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THE STATE COUNCIL ON DEVELOPMENTAL DISABILITIES has requested an opinion on questions we have rephrased as follows:

1. Are allocations from the Developmental Disabilities Program Development Fund required to be consistent with the priorities specified in the California Developmental Disabilities State Plan and approved by the State Council on Developmental Disabilities?

2. Does the State Council on Developmental Disabilities have any legal redress if allocations are made from the Developmental Disabilities Program Development Fund in a manner inconsistent with the priorities specified in the California Developmental Disabilities State Plan and without council approval?

3. Does the Department of Developmental Services have the authority to (1) restrict the amount of specialized services to be provided by the regional centers or (2) limit client eligibility for such services through the issuance of "guidelines"?

CONCLUSIONS

1. Allocations from the Developmental Disabilities Program Development Fund are required to be consistent with the priorities specified in the~ California Developmental Disabilities State Plan and approved by the State Council on Developmental Disabilities.

2. The State Council on Developmental Disabilities may seek legal redress if allocations are made from the Developmental Disabilities Program Development Fund in a manner inconsistent with the priorities specified in the California Developmental Disabilities State Plan and without council approval.

3. The Department of Developmental Services does not have the authority to (1) restrict the amount of specialized services to be provided by the regional centers or (2) limit client eligibility for such services through the issuance of "guidelines."

ANALYSIS

The Legislature has enacted a comprehensive statutory scheme (Welf. & Inst. Code § 4500–4846)[1] known as the Lanterman Developmental Disabilities Services Act (§ 4500; hereafter "Act") to provide services to developmentally disabled persons in a coordinated manner throughout the state (§ 4501) so that they may lead "more independent, productive, and normal lives" (§ 4750). The programs include locating persons who are in need of such assistance (§ 4641), assessing the extent of their needs (§ 4642–4643), and providing the aid required to help improve their capabilities and resolve their problems (§ 4502–4503, 4646–4648).

The questions presented for analysis concern the roles of the various governmental entitles responsible for administering the Act, principally the State Council on Developmental Disabilities (hereafter "Council") and the Department of Developmental Services (hereafter "Department"). Certain of these issues have been addressed by recent legislation amending the relevant statutory provisions. (Stats. 1981, ch. 563.)

1. Allocations Consistent With Plan Priorities and With Council Approval

The first question concerns whether allocations from the Developmental Disabilities Program Development Fund (hereafter "Fund") are required to be consistent with the priorities specified in the California Developmental Disabilities State Plan

[1]All section references hereafter are to the Welfare and Institutions Code unless otherwise indicated.

(hereafter "Plan") and approved by the Council. We conclude that they must.

The Plan is the Legislature's mechanism for avoiding "confusion of responsibilities, a lack of systemwide priorities, and failure to make the most appropriate use of all federal, state, and local funds and programs." (§ 4560.) It is prepared by the Council (§ 4561) and submitted to the Secretary of the Health and Welfare Agency after public hearings have been conducted and copies of the Plan are provided to various public officials for guidance in preparing legislation and funding the programs for persons with developmental disabilities (§§ 4564–4565).

The components of the Plan include:

> "(a) A part describing existing publicly funded services for persons with developmental disabilities within the state, and within each area of the state, including the numbers and types of persons receiving such services, the amount and sources of funding of such services, the agencies responsible for administration, and the effectiveness of such services in helping developmentally disabled persons live more independent, productive, and normal lives.
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> "(b) *A part recommending priorities for program and facility development or expansion. Such recommendations shall include statements of justification of need, specific objectives of programs to be developed, amount and sources of funding, timing and agencies responsible for implementation*. The priorities for program and facility development or expansion contained in this division shall include specific recommendations with regard to the findings of regional centers resulting from their investigations carried out pursuant to Section 4509.
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> "(c) A part listing the priority recommendations for program termination, modification, or reduction. Such recommendations shall include statements of justification or lack of need, or evidence of program ineffectiveness, or evidence of discrimination against persons with developmental disabilities, or evidence of unnecessarily high costs in relation to program results. Recommendations for program termination, modification, or reduction shall also include a statement of the amount and sources of funds to be saved or reallocated to other programs and the timing and agencies responsible for implementation.

"(d) A part describing the procedures that shall be used for evaluating all programs identified in the state plan, the costs and sources of funds for such evaluation, and the agencies responsible for evaluation.

"(e) A part describing the administrative responsibility of state agencies involved in implementing all aspects of the state plan and a description of the amount and sources of funds required for such administration.

