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OPINION	:	No. 80-321
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SUBJECT: BUDGET OF THE BOARD OF DENTAL EXAMINERS—This opinion deals with the legal steps necessary for the Board of Dental Examiners to expend the State Dentistry Fund and the State Auxiliary Fund and the authority that the Director of the Department of Finance, the Secretary of State and Consumer Services, and the Director of the Department of Consumer Affairs have over the budget of the Board of Dental Examiners.

The Board of Dental Examiners of the State of California, has requested an opinion on the following questions:

1. What legal steps are necessary for the Board of Dental Examiners to expend the State Dentistry Fund and the State Dental Auxiliary Fund?
2. What authority does the Director of the Department of Finance, the Secretary of State and Consumer Services, and the Director of the Department of Consumer Affairs have over the budget of the Board of Dental Examiners?

CONCLUSIONS

1. The legal steps necessary for the Board of Dental Examiners to expend the monies in the funds within its charge are, first to see that sufficient authorization for the desired expenditure has been obtained in the Budget Act, and second, on so doing, to have the Controller draw warrants for the expenditure upon the appropriate fund in the State Treasury.

2. The authority of the Director of Finance Consists of his initial approval, his continual monitoring (auditing), and his potential revision, alteration or modification of the budget of the Board of Dental Examiners, and his ability to authorize deficiency spending over and above its limits. The Secretary of State and Consumer Services has legal authority to approve the budget of the Department of Consumer Affairs and to the limited extent that the budget of that Department would affect the Board of Dental Examiners, he would thereby have an effect on its budget as well. To the limited extent that the Director of Consumer Affairs' role in superintending the Department of Consumer Affairs in making its budgetary needs known for its overall programs touches the Board of Dental Examiners, he would have an effect on their budget, but otherwise he has no authority over the specific budget of the Board of Dental Examiners. Neither the Secretary of State and Consumer Services nor the Director of Consumer Affairs has the legal authority to approve the specific budget of the Board of Dental Examiners; that authority is vested in the Department of Finance.

ANALYSIS

Administration of the California Dental Practice Act (Bus. & Prof. Code, div. 2, ch. 4, § 1600 *et seq.*) is vested in the Board of Dental Examiners (hereinafter “the Dental Board”). (§ 1601.)¹ As a board within the Department of Consumer Affairs (§ 101(a)), it has the functions of “setting standards, holding meetings, and setting dates thereof, preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction, issuing citations and holding hearings for the revocation of licenses, and the imposing of penalties following such hearings, in so far as these powers are given by statute” (§ 108.)

Section 1720 requires the Secretary of the Dental Board to pay to the State Treasury and report to the State Controller “all fines, penalties and forfeitures received for violation of [the Dental Practice Act], together with all examination fees, renewal and license fees

¹ Preliminary statutory references are to the Business and Professions Code unless otherwise stated.

received by him. . . .”² The Treasurer is charged with keeping account of all money received (Gov. Code, § 12326), and the Controller with keeping and stating all accounts in which the state is interested with a separate account being kept under else head of each specific appropriation (Gov. Code, § 12412). All funds received by the Treasurer from the Dental Board except those funds which relate to dental auxiliaries, must be placed in the State Dentistry Fund (§ 1721), which is a special fund kept in a separate account in the Professions and Vocations Fund in the State Treasury (§ 205). All disbursements by the Dental Board made in the transaction of its business and in the enforcement of the Dental Practice Act (with the exception of the laws relating to dental auxiliaries) must be paid out of the State Dentistry Fund. (§ 1721; *cf.* Gov. Code, § 17000.)

As part of the Dental Practice Act, the Dental Board is also charged with administering the relatively new law dealing with dental auxiliaries. (Stats. 1974, ch. 128, p. 257, § 3, enacting Bus. & Prof. Code §§ 1740–1767, art. 7, ch. 2, div. 2; see 63 Ops. Cal. Atty. Gen. 465 (1980).) All funds received by the State Treasurer from the Dental Board which relate to dental auxiliaries must be placed in the State Dental Auxiliary Fund. (§§ 1721.5, 1725(i).) That fund is continuously appropriated for the purposes of administering the portions of the Dental Practice Act which relate to dental auxiliaries. (§ 1721.5.)

The Dental Board has informed us that “past [State] budgets have created a surplus of funds [for them] in excess of approximately 1.1 million dollars which cannot be expended for any purpose.” The Dental Board would like to expend these funds on various programs but it has been prevented from doing so through the budgetary process. Accordingly the Dental Board has asked our opinion on several questions which deal with the constraints imposed by that process upon a Board which operates on funds entirely derived from its licensees.

1. What Are the Legal Steps Necessary For The Board of Dental Examiners to Expend the State Dentistry Fund and the State Dental Auxiliary Fund?

As noted in our prefatory remarks, the State Dentistry Fund is a special fund kept in a separate account in the Professions and Vocations Fund in the State Treasury (§ 205), whence all disbursements by the Dental Board for its operations come, except those relating to dental auxiliaries. (§ 1721.) Disbursements relating to dental auxiliaries come from the State Dental Auxiliary Fund (§§ 1721.5, 1725(i)) which is continuously appropriated for that purpose. (§ 1721.5.) Each of the funds is self-sustaining.

² The limitations upon the fees set by the Board are found at sections 1724, 1724.5, 1725(a-h), and 163.5.

