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OPINION	:	No. 80-307
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of	:	<u>May 22, 1980</u>
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SUBJECT: CALIFORNIA TRANSPORTATION COMMISSION—The California Transportation Commission is required to follow San Diego federal aid urban project priorities established by the San Diego Metropolitan Transit Development Board, when allocating federal funds to such projects.

The Honorable Jim Ellis, Assemblyman, 77th District, has requested an opinion on the following question:

Is the California Transportation Commission required to approve San Diego federal aid urban project priorities if they are approved by the San Diego Metropolitan Transit Development Board?

CONCLUSION

The California Transportation Commission is required to follow San Diego federal aid urban project priorities established by the San Diego Metropolitan Transit Development Board, when allocating federal funds to such projects.

ANALYSIS

The California Transportation Commission (“Commission”) formulates and evaluates “state policies and plans for transportation programs in the state” (Gov. Code § 14520) and allocates “funds for transportation projects consistent with the Budget Act” that are “included in its adopted state transportation improvements program.” (Gov. Code § 14533.)

The Commission’s responsibilities also include activities that implement federal law. The question presented for analysis concerns whether the Commission, in carrying out federal and state law, must follow certain priorities established by local community officials in allocating funds provided under the Federal Aid Highway Act of 1970, as amended. We conclude that it must.

For the “federal-aid urban system,” the United States Secretary of Transportation apportions to each state an amount of federal funds in proportion to population. (23 U.S.C. § 104(b) (6).) This transportation system is defined generally as “high traffic volume arterial and collector routes” “so located as to serve the major centers of activity” in each state’s “urbanized area.” (23 U.S.C. § 103 (d) (1).)

To obtain the funds, the highway department of a state must submit a program of proposed “projects” for approval. (23 U.S.C. § 105 (a).) A project is an undertaking to construct a particular portion of a highway.” (23 U.S.C. § 101 (a).) Approval is given for such projects that are “selected by the local officials with the concurrence of the state highway department of each state and, in urbanized areas, also in accordance with the planning process required pursuant to section 134 of this title.” (23 U.S.C. § 105 (d).)

The required “planning process” in urbanized areas involves cooperation between a state and its local communities in developing programs “which are formulated on the basis of transportation needs with due consideration to comprehensive long-range land use plans, development objectives, and overall social, economic, environmental, system performance, and energy conservation goals and objectives.” (23 U.S.C. § 134(a).)

In the question presented, the area under consideration is the metropolitan region of San Diego under the jurisdiction of the San Diego Metropolitan Transit Development Board (“Board”). While the Board would be included in the term “local officials” for purposes of the federal statutory scheme, we note the additional requirement that the California Department of Transportation (“Department”), as the “state highway department,” must give its “concurrence” in the selection process. (23 U.S.C. § 134(a).)

Assuming that the Department concurs in the selection process, we must consider whether the Commission is required to follow a particular priority system established by the local officials in allocating the federal funds to the various selected projects. Federal law leaves the matter unresolved. (See *Jackson Sawmill Co., Inc. v. United States* (E.D. Mo. 1977) 428 F. Supp. 555, 558.) California law, however, is specific as to the responsibilities and duties of the Commission in carrying out the federal law.

The controlling statute is Streets and Highways Code section 2358, which provides:

“Funds apportioned to this state pursuant to subsection (b) (6) of Section 104 of Title 23 of the United States Code for federal urban system projects shall be allocated by the Commission. Projects eligible for allocation include fringe parking projects, state highway projects, local street and highway projects, and public mass transit projects. The commission shall review the long-range planning programs for the urban system, and shall review each annual program for conformance with the long-range programs.

For a project located within the area under the jurisdiction of the San Diego Metropolitan Transit Development Board created by Section 120050 of the Public Utilities Code, the commission shall conform to the priority established for that project by the transit development board pursuant to Section 120354 of the Public Utilities Code.” (Emphasis added.)¹

Public Utilities Code section 120354 states in turn:

“With respect to the financing of projects from funds allocated by the California Highway Commission pursuant to Section 2358 of the Streets and Highways Code, the board, in cooperation with the cities under its jurisdiction and the Department of Transportation, shall establish the priority

¹ California Constitution, article IV, section 16, subdivision (b) provides, “A local or special statute is invalid in any case if a general statute can be made applicable.” This constitutional prohibition against special legislation is inapplicable, however, where reasonable grounds exist for a local law. As was stated by the Supreme Court in *Rainey v. Michel* (1936) 6 Cal. 2d 259, 270, “an act of the Legislature applicable to one class only, when that class is reasonably the subject of classification, is a general law.” Here, the second paragraph of Streets and Highways Code section 2358 applies to all projects within the Board’s jurisdiction and carries out a valid purpose of having a measure of local control over the funding of federal urban system projects. (See *People v. Sacramento Drainage Dist.* (1909) 155 Cal. 373, 382; *Hertz v. County of Sacramento* (1978) 87 Cal. App. 3d 754, 758–759; *South Santa Clara Valley Water Conservation Dist. v. Santa Clara Valley Water Dist.* (1978) 76 Cal. App. 3d 852, 857–859.)

for the financing of such projects in the area under its jurisdiction.”

Accordingly, the Commission must follow the project financing priorities established by the Board in cooperation with the cities under its jurisdiction and the Department, when the Commission allocates federal funds for a federal-aid urban system project located within the area under the Board’s jurisdiction.

Finally, we note that the selection and priority setting procedures of the federal and state statutory schemes are subject to the requirement of Government Code section 14533 that the projects be specified in the state transportation improvements program. Without such inclusion, no allocation may be made by the Commission under the statute.

Our general conclusion to the question presented, therefore, is that the Commission is required to follow San Diego federal aid urban project priorities established by the Board, when allocating federal funds to such projects.
