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| OPINION                 | : | No. 80-117            |
|                         | : |                       |
| of                      | : | <u>April 25, 1980</u> |
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SUBJECT: ALCOHOLISM TREATMENT FACILITY—A facility for the treatment of alcoholism may be constitutionally included in the state-guaranteed loan program authorized by Article XVI, section 4 of the California Constitution if such facility is also a “hospital, hospital facility, or extended care facility, facility for the treatment of mental illness,” or “any outpatient facility or other facility useful or convenient in the operation of the hospital” within the meaning of Article XVI, section 4 of the California Constitution.

The Honorable Gary K. Hart, Assemblyman, Thirty-Fifth District, has requested an opinion on the following question:

May a facility for the treatment of alcoholism be constitutionally included in the state-guaranteed loan program authorized by Article XVI, section 4 of the California Constitution?

## CONCLUSION

A facility for the treatment of alcoholism may be constitutionally included in the state-guaranteed loan program authorized by Article XVI, section 4 of the California Constitution if such facility is also a “hospital, hospital facility, or extended care facility, facility for the treatment of mental illness, any outpatient facility or other facility useful or convenient in the operation of the hospital” within the meaning of Article XVI, section 4 of the California Constitution.

## ANALYSIS

Article XVI, section 4, of the California Constitution provides:

“The Legislature shall have the power to insure or guarantee loans made by private or public lenders to nonprofit corporations and public agencies, the proceeds of which are to be used for the construction, expansion, enlargement, improvement, renovation, or repair of any public or nonprofit hospital, hospital facility, or extended care facility, facility for the treatment of mental illness, or all of them, including any outpatient facility and any other facility useful and convenient in the operation of the hospital and any original equipment for any such hospital or facility, or both.

“No provision of this Constitution, including but not limited to, Section 1 of Article XVI and Section 14 of Article XI, shall be construed as a limitation upon the authority granted to the Legislature by this section.”

This provision was added to the California Constitution by vote of the people at the November 5, 1968, General Election as section 21.5 of Article XIII thereof. It was transferred to Article XVI at the November 5, 1974, General Election.

Generally, the purpose of this provision was to insure ‘that California [could] continue to build necessary community hospitals, clinics, tuberculosis hospitals, and facilities for the mentally ill and retarded, assisted by the [federal] Hill-Harris Health Facilities Construction Program” which California had participated in for twenty years through the receipt of federal grants and the provision of state matching funds to public entitles and nonprofit corporations.<sup>1</sup> At this juncture in time (1968), however, it had

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<sup>1</sup> The federal law referred to is set forth in section 430.2 of the Health and Safety Code, found in the “California Hospital Survey and Construction Act.” That Act was originally enacted in 1947 (Stats. 1947, ch. 327) to provide for state participation in the federal grant program for construction of health facilities. Section 430.2, as amended, provides:

“become more difficult to provide the state share” and therefore, under the constitutional authorization “[i]nstead of outright grants of money, the State would help necessary hospital projects by providing mortgage insurance to improve the ability of sponsoring organizations to borrow more money for longer periods at lower interest rates without fear of state constitutional strictures. (See Arguments To The Voters, General Election, November 5, 1968, pp. 11–12.)<sup>2</sup> The question presented is whether alcoholism services and facilities may be constitutionally included within the state-guaranteed loan program authorized by Article XVI, section 4, of the California Constitution.

