

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 79-312
	:	
of	:	<u>May 18, 1979</u>
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SUBJECT: AUTHORIZED FUNDS—The State Board of Fabric Care may legally expend funds authorized by Business and Professions Code section 9575.6 even if the Director of the Department of Consumer Affairs has disapproved such expenditures.

The Honorable William A. Peterson, Executive Secretary, State Board of Fabric Care, has requested an opinion on a question that we have phrased as follows:

May specified funds, authorized to be expended by Business and Professions Code section 9575.6 and appropriated for that purpose by the Legislature in the Budget Act of 1978–1979, legally be expended by the State Board of Fabric Care if the Director of the Department of Consumer Affairs has disapproved such expenditures?

CONCLUSION

Funds authorized to be expended by Business and Professions Code section 9575.6 and appropriated for that purpose by the legislature in the Budget Act of 1978–1979 legally may be expended by the State Board of Fabric Care even if the Director of the Department of Consumer Affairs has disapproved such expenditures.

ANALYSIS

Business and Professions Code section¹ 9575.6 provides in relevant part that:

“(a) The sum of seventy-five thousand dollars (\$75,000) from the Fabric Care Fund, *may be expended by the State Board of Fabric Care*, during the 1972–1973 fiscal year and *each fiscal year* thereafter. This amount may be expended at the rate of not more than seventy-five thousand dollars (\$75,000) during any one such fiscal year, for the purpose of conducting consumer information and education programs and industry continuing education and research programs on factors involved in the handling of consumer complaints, the cleaning and maintenance of fabrics, including those made from or containing synthetic fibers as well as natural fibers, such as wool, cotton, or other such fibers, and the effect of cleaning procedures on the properties, life, and wearing qualities of fabrics.

“(b) An amount not to exceed twenty-five thousand dollars (\$25,000) in any one fiscal year may be expended from the Fabric Care Fund by the board for research and dissemination of information on the ecological and environmental effect of dry cleaning processes and operations relating to dry cleaning establishments, such amount to be made available only for the 1973–74 fiscal year and the 1974–75 fiscal year.” (Emphasis added.)

We are advised as follows: The Budget Act of 1978–1979 appropriated \$51,000 to be expended pursuant to the provisions of section 9575.6. The budget, as it pertains to the State Board of Fabric Care, was approved by the Department of Consumer Affairs, the agency secretary, the Department of Finance, and enacted by the Legislature. It was signed into law by Governor Brown. Subsequently, contracts were developed by the State Board of Fabric Care (hereinafter “Board”) implementing a consumer information and continuing education program as authorized by section 9575.6. The Board authorized the expenditure of these section 9575.6 funds pursuant to the provisions of such contracts. The Director of the Department of Consumer Affairs (hereinafter “Director”) disapproved² these Board authorized expenditures. The Board seeks to ascertain whether these funds, nevertheless, legally may be expended, assuming that all other requirements of law are satisfied.

¹ All unidentified section references are to the Business and Professions Code.

² The precise basis for such disapproval by the Director has not been made clear. However, we understand that his decision is based on broad policy grounds and is not based on any technical defects of the contracts.

Section 9530 provides, in part, that “there is in the Department of Consumer Affairs the State Board of Fabric Care.” Section 9532 provides, in part, that “the board shall enforce and administer the provisions of this chapter subject to the powers conferred upon the director by this code.” The term “director” refers to the Director of the Department of Consumer Affairs. (§§ 23.5, 150.) The Director is appointed by the Governor and holds office at the Governor’s pleasure. (§ 151.)

The term “chapter,” appearing in section 9532, *supra*, refers to chapter 18 of division 3 of the Business and Professions Code, relating to “cleaning, dyeing and pressing.” Section 9575.6, *supra*, the import of which is at issue here, is part of chapter 18. Thus, the duty of the Board to enforce and administer section 9575.6 is “subject to the powers conferred upon the director by this code.” Does the Business and Professions Code confer any power upon the Director relative to section 9575.6?

