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OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 79-1210
	:	
of	:	<u>March 19, 1980</u>
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SUBJECT: LOCAL DETENTION FACILITIES—The Board of Corrections does not have authority to institute legal action against a local agency for failure to conform its legal detention facilities to the standards set pursuant to Penal Code section 6030.

The BOARD OF CORRECTIONS, has requested an opinion on the following questions:

1. Does the Board of Corrections have authority to institute legal action against a local agency for a failure to conform its local detention facilities to the standards set pursuant to Penal Code section 6030?
2. If, pursuant to suit brought by the Board of Corrections, a court would order a local agency to conform its local detention facilities to the standards set pursuant to Penal Code section 6030, would the state be responsible to provide the necessary funds under Revenue and Taxation Code sections 2201, *et seq.*?

CONCLUSION

1. The Board of Corrections does not have authority to institute legal action against a local agency for failure to conform its legal detention facilities to the standards set pursuant to Penal Code section 6030.

2. In light of the conclusion to question 1, it is not necessary to answer question 2.

ANALYSIS

In an unpublished opinion of this office dated March 29, 1973 (I.L. 73-58), we concluded that pursuant to Penal Code section 6030¹ the Board of Corrections (hereinafter “board”) is required to adopt minimum standards relating to local detention facilities referred to in that section.² We further concluded that such standards are permissive and

¹ All unidentified code sections are to the Penal Code.

² Section 6030 provides:

“(a) The Board of Corrections shall establish minimum standards for local detention facilities by July 1, 1972. The Board of Corrections shall review such standards biennially and make any appropriate revisions.

“(b) The standards shall include, but not be limited to, the following: health and sanitary conditions, fire and life safety, security rehabilitation programs, recreation, treatment of persons confined in local detention facilities, and personnel training.

“(c) Such standards shall require that at least one person on duty at the facility is knowledgeable in the area of fire and life safety procedures.

“(d) In establishing minimum standards, the Board of Corrections shall seek the advice of the following:

“(1) For health and sanitary conditions:

“The State Department of Health Services, physicians, psychiatrists, local public health officials, and other interested persons.

“(2) For fire and life safety:

“The State Fire Marshal, local fire officials, and other interested persons.

“(3) For security, rehabilitation programs, recreation, and treatment of persons confined in local detention facilities:

“The Department of Corrections, the Department of the Youth Authority, local juvenile justice commissions, local correction officials, experts in criminology and penology, and other interested persons,

“(4) For personnel training:

“The Commission of Peace Officer Standards and Training, psychiatrists, experts

not mandatory on local agencies and that therefor the reimbursement provisions of then Revenue and Taxation Code section 2164.3(d) for state mandated local programs were not applicable. The board has adopted and periodically amended the section 6030 minimum standards for local detention facilities. (Cal. Admin. Code, tit. 15, § 1000 *et seq.*)

In another unpublished opinion of this office dated December 29, 1977 (I.L. 77–191). we again expressed the opinion that the minimum local detention facility standards set by the board were still not mandatory on local agencies despite the addition of a provision to section 4016.5 requiring the Department of Corrections to withhold net reimbursement to counties for detention of alleged parole violators.³ We thus concluded

in criminology and penology, the Department of Corrections, the Department of the Youth Authority, local correctional officials, and other interested persons.”

Section 6031.4 defines local detention facilities:

“(a) For the purpose of this title, ‘local detention facility’ means any city, county, city and county, or regional facility used for the confinement for more than 24 hours of adults, or of both adults and minors, but does not include that portion or a facility for the confinement of both adults and minors which is devoted only to the confinement of minors.

“(b) In addition to those provided for in subdivision (a), for the purposes of this title, ‘local detention facility’ also includes any city, county, city and county, or regional facility, constructed on or after January 1, 1978, used for the confinement, regardless of the length of confinement, of adults or of both adults and minors, but does not include that portion of a facility for the confinement of both adults and minors which is devoted only to the confinement of minors.”

³ Section 4016.5 provides:

“When an alleged parole violator is detained in a county jail pursuant to an order of the Adult Authority under the authority granted by Section 3060 of the Penal Code, or pursuant to an order of the Governor under the authority granted by Section 3062, or pursuant to a valid exercise of a state parole officer’s peace officer powers as specified in Section 830.5 of the Penal Code when such detention relates to violation of the conditions of parole and not a new criminal charge, the county shall be reimbursed for the costs of such detention by the Department of Corrections. Such reimbursement shall be expended for maintenance, upkeep, and improvement of jail conditions, facilities, and services. Before the county is reimbursed by the department, the total amount of all charges against that county authorized by law for services tendered by the department shall be first deducted from the gross amount of reimbursement authorized by the section. Such net reimbursement shall be calculated and paid monthly by the department. *The department shall withhold all or part of such net reimbursement to a county whose jail facility or facilities do not conform to minimum standards for local detention facilities as authorized by Section 6030 of the Penal Code.*” (Emphasis added.)

that the state mandated program reimbursement provisions now contained in Revenue and Taxation Code section 2201 *et seq.*, and particularly section 2231⁴, were not applicable.

