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OPINION	:	No. 79-514
	:	
of	:	<u>August 9, 1979</u>
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SUBJECT: COMMITMENT OF RESERVES—Reserves are “committed” within the meaning of section 84904(c) (1) of the Education Code only when a community college board executes a contract subjecting such reserves to contractual obligations for the payment of the funds in question.

The Honorable Carol Hallett, Assemblywoman for the Twenty-Ninth District, has requested an opinion on the following question:

With respect to the phrase, “reserves committed prior to June 6, 1978, for contractual obligations,” as used in section 84904(c) (1) of the Education Code, are reserves “committed” within the meaning of that statute when the Community College Board adopts a resolution authorizing the purchase of equipment, or does commitment of reserves under the statute require the actual execution of a contract?

CONCLUSION

Reserves are “committed” within the meaning of section 84904(c) (1) of the Education Code only when a community college board executes a contract subjecting such reserves to contractual obligations for the payment of the funds in question.

ANALYSIS

In order to compensate for the loss of local property tax revenues experienced by community college districts as a result of the passage in 1978 of Proposition 13 (Cal. Const., art. XIII A), the Legislature enacted the Community Colleges Emergency Finance Act of 1978 (Stats. 1978, ch. 292, § 13) contained in sections 84900 to 84909 of the Education Code.¹ This statutory objective was set forth in section 84900, which provides:

“By enactment of this chapter, the Legislature intends to provide immediate financial relief to public California community colleges for the 1978–79 fiscal year as a result of lost local tax revenues as a result of the operation of Article XIII A of the California Constitution.”

This objective of financial relief was realized in section 84902 which provided for two appropriations for the community colleges.² Under subdivision (a) of that section \$537,064,900 was appropriated for what was essentially a continuation of the usual state share of community college financing. The appropriation of \$260,000,000 under subdivision (b), however, was intended as the substitute for the property tax revenues no longer available to the community college districts as a result of Proposition 13.

¹ Hereafter all section references are to the Education Code unless otherwise specified.

² Section 84902 provides:

“(a) In lieu of the amounts which would otherwise be appropriated for transfer from the General Fund in the State Treasury to Section B of the State School Fund pursuant to Section 14020 of the Education Code, there is hereby appropriated for transfer by the State Controller during the 1978–79 fiscal year from the General Fund in the State Treasury to Section B of the State School Fund, in addition to the sums accruing to Section B of the State School Fund from other sources, for apportionment pursuant to Section 84903 and Article 11 (commencing with Section 84850) of Chapter 5 of this part during the 1978–79 fiscal year, the sum of five hundred thirty-seven million sixty-four thousand nine hundred dollars (\$537,064,900).

“(b) In addition to the amount appropriated by subdivision (a) of this section, there is hereby appropriated from the General Fund to Section B of the State School Fund for transfer by the State Controller during 1978–79 fiscal year the amount of two hundred sixty million dollars (\$260,000,000). The State Controller shall disburse such amount upon order of the Chancellor, for apportionment pursuant to Section 84904; provided that no more than 75 percent of the appropriation made by this subdivision shall be disbursed prior to February 1, 1979.”

The formula for distributing this compensatory appropriation to the various community college districts is set forth in section 84904.³

The basic element in this formula is the so-called “target budget” which is the total of a given district’s revenue from specified sources for the previous fiscal year multiplied by 1.068. (§ 84904(b).) Under this formula the compensatory appropriation of \$260,000,000 was to be distributed so that each district would receive the same percentage of its target budget as that received by every other district in the state. (§ 84904(a).) However, in calculating whether a given district was funded up to the statewide percentage of its target budget,⁴ the district has to include, along with the state funds received from the compensatory appropriation, three other sources of funds, the first being the funds received under the regular state appropriation for community colleges. (§ 84904(a) (1).) The second

³ Section 84904 provides:

“(a) The Chancellor shall distribute the amount appropriated by subdivision (b) of Section 84902 so that each district receives the same percentage of its target budget after deducting the sum of (1) the apportionment made pursuant to Section 84903 (exclusive of the special apportionment for handicapped), (2) available local property tax revenues, and (3) available district reserves.

