TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 80-1015
of	:	MARCH 12, 1981
GEORGE DEUKMEJIAN Attorney General	:	
Rodney O. Lilyquist Deputy Attorney General	:	

The Honorable Melinda Carter Luedtke, Director, Department of Economic and Business Development, has requested an opinion on the following question:

May legislative appropriations for small business loan guarantee funds and low-interest loans to assist businesses affected by the Century Freeway Project be paid from the State Highway Account of the State Transportation Fund?

CONCLUSION

Legislative appropriations for small business loan guarantee funds and low-interest loans to assist businesses affected by the Century Freeway Project may be paid from the State Highway Account of the State Transportation Fund, so long as the use of such appropriations mitigates the environmental effects of the project.

ANALYSIS

The proposed 17.5 mile Century Freeway ("Freeway") will pass through nine cities in Los Angeles County. The construction project was halted in 1972 by a federal court injunction. Between 1972 and 1979, the corridor of the proposed Freeway was comprised of vacant and condemned property in various states of decay. In 1979 a settlement agreement was reached between the parties to the federal lawsuit, including the United States Department of Transportation and the State of California, and construction of the Freeway is now expected to be completed in 1989.

For the 1980–1981 budget year, the Department of Economic and Business Development ("Department") has been appropriated $1,200,000 by the Legislature to be used for loan guarantees for small businesses affected by the Freeway and has been appropriated $1,075,000 for direct low-interest loans to businesses affected by the Freeway.

The question presented for analysis is whether these two legislative appropriations are to be made from the State Highway Account in the State Transportation Fund ("Account") or from the General Fund. Specifically, item 161 of the Budget Act provides "that to the extent it is legally valid, as determined by the Attorney General, $1,200,000 of the funds appropriated by this item for loan guarantee funds for businesses affected by the Century Freeway Project shall be payable from the State Highway Account in the State Transportation Fund; if the Attorney General determines that use of funds in that account would not be legally valid, the $1,200,000 shall be payable from the General Fund." (Stats. 1980, ch. 510, p. 35.) Similarly, item 162 of the Budget Act provides "that to the extent it is legally valid, as determined by the Attorney General, $1,075,000 of the funds appropriated by this item for grants and loans for businesses affected by the Century Freeway Project shall be payable from the State Highway Account in the State Transportation Fund; if the Attorney General determines that the use of funds in that account would not be legally valid, the $1,075,000 shall be payable from the General Fund." (Stats. 1980, ch. 510, p.36.)

While it is thus apparent that these two programs of the Department will be funded regardless of our conclusion, the issue raised involves whether the constitutional limitation placed upon the uses of the Account's revenues is applicable to the two appropriations in question. We conclude that by virtue of a recent amendment to the constitutional limitation, the Account may be the source of the two appropriations.

The Account was previously known as the State Highway Fund ("Fund"). (Sts. & Hy. Code § 182.)[1] In 31 Ops. Cal. Atty. Gen. 21, 22–24 (1958), we noted that while many sources contributed to the Fund's revenues, over 99 percent came from the Highway Users Tax Fund (see § 2108) and that 95 percent was restricted as to its potential uses by then article XXVI of the Constitution. (See 43 Ops. Cal. Atty. Gen. 198, 198–200 (1964).) In 1976 article XXVI was renumbered article XIX and now section 1 thereof reads as follows:

> "Revenues from the taxes imposed by the state on motor vehicle fuels for use in motor vehicles upon public streets and highways, over and above the costs of collection and any refunds authorized by law, shall be used for the following purposes:
>
> "(a) The research, planning, construction, improvement, maintenance, and operation of public streets and highways (and their related public facilities for nonmotorized traffic), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, and the administrative costs necessarily incurred in the foregoing purposes.
>
> "(b) The research, planning, construction, and improvement of exclusive public mass transit guideways (and their related fixed facilities), including the mitigation of their environmental effects, the payment for property taken or damaged for such purposes, the administrative costs necessarily incurred in the foregoing purposes, and the maintenance of the structures and the immediate right-of-way for the public mass transit guideways, but excluding the maintenance and operating costs for mass transit power systems and mass transit passenger facilities, vehicles, equipment, and services." (Emphasis added.)[2]

Substantive changes in the constitutional limitation language were made by the electorate at the June 4, 1974, primary election. Not only was subdivision (b) added, but also added was the phrase 'including the mitigation of their environmental effects" to subdivision (a).