For monies for Dental Board operations to be taken from the State Dentistry Fund or the Dental Auxiliary Fund, a claim must be presented to the State Controller (Gov. Code, § 925.4)³—who superintends the fiscal affairs of the state (§ 12410) and keeps and states all accounts (§ 12412; *cf. Board of Osteopathic Examiners v. Riley* (1923) 192 Cal. 158, 162; Gov. Code § 17000)—for his drawing a warrant upon the appropriate fund kept in the State Treasury. (Cal. Const., art. XVI, § 7.) Before such a warrant may be drawn, the Controller must audit the claim “in conformity with law and the general rules and regulations adopted by the board [of Control, § 925]. . . .” (§ 925.6; *cf. § 12410*.)⁴ If a claim is approved, the Controller must draw his warrant for the amount approved in favor of the claimant (§ 925.8): if it is not, he must file it and a statement of his disapproval with the Board of Control (§ 926) to whom the claimant may appeal (§ 926.4). Should that appeal be successful the Controller must reconsider his rejection of the claim (*ibid.*) and after a final rejection of the claim following reconsideration, appeal is had to the Legislature itself (§ 926.6). The Treasurer—who receives, keeps and accounts for all state money (§§ 12320–12328)—must pay warrants drawn by the Controller, except those cancelled pursuant to law. (§ 12324.) There are, however, constitutional and statutory restrictions on the Controller’s drawing warrants for any expenditure of funds.

Article XVI, section 7 of the California Constitution provides that “Money may be drawn from the Treasury only through an *appropriation made by law* and upon a Controller’s duly drawn warrant.” Section 925.4 of the Government Code provides: “Any person having a claim against the State *for which appropriations have been made*, or for which state funds are available, may present it to the Controller in the form and manner prescribed by the general rules and regulations adopted by the board for the presentation and audit of claims.” With similar restriction, section 12440 of the Government Code provides that “[t]he Controller shall draw warrants on the Treasurer for the payment of money directed by law to be paid out of the treasury; but a warrant shall not be drawn unless authorized by law, and unless unexhausted specific appropriations provided by law are available to meet it.” Thus, “[u]nder [these] provisions . . . the authority and duty of the Controller . . . to draw warrants upon the Treasurer is in the first instance limited to those cases in which he is authorized by some law to do so, and in which the law has also provided a specific appropriation for its payment.” (*Stratton v. Green* (1872) 45 Cal. 149, 151; accord *Raymond v. Christian* (1937) 24 Cal. App. 2d 92, 110, 113.)

In 56 Ops. Cal. Atty. Gen. 143 (1973) we had occasion to discuss the nature and form an appropriation must take. We said:

³ All statutory references are now to the Government Code unless otherwise stated.

⁴ Sections 13920 and 13921 direct the Board of Control to adopt and distribute general rules and regulations governing the presentation of claims against the state. They are found in title 2 of the California Administrative Code, division 2, section 600 *et seq.*

“To constitute an appropriation there must be certainty of purpose and of the treasury fund from which expenditures are to be made. *Ingram v. Colgan*, 106 Cal. 113 (1895); *Ryan v. Riley*, 65 Cal. App. 181, 187 (1924). A general fund appropriation must designate a specific amount or a means by which it may be ascertained. *Redding v. Bell*, 4 Cal. 333 (1854); *Ingram v. Colgan*, *supra*, *Stratton v. Green*, 45 Cal. 149 (1872); *Humbert v. Dunn*, 84 Cal. 57 (1890); *Meyer v. Riley*, 2 Cal. 2d 39 (1934); *Riley v. Johnson*, 219 Cal. 513 (1933); *Riley v. Johnson*, 6 Cal. 2d 529 (1936). This requirement does not apply where appropriation is from a special fund although some type of permanent formula must exist. *Ryan v. Riley*, *supra*; *California Toll Bridge Authority v. Kelly*, 218 Cal. 7 (1933); *Gillum v. Johnson*, 7 Cal. 2d 744 (1936); *Fish & Game Comrs. v. Riley*, *supra*; *San Francisco v. Kuchel*, 32 Cal.2d 364 (1948).

“No particular form is required for an appropriation. In determining whether an appropriation has been made, the intention of the Legislature is to be ascertained from the entire statute. *Riley v. Johnson*, *supra*, 219 Cal. 513, 219 (1933); *San Francisco v. Kuchel*, *supra*; 12 Ops. Cal. Atty. Gen. 332 (1948); Ops. Cal. Atty. Gen. N.S. 2685 (1940).” (56 Ops. Cal. Atty. Gen. at pp. 146–147.)

Applying these legal guidelines we concluded that the establishment of the Duck Stamp account constituted a definitive self-executing continuing appropriation of the amounts therein so as to permit expenditures therefrom without further authorization—i.e., without provision therefore in the annual Budget Act. (*Id.* at p. 147; *cf.* pp. 146, 148.) We have no hesitancy in concluding that the State Dentistry Fund and the Dental Auxiliaries Fund similarly constitute appropriations such as to permit the Dental Board to have warrants drawn on either fund as appropriate without further authorization.

Certainly the Dental Auxiliary Fund meets this criterion. It has been continuously appropriated for the purpose of the Dental Board’s administration of those provisions of the State Dental Practice Act which relates to dental auxiliaries. (Bus. & Prof. Code, § 1721.5.)⁵ As we said in a recent opinion dealing with a similar situation presented by Business and Professions Code section 9221 which continuously appropriates fees and

⁵ Business and Professions Code section 1721.5 reads in full as follows:

“All funds received by the State Treasurer under the authority of this chapter which relate to dental auxiliaries shall be placed in the State Dental Auxiliary Fund, which fund is *continuously appropriated* for the purposes of administering this chapter as it relates to dental auxiliaries.” (Emphasis added.)

revenues in the Construction Inspectors Registration Fund to the Construction Instructors Registration Board for their administration of their statutory mandate:

“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).)” (63 Ops. Cal. Atty. Gen. 125, 126–127 (1980).)

Monies in the State Dentistry Fund however, have not been *specifically* continuously appropriated for administration of the Dental Practice Act. Nevertheless, by establishing that fund as a special fund (Pen. Code, § 205) and directing that all monies from Dental Board operations be placed in it, and all disbursements by the Dental Board in the transaction of its business and in the enforcement of the Dental Practice Act, be paid out of it (Bus. & Prof. Code, § 1721),⁶ the Legislature has, in effect, continuously appropriated monies in it for the Dental Board to administer the Dental Practice Act without further authorization to that end being necessary.