We have examined the provisions of the Business and Professions Code that relate specifically to the Director. (See, e.g., § 150 *et seq.*) We have examined the specific provisions relating to the Department of Consumer Affairs. (See, e.g., § 100 *et seq.*) We have examined the general provisions of the Business and Professions Code. (See, e.g., §§ 1–24.) The following sections appear to be particularly relevant.

Section 22 provides that:

“‘Board,’ as used in any provision of this code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include ‘bureau,’ ‘commission,’ ‘division,’ and ‘agency.’”

Section 9 provides that:

“Division, part, chapter, article and section headings contained herein shall not be deemed to govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of this code.”

Section 101 specifies that the Department of Consumer Affairs is comprised of specified entities, among which is the State Board of Fabric Care. Section 108 specifies in part that “each of the boards comprising the department exists as a separate unit” and each has specified functions. Further, section 109 provides that:

“The decisions of any of the boards comprising the department with respect to setting standards, conducting examinations, passing candidates, and revoking licenses, are not subject to review by the director, but are final

within the limits provided by this code which are applicable to the particular board.”

Section 310 provides that:

‘The director shall have the following powers and it shall be his duty to:

“(a) Recommend and propose the enactment of such legislation as necessary to protect and promote the interests of consumers.

“(b) Represent the consumer’s interests before federal and state legislative hearings and executive commissions.

“(c) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of consumers.

“(d) Study, investigate, research, and analyze matters affecting the interests of consumers.

“(e) Hold public hearings, subpoena witnesses, take testimony, compel the production of books, papers, documents, and other evidence, and call upon other state agencies for information.

“(f) Propose and assist in the creation and development of consumer education programs.

“(g) Promote ethical standards of conduct for business and consumers and undertake activities to encourage public responsibility in the production, promotion, sale and lease of consumer goods and services.

“(h) Advise the Governor and Legislature on all matters affecting the interests of consumers.

“(i) Exercise and perform such other functions, powers and duties as may be deemed appropriate to protect and promote the interests of consumers as directed by the Governor or the Legislature.

“(j) Maintain contact and liaison with consumer groups in California and nationally.”

No provision of this statute authorizes the Director to disapprove the expenditure of funds by the Board as authorized by section 9575.6. As we shall explain subsequently, however, this factor is not critical to the resolution of the issue.

Several specific statutory provisions must be examined. Section 110 provides: that:

“The department shall have *possession and control* of all records, books, papers, offices, equipment, supplies, *funds, appropriations*, land and other property—real or personal—*now or hereafter held* for the benefit or use of all of the bodies, offices or officers comprising the department. The title to all property held by any of these bodies, offices or officers for the use and benefit of the State, is vested in the State of California to be held in the possession of the department. The department, however, shall not have the possession and control of examination questions prior to submission to applicants at scheduled examinations.” (Emphasis added.)

Section 110 was enacted in 1937 (Stats. 1937, ch. 399, p. 1233). It is one of the original provisions prepared by the California Code Commission creating the Business and Professions Code. One of the major accomplishments of that legislation was the creation of the Department of Professional and Vocational Standards. (Stats. 1937, ch. 399, see note, p. 1230.) The Director was then titled the Director of Professional and Vocational Standards. (Stats. 1937, ch. 399, p. 1234.) As originally enacted, section 150 read: “The department is under the *control* of a civil executive officer who is known as the Director of Professional and Vocational Standards.” (Stats. 1937, ch. 399, p. 1234.) (Emphasis added.) Section 110, *supra*, reads in part that ‘the department shall have *possession and control* of all funds, . . . appropriations, . . . now or hereafter held for the benefit or use of all of the bodies, offices or officers comprising the department’

In 1970 the Legislature enacted the Consumer Affairs Act. (Stats. 1970, ch. 1394, pp. 2615 ff.) That act created the Department of Consumer Affairs which succeeded to the duties, powers, purposes, responsibilities, and jurisdiction formerly vested in the Office of Consumer Counsel. (Stats. 1970, ch. 1394, § 8, p. 2622.) The Department of Consumer Affairs was given possession and control:

“. . . of all records, papers, offices, equipment, supplies, moneys, funds, appropriations, land and other property, real or personal, held for the benefit or use of the Office of Consumer Counsel in the Agriculture and Services Agency in the performance of the duties, powers, purposes, responsibilities, and jurisdiction of the Office of Consumer Counsel that are vested in the Department of Consumer Affairs by this act.” (Stats. 1970, ch.

