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OPINION	:	No. 79-813
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of	:	December 14, 1979
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SUBJECT: PROMOTION OF ICEBERG LETTUCE—The California Iceberg Lettuce Commission is authorized to participate in a joint advertising campaign with a private association of Arizona lettuce growers designed to promote the sale of lettuce from both states if it is determined that the sale of California iceberg lettuce will be substantially promoted thereby.

The Honorable Wade A. Whitfield, General Manager of the California Iceberg Lettuce Commission, has requested an opinion on the following question:

Does the statute governing the California Iceberg Lettuce Commission authorize that agency to participate in a joint advertising campaign with a private association of Arizona iceberg lettuce growers and shippers which promotes the sale of iceberg lettuce from both states?

CONCLUSION

The California Iceberg Lettuce Commission is authorized to participate in a joint advertising campaign with a private association of Arizona lettuce growers designed to

promote the sale of lettuce from both states if it determines in the exercise of reasonable discretion that the sale of California iceberg lettuce will be substantially promoted thereby.

ANALYSIS

In 1977 the Legislature enacted a statute (Stats. 1977, ch. 434) which established a system for the institution of programs to promote the expansion of markets for and the consuming of California iceberg lettuce. (Food & Agri. Code §§ 66501-66701.)¹ The reasons and the policies motivating the enactment of this statute are extensively set forth by the Legislature in the statute's initial provisions. (See §§ 66501-66505.) For example, in section 66504 the Legislature has specifically declared that:

“It is . . . the policy of this state to aid in preventing economic waste in the marketing of iceberg lettuce, to develop more efficient and equitable methods in marketing, and to maintain job security for workers in iceberg lettuce and related industries.”

In this same vein the Legislature further declared that: “The promotional, educational, economic and marketing research, and any similar activities authorized¹ by this chapter will serve to expand existing markets and create new markets for California iceberg lettuce . . .” (§ 66503), and that, “It is, . . . in the public interest to protect and enhance the reputation of California iceberg lettuce in intrastate, interstate, and foreign markets. . . .” (§ 66502.)

The statute establishes the California Iceberg Lettuce Commission to implement its provisions (§§ 66561, 66585(c)), subject to the authority of the Director of Food and Agriculture to require the Commission to cease any activity the director determines not to be in the public interest or in violation of the statute. 66561.3.)

Here it is noted that the Iceberg Lettuce Commission statute is part of a much larger system of statutes directed toward the common end of enhancing the market for California agricultural products by controlling the flow of commodities to the market and by promoting the expansion of such markets and the increase in demand for such commodities.² (See, e.g., California Marketing Act of 1937, § 58601 *et seq.*, Agricultural Producers Marketing Law, § 59501 *et seq.* And see 54 Ops. Cal. Atty. Gen. 116, 117-119 (1971); a New Look at the California Marketing Act of 1937 (1972) 5 U.C. Davis L.Rev.

¹ Hereafter all section references are to the Food and Agricultural Code unless otherwise indicated.

² When the statute uses the term “iceberg lettuce,” it refers to iceberg lettuce that is “produced in California.” (§ 66536.)

190, 196–203. See also section 58040 authorizing the Director of Food and Agriculture to “improve, broaden and extend in every practicable way, the distribution and sale of any [agricultural] product of this state throughout the markets of the world.”)

Pursuant to its mandate to promote the sale of California iceberg lettuce, the California Iceberg Lettuce Commission presently desires to undertake an advertising campaign in cooperation with a private association of Arizona lettuce growers which would promote the sale of both California and Arizona iceberg lettuce. This gives rise to the present question: does the commission have the authority to promote California iceberg lettuce in a manner which has the effect of also promoting the sale of lettuce from another state?

Any inquiry into the extent of an agency’s authority is governed by the basic rule “that administrative agencies have only such powers as have been conferred on them, expressly or by implication, by constitution or statute.” (*Ferdig v. State Personnel Bd.* (1969) 71 Cal. 2d 96, 103. See also *California State Restaurant Assn. v. Whitlow* (1976) 58 Cal. App. 3d 340, 346–347.)

While there is no statutory provision which expressly grants to the Iceberg Lettuce Commission the specific authority to participate in a joint advertising campaign with an association of lettuce growers from another state, we initially note the expansive terminology employed by the Legislature in its general grant of power to the Iceberg Lettuce Commission: “To administer and enforce this . . . [statute], and to do and perform all acts and exercise all powers incidental to, or in connection with, or deemed reasonably necessary, proper or advisable to effectuate the purposes of this . . . [statute].” (§ 66585(c).)

