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OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION

of

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No. 81-614

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THE HONORABLE ART TORRES, ASSEMBLYMAN, FIFTY-SIXTH DISTRICT, has requested an opinion on the following question:

Is the Housing Authority of Los Angeles County an entity which is authorized to secure summary criminal history information concerning job applicants pursuant to sections 11105, subdivision (b)(10) and 13300, subdivision (b)(10) of the Penal Code?

CONCLUSION

The Housing Authority of Los Angeles County is an entity which is authorized to secure summary criminal history information pursuant to sections 11105, subdivision (b)(10) and 13300, subdivision (b)(10) of the Penal Code to assist it in fulfilling its employment duties.

ANALYSIS

Pursuant to section 11105 of the Penal Code, the State Department of Justice is required to maintain “state summary criminal history information,” which means “. . . the master record of information, compiled by the Attorney General pertaining to the identification and criminal history of any person. . . .” The similar maintenance of “local summary criminal history information” compiled by local agencies is contemplated by section 13100 *et seq.* of the Penal Code.¹

Section 11105 of the Penal Code contains a detailed enumeration of those public officers and public agencies which are entitled to receive, or may be entitled to receive upon a proper showing, state summary criminal history information. A similar detailed enumeration is set forth in section 13300 of the Penal Code with respect to local summary criminal history information and its disclosure. Accordingly, we will discuss only section 11105 of the Penal Code with respect to the disclosure of state maintained information to a housing authority with the understanding that our conclusion will be equally applicable to disclosure of information to a housing authority by local agencies pursuant to section 13300 of the Penal Code.

The question presented is whether the Los Angeles County Housing Authority is an entity which is entitled to secure summary criminal history information concerning job applicants pursuant to sections 11105, subdivision (b)(10) and 13300, subdivision (b)(10) of the Penal Code. We set forth below, however, subdivisions (b)(9) and (10) of those sections in order to dispose of a threshold problem, that is, whether a housing authority is a “state agency” within the meaning of subdivisions (b)(9) of those sections. If it is not, then we reach the question presented as set forth above, that is, whether it falls within the scope of (b)(10), which is aimed at local agencies.

Section 11105, subdivisions (b)(9) and (10) of the Penal Code provide as follows:

“(b) The Attorney General shall furnish state summary criminal

¹Penal Code, section 11105, subdivision (2)(i) defines “state summary criminal history information” as follows:

“(2) As used in this section:

(i) ‘State summary criminal history information’ means the master record of information compiled by the Attorney General pertaining to the identification and criminal history of any person, such as name, date of birth, physical description, date of arrests, arresting agencies and booking numbers, charges, dispositions, and similar data about such person.”

See also Penal Code, section 13300, subdivision (a)(1) for a similar definition of “local summary criminal history information.”

history information to any of the following, when needed in the course of their duties, provided that when information is furnished to assist an agency, officer, or official of state or local government, a public utility, or any entity, in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply:

.....

“(9) *Any agency, officer, or official of the state* when such criminal history information is required to implement a statute or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

“(10) *Any city or county, or city and county, or district,* or any officer, or official thereof when access is needed in order to assist such agency, officer or official in fulfilling employment, certification, or licensing duties, and when such access is specifically authorized by the city council, board of supervisors or governing board of the city, county or district when such criminal history information is required to implement a statute, ordinance, or regulation that expressly refers to specific criminal conduct applicable to the subject person of the state summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.” (Emphases added.)²

²Similarly, section 13300, subdivisions (b)(9) and (10) of the Penal Code provide with respect to local agency disclosure.

“(b) A local agency shall furnish local summary criminal history information to any of the following, when needed in the course of their duties, provided that when information is furnished to assist an agency, officer or official of state or local government, a public utility, or any entity in fulfilling employment, certification, or licensing duties, the provisions of Chapter 1321 of the Statutes of 1974 and of Section 432.7 of the Labor Code shall apply.

“(9) Any agency, officer, or official of the state when such criminal history information is required to implement a statute, a regulation, or an ordinance that expressly refers to specific criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.

“(10) Any city or county, or city and county, or district, or any officer, or official thereof when access is needed in order to assist such agency, officer or official in fulfilling employment, certification, or licensing duties, and when such access is specifically authorized by the city council, board of supervisors or governing board of the city, county, or district when such criminal history information is required to implement a statute, a regulation, or an

It is thus evident that the Los Angeles County Housing Authority may obtain summary criminal history information from the State Department of Justice if it is an “agency of the state” and if there is the requisite statute or regulations or if it is encompassed within the phrase “any city or county, or city and county, or district” and if it has adopted the requisite ordinance or regulations.³

We address the threshold question as to whether the Los Angeles County Housing Authority is an “agency of the state” within the meaning of section 11105, subdivision (b)(9) of the Penal Code. We conclude that it is not for several reasons.

