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OPINION	:	No. 79-828
	:	
of	:	<u>February 15, 1980</u>
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SUBJECT: STATE BOARD OF REGISTERED CONSTRUCTION INSPECTORS—Sections 9220.5 and 9221 of the Business and Professions Code constitute a continuing appropriation of the funds in the Construction Inspectors Registration Board Fund for the support of the State Board of Registered Construction Inspectors. The Controller may issue warrants to pay claims for the support of the Board from that fund.

The Honorable Richard B. Spohn, Director of the Department of Consumer Affairs, has requested an opinion on questions which we have rephrased as follows:

1. Do sections 9220.5 and 9221 of the Business and Profession Code constitute appropriations for the support of the State Board of Registered Construction Inspectors?
2. If either or both of these sections of the Business and Professions Code constitute appropriations, may the Controller issue warrants to pay claims for the support of the Board of Registered Construction Inspectors despite the fact that the Governor has eliminated that Board's specific appropriation from the Budget Act of 1979?

CONCLUSIONS

1. Sections 9220.5 and 9221 of the Business and Professions Code constitute a continuing appropriation of the funds in the Construction Inspectors Registration Board Fund for the support of the State Board of Registered Construction Inspectors.

2. The Governor's elimination of item 93.1 from the Budget Act of 1979 removed any limitation on the continuing appropriation of the Construction Inspectors Registration Board Fund for the 1979–80 fiscal year. Therefore, the Controller may issue warrants to pay claims for the support of the State Board of Registered Construction Inspectors from that fund.

ANALYSIS

The Registered Construction Inspectors Law was added to the Business and Professions Code in 1973 as sections 9100–9221. (Stats. 1973, ch. 1145, p. 2353 *et seq.*, hereinafter, the “Law.”)¹ Generally, that Law establishes the State Board of Registered Construction Inspectors (the “Board”) in the Department of Consumer Affairs to administer such Law, which provides for the registration of construction inspectors by the state. The request for our opinion essentially involves the question whether the Board is presently funded to conduct its statutory duties. The resolution of this question involves an examination of the Law itself, and the state budgetary process for the fiscal years 1978–79, and 1979–80.

The Law provides a fee schedule for those wishing to take advantage of its benefits. Section 9221 has provided since the initial enactment of the Law as follows:

“The department shall receive and account for all money derived from the operation of this chapter and, within 10 days after the beginning of every month, shall report such money to the State Controller and shall pay it to the State Treasurer, who shall keep the money in the Construction inspectors Registration Board Fund which is hereby created in the State Treasury. *The fees and revenues contained in this fund are continuously appropriated to the board for purpose of this chapter.*” (Emphasis added.)

¹ All section references are to the Business and Professions Code unless otherwise indicated. We note at the outset that chapter 1416, Statutes of 1978, which added section 9220.5, provides in sections 4 and 5 for the repeal of the entire Law on July 1, 1981 “unless a later enacted statute deletes or extends such date.”

This section constitutes a classic example of a “continuing appropriation,” that is, one which is self-executing from year to year and thus may provide the funding for its designated purposes without further inclusion of funds in the state budget. (See, generally, 56 Ops. Cal. Atty. Gen. 143, 145–146 (1973); 22 Ops. Cal. Atty. Gen. 101 (1953); and cases cited in these opinions.) We have underscored the word “may” above, since the Budget Act, now passed on an annual basis (Cal. Const., art. IV, § 12), may constitute a limitation or restriction upon a “continuing appropriation.” Absent some limitation in the Budget Act, all of the funds in the Board’s special fund known as the “Construction Inspectors Registration Board Fund,” are available for the support of the Board and its activities by virtue of the continuing appropriation of that fund for those purposes provided in section 9221. (*Railroad Commission v. Riley* (1923) 192 Cal. 54; 56 Ops. Cal. Atty. Gen. 141, 146 (1973); 22 Ops. Cal. Atty. Gen. 101 (1953).)

In 1939 we noted that “[i]t has long been regarded as settled that the effect of an appropriation contained in the budget bill is to place a limitation upon the amount of money that may be expended by a special fund department notwithstanding that a larger amount may be collected and appropriated to such department by a provision for a continuing appropriation.” (Citing *Board of Fish and Game Commissioner v. Riley* (1924) 191 Cal. 37, 43 Ops. Cal. Atty. Gen. No. N.S. 2222; see also Ops. Cal. Atty. Gen. No. N.S. 3905 (1941) and 22 Ops. Cal. Atty. Gen. 101, 104–105 (1953).)

In the Budget Act of 1978 (for fiscal year 1978–79) there was no specific appropriation for support of the Board. We do note, however, that in 1977 the Legislature attempted to appropriate \$160,000 *from the General Fund* to permit the Board (1) to reimburse the Department of Finance for emergency fund loans, (2) to refund fees to applicants and (3) to proceed with its operations. (Sen. Bill No. 900, 1977 Reg. Sess.) The bill, though enacted by the Legislature, was vetoed by the Governor. Thus, at that point in time it appears that there were insufficient funds in the Board’s special fund, the Construction Inspectors Registration Board Fund, for the support of the Board.