Thus the commission is authorized to perform not only those acts “reasonably necessary” to effectuate the statute’s purposes, but also those acts which are deemed “advisable” for such purposes.

More specifically relevant to the commission’s authority to participate in the contemplated joint advertising program are the provisions of section 66585(i) which empower the commission:

“To maintain or expand the demand for iceberg lettuce nationally and abroad by means of promotional, educational, and similar programs and activities, including, but not limited to, the advertising and publicizing of iceberg lettuce in all forms of media, providing merchandising services and materials, conducting educational meetings and demonstrations, and sponsoring or participating in appropriate trade and food conferences.”

Also directly pertinent to the commission's authority to participate in the proposed joint advertising program is section 66585(j) which authorizes the commission to “. . . *negotiate with private and governmental bodies* and agencies on, matters affecting sales and distribution . . . of iceberg lettuce production and marketing; and to undertake any other similar activities which the commission may determine appropriate for the maintenance and expansion of present markets and the creation of new and larger markets for iceberg lettuce.” (Emphasis added.) See also section 66585(k) authorizing the commission to make contracts and agreements it deems necessary for the promotion of the sale of iceberg lettuce.”

Thus in view of the commission's comprehensive authority to “exercise all powers . . . reasonably necessary, proper or advisable to effectuate the purposes of . . . [the statute]” (§ 66585(c)), and in view of the commission's specific authority to “expand the demand for iceberg lettuce nationally and abroad by means . . . of advertising and publicizing . . . iceberg lettuce in all forms of media . . .” (§ 66585(i)), and to “negotiate with private and governmental bodies” concerning “expansion” and the “creation” of “new and larger markets for iceberg lettuce” (§ 66585 (j)), and further in view of the legislative directive to construe the statute ‘liberally’” (§ 66684), the provisions of the statute would appear to afford ample authority for the Iceberg Lettuce Commission to undertake an appropriate advertising program in cooperation with a private association of Arizona growers.

But while the terms of the Iceberg Lettuce Commission statute itself appear to be unqualified, with respect to the commission's authority to participate with out-of-state associations in advertising programs, provisions in other related agricultural marketing statutes might be viewed as indirectly constituting a restriction upon the commission's undertaking such programs. For example, under the Agricultural Producers Marketing Law (§§ 59501–60015) marketing program committees are authorized to “collaborate and cooperate with any agency or organization with similar purposes, whether of this state, *any other state*, or of the United States, in the formulation and execution of any marketing program or marketing order which has common objectives. . . .” (§ 59735(b); emphasis added.

See also section 58713(a.) And see sections 64151(g) and 64631(g) which authorize the Dairy and Beef Counsels to participate in “joint campaigns of advertising”; and see section 67092(d) authorizing the Avocado Commission “to enter into cost-sharing advertising with other products. . . .”

In view of these specific references in the other related agricultural marketing statutes to cooperation with agencies of “other state[s],” or such references to “joint” or “cost sharing advertising,” it might be argued that the absence of such specific references in the Iceberg Lettuce Commission statute indicates the Legislature's intent to exclude

from the commission's power the authority to participate in a joint advertising program with an association from another state.

A similar argument was considered by the Supreme Court when it construed the predecessor to the Agricultural Producers Marketing Law in *Dickey v. Raisin Proration Zone No. 1* (1944) 24 Cal. 2d 796. In that case it was contended that because the statute expressly permitted the program committee to make a charitable gift of surplus raisins, it did not have the power to pledge such raisins to secure agricultural loans because such power was not expressly specified in the statute. (*Id.* at pp. 809–811). The Court rejected this argument declaring that:

“To hold otherwise would be to nullify the essence of the statute by subordinating its purpose to a supposed limitation of its implemental terms. In such circumstances the maxim ‘*expressio unius est exclusio alterius*’ and other rules of construction have no application. Those rules will not be utilized to contradict or vary a clear expression of legislative intent in a matter of such vital concern to the people of the state. [Citations omitted.] The act is a recognition of the need for the establishment of adequate marketing programs for the preservation of economic standards in agricultural production in the state. It does not attempt to provide all the details for the negotiation of a particular marketing plan, but its aim is to declare the sound principles on which the legislation was premised and to prescribe in comprehensive language the general powers of the administrative agency (the program committee) charged with the duty of achieving the desired result. Such statute is to be construed in a way which will render it reasonable, fair and harmonious with its manifest purpose, and which will avoid mischievous or absurd consequences . . .” (*Id.* at pp. 811–812).

