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OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION

of

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No. 81-408

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THE BOARD OF EXAMINERS OF NURSING HOME
ADMINISTRATORS has requested an opinion on the following question:

Is the Board of Examiners of Nursing Home Administrators responsible for that portion of the cost of preparing a transcript of one of its administrative hearings, that has been requested by a petitioner for an action in administrative mandamus, which exceeds the statutory fee chargeable to that petitioner for such a transcript?

CONCLUSION

The Board of Examiners of Nursing Home Administrators is responsible for that portion of the cost of preparing a transcript of one of its administrative hearings, that has been requested by a petitioner for an action in administrative mandamus, which

exceeds the statutory fee chargeable to a petitioner requesting such transcript.

ANALYSIS

All hearings of state agencies that are required to be conducted under chapter 5 of the Administrative Procedure Act (Gov. Code, tit. 2, div. 3, pt. 1, chs. 3.5, 4, 5, §§ 11340 *et seq.*, 11370 *et seq.*, 11500 *et seq.*)¹ i.e., generally those involving regulation of licentiates, must be conducted by hearing officers on the staff of the Office of Administrative Hearings (hereinafter, “OAR” or “the office”) (§ 11502; *cf.* § 11501 (listing of specific agencies), 11370.3; 24 Ops. Cal. Atty. Gen. 232, 233–234; *Hobreiter v. Garrison* (1947) 81 Cal. App. 2d 384, 393–394), an entity established primarily for that purpose within the Department of General Services and placed under the direction and control of a director. (§ 11370.2, subd. (a), *cf.* § 11370.3.)² The director is charged with appointing and maintaining a staff of full time (and part time) hearing officers sufficient to fill the needs of the various state agencies (*ibid.*), and also with “appoint[ing] shorthand reporters and such other technical and clerical personnel as may be required to perform the duties of the office.” (*Ibid.*) He assigns hearing officers to conduct the aforementioned administrative proceedings as well as “other administrative proceedings not arising under . . . chapter [5]” upon request from any agency. (*Ibid.*)

Section 11370.4 states that OAH is to be self-sufficient, paying its operating expenses from charges derived from the state or other public agencies for which it provides services. It reads as follows:

“*The total cost to the state of maintaining and operating the Office of Administrative Hearings shall be determined by, and collected by the Department of General Services in advance of upon such other basis as it may determine from the state or other public agencies for which services are provided by the office.*” (Emphasis added.)

The section thus delegates to the Department of General Services (hereinafter, “the Department”) the task of determining how the costs to the state of running OAH are to be assessed among the agencies using its services so that the total cost of its maintenance and operation might be recovered. Pursuant thereto the Department has projected a schedule of charges that it has determined necessary to recoup the expenses in running the office,

¹ All unidentified statutory references are to the Government Code.

² The lion’s share of OAH’s work involves “disciplinary” hearings for those agencies enumerated in section 11501, but it also provides services for other “public agencies” by contract, such as for counties and cities. (*Cf.* § 11370.4.)

i.e., its salaries, wages, and overhead expenses. (*Cf.* 11 Ops. Cal. Atty. Gen. 297, 301 (1948).) We are informed that to meet that goal in Fiscal Year 1981–1982 the Department has determined that an agency be assessed the sum of \$69.80 an hour for the services of a hearing officer and \$34.50 an hour for the services of a shorthand reporter, including the transcription of shorthand notes.

Under the Administrative Procedure Act a person aggrieved by a decision of an administrative agency may seek judicial review thereof by filing a petition for a writ of mandate (or mandamus) in accordance with the applicable provisions of the Code of Civil Procedure. (§ 11523; Code of Civ. Proc., § 1094 *et seq.*; *cf. id.*, § 1084 *et seq.*; *Strumsky v. San Diego County Employees Association* (1974) 11 Cal. 3d 28, 29.) Section 11523 sets forth the time limits within which such a petition must be filed³ and provides for the preparation of the transcript of the administrative proceeding being reviewed. It reads as follows:

