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OFFICE OF THE ATTORNEY GENERAL  
State of California

GEORGE DEUKMEJIAN  
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OPINION	:	No. 81-708
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of	:	<u>MARCH 26, 1982</u>
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GEORGE DEUKMEJIAN	:	
Attorney General	:	
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Robert D. Milam	:	
Deputy Attorney General	:	
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THE HONORABLE MILTON GOLDINGER, COUNTY COUNSEL,  
COUNTY OF SOLANO, has requested an opinion on the following question:

Does the Solano County Civil Service Commission have authority to contract for the services of a private investigator to conduct an investigation at county expense without authorization to make such a contract and an appropriation to pay for such services from the board of supervisors?

CONCLUSION

The Solano County Civil Service Commission does not have authority to contract for the services of a private investigator to conduct an investigation at county expense without authorization to make such a contract and an appropriation to pay for such services from the board of supervisors.

## ANALYSIS

Government Code<sup>1</sup> section 31100 et seq., the County Civil Service Enabling Law (hereafter "act"), provides that counties may adopt a civil service system if the implementing ordinance is approved by the voters. Under section 31100 the county board of supervisors must appoint a civil service commission to assist in administering the system. Under section 31113 the civil service commission shall perform the duties and exercise the powers provided in the act as well as performing other duties delegated to it by the board of supervisors. Solano County adopted a civil service system under the act and it was approved by the voters on November 8, 1966. (Solano County Code, ch. 20, art 1.)

There recently arose a situation where a county employee testified before the civil service commission in a grievance hearing, and after having so testified complained that he had been intimidated and harassed when he returned to work. The civil service commission then directed the personnel director to contract for investigative services for the purpose of investigating the allegations of intimidation or reprisal. The question is whether the civil service commission has the power to contract for such services without authority and funding from the board of supervisors.<sup>2</sup>

The power of civil service commissions has been described thusly:

"... The [civil service] commission has wide discretionary power in its many fields of endeavor. *However, such commissions have only such powers as are conferred upon them.*" (*Allen v. McKinley* (1941) 18 Cal.2d 697, 705; emphasis added.)

Section 31110 provides that "[u]pon the adoption of the civil service system, the board of supervisors shall appoint a civil service commission *to assist* in administering the system." (Emphasis added.) Section 31113 provides that the "... commission shall perform the duties and exercise the powers provided in this part, and such additional power and duties in relation thereto *as the board of supervisors delegates to it.*" (Emphasis added.) Our examination of the act has revealed no express grant of authority to a civil service commission to contract for investigative services. Nor may such authority be implied in view of the statutes expressly granting to the board of supervisors the authority to contract for special services needed by the county. Sections 31000 and 53060 authorize the board of supervisors to contract for the services of certain experts generally and section

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<sup>1</sup> All unidentified section references are to the Government Code.

<sup>2</sup> For the purposes of this opinion we assume, without deciding, that the commission has jurisdiction to investigate such matters.

31103 specifically authorizes the board of supervisors to contract for services needed to conduct competitive examinations in the county's civil service system.

We think the legislative scheme evidences a legislative intent that contracts for services needed to implement the civil service system adopted pursuant to the act were to be made by the board of supervisors. It is clear that the act contemplates a joint administration of the civil service system by the board of supervisors and the civil service commission and that where such administration requires the services of experts it is the board of supervisors which has the ultimate power to contract therefor. Similarly, those aspects of administering the civil service system which involve the expenditure of county funds are committed to the board of supervisors by the statutes requiring budgets and appropriations to authorize expenditures. (§ 29000 et seq.; see *Hicks v. Board of Supervisors* (1977) 69 Cal.App.3d 228, 235 and *Placer County Employees Assn. v. Board of Supervisors* (1965) 233 Cal.App.2d 555, 559.)

The question becomes, then, whether, pursuant to section 31113, the board of supervisors has delegated its authority to contract for investigative services to the civil service commission. Section 20-3 of the Solano County Civil Service Ordinance provides:

"The civil service commission shall appoint a personnel director who shall report to and be directly responsible to the commission and who shall also be its executive officer and secretary. The personnel director may be disciplined by the commission; provided, that in such case he shall have the right to appeal to the board of supervisors.

"Subject to the supervision and review of the civil service commission, the personnel director shall perform all the duties, powers, purposes, and functions of the commission. *The commission shall retain exclusive jurisdiction in* the adoption of rules, the creation and adjustment of class specifications, the hearing of appeals from disciplinary action, the issuance of subpoenas, *the conducting of hearings and investigations*, and the rendering of decisions on all such matters." (Emphases added.)

This section contains a reference to investigations as part of the commission's exclusive jurisdiction. However, the section covers only the jurisdiction of the commission vis-a-vis the personnel director and does not purport to delegate the board of supervisors' power to contract for special services to the commission. We therefore conclude that section 20-3 of the Solano County Civil Service Ordinance does not contain authorization for the Solano County Civil Service Commission to contract for investigative services.

It has been suggested that the board of supervisors must approve the civil service commission's request by virtue of section 20-10 of the Solano County Code. This section provides:

"The board of supervisors *shall appropriate* such funds as are necessary for the proper administration of this article."

The primary issue raised with regard to this section is which body, the board of supervisors or the civil service commission, is to make the determination of what is "necessary" for the proper administration of the article. This section does not purport to delegate any of the board of supervisors' statutory contract authority and there is no indication that the Legislature intended that the board of supervisors must appropriate the funds that the commission deems necessary. In absence of any contrary language, the determination of what is necessary remains with the board of supervisors as part of its appropriation power and authority to contract for specialized services.

When state law leaves to the board of supervisors the determination of what is suitable, the courts will not interfere and tell the board how to exercise its discretion (*County of Los Angeles v. Bryam* (1951) 36 Cal.2d 694, 699; *Simpson v. Hite* (1950) 36 Cal.2d 125, 130; *Nickerson v. San Bernardino* (1918) 179 Cal. 518, 522) unless there has been an abuse of that discretion (*Board of Law Library Trustees v. Board of Supervisors* (1893) 99 Cal. 571, 573). In making this determination the board of supervisors is presumed to have regularly performed its official duty. (*LaVine v. Jessup* (1958) 161 Cal.App.2d 161, 167; Evid. Code, § 664.) If the board of supervisors exercises an unreasonable interference with the delegated functions of the civil service commission, it may be an abuse of its discretion. But to exercise its statutory duties with regard to the appropriation of money for special services is not such abuse when such power has not been delegated to the commission.

In a recent opinion (64 Ops.Cal.Atty.Gen. 632) this office concluded that the power to determine what is "necessary" in regard to a Local Agency Formation Commission (LAFCO) was expressly withdrawn from the board of supervisors and placed in LAFCO itself. In that opinion the statute under consideration provided that the board of supervisors *shall appropriate the amount of money estimated by LAFCO*. We have found no such mandate in any law which deprives the Solano County Board of Supervisors of its statutory authority over the employment of persons for specialized services and to determine the budget expenditures of the Solano County Civil Service Commission.

We conclude that the Solano County Civil Service Commission does not have authority to contract for the services of a private investigator to conduct investigations

at county expense without authorization to make such a contract and an appropriation to pay for such services from the Solano County Board of Supervisors.

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