The request for our opinion on this question indicates two main concerns of the requester. The requester first notes that in 1975 alcoholism services were completely removed from the Short-Doyle Act (Health & Safety Code § 5600 *et seq.*) and that act’s system for providing community mental health services. In lieu thereof, new statutory provisions, patterned on the Short-Doyle Act, were enacted providing for a separate and distinct system for the prevention and treatment of alcoholism at the community level. (Prior Welf. & Inst. Code §§ 19900–19973. See now, Health & Safety Code § 11795 *et seq.*) The requester additionally notes that in 1979 this office issued an opinion in which we concluded that the Board of Vocational Nurse and Psychiatric Technician Examiners does not have the authority to require alcoholism counselors to be licensed as psychiatric technicians. In so concluding, we determined that an individual suffering from alcoholism was not “mentally ill” within the meaning of the Psychiatric Technicians Law (Bus. & Prof. Code section 4500 *et seq.*) which provides for the licensing as psychiatric technicians of individuals who care for “mentally ill, emotionally disturbed, or mentally retarded persons.” The requester’s concern is whether either or both of these occurrences now precludes the use of the state-guaranteed loan program to establish facilities for the treatment of alcoholism. The concern arises because Article XVI, section 4, specifically

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“‘The federal act’ includes Public Law 725 of the 79th Congress, approved August 13, 1946, entitled the Hospital Survey and Construction Act, as amended by Public Law 482 of the 83d Congress, approved July 12, 1954, entitled the Medical Facilities Survey and Construction Act of 1954, Public Law 88–164 of the 88th Congress, approved October 31, 1963, entitled Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, and any other law now enacted by Congress concerning hospitals as defined in this article.”

In 1952, then Article IV, section 22 of the California Constitution (see now Art. XVI sec. 3(1)) was amended to insure the state’s ability to match federal grant money for nonprofit corporations despite that section’s prohibition against “gifts of public funds.” (See Ballot Pamphlet, General Election, November 4, 1952, pp. 2 1–22.)

<sup>2</sup> The specific constitutional limitations set forth in the amendment were the so-called “debt limitation” provisions of the California Constitution, then Article XVI, section 1 (state) and Article XI, section 18 (cities and counties).

mentions a “facility for the treatment of mental illness” but does not specifically mention a facility for the treatment of alcoholism. If alcoholism is not considered to be a mental illness, the requester raises the possibility that facilities for its treatment are not included within the constitutional authorization.

Initially, we again note that in 62 Ops. Cal. Atty. Gen. 21, *supra*, we only concluded that alcoholism was not a “mental illness” *for purposes of the Psychiatric Technicians Law* based upon its statutory history. We specifically declined to enter the controversy as to whether alcoholism is a disease (the current position of the American Medical Association) or a “mental disturbance” as defined and set forth in the Diagnostic and Statistical Manual of Mental Disorders (2nd Ed. 1968) of the American Psychiatric Association (“DSM-II”). We stated that our analysis, predicated upon the statutory history of the law we were construing “obviate[d] any necessity to discuss or rely upon an analysis of the various definitions of ‘alcoholism,’ or the controversy over its cause, nature and proper treatment.” (62 Ops. Cal. Atty. Gen. 21, 31, *supra*.)

Secondly, with respect to Article XVI, section 4, and its intended scope, we note again that it was adopted to permit California’s continued participation in federal grant programs for construction of health facilities. In furtherance of that end Article XVI, section 4 includes not only a “facility for the treatment of mental illness,” but also any public or nonprofit (1) hospital, (2) hospital facility, (3) extended care facility, including, (4) any outpatient facility, and (5) any other facility useful and convenient in the operation of the hospital.<sup>3</sup> Suffice it to say that its scope is exceedingly broad with respect to the health facilities which may qualify for state-guaranteed loans.

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<sup>3</sup> Our research has disclosed no California law which defines the precise term “extended care facility.” The Legislative Counsel, in his Opinion No. 17288, dated January 18, 1980, explains the term as follows:

“We are informed by the agency administering federal funds for guaranteed loans, the Department of Health and Welfare, that in 1968 the term “extended care facility” for purposes of the Federal Hospital Survey and Construction Act, had, and still has, the meaning given by regulation under the Medicare Program. Under this regulation, ‘extended care services’ which would be provided by an ‘extended care facility’ means the following items and services furnished by a qualified skilled nursing facility (with specified exceptions) to an inpatient of such facility: registered professional nurse; bed and board in connection with the furnishing of such nursing care; physical, occupational, or speech therapy; medical social services; drugs, biologicals, supplies, appliances, and equipment; medical services provided by an intern or resident-in-training; diagnostic or therapeutic services; and such other services necessary to the health of the patient as are generally provided by skilled nursing facilities (42 C.F.R. 405.125).”

