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OFFICE OF THE ATTORNEY GENERAL
State of California

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OPINION

of

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No. 81-705

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THE HONORABLE MARY ANN GRAVES, DIRECTOR OF FINANCE,
has requested an opinion on the following questions:

1. For the purposes of Government Code section 13340, what is an appropriate definition of the term continuing appropriation?
2. Does the “sunset provision” contained in Government Code section 13340 apply to continuing appropriations enacted after its effective date, January 1, 1979, but before July 1, 1983?
3. What effect, if any, does the “sunset provision” contained in Government Code section 13340 have on continuing appropriations enacted after July 1, 1983?

CONCLUSIONS

1. For the purposes of Government Code section 13340, a continuing appropriation may be defined as set forth in section 6134 of the State Administrative Manual, or as may be derived either from section 16304 of the Government Code or from ease law; provided that the term continuing appropriation shall not be deemed to include mere interfund transfers of a continuing nature.

2. The “sunset provision” contained in Government Code section 13340 does apply to continuing appropriations enacted after its effective date, January 1, 1979, but before July 1, 1983, unless the statute enacting the continuing appropriation provides: otherwise.

3. The “sunset provision” contained in Government Code section 13340 has no effect upon continuing appropriations enacted after July 1, 1983.

ANALYSIS

This opinion request poses questions which arise from the enactment by the Legislature of chapter 1284, Statutes of 1978. That enactment amends and adds various sections to the Government Code¹ relating to the preparation of the state budget and accounting for state funds. The new procedures are being phased in gradually and will eventually be operative as to all state departments and agencies.² (See, e.g., § 12016, 13300 and 13338.) Ultimately, the budget bill enacted by the Legislature will, as to all state departments and agencies, “be prepared in such a manner that it reflects, and follows as closely as possible, the Governor’s Budget,” which must be a “program budget.” (§ 13337, subd. (c), § 13338, subd. (a).) Ultimately, also, the budget bill, the Governor’s Budget, and

¹All section references are to the Government Code unless otherwise indicated.

²The purpose of chapter 1284, Statutes of 1978, is generally set forth in section 1 as follows:

“SECTION 1. It is the intent of the Legislature in enacting this act to provide for accurate budgeting and accounting for all funds whether they be derived from state or other sources. It is further the intent of the Legislature that local information developed within state government be provided to both the legislative and executive branches in usable form in order to enhance fiscal decision making in the establishment of budgets for all state activities. The Legislature declares that the implementation of this act is necessary to form the basis for fiscal accountability for all funds used by the state. The Legislature further declares that this act is necessary to establish expenditure priorities within the state government in such a way as to give the State of California a budget which reflects the total resources of the state, serves the needs of the people of the state and, at the same time, provides such services in the most efficient and effective manner without waste and duplication.”

the Controller's records relating to the expenditure of state funds will contain a compatible coding scheme for purposes of accounting and fiscal control. (See §§ 12412.1, 13300, 13335–13338.) Toward this goal the Department of Finance is directed to develop a cost accounting system which

“ . . . shall be of a nature so as to permit a comparison of budgeted expenditures, actual expenditures and encumbrances and obligations, as defined by the California Fiscal Advisory Board, and estimated revenue to actual expenditures, on a monthly basis which is compatible with a budget coding system, developed by the department. In addition, the system shall provide for a federal revenue accounting system with cross-references of federal fund sources to state programs.” (§ 13300, subd. (b).)

Our focus herein is on section 13340, as added by chapter 1284, Statutes of 1978. That section provides significant change in the law with respect to continuing appropriations. It states:

“On and after July 1, 1983, no moneys in any fund which by any statute other than a Budget Act, is continuously appropriated without regard to fiscal years, may be encumbered unless the Legislature, by statute, specifies that the moneys in the fund are appropriated for encumbrance. The department, not later than January 1, 1982, shall submit a report to the Legislature containing a recommendation as to which of such funds, if any, should continue to be continuously appropriated.”³

1. The first question presented is what is an appropriate definition of the term continuing appropriation for purposes of section 13340.

With respect to “codified” definitions, the requester points out a definition she derives from section 16304 and the definition contained in section 6134 of the State Administrative Manual (SAM). The requester suggests the possibility of the need to select between these definitions.

Section 16304 sets forth the general rule that appropriations are “available for encumbrance during the period specified therein,” or if not limited, then for three years. Section 16304 then states that:

³Current law presents essentially the converse. A continuing appropriation is available for encumbrance (and expenditure) to the full extent of the fund *unless* the budget bill puts a cap on the fund through a specific line item appropriation. See generally 63 Ops. Cal. Atty. Gen. 125, 126–127 (1980).

“An appropriation containing the term ‘without regard to fiscal years’ shall be available for encumbrance from year to year until expended.”