“Judicial review may be had by filing a petition for a writ of mandate in accordance with the provisions of the Code of Civil Procedure, subject, however, to the statutes relating to the particular agency. Except as otherwise provided in this section any such petition shall be filed within 30 days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. *The complete record of the proceedings, or such parts thereof as are designated by the petitioner, shall be prepared by the agency and shall be delivered to petitioner, within 30 days after a request therefor by him, upon the payment of the fee specified in Section 69950 of the Government Code as now or hereinafter amended for the transcript, the cost of preparation of other portions of the record and for certification thereof.* The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decision by a hearing officer, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. Where petitioner, within 10 days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record the time within which a petition may be filed shall be extended until 30 days after its delivery to him. The agency may file with the court the original of any document in the record in lieu of a copy

³ The time limits set forth in section 11523 are tantamount to a statute of limitations which must be complied with. (*Compton, v. Board of Trustees* (1975) 49 Cal. App. 3d 150, 154–155; *Crow v. City of Lynwood* (1959) 169 Cal. App. 2d 461, 467; *Binns v. Savage* (1964) 61 Cal. 2d 520, 524; *Hollywood Turf Club v. Daugherty* (1950) 36 Cal. 2d 352, 356; *Eichman v. Escondido etc. School Dist.* (1964) 61 Cal. 2d 100, 102.)

thereof.” (Emphasis added.)

Thus, when a petitioner desires a transcript of the administrative proceeding for his action in administrative mandamus, section 11523 provides that he must pay the fees set forth in section 69950.⁴ (*Hollywood Turf Club v. Daugherty* (1950) 36 Cal. 2d 352, 356; *cf. Feist v. Rowe* (1970) 3 Cal. App. 3d 404, 422.) That section has been amended four times since its adoption in 1953 (Stats. 1953, ch. 206, p. 1266, § 1) to increase the fees specified therein and currently provides as follows:

“The fee for transcription for original ribbon copy is sixty cents (\$0.60) for 100 words, and for each copy for the party buying the original made at the same time, ten cents (\$0.10) each for 100 words. The fee for a first copy to any other person shall be twenty cents (\$0.20) for each 100 words, and for each additional copy, made at the same time, ten cents (\$0.10) for each 100 words.” (Stats. 1980, ch. 1350, p. —, § 1.)

Needless to say the “actual” costs to the state for preparing a transcript is much greater than the “sixty cents (\$0.60) for 100 words” section 69950 provides that the mandate petitioner must pay. As we have seen, the Department of General Services has deemed \$34.50 per hour to be the amount for transcription services of a shorthand reporter that is necessary to recoup the expenses of the Office of Administrative Hearings and that amount translates to approximately \$2.95 for the transcription of 100 words.⁵ We are presented with the issue of whether the agency whose proceeding is being transcribed for

⁴ A petitioner may proceed on mandate without a transcript of the administrative proceeding but in so doing he would be precluded from attacking the sufficiency of the evidence to support the decision, one of the three grounds of mandate challenge under Code of Civil Procedure section 1094.5, subdivision (b) (*Baker v. Wadsworth* (1970) 6 Cal. App. 3d 253, 260; *Ames v. City of Pasadena* (1959) 167 Cal. App. 2d 510, 513; *Fickeisen v. Civil Service Com.* (1950) 98 Cal. App. 2d 419, 420–421; *Black v. State Personnel Board* (1955) 136 Cal. App. 2d 904, 909; *Lees v. Bay Area Air Pollution Control District* (1965) 238 Cal. App. 2d 850, 854; *Mattison v. City of Signal Hill* (1966) 241 Cal. App. 2d 576, 582; Deering, Continuing Education of the Bar, *California Administrative Mandamus*, §§ 9.5, 13.4, p. 136) and he would also fail to meet his burden of proof to rebut the presumption that the agency regularly performed its official duty. (*Ward v. County of Riverside* (1969) 273 Cal. App. 2d 353, 358–359; *Gong v. City of Fremont* (1967) 250 Cal. App. 2d 568, 574; *Feist v. Rowe*, *supra*. 3 Cal. App. 3d at p. 422.)

