example, section 12511 provides that “The Attorney General has charge, as attorney, of all legal matters in which the State is interested, except the business of The Regents of, the University of California and of such *other* boards or officers as are by law authorized to employ attorneys.” (*Cf.* Cal. Coast., art. IX, § 9(f) giving the Regents the power to sue and be sued.) Similarly, section 11041 exempts from the mandatory requirements of sections 11042 and 11043 that state agencies employ the Attorney General as their legal counsel, “The Regents of the University of California . . . and any *other state agency* which by law enacted after . . . 1933, authorized to employ legal counsel.” The use in section 11041 of the word “other” (which Webster’s Third New International Dictionary defines as “more” or “additional”) means that the phrase the “Regents of the University” which precedes it, is of like character with the terms immediately following it—i.e., “state agency.”

This comparison plainly demonstrates that when the Legislature wants to exclude the University of California from the operation of statutory provisions applicable to state agencies “it knows how to do so” (*Board of Trustees v. Judge* (1975) 50 Cal. App. 3d 920, 927) and that had it wished to-so exclude the University of California from the operations of section 11011 *et seq.*, it would have clearly done so as it did in those other instances.

of statewide concern, (§ 11011.9(a)) but has specifically expressed its intent that state surplus property be disposed of to further state policies in those areas. (*Id.*, subd. (b).) (See footnote 1, *supra.*)

It has been suggested that the University of California cannot be considered a state agency” as that term is used in section 11011 *et seq.*, for that would mean that it too would be required pursuant to section 41011, to undertake an annual review of proprietary state lands over which it has jurisdiction and to report those in excess of its foreseeable needs to the Department of General Services for disposition pursuant to those sections, and that would be an unconstitutional result given the independent and autonomous status of the University of California set forth in article IX, section 9 of the California Constitution, and especially that portion of subdivision (f) which vests the management and disposition of real property of the University of California in its Regents, and gives them power to take and hold it without restriction, save that sales of that real property be subject to such competitive bidding procedures as the Legislature may provide. (Cal. Const., art IX, § 9(f).)

Although we acknowledge that the scheme of section 11011 *et seq.*, does not constitute a competitive bidding procedure within the ambit of article IX, section 9, we still reject the suggestion that that must mean the University cannot be deemed a state agency within the operation of the statute.

We can only assume that the Legislature was fully cognizant of the constitutional impediment to its directing the University of California to annually assess its realty holdings and report the excess to the Department of General Services for disposition under section 11011 *et seq.* “We must, however, presume that the Legislature intended to enact a valid statute . . . and therefore must adopt an interpretation that, consistent with the statutory language and purpose, eliminates doubts as to the provision’s constitutionality. (*City of Los Angeles v. Belridge Oil Co.* (1957) 48 Cal. 2d 320, 324; *Miller v. Municipal Court* (1943) 22 Cal. 2d 818, 828.)” (*In re Kay* (1970) 1 Cal. 3d 930, 942; see also *Braxton v. Municipal Court* (1972) 10 Cal. 3d 138, 147; *Cemetery Board v. Telophase Society of America* (1978) 87 Cal. App. 3d 847, 857.) We conclude that the Legislature intended the statute to apply to the extent constitutionally permissible—to have those provisions of section 11011 dealing with the acquisition of surplus state land to fully apply to the University of California, but not the first provisions of that section dealing with state agencies assessing their property needs and reporting the excess for disposition.

There is no inconsistency in so concluding. While the acquisition of surplus state property by the University of California may not result in the property being put to those open space, recreational or housing uses mentioned in section 11011.1 to further state policies in those areas (§ 11011.9(a); see also footnote 1 and accompanying text and footnote 8, *supra*), the acquisition of the realty by the University of California would further equally important state policies in other areas such as having a viable and sound higher educational establishment, and of maintaining the integrity of the realty of the state. This is no less a result than would be the case were any other state agency to acquire the land under section 11011. Furthermore, when local agencies acquire surplus state land

pursuant to section 11011.1 *et seq.* they are not required to dedicate the land to the specific uses specified therein to further state policies in those areas *unless* they wish to acquire the realty at less than fair market value. (Compare section 11011.1, subds. (b), (c), and (d) with section 11011.1, subd. (a).)

The Legislature must have been aware of these considerations when it enacted section 11011 *et seq.* Therefore the fact that it constitutionally lacked the power to impose section 11011's initial surveying, reporting and disposition of real property and requirements on the University of California, does not indicate that it did not wish the University of California to benefit as a "state agency" at all under the statute. To the contrary, given these other considerations, we believe the Legislature wanted to confer the benefits of the statute on the University of California as it constitutionally could, and therefore intended that the University of California be deemed a "state agency" within the meaning of section 11011 *et seq.* for the purpose of its acquiring surplus state property disposed of pursuant to those sections before local agencies would be so entitled.

Accordingly we conclude that the University of California is a state agency within the meaning of sections 11011 *et seq.* to enable it to acquire surplus state land by the priority established for state agencies thereunder.
