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OPINION	:	No. 79-415
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of	:	October 10, 1979
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SUBJECT: AUTHORITY OF SUPERINTENDENT OF PUBLIC INSTRUCTION—The Superintendent of Public Instruction has no authority to deny, suspend or revoke, for cause, an “authorization to operate” with respect to a private postsecondary educational institution holding an accreditation of the type described in either Education Code section 94310(a) or 94311(c).

The Honorable Wilson C Riles, Superintendent of Public Instruction and Director of the Department of Education, has requested an opinion on the following: question:

May the Superintendent of Public Instruction deny, suspend or revoke, for cause, an “authorization to operate” in connection with any private postsecondary educational institution holding an accreditation of the type described in Education Code sections 94310(a) and 94311(c)?

CONCLUSION

The Superintendent of Public Instruction has no authority to deny, suspend or revoke, for cause, an “authorization to operate” with respect to a private postsecondary educational institution holding an accreditation of the type described in either Education Code sections 94310(a) or 94311(c).

ANALYSIS

We are called upon to interpret several of the provisions of the Private Postsecondary Education Act of 1977, as amended. (Enacted by Stats. 1977, ch. 1202; amended by Stats. 1978, chs. 1114, 1160.) The Private Postsecondary Education Act of 1977 (hereinafter the “Act”; Reorganized Education Code¹ sections 94300–94375) is a statutory scheme of regulation intended to “encourage privately supported education and [to] protect the integrity of degrees and diplomas conferred by privately supported . . . educational institutions” as well as “to encourage the recognition by tax-supported institutions of work completed and degrees and diplomas issued by privately supported institutions, to the end that students may have equal opportunities for equal accomplishment and ability [sic].” (§ 94301.) The Act also is intended to provide protection to “consumers” of private postsecondary education. (See §§ 94312, 94320–94321, 94332, 94335, 94339 and §§ 32370–32375.)

Viewed broadly, the Act seeks to accomplish its objectives by prescribing compliance with certain standards as a condition precedent: (1) to the issuance, conferring or awarding of an academic or honorary degree by a private postsecondary institution (see § 94310); and (2) to the offering of postsecondary courses of education leading to educational, professional, technological, or vocational objectives. (See § 94311.)

The Superintendent of Public Instruction (hereinafter “Superintendent”) is authorized by the provisions of the Act to determine whether a private postsecondary educational institution qualifies pursuant to the applicable provisions of the Act. His determination that an institution is qualified is evidenced by his issuance of either an “approval to operate” or by an “authorization to operate,” depending upon the type of private postsecondary educational institution involved. (See §§ 94310, 94311.)

Section 94302(c) defines an “approval to operate” as meaning “. . . that the institution so approved has met recognized and accepted standards as determined by the Superintendent of Public Instruction in carrying out the provisions of this chapter to operate a postsecondary educational institution in this state.”

Section 94302(d) defines an “authorization to operate” as meaning “. . . that the institution so authorized has been granted permission by the Superintendent of Public Instruction to operate as a postsecondary educational institution.”

The question is concerned with only two of the various classifications of private postsecondary educational institutions regulated by these statutory provisions: first, those

¹ All unidentified section references are to the Reorganized Education Code.

institutions described in subdivision (a) of section 94310 and, second, those institutions described in subdivision (c) of section 94311. Subdivision (a) of section 94310 (hereinafter § 94310(a)) basically describes accredited degree-granting private postsecondary educational institutions. Subdivision (c) of section 94311 (hereinafter § 94311(c)) basically describes diploma-granting private postsecondary institutions of which the institution, program or specific course of study upon which the diploma is based is accredited. However, degree granting institutions also may issue diplomas and certificates. (See § 94310(a).)

The type of recognition that the Superintendent affords to an institution that qualifies as an accredited institution pursuant to section 94310(a) or 94311 (c) is an ‘authorization to operate’ rather than an “approval to operate.” (Cf. § 94311(b).)