Initially we note that section 11105, subdivision (b) contemplates the dissemination to assist “an agency, officer, or official of state or local government, a public utility or any entity” in fulfilling certain duties. Thus it would appear that the inquiry is whether the Los Angeles County Housing Authority is part of “state government” or “local government.”

Housing authorities are established pursuant to the Housing Authorities Law. (Health & Saf. Code § 34200 *et seq.*) There is in each county or city “a public body corporate and politic known as the housing authority of the city or county.” (Health & Saf. Code, § 34240.) “An authority constitutes a corporate and politic body, exercising public and essential governmental functions, and having all the powers necessary or convenient to carry out the purposes and provisions” of the Housing Authorities Law. (Health & Saf. Code § 34310.) The essential purpose of a housing authority is to provide safe and sanitary dwelling accommodations to persons of low income at affordable rents. (See Health & Saf. Code, §§ 34242, 34312, 34315, 34322.) However, a housing authority only becomes operative with respect to any city or county if the governing body adopts a resolution declaring the need therefor. (Health & Saf. Code §§ 34240, 34241–34243.) Its operation is *local* in nature, being essentially limited to the particular city or county. (See §§ 34208, 34209 defining “area of operation.”)

ordinance that expressly refers to specific criminal conduct applicable to the subject person of the local summary criminal history information, and contains requirements or exclusions, or both, expressly based upon such specified criminal conduct.”

The provisions of Chapter 1321. Statutes of 1974 relating to criteria for denial, revocation and suspension of licenses by state boards, and section 432.7 of the Labor Code, relating to certain matters which may not be inquired into for employment purposes, such as arrests not resulting in convictions, are not involved in the issue presented in this request.

³The housing authority would also have to comply with the administrative regulations of the Department of Justice which are found in sections 700–710 of title 11 of the California Administrative Code which have been adopted to implement sections 11075–11081 of the Penal Code relating to the handling of criminal offender record information compiled by “criminal justice agencies.”

The “governing body” of a housing authority consists of a board of “commissioners. In the case of a city with an elective mayor, five commissioners are appointed by the mayor, subject to confirmation by the city council, and two additional commissioners who are tenants are appointed by the mayor. In other cities, that is, those not having an elective mayor, the city council makes the appointments. (Health & Saf. Code, § 34270.) In the case of a county housing authority, the seven commissioners are appointed by the county board of supervisors. (Health & Saf. Code, § 34271) Alternatively, the governing body of the city and county may declare itself to be the commissioners, that is, the governing body of the housing authority. (Health & Saf. Code, §§ 34290–34292.) It must, however, also appoint two tenant commissioners who have the same rights and powers as do the members of the governing body. (*Ibid.*) The rights, duties, powers and privileges of a housing authority are vested in its board of commissioners no matter how constituted. (Health & Saf. Code, §§ 34275, 34290.)

It is thus seen that the statutory scheme is to establish a housing authority as an independent governmental entity separate from the city or county in which it is established. This conclusion is also clearly affirmed in the case law. It is also such case law which raises the “threshold question” whether housing authorities should be considered “state agencies” within the meaning of section 11105, subdivision (b)(9) of the Penal Code. Thus, for example, in *Housing Authority v. City of L.A.* (1952) 38 Cal. 2d 853, the court reviewed the history of the Housing Authorities Law in concluding that the City of Los Angeles was required to perform a cooperative agreement it had entered into with the Los Angeles City Housing Authority. The court noted the Housing Authorities Law was enacted in 1938 to take advantage of benefits of the United States Housing Act of 1937 through the receipt of federal loans for construction of low rent housing projects. The court also set forth the sense in which a housing authority is a “state agency.” The court stated:

. . . The Legislature found that there was in existence in this state unsanitary and unsafe dwelling accommodations in which persons with low income were forced to reside; that the conditions caused increase and spread of disease and crime and were a menace to the health, and safety and economic welfare of the state which could not be relieved through the operation of private industry; *that the amelioration of such conditions and the use of public funds for the purpose was a governmental function of state concern*; and that it was also in the public interest to have the act immediately effective to relieve the then existing unemployment emergency. [1] In the same year through action of the city council, the ‘Housing Authority of the City of Los Angeles’ was organized to function as the creature, however, of the state legislative action. (Section 4 of the act, Health & Saf. Code, § 34240.) *The housing authority was thereby created as a state agency, ‘a*

public body corporate and politic' and is not an agent of the city in which it functions. [2] Similarly the city under the Housing Authorities Law is an agency of the state, functioning under state law to fulfill state purposes, and is not acting pursuant to its fundamental law to effect solely municipal objectives. (Housing Authority v. Superior Court, supra, 35 Cal. 2d 550, 558; Kleiber v. City & County of San Francisco, supra, 18 Cal. 2d 718, 724–725.) [3] Each functioning body, the city and the housing authority, is a separate body politic vested with specific duties and powers under the Housing Authorities Law and Housing Cooperation Law to effect a state objective. Neither is functioning independently of that state law. In pursuing the state objective each is governed by the state law and neither may exercise powers nor vested or recognized by that law. The city and the housing authority function as administrative arms of the state in pursuing the state concern and effecting the legislative objective.”(Emphases added.)⁴

It is thus seen that a housing authority is not a “state agency” in the sense that it is part of the “state government,” but is a “state agency” in the sense that it performs functions of statewide concern, albeit in a limited geographical area. It is also a “state agency” in contradistinction to being a part of city or county government. In short, a housing authority performs governmental functions of state concern within limited boundaries. This, however, may also be said of many special districts. School districts are the primary example. (See *Hall v. City of Taft* (1956) 47 Cal. 2d 177, 181.) Likewise, other districts, such as irrigation districts (see, e.g., *El Camino I. Dist. v. El Camino L. Corp.* (1938) 12 Cal. 2d 378, 383) and reclamation districts (see, e.g., *Hershey v. Reclamation District* (1912) 162 Cal. 401, 403), have sometimes been described as “state agencies” though clearly not a part of “state government” in the traditional sense. And in some legislation, “special districts” are defined as “any agency of the state . . . for the local performance of governmental or proprietary functions within limited boundaries. . . .” (See, e.g., Gov. Code, § 58751, “District Securities Investigation.”)

Accordingly, the mere fact that case Jaw has described a housing authority as a “state agency” of “agency of the state” does not mean that it must be considered such in contradistinction to a ‘city or county, or city and county, or district’ as set forth in section 11105, subdivisions (b)(9) and (10) of the Penal Code. In our view, it is more logical to conclude that subdivisions (b)(9) and (10) were merely intended to delineate state

⁴See also, e.g., *Housing Authority v. City of Oakland* (1963) 222 Cal. App. 2d 771, 772; *Housing Authority v. City Council* (1962) 208 Cal. App. 2d 599, 607; *People v. Holtzendorff* (1960) 177 Cal. App. 2d 788, 798–799; *Lockhard v. City of Bakersfield* (1954) 123 Cal. App. 2d 728, 731. Thus, the case law characterizes both a housing authority and the city or county acting thereunder as a “state agency” or “arm of the state.”

government versus local governments in the traditional sense. A housing authority, exercising its powers in a limited geographical area, would fall in the latter category. This conclusion is supported by the only case of which we are aware where the question arose as to a housing authority where one law applies to state agencies and another law applies to local agencies. In *Torres v. Board of Commissioners* (1979) 89 Cal. App. 3d 545 the question was presented whether a county housing authority was a “state agency within the meaning of the State Agency Open Meeting Act (Gov. Code, § 11120 *et seq.*) or was to be considered a “local agency” within the meaning of the Ralph M. Brown Act (Gov. Code, § 54950), which requires legislative bodies of local agencies to hold their meetings open to the public. The court opted for the latter construction, reasoning in part as follows:

“ . . . In addition, a housing authority is local in scope and character, restricted geographically in its area of operation, and does not have statewide power or jurisdiction even though it is created by, and is an agent of, the state rather than of the city or county in which it functions. Respondents are correct in noting that no housing authority has statewide powers or jurisdiction and is in fact subject to some regulations by a state agency with statewide jurisdiction (e.g., the Department of Housing and Community Development (see Health & Saf. Code, § 50400, formerly Health & Saf. Code, § 37050) pursuant to Health & Saf. Code, § 36071 enforces rules and regulations on the Farm Labor Center Law (Health & Saf. Code, § 36050 *et seq.*)).

Furthermore, as perceptively noted by the trial court, the placement of Government Code Section 11120 and its history is some persuasive indication that the State Act was meant to cover executive departments of the state government and was not meant to cover local agencies merely because they were created by state law. *A housing authority is no more a state agency under these acts than is a city or a county. The fact that such entities from time to time administer matters of state concern may make them state agents for such purposes but not state agencies under the open meeting acts.*” (*Id.*, at p. 550. Emphasis added.)