It “cannot be questioned” the State Dentistry Fund does constitute a valid appropriation of the monies held therein for the Dental Board’s administration of the Dental Practice Act. As the Supreme Court said in *California Toll Bridge Authority v. Kelly* (1933) 218 Cal. 7:

⁶ Business and Professions Code section 1721 reads in full as follows:

“Except as provided in Section 1721.5, all funds received by the State Treasurer under the authority of this chapter shall be placed in the State Dentistry Fund. Except as provided in Section 1721.5, all disbursements by the board made in the transactions of its business and in the enforcement of this chapter shall be paid out of the fund upon claims against the state.”

“It cannot be questioned that a statute making available a specific fund for a definite object constitutes a valid appropriation of such fund, and it is not even necessary that the amount thereof be fixed or specified. (*Ryan v. Riley*, 65 Cal. App. 181 [223 Pac. 1027]; *Gamble v. Velarde*, 36 N.M. 262 [13 Pac. (2d) 559].)” (218 Cal. at p. 14.)

Further, the appropriation of monies in a special fund is such that it is, *in effect*, of a continuous nature. In *Riley v. Forbes* (1924) 193 Cal. 740, the Supreme Court said that by establishing a special fund for the State Board of Accountancy—i.e., by its directing that the monies of that Board—“be collected and disbursed in a particular way for a particular purpose and not in accordance with the general statutes concerning the collection and disbursement of funds paid into the state treasury,”—

“it [could] reasonably be concluded that the legislature intended that such funds should be devoted to the support of the respondent board until otherwise specifically ordered by the law-making power. . . .” *Riley v. Forbes* (1924) 193 Cal. at p. 748.)

In *Board Etc., Commrs. v. Riley* (1924) 194 Cal. 37, the Court specifically deemed special funds to be continuous appropriations of the monies deposited therein, thus:

“. . . The effect of the foregoing decisions by this court upon the situation presented by the instant case is to establish as settled law the proposition that the statutes of 1909 and 1911 creating the special fund in the state treasury known and designated as the fish and game preservation fund, as well as the several later enactments providing the sources of its accretion and the purposes of its disbursement under the direction and approval of the Fish and Game Commission, *created and constituted both a continuing fund and a continuing appropriation of the moneys deposited therein pursuant to said enactments and that said special fund so created and so to be disbursed was not abrogated or otherwise affected by the provisions of the budget amendment or budget bill* either as originally enacted or as later modified by the action of the Governor above referred to, except in so far as the Governor’s said action carried into the budget law might be held to impose a limitation upon the amount of money available to the commission during the biennium provided for in said budget bill.” (*Board Etc., Commrs. v. Riley* (1924) 194 Cal. at pp. 42–43; emphasis added.)⁷

⁷ Accord *Ryan v. Riley* (1924) 65 Cal. App. 181, 188 (“. . . An appropriation may be made in different modes. *It may be made by an act setting apart and specifically appropriating the money derived from a particular source of revenue to a particular purpose.* Our swamp-land act is of this

In establishing the State Dentistry Fund therefore, the Legislature made a valid, and in effect, a continuous appropriation of the monies contained therein for expenditure by the Dental Board in administering the Dental Practice Act. In fulfilling that statutory mandate the Dental Board is thus entitled to have warrants drawn upon the State Dentistry Fund without the necessity of further authorization by additional appropriation in the Budget Act.

That observation, however, does not tell the whole story, and in the long run may prove to be only academic, for while the annual Budget Act may not affect the continued existence of a special fund (such as the State Dentistry Fund) or of a continuous appropriation (such as the Dental Auxiliary Fund) or convert them into general funds (*Riley v. Forbes*, *supra*, 193 Cal. at p. 744; *Railroad Commission v. Riley* (1923) 192 Cal. at pp. 58–59), still that Act *does* place a limitation on the amounts that may be expended by a board from those funds. As we have observed on several occasions:

“It 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 by such department by a provision for a continuing appropriation” (Ops. Cal. Atty. Gen. No. N.S. 2222 (December 23, 1939), quoted in 63 Ops. Cal. Atty. Gen. 125, 127 (1980); see also 56 Ops. Cal. Atty. Gen. 143, 146, fn 4.)

(*Accord Board Etc., Comms. v. Riley*, *supra*, 194 Cal. at p. 43 (special fund for Fish and Game Commission); *Railroad Commission v. Riley*, *supra*, 192 Cal. at pp. 57–58; *Jamme v. Riley* (1923) 192 Cal. 125, 129 (special fund for nurses education); *Riley v. Forbes*, *supra*, 193 Cal. at p. 749 (special fund for Board of Accountancy); *Cf. Western Shore Lumber Co. v. Riley* (1923) 192 Cal. 144, 147 (special fund for enlargement of California Redwood Park); *Riley v. Thompson* (1924) 193 Cal. 773, 781 (pilotage fees)).

Thus, the budgetary process, culminating in the annual Budget Act does limit or restrict the amount of monies available to the Board of Dental Examiners to expend from the State Dentistry Fund or the Dental Auxiliary Fund in fulfilling its statutory charge, despite the fact that the latter is specifically continuously appropriated toward that end, and the former a special fund similarly designated. Consequently it behooves the Dental Board

character. [¶] [¶] We think the statutes on the subject of swamp lands make an ample appropriation of the swamp land fund to the payment of legitimate claims against that fund. The auditor is authorized to draw his warrant, in a proper ease, upon these funds and no other or further appropriation is necessary than is found in the statutes above referred to.” (*Ryan v. Riley* (1924) 65 Cal. App. at p. 188, quoting *Ristine v. State* 20 Ind. 328 and *Lange v. Stover* 19 Ind. 175.)

to ensure “hat the Budget Act, which most assuredly will include its operation, will appropriate sufficient funds to the Board for its desired program operations. The Dental Board may not expend funds in excess of those allocated to it in the annual budget (e.g., *Board Etc., Commrs. v. Riley, supra*, 194 Cal. at p. 43; 63 Ops. Cal. Atty. Gen. 125, 127)⁸—without an authorized deficiency (§ 11006) or transfer of funds to it from the General Fund (§ 163523)—and if it has any unspent unencumbered funds equal or greater than its operating budget for the next two fiscal years, it must reduce its license and other fees during the following fiscal year in an amount which will reduce that surplus to that limit. (Bus. & Prof. Code, § 128.5; 59 Ops. Cal. Atty. Gen. 283, 292 (1976).)