Section 16304 additionally sets forth a list of appropriations which “shall remain available from year to year until expended.” From section 16304 the requester states in her request:

“ ‘Continuous appropriation’ is most commonly defined as the availability of future revenues for expenditure without further action by the Legislature. This definition appears to be based on Government Code section 16304.”

Section 6134 of the State Administrative Manual (SAM) provides what the requester suggests may be a “broader definition.” It reads:

“B. Continuing Appropriation, Legal Citation

Amount, actual or estimated, available each year under a permanent constitutional or statutory appropriation which is renewed each year without further legislative action The amount available may be a specific, recurring sum each year; all or a specified portion of the proceeds of specified revenues which have been dedicated permanently to a certain purpose; or it may be whatever amount is required for the purpose as determined by formula—such as school apportionments. For example: ‘Section 15204, Welfare and Institutions’ Code’ (Aid to Counties for Needy Disabled).”

With the caveat that the section 16304 derived definition, *supra*, need not be restricted to “future revenues,” but may also include existing funds, we believe there is no significant difference between the section 16304 definition and that provided in SAM. The first sentence of the SAM definition is the equivalent of the section 16304 derived definition. The additional material is more in the nature of explanation or examples.⁴

Finally, with respect to the definition of a continuing appropriation, this office had occasion to define or explain such appropriations in a recent opinion. In 63 Ops. Cal. Atty. Gen. 777 (1980) we reviewed in detail the case law and opinions of this office on the subject of whether the Legislature has in a given statute appropriated money and

⁴The requester set forth examples in her request of the various types of continuing appropriations set forth in SAM. Additionally, she noted that there are some statutes of a continuing nature which would not constitute continuing appropriations because *further* legislative action is needed before there is an actual appropriation. (E.g., Welf. & Inst. Code. § 16702, subd. (d), providing a statutory formula for cost of living adjustments for county health services.) We agree with this observation by the requester.

whether such an appropriation is a continuing appropriation. (*Id.*, at pp. 780–783.) Suffice it to say that a reading of that opinion sets forth the following principles:

1. An appropriation must have certainty of purpose and a designation of the fund from which expenditures are to be made.
2. However, no particular form or language is required to constitute an appropriation. The intent of the Legislature is the controlling factor.
3. If an appropriation is to be made from the general fund, a specific amount or formula for determining the amount is required.
4. However, where a statute makes a *specific* fund available for a particular object, the amount need not be fixed or specified, and such statute constitutes a continuing appropriation of such funds for such object or purpose.

If we were to attempt a definition from the case law and opinions discussed in 63 Ops. Cal. Atty. Gen. 777, *supra*, it is probably best set forth in the language wherein we characterized a particular statute as “constitut[ing] a definitive self-executing continuing appropriation of the amounts therein so as to permit expenditures therefrom without further authorization—i.e., without provision therefor in the annual Budget Act.” (*Id.*, at p. 781.) This definition, extracted from the general case law is essentially the same as that extracted from section 16304 (with the caveat with respect to existing funds) and that found in section 6134 of SAM.

Accordingly, we believe that for purposes of section 13340 any of the foregoing definitions are adequate to describe a continuing appropriation.

This brings us to the essential point raised by the requester in question one. The requester points out that there are many statutory provisions which “appropriate” funds on a continuous basis from a primary fund to a second fund, from which fund the monies are then appropriated for encumbrance and expenditure. An example set forth by the requester is as follows:

“For example, Education Code section 60246 appropriates a specified amount for transfer from the General Fund to the State Instructional Materials Fund from which the Budget Act makes an in-lieu appropriation for expenditure.”

With respect to this type of continuing appropriation, we are advised that such constitutes merely bookkeeping transfers and, as such, the monies in the primary fund are never “encumbered” for ultimate expenditure from that fund.⁵

Assuming such continuous directions by the Legislature to transfer funds from a primary fund to a second fund for further appropriation and expenditure are continuing appropriations,⁶ we agree with the requester’s determination that such do not constitute continuing appropriations within the meaning of section 13340. Section 13340 prohibits encumbrance” after July 1, 1983, of any such appropriations “unless the Legislature, by statute, specifies that the monies in the fund are appropriated for encumbrance.” Continuing appropriations for interfund transfers, which are mere bookkeeping entries, lack the *sine qua non* for inclusion within the ambit of section 13340, that is, the ability to be “encumbered” for ultimate expenditure while still in the primary fund.

In sum, for the purposes of section 13340, a continuing appropriation may be defined as set forth in section 6134 of the State Administrative Manual (SAM), or as may be derived from the terms of section 16304 of the Government Code, or as may be derived from the case law, as discussed above; provided that continuing appropriations shall not be deemed to include mere interfund transfers of a continuing nature.