1394, § 10, p. 2622.)

The specific statutory declaration of the Director's powers and duties, set forth in section 310, *supra*, were thus originally enacted as part of the Consumer Affairs Act. Such enumeration of the Director's powers and duties was not part of the powers and duties of the Director of Professional and Vocational Standards.

In 1971 the Legislature merged the Department of Professional and Vocational Standards and the Department of Consumer Affairs into one agency: the Department of Consumer Affairs. (Stats. 1971, ch. 716, pp. 1387 if.) The civil executive officer was now titled the Director of Consumer Affairs. (Stats. 1971, ch. 716, p. 1388.) The legislative intent "was to incorporate into law by statute, without substantive change, the Governor's Reorganization Plan No. 2 of 1970, dated March 4, 1970, together with such additional changes as were effected by the Legislature at its 1970 session." (Stats. 1971, ch. 716, § 206, p. 1443.)

Section 150, *supra*, now reads as follows: "The department is under the control of a civil executive officer who is known as the *Director of Consumer Affairs*." (Emphasis added.)

Thus, it is apparent that the Director of Consumer Affairs has broader powers than those specified in section 310, *supra*. For instance, the relationship of the various boards and the Director with respect to the adoption of rules and regulations is set forth in section 313.1 as follows:

"(a) Notwithstanding any other provision of law to the contrary, no rule or regulation, other than those relating to examinations and qualifications for licensure, and no fee change promulgated by any of the boards, commissions or committees within the department, shall take effect until submitted to the director for review.

"(b) The director shall have the authority, for a period of 30 days after such a proposed rule, regulation, or fee change has been submitted to him, to disapprove it on the ground that it is injurious to the public health, safety, or welfare. If it is so disapproved it shall have no further force or effect unless such disapproval is reversed by a unanimous vote of the board, commission, or committee proposing it, in which event it shall become effective upon compliance with the further procedures required by Chapter 4.5 (commencing with Section 11371) of Part 1, Division 3, Title 2 of the Government Code.

“(c) Nothing in this section shall be construed to prohibit the director from affirmatively approving a proposed rule, regulation, or fee change at any time within the 30-day period after it has been submitted to him, in which event it shall become effective upon compliance with the further procedures required by Chapter 4.5 (commencing with Section 11371) of Part 1, Division 3, Title 2 of the Government Code.”

Several provisions, however, make clear that the Director may only act with the consent of a board that is under his or her jurisdiction.

Section 156 provides that:

“The director may, *at the request and with the consent of the particular board* within the department on whose behalf the contract is to be made, enter into contracts pursuant to Article 4 of Chapter 3 of Part 1 of Division 3 of Title 2 of the Government Code [now §§ 11256–11263] for and on behalf of any board within the department.” (Emphasis added.)

Section 200 provides that:

“Notwithstanding any other provisions of this code, any revenues, collections, or receipts accruing to any board in the department may, in the manner determined by the director *and with the consent of the board concerned*, be received and deposited by the department, and in such case *shall be accounted for to the board* and remitted by the department to the State Treasury in accordance with law for credit to the fund of such board. Notwithstanding Section 158 of this code, all refunds shall be made by the department *with the consent of the boards.*” (Emphasis added.)

Section 156.5, for instance, specifically grants to the Director of Consumer Affairs authority to act for the Department of Consumer Affairs and for its component agencies with respect to negotiating and execution of certain leases. (See also § 400.)

We turn now to several specific statutory provisions relating to the management of the monies funding the operations of the boards within the Department.