That this is the case is confirmed by the legislation which was enacted in 1969 to implement the provisions of then Article XIII, section 21.5, now Article XVI, section 4. That legislation was, and is, the “California Health Facility Construction Loan Insurance Law” (Health and Safety Code section 436 *et seq.*, added by Stats. 1969, ch. 970). In that law, the Legislature, instead of separately defining each of the terms set forth in the constitutional provision, set forth a collective definition of the terms used in Article XIII, section 21.5, aggregating them all under the term “health facility.” Thus, section 436.2 subdivision (h), as enacted in 1969, and which clearly constituted the Legislature’s contemporaneous construction of Article XIII, section 21.5, provided:<sup>4</sup>

(h) ‘Health facility’ means any facility providing or designed to provide services for the acute, convalescent, and chronically ill and impaired, including but not limited to public health centers, community mental health centers, facilities for the mentally retarded, and general, tuberculosis, mental, and other types of hospitals and related facilities, such as laboratories, outpatient departments, extended care, nurses’ home and training facilities, offices and central service facilities operated in connection with hospitals, diagnostic or treatment centers, extended care facilities, nursing homes, and rehabilitation facilities. *Except for facilities for the mentally retarded, ‘health facility’ does not include any institution furnishing primarily domiciliary care.* (Emphasis added.)

It is seen that under the foregoing and virtually all encompassing definition of the term “health facility” it is immaterial whether alcoholism is considered to be a mental illness, or is considered to be a physical illness or disease. A facility for the treatment of alcoholism could be encompassed in the definition of “health facility,” which includes “any

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<sup>4</sup> See now Health and Safety Code section 436.2, subdivision (g).

“(g) ‘Health facility’ means any facility providing or designed to provide services for the acute, convalescent, and chronically ill and impaired, including but not limited to public health centers, community mental health centers, facilities for the developmentally disabled, nonprofit community care facilities that provide care, habilitation, rehabilitation or treatment to developmentally disabled persons, and general tuberculosis, mental, and other types of hospitals and related facilities, such as laboratories, outpatient departments, extended care, nurses’ home and training facilities, offices and central service facilities operated in connection with hospitals, diagnostic treatment centers, extended care facilities, nursing homes, and rehabilitation facilities. *Except for facilities for the developmentally disabled, ‘health facilities’ does not include any institution furnishing primarily domiciliary care.*” (Emphasis added.)

“Unless the context dictates otherwise, ‘health facility’ includes a political subdivision of the state or nonprofit corporation which operates a facility included within the definition set forth in this subdivision.”

facility providing or designed to provide services for the acute, convalescent, and chronically *ill and impaired*, including *but not limited to*” the enumerated facilities, except those which provide primarily domiciliary care (other than to the developmentally disabled). (Emphasis added.)

With respect to the construction of another provision of the Health Facility Construction Loan Insurance Law, the Court, in upholding the legislative construction of Article XIII, section 21.5, now Article XVI section 4, stated:

“(6) This approach [i.e., rejection of the legislative interpretation] overlooks still another settled principle of construction, i.e., the strong presumption in favor of the Legislature’s interpretation of a provision of the Constitution. That presumption has been phrased differently over the years, but its import remains clear. Thus, in *San Francisco v. Industrial Acc. Comm.* (1920) 183 Cal. 273, 279 [191 P. 26], the court held that ‘where a constitutional provision may well have either of two meanings, it is a fundamental rule of constitutional construction that, if the Legislature has by statute adopted one, its action in this respect is well nigh, if not completely, controlling. When the Legislature has once construed the constitution, for the courts then to place a different construction upon it means that they must declare void the action of the Legislature. It is no small matter for one branch of the government to annul the formal exercise by another and coordinate branch of power committed to the latter, and the courts should not and must not annul, as contrary to the constitution, a statute passed by the Legislature, unless it can be said of the statute that is positively and certainly is opposed to the constitution. This is elementary. But plainly this cannot be said of a statute which merely adopts one of two reasonable and possible constructions of the constitution.’

