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OFFICE OF THE ATTORNEY GENERAL  
State of California

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OPINION	:	No. 82-303
of	:	<u>SEPTEMBER 3, 1982</u>
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THE CALIFORNIA HEALTH FACILITIES AUTHORITY has requested an opinion on the following question:

What are the duties, powers and responsibilities, if any, of the California Health Facilities Authority with respect to the construction of a health facility project for which it has arranged financing and given a loan under the California Health Facilities Authority Act?

CONCLUSION

The California Health Facilities Authority has no duties, powers or responsibilities with respect to the construction of a health facility project for which it has arranged financing and given a loan under the California Health Facilities Authority Act.

## ANALYSIS

The California Health Facilities Authority ("the Authority") administers the California Health Facilities Authority Act ("the Act") (Stats. 1979, ch. 1033, p. 3558, § 1; Gov. Code, tit. 2, div. 3, pt. 7.2, § 15430 et seq.)<sup>1</sup> under which loans carrying favorable financing are made for the *construction*, expansion, remodeling, renovation, furnishing and/or equipping of health facilities, with monies therefor being raised through the Authority's issuance of tax exempt revenue bonds. (§§ 15437, 15432, subd. (f) (health facility "project" so defined), 15439- 15444; cf. §§ 15431, 15433, 15438.) The Authority is vested with all powers reasonably necessary to carry out the powers and responsibilities expressly granted or imposed by the Act (§ 15437; cf. § 15438, subd. (o)) and section 15438 grants it a broad array of specific powers among which is the power to make secured or unsecured loans to any participating health institution in connection with the financing or refinancing of a project in accordance with an agreement between the Authority and the participating health institution. (§ 15438, subs. (i), (j).) It is in connection with its role in arranging such financing that we are asked what the Authority's duties, powers and responsibilities might be vis-a-vis the construction of the health facility project. We conclude that the Authority has no duties, powers or responsibilities in regard thereto.<sup>2</sup>

The construction of health facilities in this state is governed by a comprehensive statutory and regulatory regimen under which various state agencies, but primarily the Office of Statewide Health Planning and Development, review, approve and monitor the different stages of that activity. The Authority, however, is noticeably absent from being charged with such oversight. Thus, under the Hospital Seismic Safety Act of 1972 which deals with the structural elements of construction generally (Stats. 1972, ch. 1130, p. 2171, § 3; Health & Saf. Code, div. 12.5, §§ 15000-15023), it is the Office of Statewide Health Planning and Development, in conjunction with the Office of the State Architect of the Department of General Services (and the State Fire Marshal), who carefully reviews and approves detailed plans and specifications for the construction or alteration of facilities (*id.*, §§ 15007-15009, 15013, 15014, 15015(2); cf. *id.*, § 446.3)<sup>3</sup> and

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<sup>1</sup> Unidentified section references are to the Government Code unless contextually otherwise indicated.

<sup>2</sup> We are also asked what might be the potential risks or liabilities associated with any involvement by the Authority in connection with its overseeing or monitoring construction of facility projects for which it has arranged financing under the Act. Inasmuch as we conclude that the Authority has no duties, powers or responsibilities in regard to the construction, the question is made moot. (Cf. *Mikalian v. City of Los Angeles* (1978) 79 Cal.App.3d 150, 158; *Kane v. Hartford Accident & Indemnity Co.* (1979) 98 Cal.App.3d 350, 354-355; see however, 57 Ops.Cal.Atty.Gen. 332, 335-337 (1974); Civ. Code, § 3434.)

<sup>3</sup> As succinctly summarized in an earlier opinion:

thereafter observes, inspects, and monitors the actual construction itself (*id.*, §§ 15006, 15016, 15017, cf. *id.*, § 446.3). (See 61 Ops.Cal.Atty.Gen. 365, 369-370 (1978); 57 Ops.Cal.Atty.Gen. 332, 333-334, *supra*.) That office (OSHPD) also reviews and approves plans and specifications required to be submitted by health facilities dealing with matters not related to the structural elements of construction (e.g., spatial, mechanical, electrical, plumbing plans) for their consistency to standards adopted to ensure the adequacy and safety of the facilities' physical plants. (Health & Saf. Code, § 1276, cf. *id.*, § 446.3; 24 Cal. Admin. Code, pt. 6, div. T17, T17-001, et seq.; *West Covina Enterprises, Inc. v. Chalmers* (1958) 49 Cal.2d 754, 760; cf. *Yanke v. State Dept. Public Health* (1958) 162 Cal. App.2d 600, 604.) In addition, where a facility seeks loan insurance under the California Health Facility Construction Loan Insurance Law (Stats. 1969, ch. 970, p. 1920, § 1, as amended by Stats. 1979, ch. 1047, p. 3689, § 1; Health & Saf. Code, §§ 436.1, 436.2), the Office of Statewide Health Planning and Development is mandated to inspect each construction project for which loan insurance is approved and to certify that work thereon has been performed in accordance with approved plans and specifications before payment of an installment of the loan proceeds is disbursed. (*Id.*, § 436.6; cf. *id.*, § 436.4.)

