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GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 79-307
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of	:	<u>May 11, 1979</u>
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GEORGE DEUKMEJIAN	:	
Attorney General	:	
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Rodney Lilyquist, Jr.	:	
Deputy Attorney General	:	
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SUBJECT: COMMUNITY REGIONAL CENTERS—The Department of Developmental Services has no general authority to control the operations of community regional centers through contract provisions negotiated under Welfare and Institutions Code sections 4620–4636; specific statutory exceptions authorize Department control in limited areas.

David E. Loberg, Director of the Department of Developmental Services, has requested an opinion on related questions that we have rephrased as follows:

May the Department of Developmental Services control the operations of community regional centers through contract provisions negotiated under Welfare and Institutions Code sections 4620–4636?

CONCLUSION

The Department of Developmental Services has no general authority to control the operations of community regional centers through contract provisions negotiated under Welfare and Institutions Code sections 4620–4636; specific statutory exceptions authorize Department control in limited areas.

ANALYSIS

The California Legislature has established a comprehensive statutory scheme (Welf. & Inst. Code §§ 4500–4825)¹ to provide services for developmentally disabled individuals so that they may lead “more independent, productive, and normal lives.” (§ 4750.) The programs include locating persons who are in need of such assistance (§ 4640), assessing the extent of their needs (§§ 4642–4643), and providing the aid required to help improve their capabilities and resolve their problems (§§ 4502–4503, 4646–4648).

Rather than have state agencies and personnel provide the necessary services, the Legislature has determined that the programs should be operated by “regional centers,” which are private nonprofit corporations existing in communities throughout the state. (§ 4620.)

The question presented for analysis concerns whether the Department of Developmental Services (hereinafter “Department”) may exercise contractual control over the day-to-day operations of the regional centers. Several proposed contractual provisions have been submitted for specific discussion. We conclude that, with some exceptions, the Department’s responsibilities are limited to evaluating the results of the programs and do not include controlling the actual manner in which the services are provided by the centers.

Preliminarily, we note that contractual disagreements between the Department and the regional centers are to be submitted for resolution to a state planning council established under the statutory scheme; however, such “advice” by the council is not binding upon the parties. (§§ 4540 subd. (j), 4632.) It is therefore appropriate that we examine the Department’s contractual rights and duties vis-a-vis the regional centers.

In construing the relevant provisions of the legislative scheme, we are guided by generally accepted principles of statutory construction. The cardinal rule is to “ascertain the intent of the Legislature so as to effectuate the purpose of the law.” (*Select Base Materials v. Board of Equal.* (1959)51 Cal. 2d 640, 645; accord *Cossack v. City of Los Angeles* (1974) 11 Cal. 3d 726, 732.) Legislative intent may be discerned by examining the words used, harmonizing them within the statutory framework as a whole. (*Moyer v. Workmen’s Comp. Appeals Bd.* (1973)10 Cal. 3d 222, 230; *Steilberg v. Lackner* (1977) 69 Cal. App. 3d 780, 785.)

On the one hand, the Legislature has indicated that the regional centers are to have wide discretion in determining the manner in which they provide their services. Subdivision (b) of section 4648 states in part: “A regional center may purchase services for

¹ All unidentified section references hereinafter refer to the Welfare and Institutions Code.

a client from any individual or agency the regional center determines will best accomplish all or any part of that client's program plan." Thus, for example, the Department may not contractually require approval over the providers of services to the centers, as this would be contrary to the Legislature's intent.

Moreover, the regional centers are responsible for developing their own programs, techniques, and staffing arrangements. (§§ 4630 subd. (b), 4651.) Consistent with this responsibility is the legislative prohibition that the contractual agreements between the Department and the regional centers are not to impinge on the latter's corporate "legal rights." (§ 4630 subd. (c).)² Consequently, the general thrust of the legislative scheme is to place control with the regional centers over the manner in which their programs are to be provided.

On the other hand, the legislature has expressly authorized Department involvement in certain areas of a regional center's operations. For example, the Department is statutorily required to assist any regional center that is failing to provide its service obligations. (§§ 4635, 4685.)

