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GEORGE DEUKMEJIAN
Attorney General

OPINION	:	No. 82-404
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GEORGE DEUKMEJIAN Attorney General	:	
Ronald M. Weiskopf Deputy Attorney General	:	

THE CALIFORNIA HEALTH FACILITIES AUTHORITY has requested an opinion on the following question:

What is the length of time that a community service obligation given pursuant to Government Code section 15459 by a health institution seeking financing under the California Health Facilities Authority Act remains in force?

CONCLUSION

A community service obligation given by a health institution pursuant to Government Code section 15459 to receive favorable financing under the California Health Facilities Authority Act remains in force for as long a time as is agreed upon by the parties if that determination is "reasonable" considering all the circumstances of each particular case.

ANALYSIS

Under the California Health Facilities Authority Act (Stats. 1979, ch. 1033, p. 3558, § 1; Gov. Code, tit. 2, div. 3, pt. 7.2, § 15430 et seq.)[1] favorable financing is provided by the California Health Facilities Authority for the construction, expansion, remodeling, renovation, furnishing or equipping of health facilities, with monies for low interest loans for those "projects" raised through the issuance of tax exempt revenue bonds. (§§ 15432, subd. (f)-(j); 15438.5; 15448; see also 15437-15438, *passim*.) To participate under the Act and receive that favorable financing, however, a health institution must give the Office of Statewide Health Planning and Development an assurance that its services will be made available to all persons residing or employed in the community, that is, the area served by the facility, and it must also post a prescribed notice of such availability in prominent areas within the facility and provide copies of it to all welfare offices in the county where the facility is located. (§ 15459; Health and Saf. Code, §§ 436.8, subd. (j); 438.82.)

In a recent opinion of this office we touched on the *nature* of that "community service obligation". (65 Ops.Cal.Atty.Gen. 165 (1982).) The present inquiry deals with its *duration*. Asked about the length of time such an obligation remains in force, we conclude that the duration of a community service obligation lasts for as long a time as is agreed upon by the parties if their determination is "reasonable" considering all the circumstances surrounding the financing for which it is given in each particular case.

The problem we face is one of statutory construction where our primary and controlling consideration becomes that of determining and giving effect to the legislative intent behind the enactment. (*People* v. *Davis* (1981) 29 Cal.3d 814, 824; *Great Lakes Properties, Inc.* v. *City of El Segundo* (1977) 19 Cal.3d 152, 163; *Select Base Materials* v. *Board of Equal.* (1959) 51 Cal.2d 640, 645.) To do so with respect to determining the intended duration for a community service obligation given pursuant to section 15459, we turn first to the words of that section itself. (*People* v. *Belleci* (1979) 24 Cal.3d 879, 884; *Moyer* v. *Workmen's Comp. Appeals Bd.* (1973) 10 Cal.3d 222, 230; *Steilberg* v. *Lackner* (1977) 69 Cal.App.3d 780, 785.) Section 15459 reads in full as follows:

> "*As a condition of participation under this part*, each participating health institution shall give assurance to the Office of Statewide Health Planning and Development *regarding availability of its services to community residents in the manner set forth in subdivision (j) of Section 436.8 of the Health and Safety Code* and shall provide notice of such availability as set forth in Section 436.82 of the Health and Safety Code. The

[1] Statutory references are to the Government Code unless otherwise stated.

remedies and sanctions available to the office against the borrower for failure to adhere to the assurance given to the office shall include the following:

"(a) Rendering the borrower ineligible for federal and state financial assistance under the Hill-Burton Program.[2]

"(b) Requiring a borrower that had originally met the conditions of community service to submit a plan that is satisfactory to the office which details the reasonable steps and timetables that the borrower agrees to take to bring the facility back into compliance with the assurances given to the office.

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[2] We understand that this sanction is now virtually meaningless since financial assistance under the Hill-Burton Program (i.e., pursuant to the Hospital Survey and Construction Act of 1946, 42 U.S.C. § 291 et seq.) apparently has fallen into desuetude. (*Cook* v. *Ochsner Foundation Hospital* (5th Cir. 1977) 559 F.2d 968, 974, fn. 13; *Newsom* v. *Vanderbilt University* (6th Cir. 1981) 653 F.2d 1100, 1120, fn. 5; see also Sen. Rept. on P.L. 96-79, 1979 U.S. Cong. & Adm. News 1306, 1309-1314.)

In its heyday (1946-1970) the program promoted the construction of community hospitals through basic grants and favorable interest bearing loans. (See, e.g., *id.*, §§ 291a, 291i, 291j.) As a condition for the receipt of Hill-Burton funds, assurance had to be given by the applicant that:

> "(1) the facility or portion thereof to be constructed or modernized [would] be made available to all persons residing in the territorial area of the applicant; and (2) there [would] be made available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor . . . ." (42 U.S.C. § 291c(e); see also *id.*, §§ 291g, 291e(b); 291j-3(b); 42 C.F.R. § 53.111; cf. 42 U.S.C. § 291e(e).)