⁵ On the average, 100 words constitutes what is known as a “folio.” (See Unpublished Opn. No. I.L. 75–24 (Feb. 19, 1975) p. 1.) The \$2.95 hourly amount for its preparation is based on an average transcription at \$34.50/hr., i.e., approximately 10 to 11 folios being prepared per hour. Of course the speed of the transcription would vary depending upon, among other things, the complexity of the proceeding and the terminology involved. In the same proportion, sixty cents (60¢) per 100 words (i.e., per folio) would translate to a charge of \$7.02 an hour, and the differences would be \$2.35 per folio of a charge of \$27.48 an hour.

the preparation of a transcript at the request of a petitioner for judicial review is liable to OAH for the \$27.48 per hour or \$2.35 per folio difference between the amount that has been established by the Department of General Services under section 11370.4 as being necessary to recoup the costs to the state of running the Office of Administrative Hearings (i.e., \$34.50/hr. or \$2.95/folio) and the amount that section 11523 in conjunction with section 69950 provides a petitioner must pay (i.e., \$0.60/folio or \$7.02/hr) for preparation of a transcript for judicial review. (See fn. 5, *supra*.) We conclude that an agency is responsible for that difference and may properly be charged therefor.

Our resolution of the issue presented entails juxtaposing the three aforementioned sections of the Government Code, i.e., its section 11370.4 (the general pricing statute of the Department for OAH), 11523 (the provisions for judicial review of decisions of administrative agencies and transcript preparation and payment therefor) and 66950 (the fees scheduled for payment of a transcript), for it is axiomatic that statutes relating to the same subject matter should be construed together and harmonized by considering their statutory framework as a whole. (*California Manufacturer Association v. Public Utilities Commission* (1979) 24 Cal. 3d 836, 846; *Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230.) Thus the application of one statute may not ignore the requirements of another statute if at all possible. (*Tripp v. Swoap* (1976) 17 Cal. 3d 671, 679; *Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal. 3d 1, 7; *Lara v. Board of Supervisors* (1976) 59 Cal. App. 3d 399, 408–409; *People v. Ashley* (1971) 17 Cal. App. 3d 1122, 1126.) Furthermore, we must not forget that the cardinal rule of statutory construction is to “ascertain the intent of the Legislature so as to affectuate the purpose of the law.” (*Select Base Materials v. Board of Equal.* (1959) 51 Cal. 2d 640, 645.)

So doing we view the requirements of the statutory scheme to be this: Section 11370.4 gives the Department of General Services the authority to determine the bases upon which the costs of running OAH are to be apportioned among the agencies it services with the proviso that the Office is to be self-sufficient, that is, that the “total cost to the state” for its operation and maintenance shall be recovered through any apportionment scheme so devised. (§ 11370.4.) This the Department has done, establishing the fee of \$34.50/hr. for an agency's utilization of the services of a shorthand reporter, as part of its projection of the fees necessary to recoup the “total cost to the state for the operation and maintenance” of that office. The thrust of sections 11523 and 66950 is in another direction: they establish the fee *a person seeking judicial review of an agency decision* must pay for a transcript for that purpose.⁶ By their terms *an agency* must prepare such a transcript and

⁶ In practice, a petitioner tenders payment of the section 69950 transcript fee to the Office of Administrative Hearings, which credits the agency with that amount. We also understand that a copy is provided gratis to the agency involved or its representative.

deliver it to the petitioner (§ 11523) at a price fixed at “sixty cents (\$0.60) for 100 words” or per folio (§ 69950; *cf.* § 11523) even though its cost for so doing may be greater. These sections in no way discharge the agency from its assessed obligations under section 11370.4 of paying an appropriate amount, upon a basis determined by the Department, to recover the “*total* cost” to the state of maintaining and operating the Office of Administrative Hearings. Thus, if the fee established by sections 11523 and 69950 to be paid for the transcription of an administrative hearing is insufficient to recoup the “total cost” of its preparation as determined by the Department of General Services, section 11370.4 authorizes that Department to “charge and collect” the difference from the agency involved, so that those “total costs” may effectively be recovered.⁷

Accordingly, we conclude that the Board of Examiners of Nursing Home Administrators is properly responsible for that portion of the cost of preparing a transcript of one of its administrative hearings that has been requested by a petitioner for an action in administrative mandamus, which exceeds the statutory fee chargeable to that petitioner for such a transcript.

⁷ We do not address any question regarding the methods the Department has used to recoup particular costs, or the bases on which they have been projected. As long as an agency is not doubly charged for a particular service, the bases and method of assessment of the charge is for the Department to determine. (§ 11370.4.)