2. The second question presented is whether the “sunset provision” contained in Government Code section 13340 applies to continuing appropriations enacted after January 1, 1979, the effective date of chapter 1284, Statutes of 1978, and hence of

⁵Section 16304, *supra*, also essentially defines the term “encumbered.” It states:

“An appropriation shall be deemed to be encumbered at the time and to the extent that a valid obligation against the appropriation is created.”

See also SAM, section 8340:

“Encumbrances are commitments for expenditure . . .”

⁶Although the statutes may state that the funds are “appropriated” for transfer to the second fund, it would seem that such are not appropriations in the constitutional sense, that is, an authorization to spend public monies for a specific purpose. (See, generally, *Ingram v. Colgan* (1895) 106 Cal. 113, 116–118; *Proll v. Dunn* (1889) 80 Cal. 220; *cf.*, § 29901.) Since these transfers are bookkeeping entries they are more in the nature of allocation of monies within the state treasury. As noted by the court in a sister jurisdiction in *Hooker v. Parkin* (Ark. 1962) 357 S.W. 2d 534, 542:

“ . . . the act provides for rise allocation of funds within the State Treasury and it does not provide for the withdrawal of any funds from the Treasury. The Act is not an appropriation within the meaning of these two provisions of the State Constitution . . .”

See also, *Nevada-California Electric Corporation v. Corbett* (N.D. Cal. 1938) 22 F. Supp. 951, 956: This transfer [from the retail sales tax fund to the general fund], of course is not an appropriation.”

section 13340 itself. We conclude that it does apply to such appropriations unless the statute enacting the continuing appropriation provides otherwise.⁷

It would appear that the requester, in positing the second question, envisions at least the possibility that the terms of a continuing appropriation enacted after January 1, 1979 will prevail over the terms of section 13340. Such predominance could arise from either of the following rules of statutory construction: (1) that the statute last in time prevails over an earlier enacted inconsistent statute (see, e.g., *Fuentes v. Workers' Comp. Appeals Bd.* (1976) 16 Cal. 3d 1, 7); or (2) that a specific statute controls a general statute where the statutes are in conflict (*id.*, at p. 8). It is also to be noted, however, that both these rules require *that inconsistency or conflict exists*. As the court noted in the *Fuentes* case as to both these rules, they apply only where the statutes cannot be harmonized or reconciled.

With respect to section 13340 and continuing appropriations enacted between January 1, 1979 and July 1, 1983, we see no inconsistency or irreconcilable conflict which would make either of the above rules of statutory construction applicable. Continuing appropriations enacted during such time may still be subjected to the recommendation of the Department of Finance through January 1, 1982 as to whether they should be continued. Likewise, such appropriations may be subjected to scrutiny by the Legislature prior to the basic operative date of the “sunset provision,” July 1, 1983, just like any other continuing appropriation. In short, it does not follow from the fact that a continuing appropriation has been enacted after July 1, 1979 that there is no reason to review the question whether it is desirable that such appropriation should continue as a self-executing appropriation.

Of course, if the Legislature does not intend that a continuing appropriation enacted after the effective date of chapter 1284, Statutes of 1978 should automatically “sunset” on July 1, 1983, it can so provide in the statute enacting the continuing appropriation. This will be of particular significance as to continuing appropriations enacted after the submission of the Department of Finance’s recommendations on or before January 1, 1982 since no automatic review will be provided after that submission.

Accordingly, we conclude that the “sunset provision” contained in section 13340 does apply to continuing appropriations enacted after its effective date, January 1,

⁷The requester characterizes the effect of section 13340—that is, requisite legislation to continue the continuing appropriation or a prohibition as to its encumbrance or expenditure—as a “sunset provision.” We note parenthetically that the failure of the Legislature to act with respect to a particular continuing appropriation will not actually repeal the statute providing the appropriation. Accordingly, denominating it a “sunset provision” may be a slight overstatement of the effect of section 13340. However, the practical effect is the same since it may constitute at least a “temporary repealer” of the continuing appropriation.

1979, but before July 1, 1983 unless the statute enacting the continuing appropriation provides otherwise.

3. The third and final question is whether the “sunset provision” of section 13340 is applicable to continuing appropriations enacted *after* July 1, 1983. We conclude that it is not. Section 13340 by its terms contemplates a complete review of continuing appropriations by the Department of Finance by January 1, 1982, and its recommendations to the Legislature by such date. It also contemplates a complete review of continuing appropriations by the Legislature *before* July 1, 1983 to effectuate the “sunset provision.” Accordingly, continuing appropriations enacted after July 1, 1983 just would not fall within the terms of section 13340. Stated otherwise, as to such continuing appropriations the legislative review contemplated by section 13340 will be satisfied by the mere enactment of the appropriation itself.