Regarding the Dental Board’s budget, subdivision (e) of section 12 of article IV of the California Constitution provides that the Legislature may control the submission, approval, and enforcement of budgets of all state agencies.” In section 13320 of the Government Code the Legislature has directed that:

“Every State agency⁹ and court for which an appropriation has been made, shall submit to the department¹⁰ for approval,¹¹ a complete and detailed budget at such time and in such form as may be prescribed by the department, setting forth all proposed expenditures and estimated revenues for the ensuing fiscal year.”

Section 13321 requires those budgets to “show the allotments of appropriations of other funds available for the fiscal year by quarter or other period of time and by organization unit.” The Department of Finance is mandated to develop, issue and implement consistent and adequate guidelines for program budgets¹² to be utilized by the various agencies, that

⁸ In this regard we note that Government Code section 13324 provides that:

“Every person who incurs any expenditure in excess of the allotments or other provisions of the fiscal year budget as approved by the department or as subsequently changed by or with the approval of the department, is liable both personally and on his official bond for the amount of the excess expenditures.”

⁹ The Board of Dental Examiners is a state agency within the meaning of section 13320: section 11000 provides that as used in title 2 of the code (§§ 8000–22999) “state agency” includes every state office, officer, department, division, bureau, board, and commission.” (Emphasis added.) (See also Bus. & Prof. Code, §§ 22 and 101, subd. (a).)

¹⁰ *Viz*, the Department of Finance (§ 13001, providing that as used in part 3 of title 2 (§§ 13000–13881), “department” refers to the Department of Finance).

¹¹ Pursuant to section 13012 *approval* is deemed to have been given “only if given in writing by the director [of Finance], his deputy, or by some other officer or employee of the Department of Finance acting pursuant to writing authority of the Department.”

¹² “Program budget” is defined in section 13335 as follows:

are required to submit budgets to them. (§ 13335.) Those guidelines, which are found in the State Administrative Manual, (hereinafter SAM) section 6100 *et seq.*, are designed to:

“(a) Ensure program budgets that are reflective of an agency’s activities;

“(b) Divide programs into a consistent level of detail; and

“(c) Ensure that the program budgets are reflective of the costs which are Associated with their execution.” (§ 13335.)

The Department of Finance also monitors agency’s expenditures on a continual basis to ensure they are compatible and consistent with the agency’s budgetary allocations. Pursuant to section 13300, subdivision (a), the Department of Finance is charged with devising, installing and supervising a modern and complete accounting system for each agency so that “all revenues, expenditures, receipts, disbursements, resources, obligations, and property of the state be properly, accurately and systematically accounted for, and that there . . . be obtained accurate and comparable records. . . .” (§ 13300, subd. (a).) That accounting system is designed to be compatible with the budget coding system so as to permit a monthly comparison of budgeted expenditures, actual expenditures and encumbrances and obligations, and estimated revenue to actual revenue. (§ 13300, subd. (b).) Finally, the Department of Finance has the all important power to “revise, alter, or amend any fiscal year budget, if, in its opinion, revision, alteration or amendment is required in the interest of the state.” (§ 13322.) Should that take place, the Department of Finance is required to notify the agency. (*Ibid.*) In addition, pursuant to section 11006 the Director of Finance may, with the consent of the Governor, authorize the creation of deficiencies in the amount of \$25,000 or more “in any appropriation made by law in cases of actual necessity and shall authorize payment of deficiencies out of any money which may be appropriated for such purposes. (§ 11006.)¹³

“[A] ‘program budget’ is a budgetary presentation designed to display expenditures based on various goals or objectives. A program budget defines objectives and relates the proposed level of expenditure to meet that objective in the given budget year. A mayor objective may be divided into elements designed to meet the major objective and, in turn, these elements may be divided into components or tasks designed to complete a proposed work effort. Such program budgets shall reflect expenditures from all fund sources.”

See also, SAM §§ 6002–6003, 6012, 6106, 6108.2, and 6108.4.

¹³ Alternatively, section 16352 provides that when any special fund is exhausted and there is money in the General Fund not required to meet any demand which has or may accrue against it, the Governor may order the Controller to direct the transfer of such money on a temporary basis

From the foregoing we see, in answer to the first question, that the legal steps necessary for the Board of Dental Examiners to expend the monies in the funds within its charge, are first to see that sufficient authorization for their desired expenditure has been obtained in the Budget Act,¹⁴ and second, on so doing, to have the Controller draw warrants for the expenditure upon the appropriate fund in the State Treasury.¹⁵

2. What Authority Does the Director of the Department of Finance, the Secretary of State and Consumer Services, and the Director of the Department of Consumer Affairs Have Over the Budget of the Board of Dental Examiners?

A. The Director of Finance

The Director of Finance is an executive officer under whose control the Department of Finance is placed. (§ 13000.) He is appointed by and holds office at the pleasure of the Governor. (§ 13002.) Since the director “perform[s] all duties, exercise[s] all powers and jurisdiction, assume[s] and discharge[s] all responsibilities, and carr[ies] out and effect[s] all purposes vested by law in the department, except as otherwise provided by [the Government Code]” (§ 13004), his control over the Board’s budget is pervasive.

In order to “conserve the financial interests of the state, to prevent improvidence and to control the expenditure of state money by any of the several [state] departments” (*Ireland v. Riley* (1935) 11 Cal. App. 2d 70, 72; *State v. Brotherhood of Railway Trainmen* (1951) 37 Cal. 2d 412, 422; *Tren v. Kirkwood* (1954) 42 Cal. 2d 602, 609; *State Board of Education v. Letit* (1959) 52 Cal. 2d 441, 458–459), the Department of Finance “has been given general powers of supervision over all matters concerning the financial and business policies of the state. . . .” (§ 13070.) Toward that end as we have seen, not only has the Director of Finance the power to *initially approve* the budgets submitted by the various state agencies (§§ 13320, 13012) in a form and in the detail prescribed by the

to the special fund in need.

