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OPINION	:	No. 81-101
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of	:	<u>FEBRUARY 10, 1981</u>
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The Honorable Eugene F. Veglia, Executive Secretary, State Board of Control, requests an opinion on the following question:

Does the State Board of Control or the Board of Trustees of the California State University and Colleges have the authority to establish the rental rates to be charged for housing, owned by the State of California and administered by the Board of Trustees, that is made available by the Board of Trustees to its employees?

CONCLUSION

The State Board of Control, rather than the Board of Trustees of the California State University and Colleges, has the exclusive authority to establish the rental rates to be charged for housing, owned by the State of California and administered by the Board of Trustees, that is made available by the Board of Trustees to its employees.

ANALYSIS

A number of buildings, suitable as residences, have been donated to the State of California, specifically to the Board of Trustees of the California State University and Colleges (or its statutory predecessor, the State Board of Education) so as to enable the Board of Trustees to make available to its employees, typically a college president, a residence to be used in connection with the employee's employment.

The rental rates to be paid by such employees for the use of these residences historically have been established by the state Board of Control. However, the Board of Trustees asserts that the authority to establish such rental rates is vested in the Board of Trustees, and further, that the exercise of such authority by the Board of Control has been pursuant to a delegation of authority by the Board of Trustees to the Board of Control. The Board of Trustees, for policy reasons, now wishes to exercise its authority directly. The issue is whether it has such authority.

The Board of Trustees contends that it has the requisite authority to set rental rates for such residences pursuant (1) to its statutory authority to administer and manage all real property over which it has jurisdiction, (2) as part of its control over employment, particularly in the light of the Higher Education Employer-Employee Relations Act, and (3) as a result of restrictions arising upon the use of such property imposed by the donors of the property.

The Board of Control believes that it has the statutory responsibility, pursuant to Government Code section 13924, to establish a "fair and reasonable" rental rate for such residences on the basis that it is "housing . . . furnished by the state as an employer to its employees . . ." as therein provided.

Government Code section 13924 provides as follows:

"(a) The board [of control] shall determine the fair and reasonable value of maintenance, living quarters, housing, lodging, board, meals, food, household supplies, fuel, laundry, domestic servants and other services furnished by the state as an employer to its employees.

"The value so determined shall constitute the charges to be made to state employees for any such maintenance or other services furnished by the state, unless the employee is entitled thereto as compensation for his services or as actual and necessary expenses incurred in the performance of the state's business. Whenever a state employee is entitled to such maintenance or other services as part or full compensation for services rendered, the value thereof

for retirement purposes, as defined by Section 20022 of this code, and for salary or wage fixing purposes, shall also be determined in accordance with the values established by the board hereunder. The Board of Control, by rule, shall provide for reasonable opportunity to be heard by departments or employees affected by this section.

“(b) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5, the memorandum of understanding shall be controlling without further legislative action, except if such provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.” (Emphasis added.)

Initially, we note that the issue is not one concerning the authority of the Board of Trustees to have control over the management of real property within its jurisdiction. We assume for purposes of this opinion that it has control over the use and management of its property.¹ Thus, it is assumed to be within the Board of Trustees’ province to decide whether to provide housing to one or more of its employees, assuming the availability of such housing. However, once it has exercised that power, the issue is a narrow one—i.e., whether it or the Board of Control has exclusive control to establish the rental rate to be charged consequent to the Board of Trustees’ decision to rent such property. Were the Board of Trustees to rent to a non-employee, Government Code section 13924 would not be applicable. It is only in the instance where it rents to an employee that there arises a possible limitation upon its power to control its property, and that limitation arises as a result of the Board of Trustees acting as an employer, not as a manager of its real property.

¹ But see Government Code section 11005.2 which provides that:

“Unless the Legislature specifically provides that approval by the Director of General Services is not required, every conveyance, contract or agreement whereby an interest of the state in any real property is conveyed, demised or let to any person, shall, before such conveyance, contract or agreement executed or entered into, be approved by the Director of General Services. Any conveyance, contract or agreement executed or entered into in violation of this section is void. This Section shall apply to any state agency which by general or specific statute is expressly or impliedly authorized to enter into transactions referred to herein.

“This section does not apply to real property acquired by the Department of Public Works for highway purposes or real property administered by the Board of State Harbor Commissioners for San Francisco Harbor, the State Lands Commission, the State Controller or the State Compensation Insurance Fund.” (Emphasis added.)

There is no question but that the housing provided to its employees by the Board of Trustees is” . . . housing . . . furnished by the state as an employer to its employees.” Thus, Government Code section 13924 is applicable unless the provisions contained in the Education Code establishing the authority of the Board of Trustees with respect to the State University and Colleges control notwithstanding the provisions of Government Code section 13924.