---

[1] All unidentified section references hereafter are to the Streets and Highways Code.

[2] Section 2101 implements these constitutional provisions. The scope of this opinion is limited to the constitutional restrictions placed upon the uses of the Account's revenues. All statutory requirements with regard to the appropriations in question must of necessity be met as well.

It is apparent that without the added language concerning "environmental effects," the two appropriations at issue made by the Legislature could not have a source in the Account revenues. Although we have previously interpreted the governing constitutional limitation somewhat narrowly (see, e.g., 57 Ops. Cal. Atty. Gen. 142, 145–146 (1974)) as well as somewhat expansively (see, e.g., 53 Ops. Cal. Atty. Gen. 203, 204 (1970)), financial aid to businesses affected by the construction of a freeway cannot be said to come within the authorization of the constitutional provision prior at least to its amendment in 1974. (See 61 Ops. Cal. Atty. Gen. 483, 483 (1978); 56 Ops. Cal. Atty. Gen. 243, 245 (1973); 53 Ops. Cal. Atty. Gen. 203, 204 (1970).)

Consequently, our task is limited to the construction of the phrase "including the mitigation of their environmental effects" added by the electorate in 1974. In interpreting this provision, we are guided by the well recognized principle that "in arriving at the meaning of a constitution, consideration must be given to the words employed, giving to every word, clause and sentence their 'ordinary meaning." (*State Board of Education v. Levit* (1959) 52 Cal. 2d 441,462; see also, *County of Sacramento v. Hickman* (1967) 66 Cal. 2d 841, 848–851; *Flood v. Riggs* (1978) 80 Cal. App. 3d 138, 152; *Lucas v. County of Monterey* (1977) 65 Cal. App. 3d 947, 954; *In re Quinn* (1973) 35 Cal. App. 3d 473, 482.)

We believe that the usual and ordinary import of the phrase "the mitigation of their environmental effects" includes the granting of aid to businesses affected by the construction of a freeway so as to lessen the adverse impact of the construction process. Here, we note that the affected areas have lost considerable amounts of tax revenues, purchasing power, and business growth, not to mention the deterioration of nearby neighborhoods caused by the delay in construction. It would be difficult to conceive of a situation more in need of attempting to restore economic viability.

Not only do the dictionary definitions of the terms used support such a conclusion,[3] but so also do the definitions contained in the governing California laws dealing with the quality of the environment as affected by governmental decisions.

The governing regulation applicable to the construction of projects by the California Department of Transportation defines "environment" for purposes of the California Environmental Quality Act (Pub. Res. Code §§ 21000–21176) (hereinafter "CEQA") as:

[3] The "environment" is comprised of "surrounding conditions, influences, or forces that influence or modify," including "the whole complex of climatic, edaphic, and biotic factors that act upon an organism or an ecological community" and "the aggregate of social and cultural conditions that influence the life of an individual or community" (Webster's New Intenat. Dict. (3d ed. 1966) p. 760.)

> "Environment means the physical conditions which exist in the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, objects of historic or aesthetic significance.
>
> "Environment is more broadly defined *as the totality of man's surroundings: social, physical, natural and man-made. It includes human, plant. and animal communities and the social, economic, and natural forces that act on all three."* (Cal. Admin. Code, tit. 21, § 1504.8; emphasis added.)

This regulation is consistent with the general regulations implementing CEQA, which provide that a "project will normally have a significant effect on the environment if it will . . . [clause an increase in traffic which is substantial in relation to the existing traffic load and capacity of the street system; [d]isplace a large number of people; . . . [d]isrupt or divide the physical arrangement of an established community." (Cal. Admin. Code, tit. 14, § 15203, Appendix G.)

CEQA itself directs "that a project may have a 'significant effect on the environment' if . . . environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly." (Pub. Res. Code § 21083.)

Additionally, we note that since CEQA is "so parallel in content and so nearly identical in words" to the National Environmental Policy Act (42 U.S.C. § 4331 et. seq.) (hereafter "NEPA"), the judicial construction of the federal law is highly relevant and strongly persuasive in interpreting the California law. (*Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 27 Cal. App. 3d 695, 701; see *Friends of Mammoth v. Board of Supervisors* (1972)8 Cal. 3d 247, 260–261.)