We are now asked whether the board, if it determines that a local agency has failed to correct a dangerous life-threatening condition that is not in conformance with the minimum standards set pursuant to section 6030, has authority to institute legal action against the local agency to compel correction of the condition, and if so, whether such successful action would trigger the provisions of Revenue and Taxation Code section 2231. Our review of the functions and duties of the board leads us to conclude that the Legislature has not given the board any authority to sue in this area.⁵

The board was created in 1944 by section 6024 and has been given a variety of duties. Its initial duties were twofold: (1) to study and report to the Governor and the Legislature on crime, its causes, prevention, detection and prosecution (§ 6027), the board being the successor to the California Crime Commission; and (2) to serve as the means by which the Department of Corrections and the Department of the Youth Authority may correlate their individual programs. (§ 6026.) In 14 Ops. Cal. Atty. Gen. 9, 15 (1949) we concluded the board was not given the power of enforcement of the laws. Subsequently, the board has been given the duty to review and advise on rules, and regulations and manuals of state corrections agencies (§ 6025.5) and to make recommendations on all plans and specifications including the construction, reconstruction, remodeling, or repair of all jails, prisons or detention facilities. (§ 6029.)⁶ These additional duties, did not however, give the board any enforcement power as to these or any other areas.

⁴ The critical portion of Revenue and Taxation Code section 2231 provides:

“(a) The state shall reimburse each local agency for all ‘costs mandated by the state’, as defined in section 2207”

Section 2207 provides:

“‘Costs mandated by the state’ means any increased costs which a local agency is required to incur as a result of the following:

“(a) Any law enacted after January 1, 1973, which mandates a new program or an increased level of service of an existing program;

“(b) Any executive order issued after January 1, 1973, which (i) implements or interprets a state statute and (ii), by such implementation or interpretation, increases program levels above the levels required prior to January 1, 1973.

⁵ We express no opinion herein as to whether any other state agency or the Attorney General has the authority generally or under any other specific statutes to sue a local entity to compel correction of a life-threatening condition in a local detention facility irrespective of the section 6030 standards.

⁶ In 53 Ops. Cal. Atty. Gen. 101 (1970) we concluded that the board was required by section 6029 to accept all requests for study of city and county detention facility programs.

As noted, section 6030 requires the board to establish minimum standards for local detention facilities. Section 6031 requires the board to inspect each local detention facility biennially and to report the results to the official in charge of the facility, local governing body, grand jury, and the presiding judge of the superior court. (§ 6031.1.)⁷ Further, the board is required to file biennially with the Legislature reports of inspection of local detention facilities which have not complied with the minimum standards established pursuant to section 6030. (§ 6031.2)⁸

We reiterate our conclusion in the two unpublished opinions cited above. It is our opinion that although the board is obligated by section 6030 to set minimum standards for local detention facilities, those standards are not mandatory for local entities. There is nothing in the statutes that gives the board authority to sue to compel compliance with those standards, even if the failing in a particular facility is life-threatening. A public agency, such as the board, which has been created by the Legislature may exercise only such powers which have been expressly granted to it or which may be fairly implied from such granted powers. (*Cal. Toll Bridge Authority v. Kuchel* (1952) 40 Cal. 2d 43, 53; 62

⁷ Section 6031.1 provides:

“Inspections of local detention facilities shall be made biennially. Inspections shall include, but not be limited to, the following:

“(a) Health and safety inspections conducted pursuant to Section 459 of the Health and Safety Code.

“(b) Fire suppression preplanning inspections by the local fire department.

“(c) Security, rehabilitation programs, recreation, treatment of persons confined in local detention facilities, and personnel training by the staff of the Board of Corrections.

“Reports of each facility’s biennial inspection shall be furnished to the official in charge of the local detention facility, the local governing body, the grand jury, and the presiding or sole judge of the superior court in the county where the detention facility is located. Such reports shall set forth the areas wherein the local detention facility has complied and has failed to comply with the minimum standards established pursuant to Section 6030.”

⁸ Section 6031.2 provides:

“The Board of Corrections shall file with the Legislature by March 31, 1974, and on March 31, in each even-numbered year thereafter, reports of the inspection of those local detention facilities that have not complied with the minimum standards established pursuant to Section 6030. The report shall specify those areas in which the facility has failed to comply and the estimated cost to the facility necessary to accomplish compliance with the minimum standards.

“The report shall also include an evaluation of standards required of and training provided for correctional personnel. The reports shall specify those areas in which standards and training are, in the board’s estimation, inadequate.”

Ops. Cal. Atty. Gen. 467, 472 (1979).) No such authority has been granted to the board herein, nor may such be implied from its powers. Instead, the Legislature has left compliance with the standards to persuasion through the filing of reports of inspection or through the coercion of withholding reimbursement for detention of alleged parole violators under section 4016.5. Further, the Legislature has directed the board to report to it on local detention facilities which do not meet the standards, together with “the estimated cost of the facility necessary to accomplish compliance with the minimum standards.” (§ 6031.2.) The Legislature has thus reserved to itself the option of either making the standards mandatory or providing funds to bring facilities up to those standards. It has not, however, authorized the board to sue a local agency to compel compliance.⁹

In view of our continuing opinion that the local detention facilities standards set by the board pursuant to section 6030 are not mandatory on local agencies and our conclusion that the board has no authority to sue to compel compliance with those standards to correct a life-threatening condition, it is unnecessary to examine further the effect of implementation of section 6030 standards on the reimbursement provisions of Revenue and Taxation Code section 2201 *et seq.*

⁹ To complete the picture as to the functions and duties of the board we note that chapter 1148, Statutes of 1979 requires the board, effective July 1, 1980, to adopt rules establishing minimum standards for the recruitment and training of local corrections and probation officers and to apportion funds for such training from the new Corrections Training Fund. New section 6035(b) requires any county or city receiving state aid from the Corrections Training Fund to “. . . adhere to the standards for recruitment and training established by the board.”