Insofar as appropriate contractual arrangements between the Department and regional centers are concerned, we believe that the Department may contractually require compliance by the centers with accountability and reporting procedures specified by the Department. Section 4629 provides:

"After January 1, 1977, contracts between the state and the governing boards of regional centers shall include reasonable specific performance and reporting requirements relative to the responsibilities of regional centers defined in this division, and the timing for compliance with such requirements. The department shall specify procedures to be used by all regional centers which shall:

"(a) Define 'active' and 'inactive' cases.

"(b) Account for all funds received or expended by regional centers.

² It would be difficult to delineate in the abstract the "legal rights" of the regional centers as corporations. We view the phrase generally in terms of a corporation's normal "powers" (see Gov. Code §§ 207, 9501) and consistent with the other provisions of the statutory scheme so as to effectuate the overall legislative intent. Specific legislative enactments that allow some impairment of a regional center's "legal rights" would control over the more general language of section 4630. (See *Warne v. Harkness* (1963) 60 Cal. 2d 579, 588; *Covino v. Governing Bd.* (1977) 76 Cal. App. 3d 314, 321.)

“(c) Define a unit of direct service performed by regional center personnel.

“(d) Allocate indirect, administrative, and overhead expenditures to a unit of direct service.

“(e) Calculate costs per unit of direct service.

“(f) Provide such other information as the department may require to analyze expenditures, conduct comparative costs and performance reviews, and implement the evaluation requirements in Chapter 8 (commencing with Section 4750) of this division.

“Contracting agencies shall agree to use procedures specified by the department to produce caseload and unit of service costs reports.”

Accordingly, the contracts may expressly detail the reporting procedures to be followed or may incorporate by reference the Department’s regulations or other directives relevant to the issue.

The Department may also contractually control the amount of payment received by the service providers from the regional centers. Under sections 4680–4683 and 4690, the Department is required to set the rates of payment for community living facilities and nonresidential services purchased by the centers.

In the area of the staffing of the regional centers, the Department may not generally control the centers’ hiring practices. (See §§ 4630 subd. (b), 4651.) Activities such as setting minimum employment and personnel standards, job descriptions, wage scales, and travel and per diem expense rates are the responsibilities of the centers rather than the Department. In two specific areas, however, the Department may exercise contractual control as part of its statutory duties. Under sections 4626 and 4627, the Department is required to issue and enforce conflict of interest regulations covering the personnel of the centers so that self-dealing can be prevented and the best interest of the clients can be promoted. Under Government Code sections 11135–11139.5, the Department is required generally to adopt and enforce regulations preventing discrimination in the programs of the centers.³ Thus, the Department may contractually require that the centers comply with state

³ We do not view Government Code section 11139 as allowing discrimination against developmentally disabled individuals, but only as prohibiting consequences adverse to such persons. Also, to a limited extent, this statutory scheme would allow the Department to contractually control the providing of services by the centers.

and federal non-discrimination and equal opportunity laws.

No statutory basis can be found to support the Department's contractual control over purchases or subcontracts of the regional centers that are of a specified minimum amount. (See § 4648 subd. (b).) Such approval by the Department would be contrary to the legislative intent expressed in section 4648 subdivision (b) that the regional centers determine what services to purchase to best accomplish a client's program plan. Similarly, the Department may not contractually require that certain conditions be followed in holding board meetings by the centers. Whether such meetings are open to the public, for example, does not appear to be a Department administrative responsibility under the legislative enactments.

Rather, the primary statutory duty of the Department is to evaluate the cost effectiveness of the regional centers' programs. (§§ 4629, 4631, 4751–4753.) While the programs are also monitored by the Legislature (§ 4501), by the state planning council (§ 4540), and by the area boards (§§ 4570, 4590, 4593–4596), it is the Department that controls the reporting procedures (§ 4629) and has the duty to terminate the services of any center found to be ineffective (§ 4635). Accordingly, we believe that the Department's responsibility is generally limited to evaluating the results of the programs while at the same time allowing flexibility in the manner in which the centers achieve the desired objectives.

Finally, we believe that the regional centers may be contractually required to protect state property in their possession, including compliance with provisions concerning reasonable inventory reporting procedures and the purchase of insurance. Such contractual arrangements would not conflict with the legislative purpose of the statutory scheme and would not infringe on the corporate "legal rights" of the centers.

The conclusion to the question presented, therefore, is that the Department has no general authority to control the operations of the regional centers through contract provisions negotiated under sections 4620–4636, although specific statutory exceptions authorize Department contractual control in limited areas.