“(b) ‘Target budget,’ for purposes of this section, means the product of 1.068 times the sum of the revenue received for the 1977–78 fiscal year pursuant to Sections 2102, 8329, 8382, 23401, 56810, 56811, 56815, 76482, 81338, 81341, 81342.5, 84006, 84203, 84812, 84870, 85100, 85110, 85132, and 85133.1 and (for the second principal apportionment) Article 5 (commencing with Section 84762) of Chapter 5 of this part of the Education Code, Sections 218, 219, 988, and 992 of the Revenue and Taxation Code, and Section 5302.5 of the Streets and Highways Code.

“(c) ‘Available district reserves,’ for purposes of this section, means one-third of the unrestricted general fund balance held on June 30, 1978, in excess of five percent of a district’s general fund total income for the 1977–78 fiscal year. As used in this section, the ‘unrestricted general fund balance’ shall not include any of the following:

“(1) Reserves committed prior to June 6, 1978, for contractual obligations.

“(2) Reserves restricted by district board action taken prior to June 6, 1978, or by law, or by court order.

“(3) Reserves committed prior to June 6, 1978, to a district self-insurance fund.

“(4) Reserves committed prior to June 6, 1978, to a capital outlay obligation.

“(5) Non-cash assets, such as stores, inventory, property and buildings, or other investment purchased prior to June 6, 1978.”

⁴ We are informed by the Chancellor’s Office of the California Community Colleges that the appropriations under the Community Colleges Emergency Finance Act of 1978 permitted community college districts to be funded for the 1978–79 fiscal year at approximately 87 percent of their target budget.

source was the remaining local property tax revenues available to the district. (§ 84904 (a) (2).) And the third source of funds which has to be included in the calculation was the district's "available district reserves." (§ 84904(a) (3).) Thus the greater amount available to a district from these three sources, the less it would receive of the state compensatory funds appropriated under section 84902(b) since less of such funds would be required to bring the district's funding up to the statewide percentage of its "target budget."

As noted, one of the fund sources that would affect the level of state funding a district would receive under the compensatory appropriation is denominated "available district reserves." (§ 84904(a)(3).) The statute defines "available district reserves" as "one-third of the unrestricted general fund balance held on June 30, 1978, in excess of five percent of a district's general fund total income for the 1977-78 fiscal year." (§ 84904(c).) The statute, however, specifies five items which must not be included in determining the amount of the "unrestricted general fund balance":

"(1) Reserves committed prior to June 6, 1978, for contractual obligations.

"(2) Reserves restricted by district board action taken prior to June 6, 1978, or by law, or by court order.

"(3) Reserves committed prior to June 6, 1978, to a district self-insurance fund.

"(4) Reserves committed prior to June 6, 1978, to a capital outlay obligation.

"(5) Non-cash assets, such as stores, inventory, property and buildings, or other investment purchased prior to June 6, 1978." (§ 84904(c).)

Thus to the extent that any particular sum of funds available to a district can be properly characterized as one of these five excluded items, the district's "unrestricted general fund balance" is accordingly diminished. And since the "available district reserves" are defined as a specific fraction of the "unrestricted general fund balance," the "available district reserves" would likewise be diminished. This diminishing of the "available district reserve" component of a district's "target budget" funding would, as noted, consequently require an increase in the amount of compensatory state funding that a district would be entitled to receive.

As set forth above, one of the items specified by the statute to be excluded from the "unrestricted general fund balance" is: "Reserves committed prior to June 6, 1978, for

contractual obligations.” (§ 84904 (c) (1).)

The question presented here relates to whether a particular unit of funds necessary for the purchase of equipment by a community college district has been so “committed.” Specifically, the question we consider is whether the execution of a contract to purchase the equipment is necessary to effect a committing of reserves within the meaning of section 84904(c) (1), or is such a committing of reserves effected at the point when, prior to the execution of a contract, the board enacts a resolution authorizing such purchase.