"(f) A part describing the amount of federal funds, from Public Law 94–103, that shall be allotted to the state council, area boards, and state and non-state agencies for services, planning, advocacy, construction, and other approved purposes as defined in federal law and regulations." (§ 4561; italics added.)[2]

The key statute describing the Fund and specifying whether Fund allocations must be consistent with Plan priorities is section 4677. As recently amended, it provides:

"All parental fees collected by or for regional centers shall be remitted to the State Treasury to be deposited in the Developmental Disabilities Program Development Fund, which is hereby created and hereinafter called the Program Development Fund. *The purpose of the Program Development Fund shall be to provide resources needed to initiate new programs, consistent with approved priorities for program development in the state plan*. In no event shall an allocation from the Program Development Fund be granted for more than 24 months.

"Parental fee schedules shall be evaluated pursuant to the provisions of Section 4785 and adjusted annually by the department, with the approval of the state council. Fees for out-of-home care shall bear an equitable relationship to the cost of such care and the ability of the family to pay.

"In addition to parental contributions and General Fund appropriations, the Program Development Fund may be augmented by federal funds available to the state for program development purposes, when such funds are allotted to the Program Development Fund in the state plan. The Program Development Fund is hereby appropriated to the department

[2]The provisions of section 4509 relate to the providing of services by the state hospitals.

until June 30, 1983, for the purposes of this section. In no event shall any such funds revert to the General Fund, except after June 30, 1983. Prior to July 1, 1983, the Department of Finance shall review the utilization and effectiveness of the Program Development Fund and shall report its findings to the Legislature.

"The Legislative Analyst shall review and comment on the utilization and effectiveness of the Program Development Fund in connection with the annual budget hearings.

"*The department may allocate funds from the Program Development Fund for any legal purpose, provided, that requests for proposals and such allocations are approved by the state council, in consultation with the department, and are consistent with the priorities for program development in the state plan*. Allocations from the Program Development Fund shall take into consideration the future fiscal impact of such allocations on other state-supported programs for developmentally disabled persons. To the extent feasible, allocation decisions shall also take into consideration distribution of funds to geographic areas proportionate to such area's contributions to the Program Development Fund.

"Under no circumstances shall the deposit of federal moneys into the Developmental Disabilities Program Development Fund be construed as requiring the State Department of Developmental Services to comply with a definition of "developmental disabilities" and "services for persons with developmental disabilities" other than as specified in subdivisions (a) and (b) of Section 4512 for the purposes of determining eligibility for developmental services or for allocating parental fees and state general funds deposited in the Program Development Fund." (Stats. 1981, ch. 563, § 6; italics added.)

As indicated by section 4677, the Fund is comprised of parental fees[3] and may include state legislative appropriations from the General Fund and federal monies allocated to the Fund by the Council through the Plan's provisions.

In terms of administration, the Fund is under the general control of the Department. It sends out "requests for proposals," specifying areas in which it will allocate

[3]"Parental fees" are those contributed by parents of children under the age of 18 who are receiving program services. (§ 4782–4783.) The fees are set, reviewed annually, and adjusted by the Department with the approval of the Council. (§ 4677, 4784–4785.)

the Fund monies. Proposals for new programs are then submitted to the Department, and the individual grants for the proposals are awarded after extensive evaluation. All Fund allocations result from the initial issuance of the requests for proposals by the Department.

Section 4677 expressly states that the purpose of the Fund is to provide resources for new programs "consistent with approved priorities for program development in the state plan." This would appear to answer the question of whether allocations from the Fund are required to be consistent with the priorities specified in the Plan. Prior to its recent amendment, however, section 4677 raised the inference that only the federal monies component of the Fund required consistency when allocations were made. It authorized allocations from the Fund "for any legal purpose, provided, that such allocations are approved by the state council and provided that allocations of federal funds deposited in the Program Development Fund are consistent with the priorities for program development in the state plan." (Stats. 1980, ch. 603, § 1.)

This seeming ambiguity was resolved by the Legislature's recent amendment of the statute, deleting the sole reference to "federal funds" consistency and replacing it with the authority to allocate Fund monies "for any legal purpose" as long as (1) the "requests for proposals" issued by the Department "are approved by the state council," (2) the Fund "allocations are approved by the state council," and (3) the allocations are "consistent with the priorities for program development in the state plan."

A construction of section 4677, as amended, that requires consistency between plan priorities and allocations made from the Fund is in furtherance of the stated purpose of the statute in establishing the Fund. We must construe section 4677 "so as to harmonize its various elements without doing violence to its language or spirit." (See *Wells* v. *Marina City Properties, Inc.* (1981) 29 Cal. 2d 781, 788.)