Section 205 creates in the state treasury the Professions and Vocations Fund, among which is the Fabric Care Fund. That section further provides in part that:

“For accounting and recordkeeping purposes, the Professions and Vocations Fund shall be deemed to be a single special fund, and each of the

several special funds therein shall constitute and be deemed to be a separate account in the Professions and Vocations Fund. Each such account or fund shall be available for expenditure only for such purposes as are now or may hereafter be provided by law.”

The Department of Consumer Affairs itself has control of a separate fund, designated the Consumer Affairs Fund. (§§ 201–204.) Each board within the Department of Consumer Affairs must pay its prorata share of the administrative expenses of the Department. (§ 201.) It is significant that the authority of the Director to transfer sums from any one of the accounts in the Professions and Vocations Fund to the Consumer Affairs Fund is specifically authorized by section 202 as follows:

“Upon proper presentation of claims by the department to the State Controller, the State Controller shall draw his warrant against any of the funds of any one of the boards to cover its share of the estimated administrative expenses of the department. The fund of one board shall not be used to pay the expenses of any other board.”

The charges for such administrative expenses “may be levied” at the discretion of the Director, with the approval of the Department of Finance. (§ 201.)

Significantly, section 401 provides that:

“When there is money in the fund of any board or commission comprising the Department of Consumer Affairs or subject to its jurisdiction, which money, the Director of Consumer Affairs finds, is not required to meet any demand which has accrued or may accrue against the fund, the Controller, upon executive order of the Director of Finance, shall transfer the sum designated by the Director of Consumer Affairs from the fund of the board or commission to the Consumer Affairs Fund to be used for the purposes of this chapter.

“No money may be taken from the fund of any board or commission when it will interfere with the administrative duties imposed upon the board or commission. The unencumbered, unexpended money in the fund of any board in division number one of the department shall never be reduced to less than twenty-five thousand dollars (\$25,000) by any transfer ordered by the Director of Consumer Affairs under this chapter.” (See also § 128.5.)

These provisions suggest that the Director has *very limited authority* with respect to these *special* funds. If the word control” as used by the Legislature in section 110, *supra*,

and section 150, *supra*, were to be viewed as conclusive in respect of ascertaining the legislative intent concerning the precise issue presented, it would appear that many of these special provisions are superfluous.

In fully answering the question presented, there are several significant factors to be considered. First, does the Board have authority to enter into contracts? Secondly, does the Board have authority to designate who may execute contracts on behalf of the Board? Thirdly, does the Board have authority to submit a claims schedule to the Controller as required by law and without which the Controller will not issue his warrant? We shall examine each of these subissues.

First, does the Board have authority to enter into contracts implementing section 9575.6, *supra*? As a general proposition, such authority must be implied from the language of section 9575.6, absent contrary language in any other statute. We find no contrary language, express or implied, indicating that *only* the Director is authorized to enter into contracts on behalf of the Board. For instance, section 156, *supra*, provides that “the director *may, at the request and with the consent of the particular board* within the department on whose behalf the contract is to be made, enter into contracts pursuant to article 4³ of chapter 3 of part 1 of division 3 of title 2 of the Government Code for and on behalf of any board within the department.” (Emphasis added.) This authority is discretionary *with the Board*, not with the Director. We think it is clear that the Board and not the Department is the contracting agency for section 9575.6 contracts. Accordingly, we conclude that the Board has the authority to enter into contracts implementing section 9575.6.

Secondly, does the Board have the authority to designate who may execute such contracts? This question has significance because it is the Department that employs a fiscal officer and an accounting officer, not the Board. The fiscal officer and the accounting officer of the Department would be under the direct authority of the Director. Nevertheless, we do not see this issue as critical since we do not believe that the authority of a fiscal officer or of an accounting officer includes the authority to disapprove such contracts on policy grounds. Therefore, even assuming that the Director may determine who may sign such contracts on behalf of the Board, it does not follow that the Director has the authority on policy grounds to disapprove such contracts. It is an administrative function that is being performed, not a policy-making function. In any case, we conclude that the Board does have the authority to designate who shall execute contracts implementing section 9575.6. If personnel of the Department are not available, the Board may designate, by official

³ We note that article 4 has been repealed (Stats. 1955, ch. 1433, § 4). However, we assume nevertheless that the legislative intent is still clear and that the reference in section 156 is to contracts involving state interagency services and transactions.

action, one of its members or its executive secretary to perform such duties. This conclusion follows necessarily from the basic conclusion that it is the Board, not the Director, that is statutorily authorized to enter into such contracts by section 9575.6.