¹⁴ Ensuring that sufficient authorization for the Dental Board’s desired expenditures are obtained in the annual Budget Act, necessitates the Dental Board’s working of course with the Department of Finance who approves their budget. (Gov. Code, § 13320 *et seq.*; see also 56 Ops. Cal. Atty. Gen. 143, 149, *supra*.) We note, however, that since the ultimate authority for approving the Budget is the Legislature (Cal. Const., art. 4, §§ 10, 12) recourse may be had to that authority should the Dental Board’s desired expenditures not be satisfied by approved allocations from the Department of Finance. (Compare § 926.6.)

¹⁵ We have, of course, assumed that the preliminary “legal steps” necessary to the expenditure of those monies have been satisfied—.e.g., that the programs for which they are sought comport with law and the Board’s charge (*cf.* §§ 925.6, 12410).

Department (§ 13321), but the Department of Finance has both the ability to continually monitor the receipts and expenditures of those agencies to ensure consistency with their budgeted allocations through an accounting system (§§ 13330, 13305) and the authority to adjust those allocations throughout the year “in the interests of the state” (§ 13322) and to authorize the creation of deficiency spending (§ 11006). (*See generally*, 56 Ops. Cal. Atty. Gen. 143, 149, *supra*.) In addition the Department of Finance has powers: (a) to require verified financial and statistical reports from all state agencies (§ 13291); (b) to require special reports from them (§ 13292); to examine all their records, files, documents and financial affairs (§ 13293, *Cf.* §§ 13294–13296); and (c) to conduct, without previous notice, a semiannual count of the money in the State Treasury (§§ 13297–13299).

The authority of the Director of Finance thus consists of his initial approval, his continual monitoring (auditing), and his potential revision, alteration or modification of the budget of the Board of Dental Examiners, and his ability to authorize deficiency spending over and above its limits.

B. The Secretary of State and Consumer Services

The Secretary of State and Consumer Services (hereinafter, the Agency Secretary) is an executive officer, appointed by and holding office at the pleasure of the Governor, who supervises the State and Consumer Services Agency. (§ 12801.) The State and Consumer Services Agency (formerly the Agriculture and Services Agency) is one of the four “super-agencies” of State government (§ 12800)¹⁶ and consists of seven components, one of which is the Department of Consumer Affairs. (§ 12804; *Cf.* Bus. & Prof. Code, § 100.)¹⁷ The Board of Dental Examiners as we have seen is a component of that Department (Bus. & Prof. Code, § 101).

The Agency Secretary has “the power of general supervision over, and is directly responsible to the Governor for, the operations of *each department, office, and unit within the Agency.*” (§ 12850.) He is the principal communication link for the effective transmission of policy problems and decisions between the Governor and each such “department, office, or unit” (§ 12850.2; SAM, § 6013) and exercises the authority vested in the Governor in respect to their functions. (§ 12850.4.)

Regarding fiscal concerns, section 12850.6 provides:

¹⁶ The other ‘super-agencies’ are the Business and Transportation Agency, the Health and Welfare Agency, and the Resources Agency (§ 12800).

¹⁷ The other components of the State and Consumer Services Agency are: the Department of Veterans Affairs, the Franchise Tax Board, the Public Employees Retirement System (PERS), the State Fire Marshal, and the State Teachers’ Retirement System. (§ 12804.)

“The secretary . . . shall be generally responsible for the sound fiscal management of each department, office, or other unit within his agency. *He shall review and approve the proposed budget of each such department, office, or other unit. He shall hold the head of each such department, office, or other unit responsible for management control over the administrative, fiscal, and program performance of his department, office, or other unit.* He shall review the operations and evaluate the performance at appropriate intervals of each such department, office, or other unit. He shall seek continually to improve the organization structure, the operating policies, and the management information systems of each such department, office, or other Unit.”

Section 12851 provides:

“[The] secretary shall develop and report to the Governor on legislative, budgetary, and administrative programs to accomplish comprehensive, long-range, coordinated planning and policy formulation in the matters of public interest related to his agency. To accomplish this end, the secretary may hold public hearings, consult with and use the services and cooperation of other state agencies, employ staff and consultants, and appoint advisory and technical committees to assist in the work.”

From the foregoing we see that the Agency Secretary is an important conduit through which the budgets of the “departments, offices or other units” of the Agency are formulated. He is responsible for the sound fiscal management of the departments, offices and units he supervises, and he develops their long-range planning and their annual proposed budgets. His role however does not encompass approving the budgets of the individual boards within the Department of Consumer Affairs as such. In construing similar language found in sections 13978 and 13978.4 relating to the powers, duties and authority of the Secretary of the Business and Transportation Agency over “each department, office and unit within the agency”¹⁸ we noted that “[i]n no instance does the

¹⁸ Section 13978 reads as follows:

“The secretary has the power of general supervision over anti is directly responsible to the Governor for, the operations of each department, office and unit within the agency. He may issue such orders as he deems appropriate to exercise any power of jurisdiction, or to assume or discharge any responsibility, or to carry out or effect any of the purposes vested on law in any department in the agency.” (Emphasis added, compare, § 12850.) Section 13978.4 provides in pertinent part that:

“[The] secretary of the Business anti Transportation Agency shall exercise the

word ‘board’ appear and that we did “not believe that it may be lightly applied.” (62 Ops. Cal. Atty. Gen. 81, 85.) At an example of a “unit” of the state government we cited Government Code section 15360 reading, “The Economic Development Unit in the Department of Housing and Community Development shall become the office of Local Economic Development [in the Department of Economic and Business Development].” (62 Ops. Cal. Atty. Gen., *supra*, at p. 85, fn. 3.) We concluded that the secretary was not authorized by section 13978 to exercise the power or control the actions of the Small Business Board, which is within the Business and Transportation Agency’s Department of Economic and Business Development (§ 14020). (62 Ops. Cal. Atty. Gen., *supra*, at p. 86.)