The Donahoe Higher Education Act (Stats. 1960, 1st Ex. Sess., ch. 49) “established a unified and centrally administered state college system in California by transferring the administration of the state colleges from the Director of Education and the State Board of Education to the Trustees of the State College System.” (37 Ops. Cal. Atty. Gen. 69 (1961); see Ed. Code, § 66600 *et seq.*; see generally, Ed. Code, § 89000 *et seq.*)

In 37 Ops. Cal. Atty. Gen. 69, 70, *supra*, we stated that:

It would appear from the legislative history of the Donahoe Act and its specific provisions that this legislation was drafted with the intent of establishing an autonomous board with power and responsibility similar to that of the Regents of the University [of California], *differing chiefly in that certain fiscal controls inapplicable to the University are retained by the Legislature and other state agencies*, and that the board is not established by the state Constitution, as is the University (see ‘A Master Plan for Higher Education [in California]’ (1960) pp. 42–43.” (Emphasis added.)

In *Slivkoff v. Board of Trustees* [(of the California State University and Colleges)] (1977) 69 Cal. App. 3d 394, 400–404, it is stated that:

“Unlike the University of California, the California State University and Colleges are subject to full legislative control. . . . No such autonomy [as is accorded by the state constitution to the University of California] is accorded by the Constitution to the State University and Colleges. They have only such autonomy as the Legislature has seen fit to bestow.

“

Employees of the State University and Colleges are, therefore, state employees, albeit exempt from civil service by virtue of the provisions of article VII, section 4, subdivision (h) of the California Constitution (formerly art. XXIV, § 4, subd. (h)). *As such, they remain subject to the Legislature ‘full power to govern the conditions of their employment.*

“

“Having concluded that Government Code section 19143 is applicable to exempt employees and forecloses credit being given for continuity for services broken for six months or longer, consideration must be given to the effect of Education Code sections 22600 and 24201. Section 22600 merely states that the State University and Colleges ‘shall be administered’ by the Board of Trustees. *The power to so administer the State University and Colleges does not suggest freedom from legislative regulation.*

“Education Code section 24201, even as amended in 1972, likewise *fails to in any way indicate that the trustees’ rule-making power includes the making of rules negating statutory limitations.* The operative language is as follows: ‘Notwithstanding any other provision of law, the trustees shall provide for the government of their appointees and employees, pursuant to the provisions of this chapter and other applicable provisions of law, . . .’ The rules thus authorized clearly are rules ‘pursuant’ to law.

“‘[O]ther applicable provisions of law’ *patently include the provisions of the Government Code.* The prefatory phrase, “[n]otwithstanding any other provision of law merely refers to any other provisions of law relating to the making of administrative rules by any other body.

“Consequently, there is no conflict between Government Code section 19143 and Education Code section 22600 and 24201. The latter simply authorize the trustees to issue appropriate administrative regulations and rules which are conformable to legislation governing state personnel.” (Fns. in text omitted; emphasis in part in original and in part added.)

While not of controlling significance, the rationale expressed in *Slivkoff*, *supra*, appears persuasive with respect to the applicability of Government Code section 13924. The court in *Slivkoff* held that the authority of the Board of Trustees to provide by rule for the government of their employees is limited by “‘other applicable provisions of law’ . . . [which] ‘other applicable provisions of law’ patently include the provisions of the Government Code.” (See also *MacDonald v. San Diego State University* (1980)111 Cal. App. 3d 67, 75.)

While the court in *Slivkoff* was concerned with a legislatively established limitation upon the exercise of power by the Board of Trustees, rather than divesting of such power by the placing of jurisdiction in another public entity, the issue turns in both

instances upon the legislative intent as expressed in the relevant statutes. The Legislature used the phrase “the state as an employer” in section 13924, which phrase clearly includes the Board of Trustees absent an exclusion arising from some other statutory provision. We find none. Thus, Government Code section 13924 controls over any general provision of the Education Code relating to the power of the Board of Trustees to govern its employees. Of course, Government Code section 13924 itself contains an exception. (See Gov. Code, § 13924, subd. (b); Gov. Code, § 3517.5.)

Finally, we are not concerned here with possible restriction on the use of such property arising as a result of such property having been provided to the Board of Trustees as a “gift.”² with express or implied limitations concerning the uses of such property. Government Code section 13924 directs the Board of Control to establish a “fair and reasonable value” of housing that is furnished by the state as an employer to its employees. We are informed that historically the Board of Control has been establishing these rental rates. Thus, the difference between control of these rates by the Board of Trustees rather than by the Board of Control concerns the amount of the rental rate to be charged rather than whether any rental charge may imposed. We fail to see how the establishment by the Board of Control of a “fair and reasonable value” of housing that is furnished by the state as an employer to its employees may be said to deprive the Board of Trustees of the power to make the property available to its employees. Further, it would seem that the Board of Control as well as the Board of Trustees could comply with such restrictions, if they are deemed valid. Generally, restrictions that violate state law are against public policy and are void. The effect of such a restriction by a donor upon public policy depends upon the wording and interpretation of the language used by a donor pertaining to each gift. We are not aware of any limitation having such an effect.

Accordingly, it is concluded that the state Board of Control, rather than the Board of Trustees of CSUC, has the exclusive authority to establish the rental rates to be charged for housing, owned by the State of California and administered by the Board of Trustees, that is made available by the Board of Trustees to its employees.

² But see Government Code sections 11005 and 11005.1.