Were a facility to be sold or cease to provide health services, within 20 years after completion of construction, the United States was entitled to recover on a grant its pro rata share of the cost of construction (*id.*, § 291i) or to call any loan extended (*id.*, § 291j(c)(3); cf. *id.*, § 3005-1a). That 20 year period apparently also formed the basis for an administrative regulation, 42 Code of Federal Regulations, section 53.111(a), which made the "volume of services obligation" inapplicable to an applicant after that lapse of time. (See *Cook* v. *Ochsner Foundation Hospital*, *supra*, 559 F.2d at p. 973; see also 42 C.F.R. § 142.501(b)(1)(L).) The regulation also made *that* obligation inoperative after a loan was repaid. (*Ibid.*, at p. 973, n. 11.) Interestingly enough a regulation (i.e., 42 C.F.R. § 53.113) which had placed a similar limitation on the community service obligation found in clause (1) of section 291c(e) was found wanting as being "clearly inconsistent with the aims of the Hill-Burton Act" (*Lugo* v. *Simon* (N.D. Ohio 1976) 426 F.Supp. 28, 36), and now no such limitation appears therein. We are told, however, that that matter is the subject of further federal litigation in *American Hospital Association* v. *Schweiker*, (7th Cir.) No. 82-1295.

> "(c) Referring the violation to the office of the Attorney General of California for legal action authorized under existing law or other remedy at law or equity, when a facility fails to carry out the actions agreed to in a plan approved by the office pursuant to subdivision (b) of this section.
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> "However, the remedies obtainable by such legal action shall not include withdrawal or cancellation of the project or projects financed or to be financed under this part."

Subdivision (j) of section 436.8 of the Health and Safety Code in turn sets forth the assurance referred to in section 15459 as follows:

> "[A] borrower shall offer *reasonable assurance* that the services of the health facility will be made available to all persons residing or employed in the area served by the facility."

Taken together, the sections impose a substantive obligation upon a facility which would receive favorable financing under the California Health Facility Authority Act for its services to be "available" to all persons residing or employed in the community area. Analyzing the sections further, we see that the community service obligation has several dimensional "aspects," such as the "services" to be made available, the duration of their "availability," the scope of the "availability" and the "area" to be served. (Gov. Code, § 15459; Health & Saf. Code, § 436.8, subd. (j).) Viewing it as such, the matter of the length of time a community service obligation is to last is but one of the aspects of that total obligation. But, with respect to it and the other aspects of the total obligation, the sections are seemingly "silent" as to specific detail, the only statutory qualification being that the assurance which is given respecting the overall obligation be "reasonable." Yet the use of the word "reasonable" to describe that assurance must serve some purpose (Cf. *Wells* v. *Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 788; *Pacific Legal Foundation* v. *Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101, 114), and from its use we glean an indication of the Legislature's intent regarding the durational aspect of a community service obligation.

The plain meaning of the term "reasonable" (cf. *People* v. *Belleci*, *supra*, 24 Cal.3d at 884) is something that is not absurd, ridiculous, extreme, excessive or demanding too much. (Webster's Third New Internat. Dict. (1971 ed.) at p. 1892.) As such, it is a relative term whose applicability depends on the situation it is used to describe. Since that which might be deemed reasonable in one situation might not be so in another, no one factor can serve to determine what is "reasonable" in varying situations. We believe the Legislature deliberately used the term to describe the assurance a facility was to give respecting its community service obligation to indicate that the *duration* of the obligation,

as well as every other aspect of it, was *not* to be determined talismanically by one caliper in all cases, but rather that it, along with those other aspects, should be fashioned on a case-by-case basis according to what would fit the particular circumstances of each case.[3] Thus while such a factor as for example the length of time that financing for a particular loan is outstanding might be important toward making a determination of what would be a "reasonable" time that the community service obligation which is given for that financing should last, and while that factor may well in fact be a good marketplace indication of what is reasonable under the circumstances, still it would not be the only thing considered. Other factors such as the amount, duration and purpose of the loan measured against the needs of both the community and of the facility would join in the calculus of determining what would be a reasonable time under the circumstances. (Cf. *Cook* v. *Ochsner Foundation Hospital*, *supra*, 559 F.2d at 972; *Corum* v. *Beth Israel Medical Center* (S.D.N.Y. 1974) 373 F.Supp. 550, 556; *Lugo* v. *Simon*, *supra*, 426 F.Supp. at p. 34; *Newsom* v. *Vanderbilt University*, *supra*, 623 F.2d at pp. 1117 & 1117-1123, fns. 4, 5.)

The fact that the statutes require the overall assurance of a community service obligation to be "reasonable" connotes a need for the parties involved to make all of the aspects of that obligation specific in each case. Thereafter the question of whether any particular agreement reached by them meets the statutory test of being "reasonable" will depend upon all the circumstances surrounding the financing in the particular case. As it is but part of that overall whole, the matter of length of time the community service obligation should endure will likewise depend on the agreement reached by the parties subject to its being "reasonable" in the circumstances involved. Should the parties not agree on the duration of the obligation, it will nonetheless still be measured against the statutory test of what is reasonable considering all the circumstances of the particular case.

We therefore conclude that the duration of a community service obligation given by a health facility pursuant to section 15459 in order to receive financing under the California Health Authorities Act remains in force for as long a time as is agreed upon by the parties if that determination is reasonable considering all of the circumstances surrounding the financing for which assurance of the obligation is given in each particular case.

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[3] So conceived the flexibility inherent in subdivision (j) is no different from that found in other subdivisions of section 436.8 which, while imposing conditions for loans to be made (under the California Health Facilities Construction Loan Law), also admit tailoring the substance of those conditions to the circumstances of each particular case. (See, e.g., § 436.8, subd. (E) (amortization not to be in excess of borrower's "reasonable ability to pay").)