Based on that analysis construing identical language of the reach of the statutory charge to a similarly situated “super agency” head (compare § 12850 with § 13978 and § 12810.4 with § 13978.4), we conclude that the powers, duties and authority of the Agency Secretary in this case, i.e., that of the Secretary of State and Consumer Services is not such to embrace his approving the budget of the Board of Dental Examiners. Inasmuch however, as the Agency Secretary is charged with approving the budgets and making the budgetary needs of the departments within his Agency known, he does have a limited effect on the Budget of the Dental Board insofar as the budget of the Department of Consumer Affairs would superintend and touch upon it. It is to this area that we now proceed and thus come to what is assuredly the crux of the requestor’s concern: the legal authority of the Director of Consumer Affairs over the budget of the Board of Dental Examiners.

C. The Director of Consumer Affairs

The Director of Consumer Affairs is a civil executive officer, appointed by the Governor and holding office at his pleasure, under whose control the Department of Consumer Affairs is placed. (Bus. & Prof. Code, §§ 150, 151, *cf.* § 23.5.)¹⁹

The Department of Consumer Affairs is comprised of more than 30 boards and bureaus (§ 101 (a-ag)), including the Board of Dental Examiners (§ 101 (a)).

Pursuant to section 305 the Director of Consumer Affairs is given the power to administer and enforce the provisions of the Consumer Affairs Act, to wit, chapter 4 of division 1 of the Code (§ 300). His powers and duties are set forth at section 310 as follows:

“The director shall have the following powers and it shall be his duty to:

authority vested in the Governor in respect to the functions of each department, office or other unit within the agency” (Emphasis added; compare § 12850.4.)

¹⁹ Unidentified section references are once again to the Business and Professions Code.

“(a) Recommend and propose the enactment of such legislation as necessary to protect and promote the interests of consumers.

“(b) Represent the consumer’s interests before federal and state legislative hearings and executive commissions.

“(c) Assist, advise, and cooperate with federal, state, and local agencies and officials to protect and promote the interests of consumers.

“(d) Study, investigate, research, and analyze matters affecting the interests of consumers.

“(e) Hold public hearings, subpoena witnesses, take testimony, compel the production of books, papers, documents, and other evidence, and call upon other state agencies for information.

“(f) Propose and assist in the creation and development of consumer education programs.

“(g) Promote ethical standards of conduct for business and consumers and undertake activities to encourage public responsibility in the production, promotion, sale and lease of consumer goods and services.

“(h) Advise the Governor and Legislature on all matters affecting the interests of consumers.

“(i) Exercise and perform such other functions, powers and duties as may be deemed appropriate to protect and promote the interests of consumers as directed by the Governor or the Legislature.

“(j) Maintain contact and liaison with consumer groups in California and nationally.”

Regarding fiscal matters, section 110 provides:

“The department shall have possession and control of all funds,^[20] appropriations

²⁰ The State Dentistry Fund, as we have seen, is a single special fund constituting a separate account within the Professions and Vocations Fund in the State Treasury (§ 205), and monies in the Dental Auxiliary Fund have been continuously appropriated for the administration of the

and other property now or hereafter held for the benefit or use of all of the bodies, offices or officers comprising the department. The title to all property held by any of these bodies, offices or officers for the use and benefit of the state, is vested in the State of California to be held in the possession of the department. The department, however, shall not have the possession and control of examination questions prior to submission to applicants at scheduled examinations. (Emphasis added.)

The question arises as to what authority these or any other powers give the Director of Consumer Affairs over the Dental Board's budget.

Two recent opinions of this office tangentially have touched on this question. In 62 Ops. Cal. Atty. Gen. 258 (1979) we concluded that funds the Legislature authorized the Board of Fabric Care to expend by its enactment of section 9575.6 and its passage of the Budget Act of 1978–1979, could legally be expended by that Board even though the Director of Consumer Affairs disapproved the expenditures. We reviewed the fount of the Director of Consumer Affairs' authority (i.e., §§ 101, 150, and 310, *inter alia*) and concluded that although he might have broader powers than those specified in section 310 (62 Ops. Cal. Atty. Gen. at 263), a review of the special provisions relating to the management of the monies funding the operations of the various boards within the Department of Consumer Affairs (i.e., §§ 156, 200, 201–204, 404, 128.5) compelled the conclusion that “he has very limited authority with respect to these special funds.” (62 Ops. Cal. Atty. Gen., *supra*, at p. 265; original emphasis.)

In this regard we said:

“ . . . If the word ‘control’ as used by the Legislature in section 110, *supra*, and section 150, *supra*, were to be viewed as conclusive in respect of ascertaining the legislative intent concerning the precise issue presented, it would appear that many of these special provisions are superfluous.” (*Ibid.*)

We reaffirm that conclusion. Particularly persuading us toward that reaffirmation is the fact that since the actual “possession and control” of State monies is with the Treasurer

Dental Practice Act as it relate, to dental auxiliaries (§ 1721.5). *These* funds however, are separate and distinct from the Consumers Affairs Fund out of which the Department of Consumer Affairs pays all of its necessary administrative expenses (§ 203) which include the expenses of the Division of Consumer Services (cf. § 303). (See 59 Ops. Cal. Atty. Gen., 283, 286, 292.) The Consumer Affairs Fund receives monies through a pro rata assessment of the individual funds of each board, bureau and commission within the Department of Consumer Affairs (§§ 201, 202), “thus becoming part of *their* operating expenses and an integral factor in *their* fee structure” (59 Ops. Cal. Atty. Gen., *supra*, at p. 292.)