“In *Pacific Indemnity Co. v. Indus. Acc. Com.* (1932) Cal. 461, 464 [11 P. 2d 1, 82 A.L.R. 1170], the same reasoning led us to the statement that ‘For the purpose of determining constitutionality, we cannot construe a section of the Constitution as if it were a statute, and adopt our own interpretation without regard to the legislative construction. Where more than one reasonable meaning exists, it is our duty to accept that chosen by the Legislature.’ (Accord, *Lundberg v. County of Alameda* (1956) 46 Cal. 2d 644, 652 [298 P. 2d 1].) Again, in *Delaney v. Lowrey* (1944) 25 Cal. 2d 561, 569 [154 P. 2d 674], we referred to the presumption of constitutionality and the rule of strict construction of constitutional limitations on the Legislature, and concluded, ‘Those principles indicate the latitude and effect to be given a legislative construction or interpretation of the Construction. When the

Constitution has a doubtful or obscure meaning or is capable of various interpretations, the construction placed thereon by the Legislature is of very persuasive significance.’ The rule, moreover, remains viable today. . . .”

(*Methodist Hosp. of Sacramento v. Saylor* (1971) 5 Cal. 3d 685, 692–693; See also, e.g., *Board of Supervisors v. Lonergan* (1980) 100 Cal. App. 3d 841, 848.)

Insofar as the scope and breadth of Article XIII, section 21.5, now Article XVI, section 4, may be uncertain, the foregoing reasoning of the Supreme Court is applicable to the Legislature’s interpretation of the scope of “health facilities” which were intended to be included within the state-guaranteed loan program.<sup>5</sup>

One may engage in debate as to whether alcoholism is a “mental illness” or a disease. The fact remains, however, that in 1968 when Article XIII, section 21.5 was adopted by the people, alcoholism had been traditionally treated in state hospitals for the mentally ill. Also at that time, the treatment of alcoholism was also an integral part of the Short-Doyle Act’s community *mental health* program. It was not until 1975 that the Short-Doyle Act was amended to sever State community “alcoholism” programs from “Short Doyle.”<sup>6</sup> This, it would be logical to conclude that in 1968, when the voters adopted Article XIII, section 21.5, now Article XVI, section 4, they intended to continue to provide facilities for the treatment of alcoholism. Stated otherwise, it is immaterial whether alcoholism be considered to be a “mental illness” or a disease. The voters intended that

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<sup>5</sup> A somewhat similar analysis is possible through an examination of the various terms in Article XVI, section 4, including the term “hospital” as defined in the California Hospital Survey and Construction Act in 1968, the Act enacted originally in 1947 to permit state participation in the federal grant program. Section 430.4 of the Health and Safety Code provided at that time:

“‘Hospital’ includes hospitals for the chronically ill and impaired, public health centers, community mental health centers, facilities for the mentally retarded and general tuberculosis, mental and other types of hospitals and related facilities, such as laboratories, outpatient departments, nurses’ home and training facilities. and central service facilities operated in connection with hospitals, diagnostic or treatment centers, nursing homes, and rehabilitation facilities, *but except for facilities for the mentally retarded does not include any institution furnishing primarily domiciliary care.*” (Stats. 1964, 1st Ex. Sess., ch. 107, section 3, p. 372: Emphasis added.)

The definition in this act also discloses a broad perception of health facilities included within the federal grant program.

Additionally, the same result can be obtained by examining the scope of the federal laws themselves set forth in footnote 1, *supra*.