Having concluded that a housing authority is not a state agency within the meaning of subdivision (b)(9) of section 11105 of the Penal Code, we reach the ultimate issue herein, that is, whether it is a “district” within the meaning of subdivision (b)(10) of that section. This is so since, as discussed above, a housing authority is not part of the city or county or city and county in which it is established.

In construing a statute the ultimate goal is to effectuate legislative intent. (*People v. Shirokow* (1980) 26 Cal. 3d 301, 306–307.) The intent evidenced by section

11105, subdivision (b)(10) of the Penal Code is to permit access to summary criminal history information to persons and entitles to assist in fulfilling employment, certification or licensing duties. A housing authority is empowered to hire employees just as is a city, county or special district. (See Health & Saf. Code § 34278.) Accordingly, a housing authority may also desire by regulation to exclude from certain employment persons who have been convicted of serious criminal offenses. Consequently, it would appear to be contrary to the purpose of section 11105, subdivision (b)(10) of the Penal Code to exclude from its coverage housing authorities merely because the Legislature has denominated them as “authorities” instead of “districts,” which it certainly could have done.⁵

Furthermore, the term “district” is a rather expansive term, and may include entitles other than “districts” where such entitles fall within the purpose of a particular law. As already noted, section 58751 of the Government Code defines “districts” as any state agency for the performance of a governmental or proprietary function within limited boundaries for purposes of the District Securities Investigation Law. Thus, that section defines “district” as follows:

“ ‘District’ means any agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries. ‘District’ shall not include the state, any city, city and county, county, school district, any district the majority of members of whose governing body is composed of members of boards of supervisors or city councils, or any combination of either, or is composed of members the majority of which are appointed by boards of supervisors or city councils, or any district which proposes to issue bonds pursuant to any law requiring the approval of or an investigation and report by the . . . State Treasurer prior to the issuance of such bonds.”

Another example is section 31468, subdivision (3) of the County Retirement Law, which includes no less than eight definitions of the term “district.” Subdivision (e) is particularly germane to our consideration. It provides:

“(e) ‘District’ also includes any city, public agency and any other political subdivision or public corporation formed or created under the Constitution or laws of this state and located or having jurisdiction wholly or

⁵See also, *e.g.*, the laws with respect to water and similar special districts, some of which are denominated “districts” (*e.g.*, municipal water districts, Wat. Code, § 71000 *et seq.*), some of which are denominated “authorities” (*e.g.*, sanitation authorities, Wat. Code § 77000 *et seq.*), and others which are denominated “agencies” (*e.g.*, various county water agencies. West Wat. Code App. §§ 80–1 *et seq.*) This provides an excellent example of local agencies which could have been all denominated “districts.”

partially within the county.”

Accordingly, the term “district” is not an immutable term which can only encompass those local entities which the Legislature has specifically denominated as “districts.” Thus, to construe the term “district” in subdivision (b)(10) to include a city or county housing authority would neither do violence to the statute nor violate the “plain meaning rule” of statutory construction. (See, e.g., *In re Waters of Long Valley Creek Stream System* (1979) 25 Cal. 3d 339, 348 for that rule.)

We therefore conclude that section 11105, subdivision (b)(10) should be construed to include local housing authorities and any other local agency which has independent existence from a city or county, has its own governing board (which may even be ex-officio the city council or the board of supervisors), has power to enact ordinances or regulations,⁶ and has adopted ordinances or regulations which satisfy the requirements in subdivision (b)(10). Such a construction effectuates the legislative intent as we perceive it. We also note that this conclusion is in accord with the administrative construction which has been given to this Penal Code provision by the Criminal Records Security Unit of the Department of Justice. For example the Los Angeles *City* Housing Authority has already been determined to fall within the rubric of the law.

Accordingly, in response to the specific question presented, we conclude that upon the adoption of the requisite regulations as contemplated by section 11105, subdivision (b)(10) of the Penal Code, the Los Angeles County Housing Authority may obtain summary criminal history information to aid it in the performance of its duties with respect to employing individuals to work for that agency. The authority is a “district” within the meaning of subdivision (b)(10).

⁶We again note that subdivision (b)(10) requires that the local agency be implementing a statute, ordinance or regulation relating to specific criminal conduct of the subject individuals. We note also that sample ordinances and regulations which satisfy both subdivision (b)(10) and other requirements of the Department of Justice may be obtained from the Department's Criminal Records Security Unit.