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" . . . [The] California Administrative Code, . . . describes the documents which must be submitted to the Department. These are submitted in three phases and appear to cover every phase of construction. In the first two phases, the reports include site data, including geological and earthquake engineering reports, preliminary drawings and outline specifications and working drawings. In the third phase, those elements of design and construction to be reviewed by the state are outlined in detail . . . [and include]:

"(A) Geotechnic and final geological reports.

"(B) Architectural drawings which include plot plans, floor plans, roof plans, finishes, doors, windows, location of equipment.

"(C) Structural drawings including plans of foundations, floors and roofs and details of all special connections. These must be accompanied by computations and stress diagrams.

"(D) Mechanical drawings showing complete heating, ventilating, air conditioning and plumbing systems and showing methods for fastening equipment to the structure to resist seismic forces.

"(E) Electrical drawings showing the complete electrical system and methods for fastening equipment to the structure to resist seismic forces.

" . . . . .

"The actual construction requirements for health facilities . . . [as] set forth in [the] California Administrative Code, . . . specify in detail materials, methods of construction reinforcement, tests and formulae for determining resistance to stress, inspection and many other aspects of construction relating to the structural safety of the completed building." (61 Ops.Cal.Atty.Gen. 361, 370.)

Where federal monies are sought, as under the Public Health Service Act (see 42 U.S.C.A., §§ 291d, 291m), OSHPD is similarly mandated to inspect construction projects to certify that work has been performed according to approved plans and specifications before an installment of the federal funds due an applicant is disbursed. (Health & Saf. Code, §§ 432.8, 432.9; cf. *id.*, § 446.3.)<sup>4</sup>

Although the Authority has been vested with a smorgasbord of powers—including the power to engage private consultants to render technical assistance and advice (§ 15438, subd. (e)) and even the power to determine, acquire and construct health facility projects (*id.*, subd. (f)) and to mortgage its interest in one (*id.*, subd. (k)), it has not been authorized, as have the other agencies mentioned, with the responsibility to oversee and monitor the construction of health facility projects for which it merely provides financing. Since an administrative agency may only exercise those powers which are granted to it (*Blatz Brewing Co. v. Collins* (1945) 69 Cal.App.2d 639, 645-646), we find the lack of such a similar mandate indicates that the Authority was *not* meant to have that power or responsibility. (Cf. *Marsh v. Edwards Theatres Circuit, Inc.* (1976) 64 Cal.App.3d 881, 891; *Kaiser Steel Corp. v. County of Solano* (1979) 90 Cal.App.3d 662, 667.) And any attempt to imply it under the guise of statutory interpretation is not well taken. (*Addison v. Dept. of Motor Vehicles* (1977) 69 Cal.App.3d 486, 498; *First M.E. Church v. Los Angeles Co.* (1928) 204 Cal. 201, 204.)

We must not forget that the *raison d'etre* for the Authority Act is to *provide financing only* for the construction of health facility projects which have demonstrated their "financial feasibility" (Gov. Code, §§ 15438, 15438.5), and that not all of the obligations incurred by facilities under other programs were meant to be a condition of their securing participation under the Authority Act. (See, e.g., 65 Ops.Cal.Atty.Gen. 165, 173- 174, 175 (1982) (no need to comply with the detailed reporting requirements imposed by Health & Saf. Code, §§ 436.81-436.84).) Certainly, too, given the comprehensive nature of a statutory regimen for plan review and monitoring of health facility construction already existing, we do not believe the Legislature meant to superimpose the oversight of yet

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<sup>4</sup> The Office of Statewide Health Planning and Development is the usual conduit through which federal assistance is applied for and funds received under various federal programs that have been designed to facilitate the construction of hospitals and other health facilities. (Health & Saf. Code, §§ 430.2, 432.2, 432.3, 432.4; cf. 42 U.S.C.A. § 291d(a)(1) (Hill-Burton).) Invariably, before federal assistance can be obtained, a facility must submit detailed plans and specifications for construction of the project which must be approved by the federal administrator (e.g., the Surgeon General or Secretary of Health and Human Services and upon which construction must be conducted). (See, e.g., 42 U.S.C.A. §§ 291c, 291e, 291g (Hill-Burton); 291-j(3); 300r, 300s(2), 300s-1(b)(1)(D, E) (Federal Grants).)

another administrative agency on that activity with the attendant expense and duplication of effort that that would entail.

Accordingly, we conclude that the California Health Facilities Authority has no duties, powers or responsibilities with respect to the construction of a health facility project for which it has arranged financing and given a loan under the California Health Facilities Authority Act.

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