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The Commission on Aging requests an opinion on the following questions:

1. Does the Director of the Department of Aging have the authority to exercise any control over the Commission on Aging's budget?
2. To what extent, if any, is the Commission on Aging bound by Department of Aging decisions regarding the rental and allocation of space for the commission's use?
3. To what extent, if any, does the Secretary of the Health and Welfare Agency have administrative control over the Commission on Aging?

CONCLUSIONS

1. The Director of the Department of Aging has no authority over the Commission on Aging's budget as to funds appropriated by the Legislature for use by the commission. The Director of the Department of Aging serves as "the fiscal agent" for the accounting of gifts and grants received by the Commission on Aging, in that such gifts and grants may not be expended by the commission to fund programs that conflict with programs funded by the Department of Aging.

2. The Director of the Department of Aging has no authority with respect to decisions by the Commission on Aging regarding the rental and allocation of space for use by the commission.

3. The Secretary of the Health and Welfare Agency has no administrative control over the Commission on Aging.

ANALYSIS

Welfare and Institutions Code¹ section 9200 establishes the California Commission on Aging (hereinafter "Commission"). The three questions presented seek to have determined, in effect, whether the Legislature has created the Commission subject to the authority of the Director of the Department of Aging (hereinafter "Director") and the Secretary of the Health and Welfare Agency (hereinafter "Secretary") or whether it has been created as a state agency existing independently of either the Department or of the Secretary.

Section 9200 provides in part that:

"[T]here is in the state government, the California Commission On Aging. The Commission shall be composed of 25 persons: 19 persons appointed by the Governor, three persons appointed by the Speaker of the Assembly, and three persons appointed by the Senate Rules Committee. . . . The Legislature intends that membership on the commission be selected to assure that every region of the state is represented."

Section 9200.5 provides that the appointees to the Commission shall serve at the pleasure of the appointing power within the limitations for terms provided for in that section.

¹ All unidentified section references are to the Welfare and Institutions Code.

Section 9201 provides that the duties and functions of the Commission shall be to:

“(a) Serve as the principal advocate body in the state on behalf of older persons in areas affecting such persons, including, but not limited to, advisory participation in the consideration of all regulations made by state departments affecting licensing, inspection and rate setting for nursing homes and like facilities, housing for the elderly, home health services, educational, and income maintenance programs;

“(b) Advise the director concerning basic policies and priorities with respect to the development and operation of programs and activities related to the purposes of this division, including Titles III and VII of the Older Americans Act, as amended, in order to stimulate the most effective use of existing resources and available services for the elderly;

“(c) Prepare, publish and disseminate materials dealing with the well-being of senior adults;

“(d) Meet as a commission monthly as follows in order to study all aspects of the problems of aging:

“(1) At least six of the meetings shall be with the director.

“(2) At least six of the meetings shall be held in various parts of the state.

“(e) Hold hearings throughout the state, in order to advise the Governor, Legislature and the department on action needed to solve problems of aging, and in order to insure that the needs and wants of older consumers of services referred to in this division are duly considered;

“(f) Within budgetary limits, hire an executive secretary and such staff as may be necessary for the commission to fulfill its duties; and

“(g) Perform other duties as may be assigned to it by statute or regulation.”

Section 9202 provides that:

“The commission shall prepare and render annually a written report to the Governor of its activities and its recommendations, which shall reflect the advice of California’s senior citizens, including but not limited to, the area agency on aging advisory committees and each nutrition program advisory committee under Titles III and VII of the Older Americans Act, as amended.”

Section 9300 establishes the Department of Aging. Section 9300 provides that: “There is in the state government in the *Health and Welfare Agency* a Department of Aging.” (Emphasis added.)

Section 9301 provides that:

The department consists of a director and such staff as may be necessary for proper administration. The department shall include, but not be limited to, comprehensive program planning and development, information and administrative services, which include intra- and intergovernmental relations, and regional and community development, which includes training services.

“The Department of Aging shall maintain its main office in Sacramento.

Section 9303 provides that the Director of the Department shall:

“(a) Be responsible for the management of the department;

“(b) Administer the laws pertaining to the purposes of this division;

“(c) With the advice of the commission, formulate, adopt, amend or repeal regulations and general policies affecting the purposes, responsibilities and jurisdiction of the department and which are consistent with law and necessary for the administration of this division;

“(d) *Assist the commission in the carrying out of its duties;*

“(e) Perform other duties as may be prescribed by law.” (Emphasis added.)

Section 9304 provides that:

“Subject to the State Civil Service Act, the director shall appoint such assistants and other employees as are necessary for the administration of the affairs of the department and shall prescribe their duties.”

The duties of the Department are specified in section 9306 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.”