Significantly, the "approval" given by the Counsel to the Department's actions must be based upon "consultation" between the two entitles. "Consultation" normally is defined as "a counsel or conference . . . to consider a special matter . . . deliberation of two or more persons on some matter." (Webster's New Internat. Dict. (3d ed. 1966) p. 490.) It connotes a mutuality of responsibility, cooperation, and joint consideration, without one party dictating to the other.

In answer to the first question, therefore, we conclude that pursuant to section 4677, as amended, allocations from the Fund are required to be consistent with the priorities specified in the Plan and approved by the Council.

2. Disputes as to Priorities and Allocation Approval

The second question posed concerns whether the Council has any legal redress should the Department make allocations from the Fund inconsistent with the priorities established in the Plan and without Council approval. We conclude that the Council may initiate legal action under such circumstances.

As we have found, allocations by the Department of Fund resources must be consistent with the priorities specified in the Plan and approved by the Council. If either of these conditions is not met, the Council is expressly authorized to "publicly comment (§ 4676) and "report directly to the Governor and the Legislature." (§ 4540).

Besides its express powers, however, the Council has certain powers conferred upon it by implication. (See *Ferdig* v. *State Personnel Bd.* (1969) 71 Cal. 2d 96, 103; *City and County of San Francisco* v. *Padilla* (1972) 23 Cal. App. 3d 388, 400.) While the doctrine of implied powers is not without limitation, it justifies those powers " 'essential to the declared objects and purposes of the enabling act. . . .' " *Addison* v. *Department of Motor Vehicles* (1977) 69 Cal. App. 3d 486, 498.)

Here, the Council is authorized to establish program priorities in the Plan and approve allocations from the Fund made by the Department, which allocations must be consistent with the Plan's priorities. (§§ 4561, 4677.)

We believe that the Council may insure that its statutory duties are fulfilled. Certainly the "declared objects and purposes of the enabling act" would be frustrated by anything less than full compliance with the legislative mandate.

Under Code of Civil Procedure section 1085, a writ of mandate may be directed against "any inferior tribunal, corporation, board, or person," when other remedies are inadequate, "to compel the performance of an act which the law specially enjoins." (See *People ex rel. Younger* v. *County of El Dorado* (1971) 5 Cal. 3d 480, 490–491; *Parker* v. *Bowron* (1953) 40 Cal. 2d 344, 351.) The writ will issue against a public body or a public officer. (*Housing Authority* v. *City of L.A.* (1952) 38 Cal. 2d 853, 869–871.)

It would appear appropriate for a writ of mandate to be filed on behalf of the Council to enjoin the Department from making allocations from the Fund inconsistent with the priorities established in the Plan and without Council approval. Such a proceeding would compel the Department to follow its express statutory responsibilities.[4]

[4]The same conclusion would be reached concerning the issuance of requests for proposals by the

In answer to the second question, therefore, we conclude that the Council has legal redress should the Department not follow the express requirements of section 4677.

3. Department "Guidelines" Authority

The third question concerns whether the Department has the authority to (1) restrict the amount of specialized services to be provided by the regional centers or (2) limit client eligibility for such services through the issuance of "guidelines." We conclude that it does not have such authority.

It is the regional centers that are responsible under the Act for providing the services to the developmentally disabled individuals. (See §§ 4620, 4630, 4648, 4651.) We have previously interpreted these statutory provisions as placing "control with the regional centers over the manner in which their programs are to be provided" and requiring "that, with some exceptions, the Department's responsibilities are limited to evaluating the results of the programs and do not include controlling the actual manner in which the services are provided by the centers." (62 Ops. Cal. Atty. Gen. 229, 230–231 (1979).)

We note that the Department may promulgate formal regulations regarding certain activities of the regional centers. Subdivision (a) of section 4631 states:

> "(a) In order to provide to the greatest extent practicable a larger degree of uniformity and consistency in the services, funding, and administrative practices of regional centers throughout the state, the State Department of Developmental Services shall, in consultation with the regional centers, adopt regulations prescribing a uniform accounting system, a uniform budgeting and encumbrancing system, a systematic approach to administration practices and procedures, and a uniform reporting system which shall include:
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> "(1) Number and costs of diagnostic services provided by each regional center.
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> "(2) Number and costs of services by service category purchased by each regional center.
>
> "(3) All other administrative costs of each regional center.

Department without Council approval.

Besides the issuance of formal regulations, the Department sets the rates for the special services provided by the centers (§ 4681), negotiates contract obligations to be performed by the centers (§ 4631, 4633), and audits the centers' expenditures (§ 4780.5).

