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OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION	:	No. 80-111
of	:	<u>April 10, 1980</u>
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SUBJECT: DEPARTMENT OF AGING GRANTS—California Department of Aging grants awarded under titles III, IV, and V of the Comprehensive Older Americans Act Amendments of 1978 are not contracts within the scope of Government Code section 14780 and, therefore, need not be submitted to the Department of General Services for approval.

The Honorable Janet J. Levy, Director, Department of Aging, has requested an opinion on the following question:

Are California Department of Aging grant awards with respect to titles III, IV, and V of the Comprehensive Older Americans Act Amendments of 1978 contracts within the scope of Government Code section 14780, which subjects certain contracts to approval by the Department of General Services?

CONCLUSION

California Department of Aging grants awarded under titles III, IV, and V of the Comprehensive Older Americans Act Amendments of 1978 are not contracts within the

scope of Government Code section 14780 and, therefore, need not be submitted to the Department of General Services for approval.

ANALYSIS

Under the Comprehensive Older Americans Act Amendments of 1978 (42 U.S.C. § 3001 *et seq.*), Congress has set national standards for meeting the needs of the older individuals of our nation. Pursuant thereto the federal government is empowered to make grants to states or state agencies to achieve certain general objectives.¹ Specifically, and as applied particularly to titles III, IV and V referred to in the question posed above, Congress has set forth further objectives in 42 United States Code sections 3025, 3035 and 3056.

42 U.S.C. section 3025 provides:

“(a) In order for a State to be eligible to participate in programs of grants to States from allotments under this subchapter [title III providing for social services, nutrition services and multipurpose senior centers²]—

“(1) the State shall, in accordance with regulations of the Commissioner, designate a State agency as the sole State agency to—

“(A) develop a State plan to be submitted to the Commissioner for approval under section 3027 of this title;

“(B) administer the State plan within such State;

“(C) be primarily responsible for the coordination of all State activities related to the purposes of this chapter;

“(D) serve as an effective and visible advocate for the elderly by reviewing and commenting upon all State plans, budgets, and policies which affect the elderly; and

¹ 42 U.S.C. section 3001.

² In letter opinion I.L. 78-72, this office concluded that grant awards for social services (formerly tit. III) and nutrition services (formerly tit. VII) are not contracts within the scope of Government Code section 14780 and, therefore, need not be submitted to the Department of General Services for approval. As the grant awards with which we are concerned are derived from the same statutory framework as those considered in that discussion, we find no significant differences between the grant awards there and here.

“(E) divide the State into distinct areas, in accordance with guidelines issued by the Commissioner, after considering the geographical distribution of individuals aged 60 and older in the State, the incidence of the need for social services, nutrition services, multipurpose senior centers, and legal services . . .”

42 U.S.C. section 3035 states:

“(a) To support research efforts related to the implementation of this chapter [title IV providing for training, research, and discretionary projects and programs] together with areas of concern relating to the living conditions of the elderly, the Commissioner may make grants to any public or nonprofit private agency, organization, or institution and contracts with any agency, organization, or institution or with any individual.

.....

“(b) In accordance with the purposes of this part, the Commissioner shall make grants to any public agency or nonprofit private organization or institution and contracts with any agency, organization, or institution or with an individual. . .”

42 U.S.C. section 3056 provides:

“(a) In order to foster and promote useful part-time opportunities in community service activities for unemployed low-income persons who are fifty-five years or older and who have poor employment prospects, the Secretary of Labor (hereinafter in this subchapter referred to as the ‘Secretary’) is authorized to establish an older American community service program.

“(b) (1) In order to carry out the provisions of this subchapter [title V relating to community service employment], the Secretary is authorized to enter into agreements with public or private nonprofit agencies or organizations, including national or a political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or tribal organizations in order to further the purposes and goals of the program. . .”

In a prior opinion of this office,³ we considered the question of whether Office of Criminal Justice Planning (“OCJP”) grants to units of local government and state and private agencies are contracts within the scope of Government Code section 14780. We concluded that they are not. The OCJP program is similar to the Department of Aging program, and the principles applied in that opinion are applicable here.

Welfare and Institutions Code section 9300 establishes the Department of Aging (“Department”) within the Health and Welfare Agency. The Department has been designated the sole state agency to administer the federal program.⁴

“The department shall be designated as the single state agency for supervision of all programs under the Older Americans Act as amended, and all programs for the elderly established by federal acts which provide revenue sharing for such programs, and may be designated as the single state agency for supervision of other programs of the federal government relating to the aging which are not the specific responsibility of another state department under the provisions of federal law or which have not been specifically entrusted to another state department by the Legislature.” (Welf. & Inst. Code, § 9305.)

The Department is authorized to (Welf. & Inst. Code, § 9308) and, in fact, does receive federal money under the provisions of the federal act (45 C.F.R. § 74.1 *et seq.*). The Department is a conduit of these funds which it may grant to qualified entities, individuals or groups. (Welf. & Inst. Code, §§ 9314, 9412, 9503.) The grants are made to further the purposes of the grantee, not the Department, subject to the powers of the Department to provide administrative assistance relating to the programs for which it funnels funds. The Department receives no consideration from the grantee pursuant to the grant documents.