With regard to the related iceberg lettuce statute under consideration here, its purpose is similarly “manifest”: the achievement of enhanced and expanded markets for the iceberg lettuce producers of California. (See §§ 66502, 66503.) Thus a program to advertise the virtues of iceberg lettuce, even though such a program comprehended the product grown in Arizona as well as California, is well within this purpose, since the promotion of the product in general could very well have the effect of expanding the market opportunities for lettuce from both states. Indeed this proposition would appear to embody a concept central to the entire statutory marketing system: the individual gains as a result of actions taken to benefit the commodity as a whole. (See *Dickey v. Raisin Proration Zone No. 1*, *supra*, 24 Cal. 2d at pp. 809, 812. See also §§ 58651–58654, 59541–59542.)

It follows, therefore, that a construction of the iceberg lettuce statute which would preclude an advertising program that involved the participation of the lettuce growers of another state, even though the concomitant effect of the program would be to enhance and expand the demand for California iceberg lettuce, would be at odds with the statute's plainly stated legislative purpose. (“[A] statute must be construed in light of the legislative purpose and design. . . .” *People v. Navaro* (1972) 7 Cal. 3d 248, 273.)

Such a construction would thus require a more specific or direct limitation upon joint advertising programs than is evident in the present statutory scheme.

As the Supreme Court in *Dickey v. Raisin Proration Zone No. 1*, *supra*, further observed:

“ . . . ‘when a suggested construction of a statute in any given case necessarily involves a decided departure from what may be fairly said to be the plain purpose of the enactment, such construction will not be adopted to the exclusion of a possible, plausible interpretation which will promote and put in operation the legislative intent.’” (24 Cal. 2d at p. 812.)

Accordingly we conclude that under its governing statutes the California Iceberg Lettuce Commission is authorized to participate with a private lettuce growers association in Arizona in an advertising program that will promote the sale of iceberg lettuce grown in both states.

As a final matter we would note that the fact that individuals or private associations will incidentally benefit from the funds expended by the commission for the contemplated joint advertising program does not render such expenditures a gift of public funds, in violation of article XVI, section 6 of the California Constitution, if such expenditures are for a ‘public purpose.’ As was stated in *Board of Supervisors v. Dolan* (1975) 45 Cal. App. 3d 237, 243: “The rule is well established . . . that if a public purpose is served by the expenditure of public funds . . . [the provision prohibiting gifts of public funds], is not violated even though there may be incidental benefits to private persons.” (See also *California Housing Finance Agency v. Elliott* (1976) 17 Cal. 3d 575, 583.)

The Legislature has unequivocally declared in express terms that market promotion under the iceberg lettuce statute serves an important public purpose. In this regard section 66502 provides: “It is . . . in the public interest to protect and enhance the reputation of California iceberg lettuce in intrastate, interstate, and foreign markets, and to otherwise eliminate unreasonable and unnecessary economic waste of the agricultural wealth of this state.” And in section 66505 it is stated that:

“The production and marketing of fresh California iceberg lettuce for human consumption is declared to be affected with a public interest. The provisions of this chapter are enacted in the exercise of the police power of this state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.”³ (See also §§ 66501, 66503, 66504.)

Commenting on the significance of a legislative declaration of public purpose, relative to the gift of public funds issue, the court in *Board of Supervisors v. Dolan, supra*, 45 Cal. App. 3d at p. 243, noted: “The determination of what constitutes a public purpose is primarily a matter for the Legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis. . . .” (See also *California Housing Finance Agency v. Elliott, supra*, 17 Cal. 3d at p. 583; *Winkleman v. City of Tiburon* (1973) 32 Cal. App. 3d 834, 845.) We thus conclude that the commission would not be making a gift of public funds despite an incidental benefit to private entities if in the reasonable exercise of discretion it determines that funds expended for a joint advertising campaign with the Arizona growers will substantially serve the declared purposes of its governing statute: the promotion of the sale of California iceberg lettuce.

³ Support for this Legislative determination concerning the public purpose of the iceberg lettuce statute is afforded by the decision in *Dickey v. Raisin Proration Zone No. 1, supra*, 24 Cal. 2d 796, where the Supreme Court found that a related agricultural marketing statute with a similar declaration of purpose (see *id.* at pp. 802–803) “was passed under the police power of the state to promote the general welfare . . . [T]he legislature’s flexible plan for the regulation of ‘agricultural waste’ . . . [is] a matter ‘affected with the public interest.’” (*Id.* at p. 813.)