The Legislature also funds the activities of the regional centers through appropriations to the Department. In the Budget Act of 1981, the Legislature has conditioned the appropriations for the operations of the regional centers upon the following requirement: "Provided further, that, notwithstanding any other provisions of law, the Director of the Department of Developmental Services shall establish guidelines for the expenditure of funds budgeted for the regional centers." (Stats. 1981, ch. 99, items 430-101-001–430-101-890.)

We believe this restriction in the Budget Act of 1981 authorizes the Department to issue "guidelines" to regional centers concerning the expenditure of their funds. Necessarily, such broad authorization would include subjects such as the amount of specialized services to be provided by the regional centers and client eligibility for the services. For various reasons, however, the "guidelines" are in the nature of "suggestions" rather than "requirements" to be followed by the regional centers.

In interpreting the "guidelines" authorization in the Budget Act in light of the statutory duties placed upon the Department and regional centers in the Welfare and Institutions Code, we are mindful of several relevant principles of construction.

First, as previously mentioned, an administrative agency has only such powers as are expressly or impliedly conferred upon it by law. Second, "it is firmly established that the repeal of statutes by implication is not favored; the Legislature is not presumed to intend repeal of a former act by the passage of a subsequent enactment if a fair and reasonable construction can be given to both." (*County of Kern* v. *Pacific Gas and Electric Co.* (1980) 108 Cal. App. 3d 418, 425; see *Board of Supervisors* v. *Lonergan* (1980) 27 Cal. 3d 855, 868–869.)

Third, "the Budget Act may not constitutionally be used to grant authority to a state agency that the agency does not otherwise possess." (27 Ops. Cal. Atty. Gen. 345, 346 (1956); see 39 Ops. Cal. Atty. Gen. 200, 204 (1962).) This is because of the "one subject rule" contained in section 9 of article IV of the California Constitution which states as follows: "a statute shall embrace but one subject, which shall be expressed in its title. . . ." (See *Lyons* v. *Municipal Court* (1977) 75 Cal. App. 829, 841–842; *Spencer* v. *G.A. MacDonald Constr. Co.* (1976) 63 Cal. App. 3d 836, 846.) Under the Constitution, "the budget bill may deal only with the one subject of appropriations to support the annual budget," although it may properly place "a restriction on the manner in which an

appropriation may be spent for an already authorized State purpose," as long as it is not "substantively amending and changing existing statute law." (29 Ops. Cal. Atty. Gen. 161, 167 (1957); see Cal. Const., art IV, § 12.)

Fourth, every statute is presumed constitutional unless clearly demonstrated otherwise. (*In re Ricky H.* (1970) 2 Cal. 3d 513, 519; *Reed* v. *California Coastal Zone Conservation Com.* (1975) 55 Cal. App. 3d 889, 894.)

Fifth, the exercise of any quasi-legislative rulemaking power by an agency is generally restricted to the issuance of formal regulations pursuant to statutory requirements. (Gov. Code §§ 11340–11356; see *Armistead* v. *State Personnel Board* (1978) 22 Cal. 3d 198, 201–205; *Alta Bates Hospital* v. *Lackner* (1981) 118 Cal. App. 3d 614, 620–623.)

Applying these various rules, we believe that the Legislature intended for the Budget Act "guidelines" authorization to be limited to financial "suggestions" concerning the limited resources available to the regional centers. As a practical matter, the Department may not fund the activities of the regional centers above that amount appropriated by the Legislature. Guidance in terms of the amount of money available to the regional centers would be accordingly appropriate. On the other hand, we believe the Legislature did not intend to change statutory law concerning the basic responsibilities of the regional centers in operating their own programs.

Because we conclude that the "guidelines" authorization in the Budget Act refers to administrative "suggestions" rather than "requirements," the Budget Act authorization may be harmonized with (1) the Welfare and Institutions Code provisions concerning the respective administrative roles of the Department and regional centers, (2) the constitutional "one subject rule," and (3) the formal regulations provisions of the Government Code.

Consequently, the Department's "guidelines" need not be in the form of official regulations but may take any form necessary to apprise the regional centers of its budgetary suggestions. While the guidelines may touch indirectly upon client eligibility and the amount of services to be rendered by the regional centers, such subjects would not be in the area of the Department's responsibility. In any event, the regional centers would not be mandatorily required to "implement" such guidelines, i.e., to treat them as formal regulations.

In answer to the third question, therefore, we conclude that the Department does not have the authority to (1) restrict the amount of specialized services to be provided

by the regional centers or (2) limit client eligibility for such services through the issuance of "guidelines."

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