(Gov. Code, §§ 12320, 12323, 12326) and the Controller (Gov. Code, §§ 12410, 12412–12418, 12440), the type of “possession and control” spoken of in section 110 is of a different and more abstract nature. Furthermore, given (a) the fact that “possession and control” is over the “funds held for the benefit or use of all the bodies, offices, or officers comprising the department” (§ 110) and not over each of them, (b) the fact that the several special funds in the Professions and Vocations Fund are kept in separate accounts (§ 205), and (c) the fact that the funds of one board may not be used to pay the expenses of any other (§ 202), we view the reference in section 110 to be limited to monies in the Consumer Affairs Fund (§§ 202–203) which is used for the benefit of all the boards comprising the department, and not to the distinct Professions and Vocations Fund in which the board’s funds are placed for “housekeeping” accounting purposes. After all it is the Consumer Affairs Fund out of which the necessary administrative expenses of the Department of Consumer Affairs are paid (§ 203) and from which monies to support the Department’s consumer programs come. (§ 303; 59 Ops. Cal. Atty. Gen. 283, 286–287.) (See *supra*, fn. 20.)

We are also mindful of the fact that consent of a particular board is necessary before its fund monies can be received by the Department of Consumer Affairs for transmittal to the Treasury, or for the Department of Consumer Affairs to make refunds thereon. (§ 200.) Finally, we are persuaded of the correctness of our position by the fact that whereas section 401 (Stats. 1939, ch. 909, § 31, p. 2523, as amended by Stats. 1971, ch. 716, § 19, p. 1393) authorizes the Director of Consumer Affairs to designate monies in the special fund of any board under his jurisdiction which he finds are in excess of the board’s need for the Director of Finance to have Controller transfer to the Consumer Affairs Fund, that section also provides that no money may be so taken from any such fund when it will interfere with the board’s administrative duties. Moreover, section 128.5, a later enacted statute (Stats. 1972, ch. 938, § 2, p. 1695, as renumbered and amended by Stats. 1978, ch. 1161, § 4, p. 468), provides that when a board has unencumbered funds in excess of its operating budget for the next two years, it must reduce its licensing fees. We perceive this as a legislative recognition of the integrity of those special funds, and their primary control by the board.

In 59 Ops. Cal. Atty. Gen. 283 (1976) we concluded that while the Department of Consumer Affairs could assess the individual funds of its boards and bureaus on a pro rata basis to fund the Consumer Affairs Fund (§§ 201–203) for operation of the Division of Consumer Services (§ 303) as “necessary administrative services of the Department” (§ 203), the activities utilizing those monies had to be related to the individual funds which were so assessed. (59 Ops. Cal. Atty. Gen. at pp. 291–292.) Restating the conclusion in the inverse we said:

“To the extent that monies derived from pro rata assessment are used for activities unrelated to the individual funds, under the principles set forth

in *Urban v. Riley* [(1942) 21 Cal. 2d 232] support of such activities from the individual funds would be unconstitutional in that the monies collected to support such activities would be disproportionate to the contemplated expense of regulation of the boards, bureaus and commissions within the Department of Consumer Affairs.” (*Id.*, at p. 292.)

We perceive the distillate that emerges from the statutory scheme and our prior opinions to be this: the Director of the Department of Consumer Affairs has general authority over the boards and bureaus comprising the Department of Consumer Affairs which he controls, but that does not dilute the ability of each of the component boards and bureaus to function independently in fulfilling its statutory charge. As we said in 62 Ops. Cal. Atty. Gen. 258, *supra*: “It is apparent that the Director does not have absolute authority to make all final decisions with respect to the functions of the various boards comprising his department.” (*Id.*, at p. 267.)

The Legislature has declared that “[e]ach of the boards comprising the department exists as a separate unit. . . .” (§ 108) and we deem the Legislature to have insured this independence by maintaining each of the board’s funds in a separate account (§ 205), and by requiring the consent of each board for its money to be transmitted to the Treasury through the Department instead of directly by its secretary. (Compare § 200 with § 1720.)

Control over the budgets of the individual boards is not one of the enumerated powers given the Director in section 310. In view of our earlier exposition of his limited authority with respect to the special funds of the individual boards, and his limited authority with respect to formulating their policies,²¹ we conclude that he lacks legal authority to approve or otherwise control their budgets other than impressing the pro rata assessment of the funds of the various boards for funding the Consumer Affairs Fund pursuant to sections 201–203. The Director of Consumer Affairs true budgetary concern is thus with that Consumer Affairs Fund, since it funds the necessary administrative expenses of the Department of Consumer Affairs as a whole (§§ 201–203) as well as its general consumer programs undertaken pursuant to the Director’s powers and duties enumerated in section 310. (§ 305, 59 Ops. Cal. Atty. Gen. 283, 286–287; *Cf.* § 1 10.)

Yet the budgetary process cannot be so nearly compartmentalized and we should view the role of the Director of Consumer Affairs in it as a part of a process which is a continuing, viable, and interrelated whole. Article IV, section 22 of the California Constitution requires the Governor to submit to the Legislature an annual budget for the ensuing fiscal year “containing itemized statements for recommended state expenditures

²¹ We note that while the Director of Consumer Affairs may veto a regulation proposed by a board, the board may override that veto by unanimous vote. (§ 313.1.)

and estimated state revenues.” (*Id.* § 12(a)). He is also required to submit an accompanying budget bill itemizing his recommended expenditures. (*Id.* § 12(c)). Toward their preparation the Governor may require a state agency to furnish whatever information is necessary. (*Id.* § 12(b); *Cf.* Gov. Code, § 13320.) It has been said that the Governor acts “in a legislative capacity in submitting the annual budget bill to the Legislature and in approving it after its adoption. . . .” (*Veterans of Foreign Wars v. State of California* (1974). 36 Cal. App. 3d 688, 697 citing *Jenkins v. Knight* (1956) 46 Cal. 2d 220, 223, and *Lukens v. Nye* (1909) 156 Cal. 498, 501–503.) Nevertheless, the Budget, as a bill is subject to the same legislative procedures as are other bills including the processes of legislative modification, and if necessary veto override. (Cal. Const., art. IV, §§ 10(b), 12(c, d).)