<sup>6</sup> For a detailed analysis of the treatment of alcoholics along with mentally ill persons until 1975, see 62 Ops. Cal. Atty. Gen. 21, *supra*.

facilities for the treatment of both be included in the state-guaranteed loan program. If it be considered a mental illness, then Article XVI, section 4 specifically provides for facilities for the mentally ill. If it be considered a disease then facilities for its treatment could be considered within the scope of any of the other facilities for treating physically ill individuals. Which ones would depend for the most part upon the locus of and the level of care to be accorded the alcoholism patients.<sup>7</sup>

That this is the case is supported by the current administrative practice with respect to the licensing of alcoholism treatment facilities. It is our understanding that presently an alcoholism treatment facility is either licensed by the Department of Health Services as a acute psychiatric hospital,<sup>8</sup> or by the Department of Social Services as a community care facility.<sup>9</sup>

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<sup>7</sup> See, e.g., Health and Safety Code section 1250, defining “health facilities,” that is, “general acute care hospital,” “acute psychiatric hospital,” “skilled nursing facility,” intermediate care facility,” “special hospital,” and “general acute/rehabilitation hospital.” See also, generally, California Administrative Code, Title 22, Division 5, “Licensing and Certification of Health Facilities and Referral Agencies.”

<sup>8</sup> We note that by an administrative regulation (Cal. Admin. Code, tit. 22, § 71005) it is provided that this type of hospital may provide treatment for patients referred to in Division 5 (commencing with section 5000) of the Welfare and Institutions Code, the “Lanterman-Petris-Short Act,” which would include alcoholics (see, e.g., Welf. & Inst. Code § 5008(h) (2) (iii)). Accordingly, treatment of alcoholics in an acute psychiatric hospital does not give rise to the inference that alcoholics must be considered to be mentally ill or mentally disordered.

<sup>9</sup> With respect to community care facilities, see Health and Safety Code sections 1500 *et seq.* As material herein. section 1502 provides:

“As used in this chapter:

(a) ‘Community care facility’ means any facility, place, or building which is maintained and operated to provide *nonmedical* residential care, day care, or homefinding agency services for children, adults, or children and adults, including, but not limited to, the physically handicapped, mentally impaired, or incompetent persons, and includes the following:

(1) ‘Residential facility’ which means any family home, group care facility, or similar facility determined by the director, for 24-hour *nonmedical care* of persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual.

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(3) ‘Day care center’ which means any facility which provides nonmedical care to persons in need of personal services, supervision, or assistance essential for sustaining the activities of daily living or for the protection of the individual on less than a 24-hour basis. . . .” (Emphasis added.)

Which licensing provisions are applied depends upon whether the treatment facility is to follow the “medical model” or the “social model” for treating alcoholism, respectively. The “medical model” treatment facility would fall within the scope of the provisions of Article XVI, section 4 as a hospital for the treatment of the chronically ill, or the mentally ill, depending upon one’s perception of the meaning of alcoholism. However, the “social model” treatment facility would appear to be excluded from the preview of the constitutional provision as “an institution furnishing primarily domiciliary care.” (See Health & Safety Code § 436.2, *supra*.)<sup>10</sup>

In summary, facilities for the treatment of alcoholism may be constitutionally included in the state-guaranteed loan program authorized by Article XVI, section 4 of the California Constitution if such facilities are also a “hospital, hospital facility, or extended care facility, facility for the treatment of mental illness, or any outpatient facility or other facility useful or convenient in the operation of the hospital” within the meaning of the constitutional provision, as implemented by Health and Safety Code section 436.2, subdivision (g). Excluded therefrom would be the type of treatment facility which presently is licensed as a community care facility, and which provides primarily domiciliary care in a nonmedical setting.

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<sup>10</sup> Interestingly, section 1507 of the Health and Safety Code provides:

“A community care facility may provide incidental medical services. If such medical services constitute a substantial component of the services provided by the community care facility as defined by the director in regulations, such component shall be required to obtain approval as provided by Chapter 1 (commencing with Section 1200) or Chapter 2 (commencing with Section 1250).”

“Approval” as used in this section appears to mean “licensing” as either a clinic or a health facility by the Department of Health Services. In short, if a community care facility desires to provide substantial medical services, it must be licensed to do so.