The issue presented here is whether the grant award documents are subject to the Department of General Services approval under Government Code section 14780, which provides:

“All contracts entered into by any state agency for (a) the hiring or purchase of equipment, supplies, materials, or of textbooks for use in the day

³ 58 Ops. Cal. Atty. Gen. 586 (1975).

⁴ It is to be noted that if the awards were deemed contracts within the scope of Government Code section 14780 and thereby subject to Department of General Services approval, it could be argued that supervision of the program has been partially diverted from the Department in violation of the “sole state agency” requirement of 42 U.S.C. section 3025.

and evening elementary schools of the state, (b) services, whether or not the same involve the furnishing or use of equipment, materials or supplies or are performed by an independent contractor, (c) the construction, alteration, improvement, repair or maintenance of property, real or personal or (d) the performance of work or services by such state agency for or in cooperation with any person, or public body, are of no effect unless and until approved by the Department of General Services. Every such contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of such approval. This section shall apply to any state agency which by general or specific statute is expressly or impliedly authorized to enter into transactions referred to herein. This section shall not apply to any contract let by a department under the State Contract Act or the State College Contract Law, nor to any contract of a type specifically mentioned and authorized to be entered into by the Department of Transportation under the Streets and Highways Code, nor any contract entered into by the Department of Transportation which is not funded by money derived by state tax sources but, rather, is funded by money derived from federal or local tax sources, nor to any contract let by the Legislature, nor to any contract entered into under the authority of Chapter 4 (commencing with Section 11770) of Part 3 of Division 2 of the Insurance Code."

It is a familiar rule of statutory interpretation that the enumeration of acts, things or persons as coming within the operation or exception of a statute will preclude the inclusion by implication of other acts, things or persons. (*Collins v. City & Co. of S.F.* (1952) 12 Cal. App. 2d 719, 731; *In re Ramirez* (1942) 49 Cal. App. 2d 709, 712.) Therefore, if the grant award documents do, taken together, constitute a contract, Government Code section 14780 can only apply thereto if the documents are contracts falling within one of the four categories specified in parts (a) to (d) of that section.

Subdivisions (a) and (c) of Government Code section 14780 appear to be inapplicable, since the granting of monetary assistance to an entity, individual or group would not appear to (1) be for the procurement of equipment, supplies or materials (subdiv. (a), or to (2) fall within the ambit of contracting for the construction of, or other matters relating to, real or personal property (subdiv. (c)). However, it is believed that subdivision (b), relating to "services," and subdivision (d), relating to the joint performance of work or services between the Department and the grantee warrant some discussion.

Welfare and Institutions Code section 9306 sets forth the duties and powers of the Department of Aging as follows:

“The duties and powers of the department shall be to:

“(a) Provide for the coordination of programs and activities related to the purposes of this division;

“(b) Coordinate and assist in the planning and development by public and nonprofit private agencies of programs for older persons, with a view to establishing a statewide network of comprehensive, coordinated services and opportunities for such persons;

“(c) Provide technical assistance and consultation to state and local public agencies, voluntary organizations, churches, industry, labor and other interested persons and organizations with respect to programs for the aging;

“(d) Prepare, publish and disseminate materials dealing with the well-being of older persons;

“(e) Conduct and arrange for research, gather statistics, hold hearings on and in other ways study all aspects of the problems of aging in order to accomplish the purposes of this division;

“(f) Serve as a clearinghouse for information and all aspects of aging—such information to be made available to all interested persons and organizations;

“(g) Administer programs and activities as directed by law; and

“(h) Take other actions necessary to accomplish the objectives and purposes of this division.”

Being mindful of these guidelines, we are unable to conclude that the Department contracts” for the purpose of rendering services to or receiving services from another party. The Department receives no direct benefit in the form of services. It only provides guidance and administrative assistance. Similarly, the grants are not made to the grantee to carry out any statutory duty of the Department; and, therefore, there is no contract with the grantee for services which the Department must itself perform.

Subdivision (d) of Government Code section 14780 relates to contracts entered into by a state agency for the performance of work or services by such agency *in cooperation with* others. While the Department may grant funds for the performance of tasks (Welf. & Inst. Code, § 9300 *et seq.*), it is clear that such tasks, or grant projects, are carried out by

the grantee, not the Department. The work or services are provided by the grantee.

It is believed that the foregoing discussion points out a distinction between "procurement" contracts by the state and "assistance" to others through grants. The former fall within the purview of and are covered by Government Code section 14780, the latter do not. In no instance to our knowledge is there any bargained for exchange to constitute consideration to transmute the Department grant documents into "contracts." The Department receives nothing in disbursing the funds to the grantee. The grants are made to further the purposes of the grantee not the Department. Accordingly, it is concluded that the grant award documents used by the Department in disbursing federal grant funds to entities as grantees do not come within any of the four types of contracts described in subdivisions (a) through (d) of Government Code section 14780. Therefore, there is no requirement that such documents be submitted to the Department of General Services for approval.