The budgetary process thus touches every State institution, department, board, bureau, commission, officer, and employee. Section 13337 of the Government Code states in pertinent part:

“(a) The budget required by the State Constitution to be submitted by the Governor at each regular session of the Legislature shall be submitted within the first 10 days thereof and shall contain a complete plan and itemized statement of all proposed expenditures of the state provided by existing law or recommended by him, and all of its institutions, departments, boards, bureau, commissions, officers, employees and other agencies, and of all estimated revenues, for the ensuing fiscal year, together with a comparison, as to each item of revenues and expenditures, with the actual revenues and expenditures for the last completed fiscal year, the estimated revenues and expenditures for the existing fiscal year and the budgeted revenue and expenditures for the next fiscal year.

“”

“(c) The Governor’s Budget shall be prepared as a program budget in accordance with guidelines and instructions adopted by the Department of Finance pursuant to Sections 13335 and 13336.

“(d) In order to provide meaningful comparisons, the Governor’s Budget shall be prepared in such a manner that the elements and components of each program shall be set forth in the same manner each year.

“”

“(f) The Governor’s Budget shall also include a coding structure which indicates the types of activities being performed by each state entity

so that similar or identical activities being performed by different entitles may be identified and compared.

“(h) Prior to the submission of the Governor’s Budget to the Legislature, the Department of Finance may conduct public hearings regarding any portion of any budget.

“(i) The Governor, or the Department of Finance acting on his behalf, shall, at the same time the Governor’s budget is submitted to the Legislature, submit to the Legislature copies of the material for the purposes of subdivision (j).

“(j) The Department of Finance shall develop a fiscal information system which will provide timely and uniform fiscal data needed to formulate and monitor the budget, including, but not limited to, online inquiry capacity and the ability to simulate budget expenditures and forecast revenues. This system shall include, among other things, an accounting for expenditures by line item, program, governmental unit and fund source. This system shall also include a coding structure which indicates the types of activities being performed by each state entity so that similar or identical activities being performed by the same or different entitles may be identified and compared. This system and the data shall be available to both the legislative and executive branches. The system may contain separate programs accessible by only one branch, designed to provide for distinct application of the data, but the basic system data shall be available on an equal basis to both the legislative and executive branches.”

Section 13338 of that Code provides in part:

“(a) The Budget Bill shall be prepared in such a manner that it reflects, and follows as closely as possible, the Governor’s Budget including programs and elements itemized therein.

“(b) The Budget Bill shall also utilize a coding scheme compatible with the Governor’s Budget and with the records of the State Controller. The provisions of this subdivision shall apply commencing with the 1982–83 fiscal year, and to each fiscal year thereafter.”

As is stated by the State Administrative Manual:

The Governor has complete and final responsibility for ‘the

Governor's Budget.' However, the budget is actually a product of the entire administration. Decisions, small and large, must be made by many persons. While legislative and administrative heads make crucial decisions on specific questions raised by the budget process, they are largely dependent upon the information presented to them. It is *essential therefore that everyone involved in the preparation of the budget try to create a meaningful, well developed and fully justified plan and not expect the budget review process of the Administration to accomplish an impossible task for which it is not designed.*" (SAM, § 6010.)

In that overall view we see the Director of Consumer Affairs directly responsible to the Secretary of State and Consumer Services, in which "superagency" the Department of Consumer Affairs is found (§ 100; Gov. Code, § 12804), for the management control over the fiscal and program performance of that Department (Gov. Code, 12810.6). The Dental Board is a component of the Department of Consumer Affairs (§ 101) and the Director of Consumer Affairs is thus responsible for its fiscal and program performance. The Department of Finance looks to departmental presentations (see, e.g., SAM, §§ 6108–6108.2) and we note that the Dental Board's allocations within the Budget Bill are included as part of the budget for the Department of Consumer Affairs as a whole and not separately. (See, e.g., 1979–1980 Governor's Budget, pp. 124, 127–128.)

In this reality then, the Director of Consumer Affairs of the Department does have a role to play that may affect the Dental Board's budget. That budget as part of the budget of the entire Department of Consumer Affairs although it as an independent component therein, and being such the Director transmits it for approval as part of the Department of Consumer Affairs budget to the Secretary of State and Consumer Services (Gov. Code, § 12810.8) and makes presentations on it to the Department of Finance (SAM, §§ 6108–6108.2). To the extent that his role in superintending the Department of Consumer Affairs and making its budgetary needs known for its overall programs, touches the Board of Dental Examiners, the Director of Consumer Affairs may have an effect on their budget. Should the Director's presentation of the Department's budget to the Secretary of State and Consumer Services for approval, not be consistent with the Dental Board's liking as it affects the programs it desires in fulfilling its mandate, the Dental Board would have recourse to the Agency Secretary as well as to the Director of Finance who, in contrast to the Director of Consumer Affairs, is given specific statutory authority to approve the Dental Board's budget. (Gov. Code, § 13320.) If need be the Dental Board would also have ultimate redress with the legislature, the final authority on budgetary matters. (See fn. 14, *supra*.)

Certainly the Director too would have the power to be persuasive at all of these subsequent steps in the budgetary process. But the Dental Board is established as an

independent authority (§ 108) with responsibility to fulfill a certain statutory mandate and it, not the Director of Consumer Affairs, is charged with the administration of the Dental Practice Act (§ 1601). In view of our analysis of the Dental Board's position and that of the Director of Consumer Affairs, we conclude that the latter lacks legal authority to approve the budget of the Board of Dental Examiners.

In summary recapitulation we conclude herein—that the authority of the Director of Finance consists of his initial approval, his continual monitoring (auditing), and his potential revision, alteration or modification of the budget of the Board of Dental Examiners, and his ability to authorize deficiency spending over and above its limits;—that to the limited extent the legal authority of the Secretary of State and Consumer Services to approve the general budget of the Department of Consumer Affairs would affect the budget of the Board of Dental Examiners, he would affect their budget as well;—that to the limited extent the Director of Consumer Affairs' role in superintending the Department of Consumer Affairs in making its budgetary needs known for its overall programs touches the Board of Dental Examiners, he would have an effect on their budget, but otherwise he has no authority over the specific budget of the Board of Dental Examiners;—and that neither the Secretary of State and Consumer Services nor the Director of Consumer Affairs has authority to approve the specific budget of the Board of Dental Examiners, that task being vested In the Director of Finance.