The issue with respect to these two types of regulated private postsecondary educational institutions is whether the Superintendent has the statutory authority to deny, suspend and revoke-for cause-an authorization to operate where the institution demonstrates that it has the requisite accreditation.

One set of the provisions of the Act that is critical to resolution of this issue is the provisions of section 94312. Basically, section 94312 establishes minimum standards that each private postsecondary educational institution must demonstrate that it meets in order to be eligible to obtain the Superintendent’s approval or authorization to operate. ‘Within section 94312, the most critical language relevant to the issue is that contained in subdivision (L).² Section 94312 provides in part as follows:

“All institutions authorized, or approved, under this chapter shall be maintained and operated, or in the case of a new institution, must demonstrate that it shall be maintained and operated, in compliance with the following minimum standards:

“.....

“(L) Accreditation by a national or applicable regional accrediting agency recognized by the United States Office of Education or accreditation, approval, or licensure by a California state agency shall be accepted by the superintendent as evidence of compliance with the minimum standards

² The cited subdivision of section 94312 is properly identified by the letter “L” in lower case. We have elected to substitute the upper case “L” for the lower case throughout this opinion because of the confusion arising from the fact that lower case “l” and the numeral “1” are often indistinguishable on typewriters.

established by the accrediting or licensing agency, and therefore as evidence of compliance with the minimum standards specified in the provisions of this section. If there is substantial evidence of violation of the standards established by the responsible agency, however, the superintendent may require such further evidence and make such further investigation as may be necessary.”

Subdivision (L) of section 94312, *supra*, expressly exempts accredited institutions from the minimum standards established by the Legislature or by the Superintendent. The clear meaning of the language of the second sentence of subdivision (L) of section 94312 is that if the Superintendent is aware of substantial evidence that the institution is violating the standards established by its accrediting agency, the Superintendent may conduct an investigation and in doing so, may look behind the accreditation given to a particular school.

Thus, the Superintendent has more responsibility with respect to accredited schools than he had under the former law. The provisions of the former law were set forth in division 21 of the former Education Code, particularly former sections 29023, 29042, 29045 and 29046. (These sections were renumbered by the Reorganized Education Code of 1976 and then superseded by the provisions of the Private Postsecondary Education Act of 1977.) Under the former law, a fully accredited institution was authorized to issue degrees or diplomas upon its filing with the Superintendent an “affidavit” that the institution was so accredited. The Superintendent had no duty with respect to such institutions under the former law once the institution had established its accredited status.

Under the new law, particularly subdivision (L) of section 94312, the Superintendent is authorized to investigate the degree of compliance of an accredited institution with the accrediting standards of the accrediting agency. No provision of the Private Postsecondary Education Act of 1977, however, gives him the power to deny, suspend or revoke an authorization to operate during such time as the accredited institution maintains its accredited status.

If the Superintendent does conduct an investigation of an accredited institution, what does the Legislature contemplate that he would do if he determines that an accredited institution is failing to comply with the accrediting standards of its accrediting agency? He could contact the accrediting agency and present the evidence to it, undoubtedly requesting that it demand that the school correct its violations or lose its accreditation. If that failed, the Superintendent may consider publicizing the results of his investigation and of the fact that the accrediting agency refused to take appropriate action. He may also submit the evidence to the Attorney General for possible court action in accordance with section 94339.

It has been advocated that the relevant provisions of the Private Postsecondary Education Act of 1977 imply that the Superintendent has the power to deny, suspend or revoke an authorization to operate of an accredited institution. While the question is not totally free from doubt, in the absence of a clear declaration by the Legislature, we find no express or implied authorization from the Legislature granting to the Superintendent the power to deny, suspend or revoke an authorization to operate of an accredited institution. Therefore, we conclude that the Superintendent of Public Instruction has no authority to deny, suspend or revoke, for cause, an authorization to operate with respect to a private postsecondary educational institution holding an accreditation of the type described in either sections 94310(a) or 94311(c).