Section 9309 provides that:

“No person, while holding the office of member of the commission or its staff or the director of the department or its staff, shall be a trustee, manager, director or other officer or employee of any agency performing any

function supervised by the department or the commission, nor shall any member of the commission hold any other office or employment in the department.”

We turn to the statutory provisions relating to the Health and Welfare Agency. Section 12800 provides in part that:

“There are in the state government the following agencies: State and Consumer Services; Business and Transportation; *Health and Welfare*; and Resources. . . .” (Emphasis added.)

Section 12803 provides that:

“The Health and Welfare Agency consists of the *following departments*: Health Services; Mental Health; Developmental Services; Social Services; Alcohol and Drug Abuse; *Aging*; Employment Development; Rehabilitation; the Youth Authority; and Corrections.

“The agency also includes the Office of Statewide Health Planning and Development and the State Council on Developmental Disabilities. Effective July 1, 1979, the Departments of Corrections and the Youth Authority shall no longer be included within the Health and Welfare Agency.” (Emphases added.)

The Legislature has provided specifically that the Department of Aging is one of the departments within the Health and Welfare Agency. (§§ 9300, 12803.) Section 12806 specifically excludes from the jurisdiction of the Secretary of the Health and Welfare Agency (§ 12806, subd. (b)) and from the jurisdiction of the Health and Welfare Agency (§ 12806, subd. (a)) the California Commission on Aging. (See also § 12806, subd. (c).)

The Legislature failed to use any language reasonably implying that the Commission is subject to the authority of the Department. The omission of such language must be deemed intentional because both section 9200 (relating to the Commission) and section 9300 (relating to the Department) were added at the same time (Stats. 1973, ch. 1080) and subsequently amended at the same time (Stats. 1976, ch. 157). The Legislature has authorized the Commission on Aging to hire an executive secretary and such staff as may be necessary for the Commission to fulfill its duties, within budgetary limits. (§ 9201(0).) The Commission’s primary duties are to serve as the principal advocate body in the state on behalf of older persons (§ 9201(a)) and to advise the Director concerning basic policies and priorities with respect to the development and operation of programs and activities providing assistance to older persons in order to stimulate the most effective use

of existing resources and available services. (§ 920'1(b).) Among the duties of the Director of the Department is that of *assisting* the Commission in the carrying out of its duties. (§ 9303(d).)

In none of these provisions is there any language suggesting that the Director of the Department has any authority over the operation of the Commission. We need consider, however, section 9203 which provides that:

“The commission may accept gifts and grants from any source, public or private, to assist it in the performance of its functions, and such gifts and grants shall operate to augment any appropriation made for the support of the commission, provided that the department shall serve as the fiscal agent for the accounting of such gifts and grants and that ‘no gifts or grants shall be used for the operation by the commission of direct service programs which would conflict with the department’s duties and functions as described in law.’”

The “department” therein referred to is the Department of Aging, section 9102. The phrase “fiscal agent) is not defined but it is apparent that the Legislature has imposed a limitation upon the use by the Commission of gifts and grants received by it in that they may not be used to fund programs “which would conflict with the department’s duties and functions as described in law.”

Section 9203, *supra*, also refers to such gifts and grants as augmenting any appropriation made for the support of the Commission. The Legislature itself would have control over the purposes for which it appropriated funds in support of the Commission as part of the budgetary process. We infer from the language of section 9203 a legislative policy to exclude the Director of the Department from policy decisions regarding the expenditure of appropriated funds by the Commission. The Director is given authority as “fiscal agent’ only over the accounting of funds received by the Commission as gifts or grants, which authority must have been deemed necessary by the Legislature in order to insure that such funds are not spent by the Commission in support of programs that conflict with programs being funded through the Department.

The definition of the duties of the Commission as being the “principal advocate body in the state on behalf of older persons” and as advising the Director of the Department concerning basic policies and priorities support the conclusion that each is intended by the Legislature to function independently of the other. The Legislature has further indicated that the Director is directed to assist the Commission in its carrying out its duties, which directive does not suggest control by the Director over any activities of the Commission, except as otherwise specifically provided in section 9203.

In the light of these statutory provisions, it is concluded that the Director of the Department has no authority with respect to the Commission's budget, except that the Director serves as "the fiscal agent" for the accounting of the gifts and grants received by the Commission, in that such funds may not be expended to fund programs that conflict with programs funded by the Department. The Department has no authority with respect to the authority of the Commission to expend funds once appropriated by the Legislature for use by the Commission. The Director of the Department has no authority with respect to the decisions of the Commission regarding the rental and allocation of space for the Commission's use. The Secretary of the Health and Welfare Agency has no administrative control over any activities of the Commission.