However, if during 1978 there were unobligated funds in the Board’s special fund, then under the above discussed authorities such funds should have been available to the Board by virtue of the fact that the Budget Act of 1978 did not contain a specific appropriation to limit or restrict the continuing appropriation.² Whatever the status of such fund may have been, or whatever uncertainty may have existed as to its availability as an appropriation, the Legislature enacted section 9220.5, which clearly had the effect of

² See also section 2 of the Budget Act of 1978, paragraph three:

“Appropriations for purposes not otherwise provided for herein which have been heretofore made by any existing constitutional or statutory provision shall continue to be governed thereby.”

assuring the availability of the funds in the Board's "continuing appropriation." That section reads:

"(a) The board may make refunds to those applicants who, having been accepted to take an examination, were not given an examination by the board due to failure of the board to conduct an examination.

"(b) Funds held on the effective date of this subdivision by the State Treasurer in the Construction Inspectors Registration Board Fund for the account of the Construction Inspectors Board shall be released for the board's use."

Section 9220.5 adds to the authorization for expenditure of the special fund contained in the continuing appropriation of section 9221 by directing the State Treasurer to release the funds for the Board's use. Thus, the legislative authorization in section 9221 was reinforced by a legislative command in section 9220.5. Section 9220.5, added by chapter 1416, Statutes of 1978, became law without the Governor's signature. (See Cal. Const., art. IV, § 10(a).)

Thus, the State Board of Registered Construction Inspectors was funded, to the extent of its special fund, under sections 9220.5 and 9221 for the remainder of the fiscal year 1978–79. The question then arises as to the effect of subsequent events in the budgetary process which lead to the enactment of the Budget Bill of 1979.

"Within the first 10 days of each calendar year, the Governor shall submit to the Legislature, with an explanatory message, a budget for the ensuing fiscal year containing itemized statements for recommended state expenditures and estimated state revenues. (Cal. Const., art. IV, § 12(a) "The budget shall be accompanied by a budget bill itemizing recommended expenditures." (Cal. Const., art. IV, § 10(c).) The Legislature shall pass the budget bill by midnight on June 15 of each year." (*Ibid.*) *The Governor may reduce or eliminate one or more items of appropriation while approving other portions of a bill.* The Governor shall append to the bill a statement of the items reduced or eliminated with the reasons for the action . . . Items reduced or eliminated shall be separately reconsidered [by the Legislature] and may be passed over the Governor's veto in the same manner as bills." (Cal. Const., art. LV, § 10(b); emphasis added.)

The budget bill submitted by the Governor in 1979 (introduced as Sen. Bill 190 on January 10, 1979) contained no appropriation for the Board. However, the Legislature added item 93.1 to the budget bill which passed both houses and was sent to the Governor which provided.

“93.1—For support of Board of Registered Construction Inspectors, payable from the Registered Construction Inspectors Fund . . . 129, 618.” (Emphasis added.)

However, the Governor *eliminated* this item of appropriation. “The Governor stated his reasons as follows:

“I am eliminating this item because this program would only provide ‘title act’ privileges to a select group of individuals in an area where the protection of the health and safety of the general public is not necessary.”

We must consider the effect of the Governor’s action, not only on the budget bill but on the continuing appropriation of sections 9221 and 9220.5. As noted above the constitution authorizes the Governor to “reduce or eliminate” an item of appropriation. By stating “I am eliminating this item . . .” the Governor made it clear which constitutional alternative he was exercising. He eliminated item 93.1 from the 1979 Budget Act.

The legal effect of eliminating item 93.1 from the 1979–80 Budget Act was to remove the limitation that item would have placed upon the continuing appropriation of sections 9221 and 9220.5 had it been enacted. This follows not only from the well settled rule of *Board of Fish and Game Commissioners v. Riley, supra*, 194 Cal. 37, but from the language of the 1979 Budget Act as well.

Section 2 of the Budget Act of 1979 provides as to the entire act:

“The following sums of money, or so much thereof as may be necessary unless otherwise provided herein, are hereby appropriated for the use and support of the State of California for the 1979–80 fiscal year beginning July 1, 1979, and ending June 30, 1980. All such appropriations, unless otherwise herein provided, shall be paid out of the General Fund in the State Treasury.

Whenever by constitutional or statutory provision the revenues or receipts of any institution, department, board, bureau, commission, officer, employee, or other agency, any moneys in any special fund created by law therefor, are to be used for salaries, support or any proper purpose, expenditures shall be made therefrom for any such purposes, to the extent only of the amount herein appropriated, unless otherwise stated herein, or authorized pursuant to Section 11006 of the Government Code.

“Appropriations for purposes not otherwise provided for herein which have been heretofore made by any existing constitutional or statutory provision shall continue to be governed thereby.” (Emphasis added.)

We realize that this effect of eliminating item 93.1 was not anticipated by the Governor as indicated by the reason given for eliminating the item. Nevertheless his intention to eliminate item 93.1 from the Budget Act is clear and unambiguous. In respect to presenting and modifying a budget bill the Governor acts in a legislative capacity. (*Veterans of Foreign Wars v. State of California* (1974) 36 Cal. App. 3d 688, 697.) While it is a cardinal rule in the construction of statutes that the intent of the legislator should be followed, this is subject to the imperative and paramount rule that interpretation cannot depart from the meaning of language which is free from ambiguity, although the consequence would be to defeat the object of the act. (*Anderson v. Jameson Corp.* (1936) 7 Cal. 2d 60, 68; *Solberg v Superior Court* (1977) 19 Cal. 3d 182, 198.)

We conclude that the Controller may issue warrants to pay claims for the support of the Board for the 1979–80 fiscal year from the Construction Inspectors Registration Board Fund, to the extent that moneys are available in that fund.