Pertinent to this question are the procedures for establishing a reserve fund by a community college district which are set forth in article 5 (§§ 85440–85443), chapter 9 of part 50 of the Education Code.

With respect to such procedures section 85441 provides:

“Upon the filing of identical copies of a resolution of the governing board with the superintendent of schools, auditor, and treasurer of the county specifying the purpose or purposes of a special reserve fund, the fund shall be established for such purpose or purposes. From time to time thereafter, the governing board may file identical copies of resolutions specifying additional purposes of the fund or withdrawing any purpose previously designated. The auditor and treasurer shall transfer from the general fund to the special reserve fund of the district such amounts as may be specified by the governing board during the fiscal year.”

Thus pursuant to the provisions of this section the board could, as part of its resolution authorizing the purchase of equipment, establish a special reserve fund specifying as its purpose the financing of the authorized purchase.

But under this same section the board can rescind the specified purpose of the reserve fund thereby precluding the expenditure of such reserve funds for that purpose (§ 85442)⁵ Further, under these procedures the board can also cause a reserve fund to be discontinued and the moneys in that fund to be replaced in the district’s general fund. (§ 55443*)⁶

⁵ Section 85442 provides:

“The governing board may expend the money in the fund for the purpose or purposes specified in any resolution filed pursuant to Section 85441 unless the purpose has been withdrawn pursuant to that section.”

⁶ Section 85443 provides:

“Any moneys remaining in the special reserve fund of the district, except moneys

Whether the passing of a resolution which authorizes an equipment purchase and which establishes a reserve fund to finance that purchase results in “reserves . . . committed for contractual obligations,” as specified in section 84904(c) (1), depends upon the meaning of the term “committed” as it is used in that section.

In the context of section 84904 we believe the Legislature intended to distinguish between those funds which were legally obligated for expenditure prior to June 6, 1978, and those which the district could make available for other purposes without incurring any legal liability of the district.

In the absence of a legal constraint which insulates particular funds from subsequent allocations, such funds would in effect remain “available” and could not thus be regarded as previously “committed” to an earlier allocation.

With respect to a community college board resolution that authorizes the purchase of equipment and establishes a special reserve fund for that purpose, we have already noted that the funds so reserved can be subsequently released by board action and placed back into the general fund (§§ 85441, 85443). Thus unless there is some legally binding constraint confining the expenditure of designated funds to the purpose specified in a resolution, such a resolution authorizing the purchase of equipment does not result in the funds being “committed” within the meaning of section 84904(c) (1).⁷

In specifying that the commitment must be “for contractual obligations” (emphasis added), the terminology of section 84904(c) (1) strongly indicates that the legal constraint contemplated by the term “committed,” as used in that section, must be in the form of a contract.

This evaluation of the term “committed,” as denoting contractual constraint, is consistent with the definition of the term in Webster’s Third New International Dictionary (unabr.), where it is defined (at p. 457), in the sense relevant here, as meaning: “To pledge to some particular course or use: Contract or binding obligation to a particular disposition.” See also *Dubin Weston, Inc. v. Louis Capano & Sons, Inc.* (1975)394 F. Supp. 146, 155,

placed in the fund pursuant to subdivision (b) of Section 2106 or subdivision (b) of Section 2109 shall be transferred to the general fund of the district by the auditor and treasurer upon written request to the superintendent of schools, auditor, and treasurer of the county by the governing board of the district, and the auditor and treasurer shall discontinue the special reserve fund.”

⁷ Of course, if the board’s resolution merely authorizes the purchase of equipment without establishing a reserve fund, there is even less basis for concluding that any particular funds have been “committed” by such board action.

which defined “A commitment for a permanent mortgage loan . . . [as] an enforceable contract under which a lender agrees to grant a mortgage loan at a later date.”

We thus conclude that the term “committed” as used in section 84904 (c) (1) (“reserves committed prior to June 6, 1978, for contractual obligations”) requires the entering into a contract prior to June 6, 1978, which imposed a legally binding obligation to expend a specified quantum of funds for the purposes of the designated contractual obligations.