The third factor to be considered is whether the Board has authority to designate who shall submit a claims schedule to the Controller since without a valid claims schedule the Controller will not issue his warrant even assuming the existence of a valid contract. (See generally, Gov. Code, §§ 925.4, 925.6, 925.8, 926.4, 13920; 2 Cal. Admin. Code, § 600 *et seq.*)

The general rule with respect to such authority is set forth in section 1212.4 of the State Administrative Manual (SAM), which provides that:

“Authority to sign contracts, interagency agreements, the SAM Section 1209 certification, and the contract transmittal is limited to those officers who have either statutory authority or have been duly authorized in writing by the agency head and whose names and position titles are on file with the Legal Office, Department of General Services (General Services Form LO-33) and the State Controller (Controller’s Form No. 614). The contracting agency will maintain a record for audit purposes of all officers who have been authorized to sign.”

We have found only one specific provision in the Business and Professions Code, relating to the Director and the Board, bearing upon this issue.

Section 202, *supra*, provides that:

“Upon proper presentation of claims by the department to the State Controller, the State Controller shall draw his warrant against any of the funds of any one of the board to cover its share of the estimated administrative expenses of the department. The fund of one board shall not be used to pay the expenses of any other board.” (This section is subject to Gov. Code, § 925.6.)

This section permits the Director to transfer funds to the Consumer Affairs Fund from the several special funds that are subject to section 205, *supra*, so that each board may fairly bear its pro rata share of the administrative costs of the Department. (See §§ 201, 203.) One implication of this section is that, absent its existence, the various boards would have the duty and the authority to order the transfer of their share of such administrative expenses. The other implication is that each board retains some authority to present claims to the State Controller since this provision appears *necessary* only if it is an exception to

the general policy. We find no statute expressly or impliedly providing to the contrary.

Thus, section 1212.4 of the State Administrative Manual does not present an obstacle to the Board's implementation of section 9575.6. First, the Board necessarily has implied statutory authority in order to effectuate the provisions of section 9575.6. Alternatively, the Board must be construed as "the agency head" for the limited purposes of its being able to effectively implement⁴ section 9575.6. (See § 22, *supra*.)

The full import of all of these provisions is not at issue here. It is, nevertheless, apparent that the Director does not have absolute authority to make all final decisions with respect to the functions of the various boards comprising his department. Returning to the language of section 9575.6, we note that the Legislature has enacted a specific statute stating unequivocally that a specified sum of money "may be expended by the State Board of Fabric Care" during each fiscal year. The purpose for which such funds may be expended is specified in section 9575.6. We are advised that there is an appropriation by the Legislature funding such an expenditure.

No provision that we have examined appears to grant fiscal authority to the Director with respect to an expenditure authorized by section 9575.6. To the extent that there may be a conflict between section 110 and section 9575.6, the specific provision—section 9575.6—controls over the general provision—section 110.

Accordingly, it is concluded that funds authorized to be expended by section 9575.6 and appropriated for that purpose by the Legislature in the Budget Act of 1978–1979 legally may be expended by the State Board of Fabric Care even if the Director of the Department of Consumer Affairs disapproved such expenditures. In essence, we conclude that the decision as to whether these special funds should be expended is a policy decision that is vested in the Board not in the Director, by the express language of section 9575.6.

⁴ The Board would have to take appropriate action—we assume by a duly adopted resolution—so as to comply with the procedural requirements of the Controller and the Department of General Services.