The federal courts have construed the federal law as follows:

> "The National Environmental Policy Act contains no exhaustive list of so-called "environmental considerations," but without question its aims extend beyond sewage and garbage and even beyond water and air pollution. See *Ely v. Velde*, 451 F.2d 1130 (4th Cir. 1971); *Goose Hollow Foothills League v. Romney*, 334 F. Supp. 877 (D. Or. 1971). *The Act must be construed to include protection of the quality of life for city residents. Noise, traffic, overburdened mass transportation systems, crime, congestion and even availability of drugs all affect the urban 'environment' and* are surely results of the 'profound influences of . . . high density urbanization [and] industrial expansion.' Section 10 1(a) of the Act, 42 U.S.C. § 4331(a)." (*Hanley v. Mitchell* (2d Cir. 1972) 460 F.2d 640, 647; emphasis added.)

In *Jones v. United States Dept. of Hous. & Urb. Dey*. (E.D. La. 1974) 390 F. Supp. 579, 591, the court stated:

> "'Environment' means something more than rocks, trees, and streams, or the amount of air pollution. It encompasses all the factors that affect the quality of life: crowding, squalor, and crime are obviously adverse environmental factors. See, e.g. *Silva v. Romney*, 1 Cir. 1973, 473 F.2d 287; *McLean Gardens Residents Ass'n v. National Capital Planning Comm'n, D.D.C.* 1972, 2 ELR 20662; see also Anderson, NEPA in the Courts, 66–141 (1973)."

These federal cases reflect the federal regulations describing environmental effects as including ". . . ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative." (40 C.F.R. § 1508.8(b) (1979).)

It is accordingly apparent that the "environmental effects" of the construction of the Freeway would necessarily include the displacement of businesses and the disruption of the commercial viability of the adjoining communities.

"Mitigation" of these environmental effects under California law would involve the following:

> "Minimizing impacts by limiting the degree or magnitude of the action and its implementation, . . . Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment, . . . Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, . . . Compensating for the impact by replacing or providing substitute resources or environments." (Cal. Admin. Code, tit. 14, § l5O32.5.)[4]

Finally, we note that the ballot summary, analysis and arguments presented to the electorate in connection with the addition of the phrase "including the mitigation of

[4] While not specifically at issue herein, we point out that the concept of mitigation has obvious limits. It is to be related to a deficiency caused by the project and is not intended to produce what is more than necessary to remedy that deficiency. Loan guarantee funds and low-interest loans from the Account thus may not be used to assist businesses in the Freeway corridor in order to remedy pre-existing conditions or to produce a commercial level of activity greater than existed prior to the Freeway's development.

their environment effects" supports our conclusion.[5] In voting for the measure which added the phrase, the electorate was told that it would allow "state-imposed user tax revenues to be used . . . for purposes related to public highways," thus changing the "present constitutional restrictions which limit use of such revenues for public highway purposes." The opponents of the measure stated, "To permit the Legislature to use motorists' tax funds for other than motorists' needs would be wrong," while the proponents argued "Since 1938, California has been restricted to using your gas tax money only for highway projects. While this limitation made good sense in the 1940's and 1950's when the State had a great need for a basic highway system, out requirements in the years ahead are different. We need more flexibility in order to solve our critical transportation problems." (Voters Pamp., Prim. Elec. (June 4, 1974), pp. 20, 22–23.)

While the ballot pamphlet does not discuss with particularity the phrase "including the mitigation of their environmental effects," it does point out the intent to lift the previous strict limitations so as to cover purposes "related" to highway construction.

We conclude, therefore, that appropriations for small business loan guarantee funds and low-interest loans to assist businesses affected by the Freeway project may be paid from the Account to mitigate the environmental effects of the project as authorized by article XIX of the Constitution.

*****

[5] In *Amador Valley Joint Union High Sch. Dist. v. State Bd. Of Equalization* (1972) 22 Cal. 3d 208, 245–246, the Supreme Court stated that "the ballot summary and arguments and analysis presented to the electorate in connection with a particular measure may be helpful in determining the probable meaning of uncertain language. [Citations.]"